

UNIFORM LAW COMMISSION

MEETING OF THE COMMITTEE ON SCOPE AND PROGRAM

Thursday, October 29, 2020

Minutes

The meeting of the Committee on Scope and Program was convened at 12 noon on Thursday, October 29, 2020, via video-conference technology by Chair Tim Berg. Committee members Diane Boyer-Vine, Martin Carr, Mary Devine, Lyle Hillyard, Lisa Jacobs, Gail Russell, Lee Yeakel, and Steve Wilborn were present. Also present were Carl Lisman, ULC President, and Dan Robbins, Chair of the ULC Executive Committee. Tim Schnabel, ULC Executive Director, and Katie Robinson, ULC Legislative Program Director, also attended. Attending for a portion of the meeting were Commissioners David Biklen, Michele Radosevich, Cassandra Robertson, and Sandra Stern, and guests Kristin Madison, reporter, study committee on Telehealth, and Allen Joslyn.

Chair Berg welcomed the committee and discussed the agenda for the meeting. A motion was made and approved accepting the minutes of the Scope and Program Committee meeting held July 6, 7, and 12, 2020.

Study Committee Reports

- Study Committee on **Telehealth**
(Michele Radosevich, Chair) Scope Liaison Lyle Hillyard

Commissioner Radosevich and Reporter Kristin Madison reported on the progress of this study committee. The committee had previously recommended that a drafting committee be formed to draft state legislation on telehealth, identifying five areas for potential drafting, including definition of telehealth, the formation of the doctor-patient relationship, physician registry, coverage and payment parity, and broader emerging issues of telehealth including mobile devices and artificial intelligence. At the July 2020 meeting of Scope, the Committee on Scope and Program did not approve the recommendation for a drafting committee. Instead, Scope requested that the study committee further consult with appropriate stakeholders on issues of licensure and insurance and report back to Scope. The committee chair and reporter have provided information on additional information that has been gathered, and again recommend the appointment of a drafting committee.

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 Telehealth be formed to

address four of the five issues recommended in the study committee's June 25, 2020 report, excluding issues of insurance or payment parity.

- Study Committee on **Choice of Law and Choice of Court Clauses**
(King Burnett, Chair) Scope Liaison Mary Devine

Commissioner Devine reported on the progress of this committee. This committee has studied the need for and feasibility of drafting a set of uniform laws on choice of law and choice of court clauses in international business transactions. After review of existing state statutes, relevant cases, relevant law review articles, and consultation with Advisors from the American Bar Association and the American Law Institute, the committee members were skeptical that the problem presented by existing U.S. choice-of-law rules was significant enough to warrant a legislative solution. Therefore, the study committee recommends against the appointment of a drafting committee, and the committee recommends that it be discharged.

After discussion, the Committee on Scope and Program agreed with the recommendation of the study committee and 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 Choice of Law and Choice of Court Clauses be discharged with a letter of thanks to the committee.

- Study Committee on **Online Sales Tax Collection**
(Lyle Hillyard, Chair) Scope Liaison Lyle Hillyard

Commissioner Hillyard reported on the progress of this committee. This committee has studied the need for and feasibility of state legislation on state taxation of online sales and collection of taxes in the wake of the Supreme Court decision in *South Dakota v. Wayfair*, which held that the correct standard to determine the constitutionality of a state tax law is whether the tax applies to an activity that has “substantial nexus” with the taxing state. A final report of the study committee will be considered at the January 2021 meeting of Scope.

After discussion, the Committee on Scope and Program concluded to defer further discussion on this topic until the January 2021 midyear meeting of Scope.

- JEB – **Unincorporated Organization Acts**
(Lisa Jacobs, Chair) Scope Liaison Lisa Jacobs

Commissioner Jacobs provided a brief report on the issues that the JEB is currently tracking. No immediate action is needed on any of the issues, and the JEB will provide a more comprehensive report at the January 2021 meeting of Scope.

- **Earned Wages Advance Products**

(Prof. Jim Hawkins, UNC) Scope Liaison Lisa Jacobs

Commissioner Jacobs reported on this proposal to appoint a study committee to consider drafting a uniform law to govern earned wage advances. Earned wage advance companies work with employers to give employees access to wages they have already earned but have not been paid, with the agreement that the employer will deduct the amount advanced from the employee's next paycheck. Earned wage advances are difficult to categorize with certainty under current law and practice; if courts or regulators decide that employee advances are loans, then the companies offering them must become licensed lenders in many states. Scope had briefly considered this proposal at the January 2020 meeting of Scope and again at the July 2020 meeting of Scope, each time deferring further discussion to a subsequent Scope meeting.

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

- **Revise or Amend the Revised Uniform Parentage Act**

(Prof. Margaret Olnek) Scope Liaison Mary Devine

Commissioner Devine reported on this proposal to appoint a study committee to revise the Uniform Parentage Act (2017) to provide access to information to children conceived through reproductive technology. At the July 2020 meeting of Scope, the Committee on Scope and Program referred the proposal to both the Standby Committee for the Revised Uniform Parentage Act (2017) and the JEB/Uniform Family Law for further review. Commissioner Devine reported on the recommendation from both these committees to take no action on the proposal to revise the Uniform Parentage Act.

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

- **Recurring Service Charges**

(Commissioner Cassandra Robertson) Scope Liaison Gail Russell

Commissioner Robertson reported on this proposal to consider appointing a study committee to consider recurring service charges and the problems consumers have faced when trying to cancel those services. At the July 2020 meeting of Scope, the Committee on Scope and Program concluded to defer further discussion on this topic until the fall meeting of Scope, and requested that ULC staff further research the current status of state law on the subject. The additional research was provided to Scope, and Commissioner Robertson again requests the formation of a study committee on the subject.

After discussion, the Committee on Scope and Program recommended that a study 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 Study Committee on Recurring Service Charges be formed to study the need for and feasibility of a uniform or model act on the subject.

- **Restrictive Covenants in Deeds**
(Commissioner David Biklen) Scope Liaison Gail Russell

Commissioner Biklen reported on this proposal to appoint a study committee on the issue of restrictive covenants in deeds. Many antiquated and objectionable restrictive covenants still exist, though they are no longer enforceable.

After discussion, the Committee on Scope and Program referred the proposal to the Joint Editorial Board for Uniform Real Property Acts, and requests that the JEB report back any findings at a future meeting of Scope and Program.

- **Use of Tenant Information in Rental Decisions**
(Commissioner Sandra Stern and Allen Joslyn) Scope Liaison Gail Russell

Commissioner Stern and Mr. Joslyn reported on this proposal to appoint a study committee on the issue of the use of tenant information in rental decisions. Landlords are generally free to utilize any information about prospective tenants that can be located. Frequently, such information is provided to the landlord on a "tenant screening report," which may use some information provided to the publishers of the report by the court system, i.e. the names of defendants in cases filed relating to particular premises, without further information. Prospective tenants can be denied rental housing if inaccurate or erroneous information is found on tenant screening reports. Commissioner Stern and Mr. Joslyn request the formation of a study committee on the subject.

After discussion, the Committee on Scope and Program recommended that a study 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 Study Committee on Use of Tenant Information in Rental Decisions be formed to study the need for and feasibility of a uniform or model act on the subject.

After this resolution was approved, Scope further recommended that the proposal be referred to the Joint Editorial Board for Uniform Real Property Acts, with the request that the

JEB report directly to the Executive Committee prior to its Nov. 10, 2020, meeting as to advisability of a study committee on this topic.

- **Revise the Uniform Common Interest Ownership Bill of Rights**
(George Staropoli) Scope Liaison Marty Carr

Commissioner Carr reported on this proposal to appoint a study committee to revise the Uniform Common Interest Ownership Act with respect to a homeowner's Bill of Rights.

After discussion, the Committee on Scope and Program referred the proposal to both the Drafting Committee to Revise the Uniform Common Interest Ownership Act and the Uniform Condominium Act, and the Joint Editorial Board for Uniform Real Property Acts, and requests that the drafting committee and the JEB report back any findings at a future meeting of Scope and Program.

Having no further business, the Committee on Scope and Program was adjourned.