

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

UNIFORM LAW COMMISSION

**Friday, January 23, 2015
Austin, Texas**

Minutes

The meeting of the Committee on Scope and Program was convened at 8:30 am on Friday, January 23, 2015, at the Stephen F. Austin Intercontinental Hotel in Austin, Texas, 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, and Richard T. Cassidy, Chair of the Executive Committee. Staff members present included John A. Sebert, Executive Director; Liza Karsai, Executive Director Designate, Katie Robinson, Deputy Legislative Director and Communications Officer, and Elizabeth Cotton-Murphy, Chief Administrative Officer. Attending for a portion of the meeting were Commissioners James C. McKay, Harry Tindall, and Fred Miller (via conference call), and John Black, National Federation of High Schools, Judy Clausen, Florida Coastal University Law School (via conference phone) and Debbie Plotnick, Mental Health America (via conference phone).

Chair Ramasastry welcomed the committee and discussed the agenda for the meeting. Upon a motion duly made, the minutes from the July 12 and 13, 2014, meeting of the Scope and Program Committee were unanimously approved.

Study Committee Reports

- 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 Wilborn reported on the progress of this study committee. The Committee has contacted individuals in the Caribbean that might be interested in this project, and will continue its outreach. The committee requests that it continue.

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 Robinson reported on the progress of this committee. The Committee has contacted individuals in the Caribbean that might be interested in this project, and will continue its outreach. 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 **Alternative and Mobile Payments Systems**
(Fred Miller, Chair) – Scope Liaison Anita Ramasastry

Commissioner Miller joined the meeting via conference phone, and reported on the progress of this study committee. The committee has reviewed current suggested regulation of virtual currency, and has concluded to exclude mobile payments from the scope of any act. The study committee unanimously requests that a drafting committee be appointed to prepare legislation providing “commercial law” rules related to the rights and duties of participants in virtual currency payments transactions when the transaction execution is accomplished through the use of an intermediary.

After discussion, the Committee on Scope and Program determined that the study committee be continued, and recommends that the study committee hold a stakeholders meeting in the spring, with final report to be submitted shortly thereafter.

- Study Committee on **Compatible Search and Retrieval Systems for Land Records**
(Nora Winkelman, Chair) Scope Liaison Melissa Hortman

Commissioner Hortman reported on the progress of this study committee. The committee continues its survey of the states that have enacted the Uniform Real Property Electronic Recording Act (URPERA) to determine how those states are implementing that act. The committee has also worked with the Property Records Industry Association (PRIA) to gather any current data on state electronic searches. 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 **State Regulation of Driverless Cars**
(Pam Bertani, Chair) Scope Liaison Dan Robbins

Commissioner Bertani reported on the progress of this study committee. The committee has developed an extensive issues memorandum, which outlined general principles that a drafting committee should consider in cultivating and vetting a prospective uniform act, issues that a drafting committee should consider incorporating into a uniform act, and issues that a drafting committee should consider omitting from a uniform act. In order to expand stakeholder participation in identifying and vetting prospective issues for consideration, the committee requests that a stakeholders meeting be authorized. The committee requests that it be continued, and that it be authorized to hold a stakeholders meeting in the spring.

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

- Study Committee on **Transfer and Recording of Consumer Debt**
(Tom Buiteweg, Chair) Scope Liaison John McGarvey

Commissioner McGarvey reported on the progress of this study committee. The committee plans to focus initially on the transfers of defaulted credit card debt in evaluating the feasibility of a uniform law, and if it concludes that such an act is feasible, then consider whether additional types of debt should be addressed. The committee requests that it be continued, and has noted that because of the complexity of the subject matter, it may be useful to appoint a reporter to the committee.

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

Harry Tindall reported on a proposal from the JEB to amend the Uniform Parentage Act. Given the significant recent developments in state legislatures and courts regarding same sex marriage, the JEB recommends that a study committee be appointed to amend the UPA, and potentially other ULC acts, to address those issues. The JEB requests that a study committee be appointed.

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 Amending the Uniform Parentage Act, as well as other ULC Acts that would be affected by Supreme Court decisions relating to same sex marriage.

On January 25, 2015, the Executive Committee approved this resolution.

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

There was no proposal from the JEB, and the report of the JEB was accepted. Commissioner Bertani reported that the JEB did not support the proposal on mental health advance directives, and Scope took that under consideration.

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

There was no proposal from the JEB, and the report of the JEB was accepted.

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

There was no proposal from the JEB, and the report of the JEB was accepted. Commissioner Robbins reported the JEB recommends that the Revised Uniform Arbitration Act should not be amended to conform to the UNCITRAL Model Law on International Commercial Arbitration; the JEB recommendation was accepted.

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

There was no proposal from the JEB, and the minutes of the JEB were reviewed. Commissioner Pepe noted that the minutes contained an update on Public Benefit LLCs, noting that 20 states had now enacted legislation authorizing the creation of a “public benefit corporation.”

After discussion, the Committee on Scope and Program requests that the JEB give further consideration to public benefit corporations, and provide further information and rationale to Scope as to whether this should or should not be a topic for ULC to pursue.

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

There was no proposal from the PEB, and Commissioner McGarvey reported briefly on the recent activities of the PEB.

New or Pending Proposals

- **Proposal – Regulation of Counterfeit or Illegally Imported Prescription Drugs**
(Commissioner Anne McGihon) Scope Liaison Battle Robinson

Commissioner Robinson reported on this proposal to draft an act that would regulate and prevent the sale or use of illegally imported or unapproved prescription drugs and devices. The proposal had been considered at both the January 2014 and July 2014 meetings of Scope.

After discussion, the Committee on Scope and Program requested that Commissioner McGihon, with the assistance of ULC staff and Commissioner Dan Robbins, further research the current status of both state law and federal law on the subject, and report back any findings at the July 2015 meeting of the Scope and Program Committee.

- Proposal – **Regulation of Involuntary Pornography Websites**
(Forwarded by Commissioner Vince Cardi) Scope Liaison Dan Robbins

Involuntary pornography websites are sites that post explicit or sexual photos without the consent of the person photographed. So far, two states – California and New Jersey – make it illegal to post a sexual photo online without the subject’s consent. There was no new information provided to the Committee on Scope and Program; it remains on the agenda for consideration at July 2015 meeting of Scope.

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

Prof. Clausen and Debbie Plotnick from Mental Health America joined the meeting via conference phone and 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 was first considered at the July 2014 meeting of Scope, and had been referred to the JEB on Uniform Trust and Estate Acts for its review and consideration. The JEB/UTEA reported that because there was no consensus within the mental health community on the use of MHADs, it did not recommend the subject as appropriate for further ULC study.

After discussion, the Committee on Scope and Program referred the proposal back to the JEB/Uniform Trust and Estate Acts, with specific request that it review the proposal in light of potential amendments or revision to the Uniform Health Care Decisions Act. Scope also requested that ULC staff contact Suzy Walsh and Karen Boxx, chair and reporter respectively of a prior study committee on the subject, for their views.

- Proposal – **Electronic Data Recorders in Cars**
(Commissioner David Biklen.) Scope Liaison Steve Wilborn

Commissioner Wilborn reported on this proposal to regulate the use of event data recorders in cars. A number of questions have arisen about the accuracy of the information gathered, how the information is used, and who has access to that information.

After discussion, the Committee on Scope and Program requested that Commissioner Biklen, with the assistance of ULC staff, further research the current status of state law on the subject, and report back to Scope with updated information.

- Proposal – **Quarantine and Income Protection**
(Prof. Mark Rothstein, University of Louisville.) Scope Liaison Pam Bertani

Commissioner Bertani reported on this proposal to study the need for state legislation addressing the issues of job security and income replacement for individuals in quarantine. The federal government has limited quarantine authority; the states possess first-line quarantine authority. Thus, each state has its own public health act authorizing the public health department to take specified measures to protect the public's health and safety. Income protection could be an incentive to comply with any state quarantine.

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 concerning declarations of quarantine, as well as procedures for income replacement and job protection to incentivize compliance with quarantine.

On January 25, 2015, the Executive Committee approved this resolution.

- **Proposal – Amend the Model Tribal Secured Transactions Act**
(Commissioner Tim Berg, Chair, Committee on Liaison with Native American Tribes and Nations) Scope Liaison John McGarvey

Commissioner Berg reported on this proposal. The MTSTA was promulgated in 2005, and was based on the then-current version of Revised UCC Article 9. The MTSTA has been very successful and has been adopted by a large number of tribes. This proposed drafting project would align the MTSTA as appropriate with the 2010 Amendments to UCC Article 9 and to make other appropriate revisions. The Committee on Liaison with Native American Tribes and Nations requests that a drafting committee be appointed.

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 to Amend the Model Tribal Secured Transactions Act be formed to align, where appropriate, the MTSTA with the 2010 Amendments to UCC Article 9 and to make other appropriate revisions.

On January 25, 2015, the Executive Committee approved this resolution.

- Proposal – **Model Good Samaritan Legislation Protecting Medical Professionals Volunteering at Amateur Sports Competitions** (John Black, General Counsel, National Federation of State High Schools) Scope Liaison Ray Pepe

John Black was present in person to present the proposal. 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, the Committee on Scope and Program concluded to take no action at this time.

- Proposal – **Trust Management of Funds Raised through Crowdfunding** (Prof. Karen Boxx, University of Washington Law School)
Scope Liaison Battle Robinson

Commissioner Robinson reported on this proposal to study the need for a uniform law providing a trust format for funds collected for minors by public fundraising efforts. There is little guidance on the use of these funds.

After discussion, the Committee on Scope and Program referred the proposal to the Joint Editorial Board for Uniform Trust and Estate Acts for its review and consideration. Scope also requests that the JEB consider whether a broader study may be warranted, and not restricted only to funds raised for minors. Scope also requests that ULC staff continue to monitor the topic, and do research into state legislative activity on this topic.

- Proposal – **Firearms Information Reporting** (Commissioners Jim McKay, Lane Kneedler, Fred Miller, Gene Hennig, Ted Kramer, and Elizabeth Kent) Scope Liaison Terry Care

Commissioner McKay reported on this proposal to appoint a drafting committee to draft a uniform state law concerning the completeness, accuracy, and confidentiality of information concerning firearms that the states report to the federal government. The object of the proposal would be to protect the public by preventing the transfer of firearms to persons who are prohibited from having them, while at the same time, ensuring that responsible firearms owners are not unfairly denied the right to possess firearms, and that the confidentiality of the information is reasonably protected.

After discussion, a motion was made to appoint a drafting committee on firearms information reporting. By a vote of 5-5, the motion did not pass. Therefore, 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 both the 2014 midyear and annual meetings of Scope. 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. Issues of public safety and personal privacy must be considered in any study on this topic.

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

- **Chip & PIN 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 for 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 strip) 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 requests that ULC staff continue to monitor the topic.

- **Designer and Synthetic Drugs**
(Forwarded by Commissioner Jack Davies) Scope Liaison Pam Bertani

Commissioner Bertani reported on this proposal to study the need for state law 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.

After discussion, the Committee on Scope and Program requested that ULC staff continue to monitor the topic, do further research and to reach out to relevant experts to gauge interest and identify potential solutions, and report back any findings at the July 2015 meeting of Scope.

- **Bad Faith Patent Litigation**

(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 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 concerning bad faith patent litigation.

On January 25, 2015, the Executive Committee approved this resolution.

- **Adoption Regulation**

Scope Liaison Battle Robinson

There are two proposals. The first, forwarded by Commissioner Gene Lebrun, 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. The second proposal, forwarded by Commissioner David Biklen, addresses the need to regulate the practice of re-homing adopted children.

After discussion, the Committee on Scope and Program referred both proposals to the JEB for Uniform Family Law for further review.

- **Regulation of Short-Term Rentals**

(Forwarded by Commissioner Lyle Hillyard) Scope Liaison Melissa Hortman

Commissioner Hortman reported on this topic. For the most part, short term rentals have been unregulated and untaxed, but some states are looking at regulation of such rentals, which would have implications on tax collection, insurance coverage and enforcement issues.

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

- **Telehealth**

(Forwarded by Commissioner Elisa White) Scope Liaison Terry Care

Commissioner Care reported on this topic. Telemedicine is the practice of using technology to practice medicine via electronic means. The Federation of State Medical Boards is

currently working on this topic, and has drafted an Interstate Medical Licensure Compact adopting new guidelines for the practice of telemedicine.

After discussion, the Committee on Scope and Program referred the proposal to the ULC Committee to Monitor Developments in Health Law for its review and consideration.

- **Rate Cap for Consumer Loans**

(Forwarded by Commissioner Neal Ossen) Scope Liaison Ray Pepe

Commissioner Pepe reported on this proposal to institute a national consumer lending standard – and interest rate cap – for all consumer loans.

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

- **Police Body Cameras**

(Forwarded by ULF Fellow Aliza Kaliski) Scope Liaison Terry Care

Commissioner Care reported on this topic. Police body cameras provide benefits such as increased transparency and accountability and possible reduction in complaints and use of force. However, police body cameras also raise privacy concerns for both citizens and officers, and can be very expensive to purchase and maintain the necessary equipment.

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)

Deputy Legislative Director Robinson reported on the report submitted by the Committee to Review ULC Acts on its recent activity. At the request of the Committee to Review the ULC Scope and Program Process, the Committee to Review ULC Acts – in addition to its traditional responsibility of reviewing acts that have “hit” certain designated time triggers – has agreed to take on the additional responsibility of reviewing older acts which: (1) do not hit those time triggers; and (2) do not fall under the auspices of any Joint Editorial Board or either of the newly formed committees to monitor health law or civil litigation and dispute resolution.

The following acts have been reviewed by the committee:

- Uniform Attendance of Out-of-State Witnesses (1936)
- Uniform Controlled Substances Act (1970)
- Uniform Correction or Clarification of Defamation Act (1993)
- Uniform Electronic Transactions Act (1999)

- Uniform Enforcement of Foreign Judgments Act (1964)
- Uniform Federal Lien Registration Act (1978)
- Uniform Trade Secrets Act (1979)(1985)

Each of these acts were reviewed so as to consider whether to change the status of the act, or whether to propose revisions or amendments to the acts.

In most cases, the Committee found that these acts were still in good shape, still in use by the states, and there was no need for a status change or amendments or revisions, with three exceptions:

- Uniform Trade Secrets Act: Leonard Reese recommends that the Committee revisit this act within a few years with eye on possible amendments.
- Uniform Attendance of Out of State Witnesses Act: Grant Callow suggests that the act be updated as to current ULC style, and recommends that the Act be referred to the Committee on Style.
- Uniform Controlled Substances Act: Paula Tackett and Aliza Kaliski have flagged two possible topics for Scope and Program and Executive Committee review – legalization and/or decriminalization of marijuana, and regulation of use of medical marijuana.

After discussion, the Committee on Scope and Program accepted the report of the Committee to Review ULC Acts, but deferred any further action until the July 2015 meeting of Scope.

Having no further business, the Committee on Scope and Program was adjourned at 5:00 pm.