

**ANNUAL MEETING
OF THE COMMITTEE ON SCOPE AND PROGRAM**

UNIFORM LAW COMMISSION

**Saturday, July 12, 2014, and Sunday, July 13, 2014
Seattle, Washington**

Minutes

The meeting of the Committee on Scope and Program was convened at 9:00 am on Saturday, July 12, 2014, and again at 9:30 am on Sunday, July 13, 2014, at the Seattle Westin Hotel in Seattle, Washington, by Chair Anita Ramasastry. Committee members Pamela W. Bertani, Terry J. Care, Melissa Hortman, Raymond P. Pepe, Daniel Robbins, Battle Robinson, Steve Wilborn, and John T. McGarvey were present. Also present were Harriet Lansing, President, Richard T. Cassidy, Chair of the Executive Committee, and Michael Houghton, immediate past President. Staff members present included John A. Sebert, Executive Director; Terry Morrow, Legislative Director; and Katie Robinson, Deputy Legislative Director and Communications Officer. Attending for a portion of the meeting were Commissioners Paul Kurtz, Turney Berry, Rob Sitkoff, Harry Tindall, Jim McKay, Kathy Patchel, Howard Swibel, Fred Stamp, Fred Miller, Nora Winkelman, King Burnett, Anne Reigle, Anne McGihon, and Jack Davies; Prof. William Covington and Nicholas Pleasants from the UW Law and Technology Clinic; John Black, National Federation of State High Schools (via conference phone); Ben Kahrl, General Counsel, Global Debt Registry; and Peter Lown and Lynn Romeo, Uniform Law Conference of Canada.

Chair Ramasastry welcomed the committee and discussed the agenda for the meeting. Upon a motion duly made, the minutes from the January 17, 2014, meeting of the Scope and Program Committee were unanimously approved.

Study Committee Reports

- Study Committee on **Portability and Recognition of Professional and Occupational Licenses of Military Spouses**
(Paul Kurtz, Chair) – Scope Liaison Terry Care

Commissioner Kurtz reported on the work of this committee. The committee developed an issues list, and, with the help of key observers and ULC staff, the committee also researched existing state legislation on the subject. After careful consideration of the Criteria for Designation and Consideration of Uniform and Model Act, the committee concluded that the criteria for establishing a drafting project has not been met. Most importantly, there is little likelihood that any ULC act on this topic would be enacted in a substantial number of states because a large number of state already have legislation that deals in some fashion with these issues. Therefore, the

committee concludes that the ULC should not undertake a drafting project on this topic and recommends that the study committee be discharged.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged.

The Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Portability and Recognition of Professional and Occupational Licenses of Military Spouses be discharged with a letter of thanks to the committee.

On July 14, 2014, the Executive Committee approved this resolution.

- Study Committee on **Trust Protectors**
(Turney Berry and Rob Sitkoff, Co-Chairs) – Scope Liaison Pam Bertani

Commissioners Berry and Sitkoff reported on the progress of this study committee. The committee believes that a project on divided trusteeship is the next logical step for uniform laws in the trust field. Such a project should fit neatly with other ULC projects, including the Uniform Trust Code, Uniform Powers of Appointment Act, and the soon-to-be-final Trust Decanting Act. The committee requests that a drafting committee for an Act on Divided Trusteeship be appointed, and that the committee's charge include responsibility for conforming revisions to other uniform trusts and estates statutes as appropriate. This recommendation to form a Drafting Committee on Divided Trusteeship is supported by the Joint Editorial Board for Uniform Trusts and Estates Acts.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Divided Trusteeship be formed.

On July 14, 2014, the Executive Committee approved this resolution.

- Study Committee on **Model Veterans' Court Act**
(Harry Tindall, Chair) Scope Liaison Terry Care

Commissioner Tindall reported on the work of this study committee. Veterans courts are meant to divert cases involving veterans to a specialized court set up to deal

with these issues. Within the last several years, numerous veterans' treatment courts have been established within existing court structures. After development of a list of legal issues and continued outreach to stakeholders, the committee requests that a drafting committee be appointed.

After discussion, the Committee on Scope and Program recommended, by a vote of 5 to 4, that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on a Model Veterans' Court Act/Rule be formed.

On July 14, 2014, the Executive Committee approved this resolution.

- Study Committee on **Firearms Information**
(Jim McKay, Chair) Scope Liaison Terry Care

Commissioner McKay reported on the work of this study committee. The committee has examined the issue of the information that states have to provide to National Instant Criminal Background Check System (NICS). The committee determined the specific topics to be examined within this area, which include (1) designating a state agency as a "point of contact" with NICS and defining its responsibilities; (2) specifying the circumstances in which a state provides information to NICS concerning individuals who are mentally ill; (3) establishing procedures for providing information to NICS on individuals convicted of a crime punishable by imprisonment of more than one year; (4) establishing procedures to determine whether individuals have been convicted of a misdemeanor crime of domestic violence; (5) ensuring the confidentiality and accuracy of firearms information; (6) establishing procedures for appeals from denials of firearms purchases; and (7) establishing procedures for the restoration of the right to possess firearms. The study committee recommends the creation of a drafting committee on Firearms Information.

After discussion, the Committee on Scope and Program recommended that the study committee be continued.

On July 14, 2014, the Executive Committee approved a motion to discharge the study committee.

- Study Committee on **Harmonization of the Law of Canada, Caribbean Nations and the U.S. on Registration of Foreign Judgments**
(Kathy Patchel, Chair) – Scope Liaison Steve Wilborn

Commissioner Patchel reported on the progress of this study committee. The joint committee has met by conference call, has reviewed the state of existing law, and

continues its outreach to interested parties, particularly representatives of other Caribbean nations. The study committee will work with ULC staff to develop a mailing to other organizations and individuals in the Caribbean that might be interested in the project. The committee plans to meet at least two more times via conference call this fall and may request an in-person meeting to be held in the first half of 2015, with the goal of providing a final report to Scope at the July 2015 Annual Meeting.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Harmonization of the Law of Caribbean Nations and the U.S. on Enforcement of Child Custody and Support Orders**
(Howard Swibel, Chair) – Scope Liaison Battle Robinson

Commissioner Swibel reported on the progress of this study committee. The study committee is seeking to involve representatives from as many Caribbean governments and multi-national organizations in the Caribbean as are interested, and also explore whether representatives of the ULC of Canada, or of the Canadian government, are interested in participating. The study committee will continue its efforts to further engage Caribbean Attorneys General and Ministers of Justice, and the Committee may request an in-person meeting to be held in the first half of 2015, with the goal of providing a final report to Scope at the July 2015 Annual Meeting.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Social Media Privacy**
(Fred Stamp, Chair) Scope Liaison Steve Wilborn

Commissioner Stamp reported on the progress of this study committee. The committee has reviewed a large number of background materials relating to current and pending social media legislation. The committee held a stakeholders meeting on April 30, 2014, in Washington DC. The purpose of that meeting was to obtain views from representatives of a large number of entities as to whether there is a need for an act on social media privacy, and if so, what issues should be covered. On its final call on May 30, 2014, the study committee voted to recommend that the ULC establish a drafting committee to draft an act on social media privacy.

After discussion, the Committee on Scope and Program recommended, by a vote of 8 to 1, that a drafting committee be appointed, with the further recommendation that, if at all possible, the work of the drafting committee will be expedited so as to complete its work in July 2015.

The Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on Social Media Privacy be formed, and that the scope of the act be limited to issues related to employer's access to employees' or prospective employees' social media accounts and educational institutions' access to students' or prospective students' social media accounts.

On July 14, 2014, the Executive Committee approved this resolution.

- Study Committee on **Alternative and Mobile Payment Systems** (Fred Miller, Chair) – Scope Liaison Anita Ramasastry

Commissioner Miller reported on the progress of this study committee. New payment providers such as Bitcoin and mobile or alternative payment companies are currently being licensed and regulated differently in various jurisdictions. The committee's reporter has developed a preliminary report outlining the various issues that the committee may want to consider. The report has been distributed to the committee and observers for comment, and the committee plans to have a conference call in the fall. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Computer Database Retrieval System for Land Records** (Nora Winkelman, Chair) – Scope Liaison Melissa Hortman

Commissioner Winkelman reported on the progress of this study committee. The committee has held one conference call, and is in the process of identifying stakeholders. With the help of ULC staff, the committee will undertake a survey of the 31 jurisdictions that have enacted the Uniform Real Property Electronic Recording Act to determine how they are implementing it – that is, do they already have state standards for retrieval of information in addition to the initial recording of documents. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

Joint Editorial Board Written Reports and Recommendations

- **JEB – Uniform Family Law** (Harry Tindall, Chair) – Scope Liaison Battle Robinson

There was no proposal from the JEB.

- **JEB – Uniform Trust and Estate Acts**
(Tom Gallanis, Executive Director) – Scope Liaison Pam Bertani

There was no proposal from the JEB.

- **JEB – Uniform Real Property Acts**
(Wilson Freyermuth, Executive Director) – Scope Liaison Melissa Hortman

There was no proposal from the JEB.

- **JEB – International Law**
(Michael Houghton, Co-Chair) – Scope Liaison Dan Robbins

There was no proposal from the JEB.

- **JEB – Unincorporated Organization Acts**
(Daniel Kleinberger, Director of Research) – Scope Liaison Ray Pepe

There was no proposal from the JEB.

- **PEB – Uniform Commercial Code**
(Neil Cohen, Director of Research) – Scope Liaison John McGarvey

There was no proposal from the PEB.

New or Pending Proposals

- **Interim Relief Enforcement and Recognition**
(Steve Richman, ABA International Law Section) Scope Liaison Dan Robbins

Commissioner Robbins reported on this proposal to address a mechanism for recognition and enforcement of non-final, interim orders in both domestic and foreign cross-border disputes. It addresses both judicial and arbitral orders. This proposal had been originally considered at the January 2013 meeting of Scope as well as the July 2014 meeting of Scope, and Scope had deferred action on the proposal, in order to evaluate the reception of the Uniform Asset-Preservation Orders Act (UAPOA) at the ABA 2013 Midyear Meeting and during the 2013 and 2014 state legislative sessions. Executive Director Sebert reported that the act has not yet been enacted in any state.

After discussion, the Committee on Scope and Program requests that this proposal remain on the agenda for Scope’s consideration in July 2015, in order to assess the legislative progress of the Uniform Asset-Preservation Orders Act.

- **Regulate Sale or Use of Illegally Imported or Counterfeit Prescription Drugs**
(Commissioner Anne McGihon) Scope Liaison Battle Robinson

Commissioner McGihon provided an update on this proposal, which was originally considered by Scope and Program at its January 2014 midyear meeting, on contact with Attorneys General. This is a proposal to draft an act that would regulate and prevent the sale or use of illegally imported or unapproved prescription drugs and devices. This proposal will remain on the agenda for the January 2015 meeting of Scope.

- **Regulation of Driverless Cars** (Prof. William Covington and Nicholas Pleasants, Technology Law and Public Policy Clinic at UW Law School) Scope Liaison Melissa Hortman

Prof. William Covington and Nicholas Pleasants reported on this proposal to regulate driverless cars. Autonomous vehicle technology is rapidly maturing and will soon be ready to test nationwide. This proposal recommends creation of a study committee to consider the need for state legislation on the subject. As autonomous vehicle technology matures, it may be desirable for the states to have uniform laws governing their regulation which shall allow them to move freely between states as regular vehicles do now. The National Highway Transportation Safety Administration (NHTSA) has issued guidelines for states seeking to regulate driverless cars.

After discussion, the Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of state legislation concerning the regulation of driverless cars.

On July 14, 2014, the Executive Committee approved this resolution.

- **Limiting Liability of Volunteer Healthcare Providers for Amateur Athletics** (John Black, General Counsel, National Federation of State High School Assns.) Scope Liaison Ray Pepe

John Black reported on this proposal via conference phone. This is a proposal to study the need for a model state Good Samaritan law which would protect medically licensed individuals who volunteer their services at amateur sporting events. Most current state Good Samaritan laws would not protect such volunteers, as they would not fall under the generally accepted definition of “Good Samaritan.”

After discussion, and by a vote of 5 to 4, the Committee on Scope and Program concluded to take no action at this time.

- **Mental Health Advance Directives** (Prof. Judy Clausen, Florida Coastal School of Law) Scope Liaison Melissa Hortman

Commissioner Hortman reported on this proposal regarding a model mental health advance directive statute. Mental health advance directives (MHAD) are a special type of advance directive often used by persons who have been diagnosed with serious mental disorders. This proposal recommends creation of a MHAD state statute which authorizes patients to form and effectuate “Ulysses” arrangements. A Ulysses arrangement is a type of MHAD that serves as a preventative measure for a patient to obtain treatment during an episode because the patient has learned that episodes cause her to refuse treatment. A Ulysses arrangement authorizes doctors to treat the patient during a future episode when the patient lacks capacity.

After discussion, the Committee on Scope and Program requested that Prof. Clausen further research the current status of state law on the subject, and address the question of whether there is consensus within the mental health advocacy community as to the necessity of legislation on this topic, as well as consensus within the legal community on this topic. The proposal is also referred to the Joint Editorial Board for Uniform Trust and Estate Acts for its review and consideration.

- **Business Courts**
(Commissioner Harry Tindall) Scope Liaison Battle Robinson

Commissioner Tindall reported on this proposal to form a study committee to consider the need for and feasibility of drafting an act that would regulate the creation of specialized trial courts to hear business disputes exclusively or primarily.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Recognition of Foreign Judgments Issued by Canadian Courts**
(Commissioner Harry Tindall) Scope Liaison Dan Robbins

Commissioner Tindall reported on this proposal to form a study committee to consider the need for and feasibility of drafting an act that would provide efficient procedures to enforce judgments rendered in Canada against defendants within the jurisdiction of the United States.

After discussion, the Committee on Scope and Program referred the proposal to the study committee on Harmonization of the Law of Canada, Caribbean Nations, and the U.S. on the Registration of Foreign Judgments for further review and consideration.

- **Business Association Act**
(Commissioner Harry Tindall) Scope Liaison Ray Pepe

Commissioner Tindall reported on this proposal to form a study committee to consider the need for and feasibility of drafting an act that would regulate the “verein”

business structure. The Swiss Verein is a legal entity created by drafting articles of association. The verein is a business structure that permits international business entities to affiliate under one name while simultaneously retaining their separate legal status.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Debt Collection Registry**

(Ben Kahrl, General Counsel, Global Debt Registry) Scope Liaison John McGarvey

Mr. Kahrl reported on this proposal to form a study committee to consider the need for and feasibility of state legislation for the creation of a national debt registry, or multiple registries, for the purpose of tracking title to consumer debt. The registry would be designed to resolve issues regarding debt ownership and the authority to collect, and would ensure that core data was accurately transferred to each buyer in the chain of title. The registry would also serve to provide important consumer protections.

After discussion, the Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of state legislation on the transfer and recording of consumer debt and the viability of a registration system to record such transfers.

On July 14, 2014, the Executive Committee approved this resolution.

- **Dog Owner Property Rights**

(ABA TIPS Animal Law Committee) Scope Liaison Terry Care

Commissioner Care reported on this proposal to draft a state law that would prohibit breed-specific laws, rules, regulations, or policies, thereby replacing a patchwork of both breed discriminatory laws as well as a variety of different breed-ban laws with a uniform breed-ban law that will make all laws breed neutral.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- **Puppycide**

(Cynthia Davis Merriam) Scope Liaison Steve Wilborn

Commissioner Wilborn reported on this proposal to draft a state law that would address the issue of dog shootings by law enforcement. A state law on this subject might include (1) law enforcement training in non-lethal methods of handling dog encounters;

(2) impose a duty upon law enforcement to give dog owners the opportunity to secure or save the dogs whenever possible; and (3) report all firearms discharges involving dogs.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

Potential Future Projects

The following topics were discussed and evaluated by Scope so as to determine if Scope should recommend further research or review on the particular topic.

- **Drones** (unmanned aerial vehicles, or UAVs)
(Forwarded by Commissioner Dave Clark) Scope Liaison Melissa Hortman

Commissioner Hortman reported on this topic, which had been continued from the 2014 midyear meeting. States are considering and enacting legislation on unmanned aerial vehicles, also called UAVs or drones. UAVs have many applications: for law enforcement, land surveillance, search and rescue operations, disaster response, border patrols, and many more. In 2013, 43 states considered 130 bills that address this emerging technology, considering privacy issues, the benefits of their use, and their economic impact. The FAA has recently selected six test sites for testing the integration of UAVs into the aviation system, raising the probability that drone use will grow quickly.

After discussion, the Committee on Scope and Program requested that ULC staff continue to monitor the topic, and do research into state legislative activity on this topic, and report back any findings at the January 2015 meeting of the Scope and Program Committee.

- **Anti-Fraud Technology to Prevent Data Security Breach**
(Forwarded by Commissioner Susan Nichols) Scope Liaison Ray Pepe

Commissioner Pepe reported on this proposal to study the need and feasibility of drafting state law setting database security standards and consumer notification requirements. Chip and PIN technology uses a small chip embedded in each card (rather than a magnetic stripe) that creates a new code for each transaction. This makes it nearly impossible to counterfeit cards and significantly decreases fraud.

After discussion, the Committee on Scope and Program requested that ULC staff monitor the topic.

- **Designer Drugs and Potential Revision of Uniform Controlled Substances Act**
(Forwarded by Commissioner Jack Davies) Scope Liaison Pam Bertani

Commissioner Davies reported on this proposal to study the need for state law, or possible amendments to the Uniform Controlled Substances Act, to regulate “designer” drugs – synthetic drugs that are chemical compounds designed to mimic the effects of naturally occurring drugs like marijuana and cocaine. These drugs are sold legally because these chemical compounds don’t appear on state and federal lists of illegal drugs. As soon as authorities add a compound to the prohibited list, chemists tweak the formula slightly to make a new – and legal – substance.

After discussion, the Committee on Scope and Program requested that ULC staff do further research on this topic and reach out to other organizations to gauge interest and identify potential responses, and report back any findings at the January 2015 meeting of Scope and Program.

- **Patent Trolls**

(Forwarded by Terry Morrow) Scope Liaison Ray Pepe

Commissioner Pepe reported on this topic. Patent trolls are generally companies, usually shells, that threaten to sue businesses over frivolous, and often ridiculous, patent-infringement claims. Possible state law could establish a cause of action against a person who makes a bad faith assertion of patent infringement.

After discussion, the Committee on Scope and Program requested that ULC staff continue to monitor the topic.

- **Adoption Regulation**

(Forwarded by Commissioner Gene Lebrun) Scope Liaison Battle Robinson

This is a proposal to study the need for state law to eliminate barriers that prevent children in one jurisdiction from being adopted by parents in another jurisdiction. Barriers to interstate adoption exist because the United States does not have one nationwide child welfare system; each state has its own.

After discussion, the Committee on Scope and Program referred the proposal to the JEB for Uniform Family Law for further review, with the request that the JEB report back its findings at the January 2015 meeting of the Scope and Program Committee.

- **EPA Certification for Lead Removal**

(Forwarded by Gregory Sullivan, Chemical Risk and Reporting Enforcement Branch, EPA) Scope Liaison Steve Wilborn

This is a proposal to study the need for state law to require local government construction permit approvals to be contingent upon the contractor being EPA certified for lead safe renovations.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

Other Business

- **Committee to Review ULC Acts**
(Frederick Stamp, Chair)

Commissioner Stamp reported on the recommendations from the Committee to Review ULC Acts.

The Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the June 10, 2014, recommendations from the Committee to Review ULC Acts be approved with regard to the following:

- **Re-designate the Uniform Computer Information Transactions Act (1999) as a “Model” Act.**
- **Re-designate the Model Motor Vehicle Accident Reparations Act (1972) as “Other”.**
- **Re-designate the Model Surface Use and Mineral Development Accommodation Act (1990) as “Other.”**
- **Withdraw the Model Exemptions Act (1976) as Obsolete.**
- **Withdraw the Model Extradition and Rendition Act (1980) as Obsolete.**
- **Withdraw the Model Insanity Defense and Post-Trial Disposition Act (1984) as Obsolete.**
- **Withdraw the Model Post-Conviction Procedure Act (1980) as Obsolete.**

On July 14, 2014, the Executive Committee approved this resolution.

After discussion, the Committee on Scope and Program approved the recommendations from the Committee to Review ULC Acts with respect to the following acts:

1. Uniform Mediation Act: Scope requests that the ULC legislative staff undertake a survey to determine if the act has had any adoptions by court rule, and make the results of that survey available to the committee at its next meeting.
2. Uniform Certification of Questions of Law Act: Scope requests that the ULC legislative staff undertake a survey to determine if the act has had any adoptions by court rule, and make the results of that survey available to the committee at its next meeting.
3. Uniform Construction Lien Act: Scope requests that this Act be re-referred to the Joint Editorial Board for Uniform Real Property Acts for the JEB’s review and recommendation concerning whether this act should be updated.

4. Model Marital Property Act: Scope requests that this Act be re-referred to the Joint Editorial Board for Uniform Trust and Estate Acts for the JEB's review and recommendation concerning whether this act should be updated.
5. Model Marketable Title Act: Scope requests that this Act be re-referred to the Joint Editorial Board for Uniform Real Property Acts for the JEB's review and recommendation concerning whether this act should be updated.
6. Model Planned Community Act: Scope requests that this Act be re-referred to the Joint Editorial Board for Uniform Real Property Acts for the JEB's review and recommendation concerning whether this act should be updated.
7. Model Real Estate Cooperative Act: Scope requests that this Act be re-referred to the Joint Editorial Board for Uniform Real Property Acts for the JEB's review and recommendation concerning whether this act should be updated.

- Uniform Law Conference of Canada

Executive Director Sebert and Peter Lown from ULC/Canada reported on the current projects of the Uniform Law Conference of Canada and on ULC's current cooperation with the ULCC.

Commissioner King Burnett appeared before the Scope and Program Committee to speak about the current criteria for consideration of uniform and model acts, and to express his opinion that Scope should not focus solely on enactability, but balance enactability with other factors, including drafting in areas of historical importance to the ULC. He also alerted the Scope Committee to possible future agenda items, including charitable solicitation as a complement to Model Protection of Charitable Assets Act and condemnation orders.

Having no further business, the Committee on Scope and Program was adjourned at 11:30 am on Sunday, July 13, 2014.