

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

UNIFORM LAW COMMISSION

**Saturday, July 21, and Sunday, July 22, 2018
Louisville, Kentucky**

Minutes

The meeting of the Committee on Scope and Program was convened at 9:00 am on Saturday, July 21, 2018, at the Seelbach Hotel in Louisville, Kentucky, by Acting Chair Steve Wilborn. Committee members Thomas Hemmendinger, Lyle Hillyard, Lisa Jacobs, Kay Kindred, Ryan Leonard, Craig Stowers, and Karen Washington were present. Also present were Anita Ramasastry, ULC President, Carl Lisman, Chair of the Executive Committee, Dan Robbins, Katie Robinson, ULC Legislative Program Director, Mary Shelly, ULC Fellow, and Peter Lown, Director of Research, Joint Editorial Board for International Law. Liza Karsai, ULC Executive Director, participated by phone. Attending for a portion of the meeting was Gail Hagerty, Barbara Atwood, Pat Fry, Paul Chaiken, Harvey Perlman, Steve Chow, Anne McGihon, Buzz Guida, Jack Davies, Anne Reigle, Jim McKay, Nora Winkelman, Jim O'Connor, John McGarvey, David Biklen, Harry Tindall, Lee McCorkle, Tom Buiteweg, Louise Nadeau, Rich Cassidy, Ed Smith, King Burnett, Sandra Stern, David Nixon, Charlie Trost, and Larry Metz.

Acting Chair Wilborn 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 January 19, 2018.

Study Committee Reports

- Study Committee on **Declarations of Quarantine**
(Pat Fry, Chair) Scope Liaison Craig Stowers

Commissioner Fry reported on the progress of this study committee. The committee had previously recommended that a drafting committee be formed to draft legislation to deal with rights of individuals who are subject to quarantine orders, employment security for those individuals, access to social services, and incentives to encourage cooperation with quarantine orders. At the January 2018 midyear 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 provide a more comprehensive report for consideration, specifically addressing the criteria for drafting new acts as well as narrowing the scope of drafting. The study committee has not yet had the opportunity to address the list of potential drafting projects, and requests that it be continued.

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

- Study Committee on **Event Data Recorders in Cars**
(Paul Chaiken, Chair) Scope Liaison Lisa Jacobs

Commissioner Chaiken reported on the progress of this study committee. The committee has met several times by conference call. The committee's work included identification and interviewing of stakeholders and observers, research and review of relevant material, review of existing or pending state and federal laws on event data recorders. The committee recommends the appointment of a drafting committee on Vehicle Data Recorders to include all data generated, transmitted, contained, collected, captured and stored both on-board and off-board a vehicle.

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 Vehicle Data Recorders be formed.

On July 23, 2018, the Executive Committee deferred action on this resolution until the January 2019 meeting of the Executive Committee.

- Study Committee on **Unmarried Cohabitants**
(Gail Hagerty, Chair) Scope Liaison Kay Kindred

Commissioner Hagerty and Commissioner Atwood reported on the progress of this study committee. The committee had previously recommended that a drafting committee be formed to develop an Economic Rights of Unmarried Cohabitants Act, giving due consideration to such issues as: (1) an "opt in" status for unmarried cohabitants who wish to share rights and resources while they cohabit; (2) remedies in express or implied contract for unmarried cohabitants when the cohabitation ceases because of dissolution or death, in the absence of an "opt-in" agreement; and (3) clarity on conflict of law issues which arise in a mobile population.

At the January 2018 midyear 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 provide a more comprehensive report for consideration, specifically addressing the criteria for drafting new acts as well as clarification on the question of whether any act on this subject would create dissonance with rights and obligations found in existing state law. The study committee has submitted additional information to address these concerns, and again requests 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 the Economic Rights of Unmarried Cohabitants be formed.

On July 23, 2018, the Executive Committee approved this resolution.

- Study Committee on **Right of Publicity**
(Harvey Perlman, Chair) Scope Liaison Ryan Leonard

Commissioner Perlman reported on the progress of this study committee. The right of publicity permits an individual to protect her name, likeness, and potentially other aspects of the individual's identity from use without permission. The committee had previously recommended that a drafting committee be formed on a Uniform Right of Publicity Act. Although the study committee members recognize that any drafting project would be challenging, particularly as there was no consensus from stakeholder groups as to the ability to achieve consensus in this area, the study committee nevertheless recommends a drafting committee because of the belief that the ULC can achieve a workable compromise among the competing groups.

At the January 2018 midyear meeting of Scope, the Committee on Scope and Program did not approve the recommendation for a drafting committee, and instead recommended that the study committee be discharged. The Executive Committee did not approve that recommendation, and further discussion on the recommendation was tabled until July 2018. The study committee again requests that a drafting committee be formed.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Right of Publicity be discharged with a letter of thanks to the committee.

On July 23, 2018, the Executive Committee approved this resolution.

- Study Committee on **Garnishment of Wages in Bank Accounts**
(Anne McGihon, Chair) Scope Liaison Steve Willborn

Commissioner McGihon and Commissioner Guida reported on the progress of this study committee. The committee has met several times by conference call and has identified and surveyed relevant stakeholders. The committee recommends that a drafting committee be approved to draft a Uniform Law on Garnishment of Wages in Bank Accounts with the charge to

draft state legislation specifically on garnishment of wages in bank accounts, and, if necessary, more generally on exemptions of asset classes from claims of creditors.

After discussion, the Committee on Scope and Program did not approve the recommendation for a drafting committee. Instead, Scope requests that the study committee provide additional information for consideration at the January 2019 midyear meeting of Scope, including evidence of support from the banking industry and other stakeholders, including non-bank financial institutions, and provide more information regarding the various processes for garnishment which would be considered.

- Study Committee on **Adverse Possession**
(Anne Reigle, Chair) Scope Liaison Lyle Hillyard

Commissioner Reigle reported on the progress of this study committee. The committee has met by conference call several times and has reviewed existing state law and reached out to potential stakeholders. The committee's work included identifying the emerging areas in adverse possession law and the challenges a drafting committee would face. After extensive discussion of existing and potential legislation, the Study Committee has concluded that there is not a project now that warrants a uniform state law. The committee requests that it be discharged.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged and approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Adverse Possession be discharged with a letter of thanks to the committee.

On July 23, 2018, the Executive Committee approved this resolution.

- Study Committee on **Data Breach Notification**
(Jim McKay and Nora Winkelman, Co-Chairs) Scope Liaison Karen Washington

Commissioner McKay and Commissioner Winkelman reported on the progress of this study committee. The committee has met by conference call several times and has prepared and reviewed a comprehensive analysis of current state laws. After extensive discussions, the committee recommends the appointment of a drafting committee on data breach notification, concluding that this is an area where uniformity is needed, and that there is a reasonable probability that an act would be enacted in a substantial number of states.

After discussion, the Committee on Scope and Program did not approve the recommendation for a drafting committee. Instead, Scope requests that the study committee provide information for consideration at the January 2019 midyear meeting of Scope as to whether the regulated industries, such as retailers, would support a uniform act on this subject or participate in a drafting project.

- Study Committee on **Unregulated Transfers of Adopted Children**
(David Biklen, Chair) Scope Liaison Lyle Hillyard

Commissioner Biklen reported on the progress of this study committee. The study committee has met by conference call three times since its appointment following the 2018 midyear meeting. Representatives from the State Department, Health and Human Services, Department of Justice, and other agencies have formed a working group to explore state legislation to prevent unregulated custody transfers through monitoring and provision of services, and legislation to provide appropriate remedies after a transfer of custody. Seven states have enacted legislation addressing this problem. Legislation recently enacted in Utah was identified by the State Department representatives as a promising model for uniform law treatment. Most unregulated transfers are made using a power of attorney. Because parents have the right to make temporary custodial arrangements for their children, a permanent transfer can occur under the radar of child welfare authorities.

The study committee recommends that a drafting committee be authorized to draft a uniform act on unregulated transfers of adopted children. The committee further recommends that the act be a uniform act, not a model act, as a uniform act will encourage state enactment of an integrated act rather than piecemeal enactment.

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 Unregulated Transfers of Adopted Children be formed.

On July 23, 2018, the Executive Committee approved this resolution.

Joint Editorial Board Written Reports and Recommendations

- JEB – **Uniform Family Law**
(Barbara Atwood, Chair) – Scope Liaison Kay Kindred

Commissioner Atwood reported on the recommendation from the JEB to appoint a study committee to explore the feasibility of a uniform act governing the minimum age of marriage. Because the underage marriage issue overlaps with forced marriage issues, the JEB recommends that the study committee also consider measures to ensure that marriage by a person younger than 18, if permitted, be the result of the person's voluntary consent.

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

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

There was no proposal from the JEB. At its January 2018 meeting, the Scope and Program Committee had forwarded a proposal on proxy notification to trust beneficiaries to the JEB for its review and consideration. The JEB reached no conclusion as to whether to form a study committee. If there is any interest in the appointment of a study committee, the JEB recommends that the scope be broader than the fields of trust and estates.

After discussion, the Committee on Scope and Program agreed to table further discussion of this proposal until the January 2019 midyear meeting of Scope.

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

Commissioner Lisman reported on the recommendation from the JEB to appoint a study committee to study potential revision of the Uniform Common Interest Ownership Act. At its April 13, 2018 meeting, the JEBURPA unanimously approved a motion to recommend that the ULC appoint a study committee to consider (1) comprehensive review and revision of the provisions of UCIOA and (2) the formalization of a process for the preparation and promulgation of interpretive commentary regarding UCIOA's provisions.

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 be formed to study the need for and feasibility of revisions to the Uniform Common Interest Ownership Act.

On July 23, 2018, the Executive Committee approved this resolution.

- **JEB – International Law**
(Michael Houghton, Co-Chair) – Scope Liaison Ryan Leonard

There was no proposal from the JEB, and no new report of the JEB to be considered. Peter Lown provided an update on recent JEB activity.

- **JEB – Unincorporated Organization Acts**
(James J. Wheaton, Director of Research) – Scope Liaison Lisa Jacobs

There was no proposal from the JEB, and the report of the JEB was accepted. Commissioner Jacobs provided an update on recent JEB activity.

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

There was no proposal from the PEB, and no new report of the PEB to be considered.

Monitoring Committees Reports and Recommendations

- **Committee to Monitor Civil Litigation and Dispute Resolution**
(Mike Getty, Chair) – Scope Liaison Karen Washington

Commissioner McCorkle reported on the work of the Committee to Monitor Civil Litigation and Dispute Resolution. The Scope and Program Committee, at its January 2018 midyear meeting, had referred a proposal on forced arbitration and standard form contracts for further review to the Monitoring Committee. The Committee, with the assistance of its reporter Ellen Deason, compiled extensive information on the topic, including current state legislation, statements on mandatory arbitration from state attorneys general, and federal arbitration legislation, rules, and executive orders. The committee also reviewed and discussed potential stakeholders in any mandatory arbitration study or drafting project. After extensive discussion, the Committee recommends that a study committee be formed.

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

- **Committee to Monitor Healthcare Law**
(Abbe Gluck, Chair) – Scope Liaison Lyle Hillyard

There was no proposal from the Committee to Monitor Healthcare Law, and the report of the Committee was accepted.

- **Technology Committee**
(Tom Buiteweg, Chair) – Scope Liaison Tom Hemmendinger

There was no proposal from the Technology Committee. The Scope and Program Committee, at its January 2018 midyear meeting, had referred a Vermont blockchain report for further review to the Technology Committee. The Committee recommends that it continue its

review of the Vermont report, and continue its monitoring of blockchain-related issues in general. The report of the Committee was accepted.

- **Committee on Criminal Justice Reform**
(Gail Hagerty, Chair) – Scope Liaison Craig Stowers

Commissioner Hagerty reported on the work of the Criminal Justice Reform Committee. The Scope and Program Committee, at its January 2018 midyear meeting, had referred a proposal on DNA testing after arrest for a broad range of criminal offenses for further review to the CJRC. After discussion, the CJRC had no recommendation regarding the proposal, and noted several concerns from Committee members including privacy issues and innocence claims.

Commissioner Hagerty also reported on the CJRC's discussion of a potential "red flag" act. Such an act would provide a procedure to allow for judicial intervention to remove firearms from an individual if there is heightened danger. The CJRC will continue its review of this issue.

The report of the CJRC was accepted, and it will continue to monitor these and other issues.

New or Pending Proposals

- **Special Deposits**
(Joseph Sommer, New York Federal Reserve, submitted on his own behalf)
Scope Liaison Tom Hemmendinger

Commissioner Hemmendinger reported on this proposal to create a study committee to explore the possibility of codifying the law of special deposits. Special deposits resemble a prefunded letter of credit with three parties: a funder, a bank, and a beneficiary. Mr. Sommer has requested an additional six months before Scope makes any determination.

After discussion, the Committee on Scope and Program agreed to table further discussion until January 2019. The proposal will remain on the Scope agenda for further discussion at the January 2019 midyear meeting of Scope.

- **Covenants not to Compete**
(Commissioners Rich Cassidy and Steve Willborn)
Scope Liaison Steve Willborn

Commissioner Cassidy reported on this proposal to create a study committee on covenants not to compete in employment agreements. Though the proposal is limited to a study of noncompetes in employment agreements, the study could be broad so that it would cover not only covenants that bar employment with a competitor, but also variants such as agreements that

require payments from employee to employer upon termination of employment, or that impose post-employment limitations on doing business.

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 be formed to study the need for and feasibility of state legislation on covenants not to compete.

On July 23, 2018, the Executive Committee approved this resolution.

Potential Future Projects

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

- **Secondary Market for Life Settlements**
(Commissioner David Clark) Scope Liaison Karen Washington

Commissioner Washington reported on this proposal to address the issue of secondary markets for life settlements. ULC Fellow Mary Shelly submitted a memo on life and viatical settlements and reported on the existing model acts from NCOIL and NAIC.

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

- **Sports betting**
(Commissioner Steve Wilborn) Scope Liaison Tom Hemmendinger

Commissioner Wilborn reported on this proposal regarding the Supreme Court's recent ruling which struck down a federal law that prohibits sports gambling, giving states the opportunity to legalize betting on sports.

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

- **Abuses in Public Records Laws**
(Commissioner Elizabeth Kent) Scope Liaison Craig Stowers

Commissioner Stowers reported on this proposal regarding the abuses in public records laws. State public records laws are analogous to the federal Freedom of Information Act and are intended to allow citizens to access information from government agencies.

After discussion, the Committee on Scope and Program requested that Commissioner Stowers, with the assistance of ULC staff if available, further research the current status of state law on the subject, and report back any findings at the January 2019 meeting of the Scope and Program Committee.

- **Eminent Domain**

(Commissioner Carl Lisman) Scope Liaison Kay Kindred

Commissioner Lisman reported on this proposal regarding eminent domain reform as a result of the Supreme Court's 2005 decision in *Kelo v. City of New London*. Many states have considered legislative proposals to limit the power of state and local governments to take private property for economic development purposes, though the law varies from state to state. The ULC promulgated the Uniform Eminent Domain Code in 1974.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the Joint Editorial Board for Uniform Real Property Acts for further review, with the request that the JEB report back its findings at the January 2019 meeting of the Scope and Program Committee.

- **Blockchain**

(Commissioner Fred Miller) Scope Liaison Tom Hemmendinger

Commissioner Miller reported on this proposal for a study committee on the uses of blockchain. Any study committee could also address uses of blockchain and how that applies to existing ULC acts such as the Uniform Electronic Transactions Act.

After discussion, the Committee on Scope and Program concluded to take no action at this time, and instead referred the proposal to the Technology Committee for further review, with the request that the Technology Committee report back its findings at the January 2019 meeting of the Scope and Program Committee with specific instructions as to what a study committee on blockchain might accomplish. If the Technology Committee cannot provide the requested information by January 2019, the request for a study committee on the uses of blockchain will be back on the Scope agenda for further consideration at that time.

- **Online Privacy**

(Commissioner Dan Robbins) Scope Liaison Tom Hemmendinger

Commissioner Hemmendinger reported on this proposal regarding a digital privacy law granting consumers more control over their personal information online.

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 be formed to study the need for and feasibility of state legislation regarding online privacy protection.

On July 23, 2018, the Executive Committee approved this resolution.

- **Model Tribal Labor Code**
(Anton Hajjar) Scope Liaison Tom Hemmendinger

Commissioner Hemmendinger reported on this proposal regarding a model tribal labor code.

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 July 5, 2018, recommendations from the Committee to Review ULC Acts be approved with regard to the following:

- **Re-designate the Uniform Manufactured Housing Act (2012) as a “Model” Act.**
- **Withdraw the Model Planned Community Act (1980) as “obsolete.”**
- **Withdraw the Model Victims of Crime Act (1992) as “obsolete.”**

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 Debt Management Services Act: Scope requests that this Act the ULC legislative staff further research the current legislative landscape on the topic.
2. Uniform Mediation Act: Scope requests that this Act be referred to the Committee to Monitor Developments in Civil Litigation and Dispute Resolution for its review and consideration.
3. Uniform Arbitration Act: Scope requests that this Act be referred to the Committee to Monitor Developments in Civil Litigation and Dispute Resolution for its review and consideration.
4. Uniform Custodial Trust Act: Scope requests that this Act be referred to the JEB/Uniform Trust and Estate Acts for its review and consideration.
5. Uniform Disposition of Community Property Rights at Death Act: Scope requests that this Act be referred to the JEB/Uniform Trust and Estate Acts for its review and consideration.
6. Uniform Foreign Money Claims Act: Scope requests that this Act be referred to the Committee to Monitor Developments in Civil Litigation and Dispute Resolution for its review and consideration

New Business

- **Direct to Consumers Distilled Spirits Shipping Law**

Commissioner McGarvey provided information on this proposal to study the need for a state law that would allow producers of wine, beer and distilled spirits to sell directly to consumers. Under current state laws, a three-tier system is in place to regulate sale of these products. Under a three-tier system, producers may only sell to wholesalers, wholesalers sell to retailers, and retailers sell to consumers. Some states have created exceptions to the three-tier system.

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 be formed to study the need for and feasibility of state legislation on direct to consumer sales of wine, beer, and distilled spirits.

On July 23, 2018, the Executive Committee approved this resolution.

- **Online Taxation**

Commissioner Nixon, Commissioner Stern, and Commissioner Trost provided information regarding the recent Supreme Court decision in *South Dakota v. Wayfair*, which overturned the earlier decision of *Quill v. North Dakota*, which held that a state could not compel

a retailer to collect and remit sales taxes unless that retailer has a physical presence in the state. In *SD v. Wayfair*, the court ruled that the correct standard in determining the constitutionality of a state tax law is whether the tax applies to an activity that has "substantial nexus" with the taxing state. The Scope Committee discussed whether the ULC could provide guidance to the states that want legislation to address the Supreme Court case.

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

- **Technology and Privacy**

Commissioner Metz provided information on how technology can be used to invade an individual's privacy. For example, mobile tracking devices, easily purchased online and in stores, can be attached to a car or other object, and the location information they collect can be monitored from afar on a purchaser's computer. At least 18 state legislatures have addressed privacy concerns raised when individuals track the movements of others without their knowledge.

After discussion, the Committee on Scope and Program requested that Commissioner Metz, with the assistance of the ULC Fellow, further research the current status of state law on the subject, and report back any findings at the January 2019 meeting of the Scope and Program Committee.

- **Tort Liability Laws Affecting Highly Automated Vehicles**

Commissioner Burnett addressed the Scope members about the issue of automobile liability, particularly in regard to highly automated vehicles (HAV). States are responsible for determining liability for cars, including HAVs. States will need to consider how to allocate liability among HAV owners, operators, passengers, manufacturers, and others when a crash occurs.

The ULC Study Committee on Driverless Cars, in its final report dated January 9, 2017, had acknowledged the challenges of comprehensively evaluating prospective tort liability laws and rules that could affect HAV deployment and future evolution. Consequently, the Study Committee agreed that HAV liability and insurance issues would not be addressed by the drafting committee on Highly Automated Vehicles.

After discussion, the Committee on Scope and Program agreed to continue the discussion on this topic at the January 2019 midyear meeting of Scope and requested that the reports of the Study Committee on Driverless Cars be made available for review. The Committee on Scope and Program also requests that the Drafting Committee on Highly Automated Vehicles discuss the topic at its next meeting, and report back to Scope any recommendation it has, if any.

Having no further business, the Committee on Scope and Program was adjourned at 12:30 pm on Sunday, July 22.