

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

MEETING OF THE COMMITTEE ON SCOPE AND PROGRAM

Pittsburgh, PA

July 23, 24, and 26, 2005

Minutes

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

-#- The meeting was called to order at 9 a.m on July 23, 2005 recessed at 5 p.m., and reconvened at 9:30 a.m. on July 24, recessing at 11:30 am. A special meeting was called on July 26 at 9 a.m. to discuss item 17; this meeting recessed at 10 a.m. -#-

1. Prior Minutes

Upon a motion duly made, the minutes from the January, 2005 meeting were unanimously approved.

Study Committee Reports

2. Study Committee on the **Discovery of Electronic Records**
(*Rex Blackburn, Chair*) – Scope Liaison Richard Cassidy

Commissioner Blackburn, Chair of the Study Committee, submitted a report on the work of the committee and discussed a current federal rules project and several ongoing state efforts. The committee discussed some of the interest groups and other entities that would be interested in the subject and need to be invited to participate.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on the discovery of electronic records be formed.

3. Study Committee on an **E-Government Act**
(*Pat Fry, Chair*) – Scope Liaison Harry Haynsworth

The Committee received the report of the study committee.

4. Study Committee on **Electronic Payment Systems**
(*James White, Chair*) -- Scope Liaison Harry Haynsworth

The Committee received the report of the study committee.

5. Study Committee on **Internet Private Law**
(*Anita Ramasastry, Chair*) -- Scope Liaison Harry Haynsworth

The Committee received the report of the study committee, which will be meeting during the annual meeting in Pittsburgh.

6. Study Committee on **Interstate Depositions**
(*Richard Long, Chair*) – Scope Liaison Richard Cassidy

The Committee received the report of the study committee. The committee on scope and program discussed the idea of broadening the scope of the project to include interstate discovery of documents. .

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on interstate depositions and discovery of documents be formed.

7. Study Committee on **Misuse of Genetic Information (C)**
(*Joe Willis, Chair*) -- Scope Liaison Dale Higer

The Committee received the report of the study committee. Commissioner Willis, Chair of the Study Committee reported on the work of the committee and on trends in science and society. Commissioner Willis indicated that state law on this subject is all over the map, and that many states are now at the point where a review would be helpful and uniformity appreciated. The history of the study committee's prior work was discussed, including a prior meeting on this subject in Washington D.C.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on the misuse of genetic information in employment and insurance be formed, with an initial charge to review the policy choices framed in the study committees prior reports, making outreach efforts to assess the view of the various constituencies and further develop the proper scope of the proposal.

8. Study Committee on an **Omnibus Business Organization Code**
(*Justin Vigdor, Chair*) – Scope Liaison Martha Walters

Bill Henning reported on the history of the committee and its relationship to prior ongoing projects such as META. Two reporters have now been appointed and the substantive work of the study will be going forward in partnership with a related ABA committee.

9. Study Committee on **the Regulation of Charities (B)**
(*King Burnett, Chair*) – Scope Liaison Dale Higer

The Committee received the report of the study committee. Commissioner Burnett, Chair of the Study Committee, discussed developments with the ALI nonprofit principles project and in Congress. The committee explored the risk of preemption if the conference did not begin an active drafting effort. Chairman Burnett indicated a need to confirm the active interest and willingness to participate of state attorneys general and the charitable community generally before beginning a drafting project and requested the appointment of a reporter to assist with the next phase of the study. The study committee is expected to report further at the midyear meeting.

The following Study Committees were approved previously but are not yet activated:

- A. Study Committee on an **Administrative Procedure Act for Interstate Compact Entities**
- B. Study Committee on **Collaborative Law**
- C. Study Committee on **Relocation of Children**

Editorial Board Reports and Recommendations

10. JEB-Uniform Family Laws (Tindall and Walters, Liaisons)

The Committee received the minutes of the JEB.

11. JEB-Uniform Real Property Acts (Kneedler, Liaison)

The Committee received the minutes of the JEB. The JEB decided not to recommend a project addressing tenancy in common.

12. JEB-Uniform Trusts and Estates Acts (Higer, Liaison)

The Committee received the minutes of the JEB.

13. JEB-Uniform Unincorporated Organization Acts

The Committee received the minutes of the JEB. Commissioner Haynsworth presented a proposal on the Unincorporated Nonprofit Association Act. While the existing act has been modestly successful, Commissioner Haynsworth believes that with minor revisions/additions (along the lines of the modified enactment of the UNAA in Alabama), this updated act could be approved by the ABA and have significantly improved legislative results. The committee discussed the advantages of further development of this act and the potential for modest funding of an abbreviated project.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee to amend the Unincorporated Nonprofit Association Act be formed.

Continued Business

14. Change of Scope for Child Abduction Project – Report

The Committee discussed its prior vote by conference call (April 26, 2005) to recommend that the scope of this project be expanded to also address the prevention of child abductions within the United States. The committee previously adopted the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the scope of the Drafting Committee on a Child Abduction Prevention Act be expanded to allow the committee to draft an act to allow courts to take preventative measures to deter child abduction both domestically and internationally. *(Recommendation previously approved and forwarded to Executive Committee; included here for tracking)*

15. UAGA-related issues: living donors; advance directives; revision vs. amendment issue

Commissioner Walters noted that no proposal had been submitted to the committee on these issues.

New Business

16. Proposal – Election/Voting Reform & Electronic Voting

The Committee reviewed these proposals. The committee decided to take no action on these subjects at this time.

17 International Legal Developments Report Proposal - Study Committee on Implementation of International Agreements

The committee reviewed the initial ILD Committee report, and reconvened to consider its subsequent to form a study committee to review several international agreements and report back on the practicability of working in one or more of the defined areas. Commissioner Reitz appeared before the committee on these issues, and described a number of international agreements and the rationale for NCCUSL becoming involved in this area. At the request of Commissioner Swibel, a statement of criteria for international projects was prepared. The committee discussed several aspects of this proposal, including the need for at least a preliminary analysis prior to a meeting with State Department representatives later this fall. The study committee will be charged with preparing a briefing paper on the following international agreements and providing some concrete analysis of each in light of the prepared criteria statement.

- 1) The convention on Enforcement of Foreign Judgments in exclusive forum circumstances (HAGUE)
- 2) The convention on electronic commerce (UNCITRAL)
- 3) The convention on choice of law for intermediated securities (HAGUE)
- 4) The convention on letters of credit
- 5) The convention assignment of receivables (UNCITRAL)
- 6) The convention on negotiable instruments
- 7) The convention on international wills (UNIDROIT)
- 8) The convention on enforcement of family support (HAGUE – still in development)

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee on the implementation of international conventions and treaties be formed.

18 Eminent Domain issues

The Committee reviewed this proposal and will ask the JEB-URPA to review this area.

19. Proposal -- Health Care Information Infrastructure

Mike Kerr reported on the development of this proposal, which is for a study of state statutes impacting health information interoperability. The Committee reviewed this proposal. The committee discussed the fact that this project may be able to benefit from significant outside interest and funding and would produce a deliverable that we could use for a future substantive revision/expansion of the uniform health care information act.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee on health care information interoperability be formed.

20. Scope and Name Change for Agricultural Co-ops Project

Commissioner Langrock appeared before the committee to explain the need to change the scope and name of the existing project to delete reference to ‘agriculture and agricultural-related’ and instead include specific exclusions for utilities and financial services cooperatives, (possibly) housing, etc.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the scope of the drafting committee on agricultural and agricultural related cooperatives act be changed to delete the existing limiting reference to ‘agricultural and agricultural related’ and instead have a broader definitional scope, with specified appropriate exclusions and that the drafting committee report to the Committee on Scope and Program at the midyear meeting. The committee also recommends the name of the committee be changed to the “Uniform Cooperative Association Act”.

21. Proposal -- Regulation of Medical Examiners

Dr. Victor Weedn of Duquesne University and Commissioner DeLiberato appeared before the committee on this proposal. Dr. Weedn discussed a 2003 National Academy of Sciences report on the need for significant reform of the death investigation systems, which he described as a patchwork of various inconsistent county-level administrations. Dr. Weedn argued that this patchwork of appointing authority leads to unqualified (often elected) persons making inappropriate decisions about which cases to refer for actual forensic investigation. Dr. Weedn believes that the administration of these functions should be placed at a state-wide or regional level and that these positions should not be elected – and that the elected county coroner system should essentially be replaced by a medical examiner system. The committee discussed upcoming formation of a national commission on this subject and how this might affect the timing of any NCCUSL effort in this area.. Dr. Weedn described how several state-wide medical examiner systems function. The National Institutes of Justice is supportive of reform in this area, and the ABA Criminal Justice Section submitted a letter in support. The committee

discussed several enactability issues, including local resistance.

Upon motion duly made, the Committee voted as follows:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee on the regulation of medical examiners be formed, with an initial charge to investigate the possibility of funding and to identify the interested groups.

22. Proposal – Cellphone Contract Regulation

The Committee reviewed this proposal. The committee discussed related issues and declined to take action at this time.

23. Proposal – Electoral College Reform

Commissioners Davies and Stein appeared before the committee on this proposal. Commissioner Davies proposal focuses on remedies for an elector that fails to follow the vote – including specifically the ability to reimpose the correct outcome. Commissioner Stein distributed and discussed an article on the issue of faithless electors, and indicated his support for a project in this area. The committee discussed policy questions, enactability, and potential funding.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee on faithless electors be formed.

24. Proposal – Asbestos Screening Regulation and Statute of Limitations

The Committee reviewed this proposal. Commissioner Cassidy had previously been asked to review this proposal and investigate related developments at the ABA. He reported that there seems to be a consensus between the plaintiff and defense bar that the timing of these claims should be tied to the development of serious illness (rather than a mere future risk, etc.) rather than simply the date of a physical examination. The TIPS section developed a model limitations provision on this, but it has not been adopted in the states, and the question is whether NCCUSL might pick this up and improve its drafting and legislative success. Commissioner Swibel noted that we have not been asked by the ABA to become involved in this area. The committee decided to take no action on this issue at this time.

25. Proposal – Act on Service Contract Sales & Regulation

The Committee reviewed this proposal. The committee discussed related issues and declined to take action at this time.

26. Proposal – One-call system

The Committee reviewed this proposal, which would create a committee to study buried utility location programs and the possibility of expanding their coverage to also include information about environmental controls. The committee discussed the need for the act and the potential fiscal costs to the states, as well as the possibility of outside funding for the study.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee on one call systems be formed.

27. Proposal – Consumer Financial Information Privacy Protection

Commissioner Stern appeared on this proposal, and discussed the increasing problem of information ‘spills’ by collectors of personal financial information.. Commissioner Stern also discussed Graham-Leach-Bliley, FTC regulations, European Union data protection restrictions, the Fair Credit Reporting Act, and a number of other responses in state and federal law, especially the recent act in California on this subject. The committee discussed the fact that the study committee on e-government is looking at electronic privacy issues. The committee discussed what the thrust of the proposed study would be, including possibly a survey of what states are doing on this subject, and how remedies might be directed to the benefit of affected consumers.

The committee decided to take no action on this issue at this time, but invites Commissioner Stern to work with Commissioner Fry to further develop this idea with staff. Fred Miller will inquire with the consumer financial industry association and will also report back. Staff will work with the ABA Liaison Committee to learn about developments within ABA Sections.

28. Proposal – IACA Model Registered Agent Act and Model Annual Filing Requirements Act

Bill Henning discussed these proposals, which were generated by IACA (the secretary of state filing officers association), and initially were submitted to the ABA ad hoc committee on entity

rationalization. His recommendation is that we form a drafting committee to work with the ABA and IACA to help complete these projects. .

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on registered agents and annual filing requirements be formed to work with the ABA and IACA on these projects.

29. Bank Deposits

The Committee reviewed this proposal, and Joe Sommer (who works for the NY Federal Reserve, but is not necessarily speaking on their behalf) spoke about the need for state law reform in this area.. The committee discussed several cases in this area and the need for a project. The committee noted the need for active participation by the Federal Reserve vis-à-vis the national banks and other involved federal agencies. The committee also discussed cross-border implementation issues and the funding that would be needed to make such an effort work.

The committee discussed with Mr. Sommers the nature of the NCCUSL study and drafting process, and our ability to bring in advisors from the fed, the American Bar Association, the ALI, banks, consumers, etc. and how NCCUSL might be able to serve as a ‘fulcrum’ for an effort comprising several entities.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee on a bank deposits act be formed, with an initial charge to examine the need for and potential enactability of such a law, the parties and advisors necessary to mount an effective drafting effort, and the possible underwriting of costs..

30. Proposal – Electronic Waste Management

Commissioner Sher appeared before committee to speak on this proposal. Commissioner Sher noted that he had recently sponsored legislation on this subject in California, and that interest in a national uniform solution is rising. The problem is that there are toxic materials in many obsolete electronics, and no cost-effective way to dispose of or recycle them. He also noted that the EU has a regulatory requirement on this subject. Two approaches have developed – first, responsibility can be imposed on manufacturers (manufacturer stewardship fee), and second, a transaction fee can be imposed at the point of sale to build up a fund to cover the cost of disposal (advanced disposal fee). Different states are taking different approaches. Commissioner Sher made the point that because so many electronics are sold over the internet, a uniform approach makes quite a bit of sense, and a uniform state law might be preferable to congressional action.

The committee discussed the chance of federal preemption, the likely level of industry support, and the prospect of funding for a project along these lines

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee on electronic waste management be formed.

Other business

31. Report of Committee on Review of Conference Acts

The committee received the report of the Committee on Review of Conference Acts, and agreed with its recommendations.

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

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that 1968 Uniform Child Custody Jurisdiction Act and the 1962 Principal and Income Act be designated as obsolete or superseded.

32. Additional Proposals

A. Proposal -- Non-Traditional Families Act

The committee received a proposal from Commissioners Tindall, Kent, and Cassidy; Commissioner Cassidy spoke on this proposal. The idea is to form a study committee to monitor developments in this area and to maintain active liaison relationships with the ABA and other entities working in this field. The scope of the monitoring would be unmarried couples, extended families, domestic partners, and other non-traditional families, and in particular the impact of these non-traditional family structures on children.. Commissioner Walters also suggested that an act in this area might be limited to children. After discussion, the committee asked the JEB-UFL to communicate with the JEB-UTEA and various entities within the ABA to review these issues and examine whether there are potential projects ready for action in this area.

B. Proposal – Model State Anti-Trafficking Criminal Statute

The committee discussed this proposal, forwarded by the Mississippi commission, who indicated that states (including Mississippi) have been asked by the United States Attorney General to adopt heightened criminal penalties for human trafficking and

involuntary servitude. John McCabe discussed the history of the conference with regard to criminal acts. Commissioner Houghton suggested we might speak with the US DOJ directly on this, and Commissioner Haynsworth commented that we would need to discuss this with the state AGs. The committee believes we should investigate with the US DOJ to see if they are looking for our help (Commissioner Houghton), and to check the national AG's to see if they are interested in having us work on this issue (Commissioner Kneedler). This item will be held over to the next scope meeting.

C. Revision of UPC on inheritance rights of children

Commissioner English appeared on this proposal, which is framed by questions of posthumous conception (court cases and the recent ALI restatement), surrogate mothers, other 'new biology' problems, and better coordination with the parentage act. Commissioner Tindall indicated that the JEB-UFL is interested in harmonizing these acts. The committee discussed the effect on the Parentage Act of a further revision to the UPC at this time.

The committee decided to delay action on this proposal ask the JEB-UFL to consider this proposal further, to discuss it with the JEB-UTEA, and to consider the proposal in light of its investigation of the broader non-traditional families proposal.

D. Revisions to the Uniform Pre-Marital Agreement Act

Commissioner Munson appeared to speak on his proposal to revise and amend the pre-marital agreement act to also address post-nuptial agreements. He noted that the use of postmarital agreements are proliferating because of the rising divorce rate and mixed families.

This subject will be forwarded to the JEB-UFL for its consideration and the JEB-UFL will be asked to report back.