

Minutes
Web and Audio Conference of the Executive Committee
Uniform Law Commission

November 15, 2022
Chicago, IL

Timothy Berg, Chair of the Executive Committee, called the meeting to order on November 15, 2022, at 2:00 p.m. Central Time.

The following members of the Committee were present: Daniel Robbins, President; Tom Buiteweg, Treasurer; Lisa Jacobs, Committee on Scope and Program Chair; Ryan Leonard, Secretary; Carl H. Lisman, Immediate Past President; Steve Wilborn, Legislative Committee Chair; Elena Duarte; Lani Ewart; and Melissa Hortman. Commissioner Diane Boyer-Vine, Vice President, did not attend the meeting.

Also present: Tim Schnabel, Executive Director; Elizabeth Cotton-Murphy, Chief Administrative Officer; Katie Robinson, Senior Director for Strategy and Communications; Ben Orzeske, Chief Counsel; and Kaitlin Wolff, Legislative Program Director.

1. Approval of July 7 and 12, 2022 meeting minutes and August 3, 2022, ballot minutes

A motion was made and approved accepting the minutes of the Executive Committee meetings held July 7, July 12, and ballot minutes of August 3, 2022.

2. Life membership requests – Genie Ohrenschall Daykin (NV) and Debra Lehrmann (TX)

A motion was made and approved nominating Genie Ohrenschall Daykin (NV) for election as a life member of the Conference.

A motion was made and approved nominating Debra Lehrmann (TX) for election as a life member of the Conference contingent upon her attendance at the 2023 Annual Meeting.

3. Updates to list of ULC advisory members

A motion was made and approved granting advisory member status under Section 2.09 of the Constitution to Eleanor Barrett (American Law Institute), Michael L. Buenger (National Center for State Courts), Sarah Dafoe (Uniform Law Conference of Canada), Deborah Enix-Ross (American Bar Association), Susan Parnas Frederick (National Conference of State Legislatures), Brian Kane (National Association of Attorneys General), Joseph Khawam (U.S. Department of State); Peter J. M. Lown (Uniform Law Conference of Canada), Elaine Marshall (National Association of Secretaries of State), Stephanie Martin (Federal Reserve Board), Jason C. Moseley (Council of State Governments), Richard L. Revesz (American Law Institute), Leslie Reynolds (National Association of Secretaries of State), and Jorge Sanchez Cordero (Mexican Uniform Law Center).

4. Report regarding ULC attendance at recent National Conference of State Legislatures (NCSL) legislative summit

Legislative Program Director, Kaitlin Wolff, summarized the written report submitted for the Committee's consideration. Ms. Wolff attended the NCSL meeting with the new ULC NCSL co-liaisons, Commissioners Briggs Hopson (MS) and Othni Lathram (AL). ULC representation at NCSL meetings furthers the ULC/NCSL relationship and provides opportunities to present ULC products to state legislators. President Robbins recommended that the ULC submit articles for publication in the NCSL newsletter.

5. Consideration of draft ULC amicus policy

Chair Berg summarized the draft policy presented in writing for the Committee's consideration. On occasion, the ULC has been asked to submit amicus briefs in cases where the interpretation or validity of uniform laws are at issue. It was decided that the ULC should have a written structure and policy for how to handle amicus briefs.

After discussion, a motion was made and approved adopting the policy as amended.

6. Deepfakes study committee proposal

President Robbins summarized the written report submitted for the Committee's consideration and provided background on history of the study committee recommendation and research into concerns raised during this process.

The Technology Committee proposed the formation of a Study Committee on Deepfakes in 2019. The Scope and Program Committee considered the proposal and recommended in April 2022 that a committee be appointed to conduct further research on the topic. The Executive Committee requested in May 2022 that the President seek additional information regarding several aspects of the topic, including the extent to which state law would be preempted by the First Amendment and Section 230 of the Communications Decency Act. The President reported on conversations with several experts and recommended moving forward with the formation of a study committee.

After discussion, a motion was made and approved adopting the following resolution authorizing the formation of a Study Committee on Deepfakes:

Resolved, that a Study Committee on Deepfakes be formed to study the need for and feasibility of a uniform or model act addressing the specific issues of (1) non-consensual deepfake pornography and (2) election-related deepfakes. In considering the need for a uniform or model act, the study committee should analyze existing potential claims such as tort and copyright claims and assess the benefits of additional claims. The study committee should analyze the narrowly focused legislation that several states have already enacted related to those specific categories of deepfakes and should thoroughly

analyze the extent to which the First Amendment, as well as Section 230 of the federal Communications Decency Act, would limit state legislation on the topic.

7. Report of Scope and Program Committee

A. Recommendations Concerning Establishment of New Drafting Committees

President Robbins reported that the Study Committee on Antitrust recommended the formation of a drafting committee on a Uniform Pre-Merger Notification Act. The Committee on Scope and Program considered the request, but the discussion resulted in a tie vote.

President Robbins recommended that the project proceed to drafting and submitted a resolution for the Committee's consideration.

After discussion, a motion was made and approved adopting the following resolution authorizing the formation of a Drafting Committee on Antitrust Pre-Merger Notifications:

Resolved, that a Drafting Committee on Antitrust Pre-Merger Notifications be formed to draft a uniform act requiring companies that submit a pre-merger notification filing pursuant to the federal Hart-Scott-Rodino Act to share their initial filing with the State Attorney General on request, subject to confidentiality protections equivalent to or stronger than under federal law. The act must balance the needs of state enforcers for information with the burdens and risks to filers.

Within this mandate, the drafting committee must pay special attention to issues such as the circumstances that might permit a state to access the information (e.g., does the state have a substantial nexus to the transaction); the scope of the information that must be provided (subsequent HSR filings can be massive); the obligations imposed on states that receive the information (the state act within a time limit like the federal government; the confidentiality protections must be at least as strong as federal law; if competitors can abuse the process via state FOIA provisions to access the confidential business data, the law may be counterproductive and anticompetitive); and the likelihood that the act might call for fees or an adverse fiscal statement that would make it unenactable.

B. Recommendations Concerning the Establishment of New Study Committees

1. Scope approved the following resolution for consideration, recommending that a study committee on Patent Rights in Employment be formed.

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Study Committee on Patent Rights in Employment be formed to study the need for and feasibility of a uniform or model act on the subject.

The Executive Committee approved this resolution.

2. Scope approved the following resolution for consideration, recommending that a study committee on Commercial Financing Disclosure be formed.

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Study Committee on Commercial Financing Disclosure be formed to study the need for and feasibility of a uniform or model act on the subject.

The Executive Committee approved this resolution.

The meeting was adjourned at 3:21 p.m.