

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

**UNIFORM LAW COMMISSION**

**Wednesday, June 30, 2021**

**Thursday, July 1, 2021**

**Minutes**

The meeting of the Committee on Scope and Program was convened at 12:00 pm on Wednesday, June 30, 2021, 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, Katie Robinson, ULC Legislative Program Director, and Gloria Korpas, Legislative Assistant, also attended. Attending for a portion of the meeting were Commissioners Sam Thumma, Jack Burton, Barry Hawkins, Kay Kindred, Susan Pollard, Bob Stein, and Bill Henning, and guests Barry Nekritz, member, JEB/Uniform Real Property Acts, Wilson Freyermuth, Research Director, JEB/Uniform Real Property Acts, Andrea Dennis, Reporter, Study Committee on Criminalization of Student Discipline, Nita Farahany, Reporter, Study Committee to Revise the Uniform Determination of Death Act, Brian Scarpelli, the App Association, Joshua Landau, Computer and Communications Industry Association, Jay Jurata, Orrick, Herrington & Sutcliffe, Kent Baker, u-blox America, David Kappos, Cravath, Swaine & Moore, Lisa Kimmel, Crowell & Moring, and Richard Taffet, Morgan, Lewis & Bockius.

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 April 20, 2021.

**Study Committee Reports**

- Study Committee on **Fines and Fees**  
(Kay Kindred, Chair) Scope Liaison Mary Devine

Kay Kindred, Chair, and Susan Pollard, Vice Chair, reported on the progress of this study committee. This committee has studied the need for and feasibility of a uniform or model addressing the impact of fines and fees on people of limited means. The impact of fines and fees on those with means can be a mere inconvenience, but for the poor and working poor who are unable to pay, those same fines and fees can be devastating, resulting in thousands of dollars of debt and functioning as a poverty trap. The committee considered three major areas that might be addressed in a uniform or model law: (1) suspension of driving privileges because of unpaid fines and fees even when unrelated to public safety; (2) fines and fees imposed on juveniles and their parents in the juvenile justice system; and (3) fines and fees imposed without consideration of ability to pay because of adult criminal offenses. The committee recommends that a drafting committee be appointed.

After discussion, the Committee on Scope and Program did not approve a motion to recommend a drafting committee. 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 Fines and Fees be discharged with a letter of thanks to the committee.**

- Study Committee on **Supply Chain Transparency**  
(Anita Ramasastry, Chair) Scope Liaison Diane Boyer-Vine

The report of the Study Committee on Supply Chain Transparency was accepted. 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 **Mitigation of Public Health Emergency Business Disruptions**  
(Mike Houghton, Chair) Scope Liaison Lisa Jacobs

There was no new report from the study committee for consideration. The Executive Committee will determine the status of this committee once the recommendation from the Study Committee on Public Health Emergency Authorities has been resolved.

- Study Committee on **Public Health Emergency Authorities**  
(Diane Boyer-Vine, Chair) Scope Liaison Diane Boyer-Vine

Commissioner Boyer-Vine reported on the progress of this study committee. This committee has studied the need for and feasibility of one or more uniform state laws addressing the authority of state governments to respond to epidemics, pandemics, and other public health emergencies. The committee has considered such topics as quarantines, business closures, collective purchasing mechanisms, and rules for medical practice. The committee 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 by a vote of 6 to 3:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Public Health Emergency Authorities be formed.**

- Study Committee on **Criminalization of Student Discipline**  
(Diane Boyer-Vine, Chair) Scope Liaison Diane Boyer-Vine

Commissioner Boyer-Vine reported on the progress of this study committee. This committee has studied the need for and feasibility of a uniform or model act on the relationship of in-school disciplinary procedures to criminal law enforcement. The committee requests the appointment of a drafting committee.

After discussion, a motion was made and seconded to appoint a drafting committee on criminalization of student discipline. The motion failed by a vote of 1 to 8. 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 Criminalization of Student Discipline be discharged with a letter of thanks to the committee.**

- Study Committee on **Cybercrime**  
(Michele Timmons, Chair) Scope Liaison Diane Marty Carr

The report of the Study Committee on Cybercrime was accepted. 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 **Uniform Determination of Death Act**  
(Sam Thumma, Chair) Scope Liaison Lisa Jacobs

Commissioner Thumma and Reporter Nita Farahany reported on the progress of this study committee. This committee has studied the need for and feasibility of updating the Uniform Determination of Death Act (1980), which has been enacted in 44 states. Issues considered include lack of uniformity in the medical standards used to determine death by neurologic criteria, the relevance of hormonal functions, and whether notice should be provided before a determination of death. The committee 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 to Revise the Uniform Determination of Death Act be formed.**

- Study Committee on **Mortgage Modifications**  
(Jack Burton, Chair) Scope Liaison Lyle Hillyard

Commissioner Burton reported on the progress of this study committee. This committee has studied the need for and feasibility of a uniform or model act addressing mortgage modification issues. The committee recommends that a drafting committee be appointed to draft a narrowly drawn Mortgage Modification Act to provide a safe harbor for modification of a mortgage that amended loan documents: Specifically, a recorded mortgage does not need to be amended for the mortgage to secure amended loan documents and to retain its priority, unless a few specified fundamental changes are made in the loan documents. If any of these fundamental changes is made, the recorded mortgage is governed by existing law without regard to the safe harbor.

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 Mortgage Modifications be formed.**

- Study Committee on **Recurring Service Charges**  
(Ted Kramer, Chair) Scope Liaison Gail Russell

There was no report from the study committee for consideration. 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 **Tenant Information in Rental Decisions**  
(Brian Flowers, Chair) Scope Liaison Gail Russell

There was no report from the study committee for consideration. 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 **Election Law**  
(Bill Barrett and Tom Hemmendinger, Co-Chairs) Scope Liaison Mary Devine

The report of the Study Committee on Election Law was accepted. The committee requests that it be continued. 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**  
(Barbara Atwood, Chair) – Scope Liaison Diane Boyer-Vine

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

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

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

- **JEB – Uniform Real Property Acts**  
(Barry Hawkins and James Wine, Co-Chairs; Wilson Freyermuth, Executive Director) –  
Scope Liaison Lyle Hillyard

Commissioner Hawkins and Director Freyermuth reported on the three recommendations and/or reports from the JEB. The first was a report back on the proposal from the Department of Defense regarding Energy Facility Compatibility with Military Testing and Training. In certain locations, energy facilities pose encroachment challenges to the DoD operational, training, and testing missions. Energy facilities involving tall structures, such as wind turbines and electrical transmission towers that are positioned incorrectly, degrade military testing and training operations. For example, wind turbines near military test and training ranges degrade airborne military radar capabilities. While current federal law provides DoD with the opportunity to *advise* project owners of potential interference with military equities, DoD does not have the authority to prevent the construction of energy facilities that adversely impact military operations. As a result, there is a critical need for states to ensure that the construction, alteration, and expansion of energy facilities do not adversely impact national security. The DoD proposes that ULC draft an act to mitigate the potential for energy facilities, such as wind turbines, from having an adverse impact on military operations, readiness, and installations.

This proposal, originally submitted in April 2021, had been referred to the JEB for Uniform Real Property Acts. The JEB/URPA has reviewed and discussed this proposal, and the JEB has noted three potential enactability concerns with the DoD's approach: (1) numerous states have strong home rule traditions, under which land use control decisions are made at the local level; (2) in many states, it is unclear what existing state agency would serve as the siting decisionmaker in any particular state; and (3) if a new agency has to be identified or an existing agency's portfolio must be expanded to address siting review, how would the budgetary impacts of that be addressed? The JEB recommends that the DoD demonstrate commitment and interest from impacted stakeholders, including broad participation from renewable energy developers and trade groups, before the ULC approve such a project.

After discussion, the Committee on Scope and Program referred the proposal back to the Joint Editorial Board for Uniform Real Property Acts, and requests that the JEB contact the DoD to request evidence of support among relevant stakeholders for the proposal.

The second recommendation is to appoint a drafting committee on restrictive covenants in deeds. A racially restrictive covenant is a covenant inserted into a deed or a declaration of restrictive covenants that prevents the affected land from being sold to or occupied by persons of a particular race. Many antiquated and objectionable restrictive covenants still exist, though they are no longer enforceable. The presence of a racially restrictive covenant in the chain of title does not have title consequences for an owner of land in an objective sense. Nevertheless, such covenants remain in the chain of record title to millions of parcels of land, and the continued presence of those covenants —open to public view and potentially open to disclosure and publication each and every time that someone searches title to one of those parcels — can involve psychic or subjective harms. This is a proposal to appoint a drafting committee on the issue of restrictive covenants in deeds.

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 Restrictive Covenants in Deeds be formed.**

The third recommendation is a proposal for a study committee on redaction of personal information from public records. If an individual owns a home in his or her own legal name, it is possible for one using public records to identify that individual's primary residence or other real estate owned by that person. The ready accessibility of this information not only facilitates efficient title investigation and transfer, but also the ability of creditors to enforce legitimate claims against judgment debtors. However, the ready accessibility of this information also has a potential downside from a privacy perspective. One person could use the information in the public records to identify the home of an individual and use that information to annoy, threaten, harass, or otherwise harm that individual in their home. The proposal is for a study committee to determine the feasibility of a uniform law on the redaction of personal information from public records, and if so, the scope of such an act.

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 Redaction of Personal Information from Public Records be formed to study the need for and feasibility of a uniform or model act on the subject.**

- **JEB – International Law**  
(Henry Gabriel, Co-Chair) – Scope Liaison Lee Yeakel

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

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

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

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

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**  
(Lee McCorkle, Vice Chair) – Scope Liaison Martin Carr

There was no proposal from the Monitoring Committee and the report of the Monitoring Committee was accepted.

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

There was no proposal from the Monitoring Committee and no new report of the Monitoring Committee to be considered.

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

There was no proposal from the Technology Committee and no new report of the Technology Committee to be considered.

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

There was no proposal from the Criminal Justice Reform Committee and the report of the Criminal Justice Reform Committee was accepted.

- **Privacy Monitoring Committee**  
(Rich Cassidy, Chair) – Scope Liaison Diane Boyer-Vine

There was no proposal from the Privacy Monitoring Committee, and no new report of the Privacy Monitoring Committee to be considered.

### **New or Pending Proposals**

- **State Law on Standard Essential Patent Legislation**  
(Brian Scarpelli, the App Association) Scope Liaison Marty Carr

Brian Scarpelli with the App Association, reported on this proposal to appoint a study committee to consider the need for and feasibility of a uniform or model state law on standard-essential patent legislation. The term standard-essential patent (SEP) is defined by standards-setting organizations, and generally means a patent that has been declared to be essential to a technical standard and therefore must be licensed in order to comply with such technical standard. The App Association proposes an act aimed at addressing anticompetitive behavior related to licensing of standard-essential patents. Speaking in support of this proposal with Mr. Scarpelli were Joshua Landau, Computer & Communications Industry Association, Jay Jurata, Orrick Herrington & Sutcliffe, and Kent Baker, u-blox America. Speaking in opposition to the proposal were David Kappos, Cravath, Swaine & Moore, Lisa Kimmel, Crowell & Moring, and Richard Taffet, Morgan Lewis & Bockius.

After discussion, a motion was made and seconded to appoint a study committee on standard essential patent legislation. The motion failed by a vote of 0 to 8, with one abstention from a member of the Scope committee, and one abstention from the Chair of the ULC Executive Committee.

- **Revise the Model Employment Termination Act**  
(Commissioner Peter Dykman) Scope Liaison Lyle Hillyard

Commissioner Hillyard reported on this proposal to appoint a study committee to Revise the Model Employment Termination Act, promulgated in 1990 and adopted in no states. The purpose of META was to protect employees by requiring that all employers could only dismiss an employee with “good cause.”

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

- **Revise the Uniform Prudent Management of Institutional Funds Act**  
(Krishna Dudani)

Commissioner Barry Hawkins reported on this proposal to appoint a study committee to Revise the Uniform Prudent Management of Institutional Funds Act, promulgated in 2006 and adopted in 49 states, the District of Columbia and the U.S. Virgin Islands. The purpose of



UPMIFA is to govern the management of funds donated to charitable institutions in accordance with modern investment and expenditure practice.

After discussion, the Committee on Scope and Program concluded to take no action at this time but suggested that the Chair of the Committee write to Mr. Dudani thanking him for his suggestion and encouraging his interest in the ULC and the subject matter of UPMIFA.

- **U.N. Convention on International Settlement Agreements resulting from Mediation**  
(International Legal Developments Committee, Bob Stein, Chair)  
Scope Liaison Lee Yeakel

Commissioner Stein and Commissioner Bill Henning reported on this proposal to appoint a study committee regarding the U.N. Convention on International Settlement Agreements resulting from Mediation. The primary focus of the study committee would be on the potential impact of the convention on existing state law, including how ratification would affect the Uniform Mediation Act and state contract law. If the study committee should conclude that ratification by the U.S. is desirable, it would consider appropriate methods of implementation.

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 explore issues relating to the U.N. Convention on International Settlement Agreements Resulting from Mediation. The primary focus of the study committee should be on the potential impact of the Convention on existing state law, including how ratification would affect the Uniform Mediation Act and state contract law. If the study committee should conclude that ratification by the U.S. is desirable, it should consider appropriate methods of implementation.**

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