Diversity of Thought  Uniformity of Law  More Than a Century of Service to the States

National Conference of Commissioners on Uniform State Laws

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Annual Report 2004–2005
The Conference in Action – 2005

1. Nationwide, during the 2004–2005 legislative year, there were 201 introductions of uniform acts and 86 enactments.

2. The Uniform Environmental Covenants Act topped the list of legislative enactments with 10 adoptions in 2005. The Uniform Child Custody Jurisdiction and Enforcement Act moved closer to total uniformity, with four new adoptions in 2005, bringing its total number of enactments to 44.

3. Wyoming led all jurisdictions with seven enactments, including the first-ever enactment of the Uniform Management of Public Employee Retirement Systems Act.

4. The Uniform Debt-Management Services Act and the Uniform Certificate of Title Act were among four new acts approved at the 2005 Annual Meeting.

5. Eighteen drafting committees are working on projects that include revisions of the Uniform Management of Institutional Funds Act and the Uniform Anatomical Gift Act and a Uniform Child Abduction Prevention Act.

6. Thirteen study committees are looking at timely topics ranging from private law issues arising from the Internet and the misuse of genetic information to electronic payment systems.

Officers and Executive Committee 2004–2005

Fred H. Miller, President
Peter F. Langrock, Vice-President
Robert A. Stein, Secretary
Carl H. Lismann, Treasurer
Howard J. Swibel, Chair, Executive Committee
Martha L. Walters, Chair, Scope and Program Committee
Michael Houghton, Chair, Legislative Committee

Appointed Members of Executive Committee

Timothy Berg
Charles A. Trist
James A. Wynne, Jr.
William H. Henning, Executive Director

PRESIDENT’S MESSAGE

Over the past two years, I have been blessed with the opportunity to serve this great organization as President. It has been a privilege and an honor for which I am deeply grateful.

Each year the Conference faces new challenges and new issues with which to contend, and this year was no different. But like every other year in the Conference’s long and illustrious history, the Conference rose to whatever challenge it faced, and I am happy to report that we have concluded another successful year.

Legislative Activity

While the reputation of the Conference is not solely dependent on our enactment record, that record is a very significant indicator of our value to the states. I am pleased to report that this past year, our legislative activity showed a significant increase over previous years, with more than 200 introductions and 86 enactments.

Of particular note is the Uniform Environmental Covenants Act (UECA), which led all acts with 10 enactments. We expect even more adoptions next year, thanks in large part to the UECA Task Force that was formed in 2004 to promote the enactment of UECA nationwide. The task force comprises commissioners who worked on the drafting committee, as well as a number of the advisors, observers, and environmental law experts who participated in the drafting effort.

We also had more success with the Uniform Trust Code, a long and complex act that has benefited from having its own Task Force and staff coordinator in Chicago focusing on the enactment efforts. The UTC has now been adopted in 15 states, a remarkable achievement given the complexity of this act. We fully expect to build on these numbers next year.

In many ways, the legislative work of the Conference is the hardest work to do. It takes a lot of time, energy, dedication and know-how. But the result of all this hard work is workable modern state law that helps keep the federal system alive – no small reward.

Finances

I am pleased to report that we essentially balanced our budget for the fiscal year just ended, notwithstanding the fact that in the past few years, due to economic circumstances and partisan political impasses, a number of jurisdictions have suspended payment of their dues to the Conference or have reduced their payment.

This coming year we hope for a better year. We are moving forward with efforts to persuade the defaulting states to shoulder their fair share of the cost, which is far less than the value they have received. The Legislative Committee will continue to pursue all avenues of regaining our sound financial footing.

We are also doing everything we can to control our own expenses. For instance, by having most of our meetings in Chicago, we have saved a considerable amount of money.
However, the Executive Committee continues to adhere to the decision that we will not unduly cut back on the core efforts of the Conference, which are our drafting and enactment efforts. In particular, we have had more committee meetings than before because we must deal with specific issues when they arise; we do not have the luxury of waiting for enactment efforts. In particular, we have had more committee efforts of the Conference, which are our drafting and development of uniform acts, and will expand that role even further as its corpus grows.

We have also made progress in related efforts. The Uniform Law Foundation has increased and broadened its efforts. It has taken a larger role in funding research and development of uniform acts, and will expand that role even further as its corpus grows.

The Public Information Committee has made recommendations that are being implemented to increase our visibility. We have a great organization and we do excellent work. When that message reaches relevant audiences we believe it generates support for the Conference in both tangible and intangible ways. One example of our outreach is the recently inaugurated William Pierce Writing Contest, which was established just last year. In the first year, we received some excellent entries, and a winner was announced last winter.

We have also sought other income sources. For example, we reached agreement with our partner, the American Law Institute, to cash in some of the revenue derived from our success with the Uniform Commercial Code, and we will have further funds from that source this year. The ABA Business Law Section, in addition to the ABA itself, has also made contributions to our work.

Scope and Program

Our work begins with the Committee on Scope and Program. It is not an understatement to say that what begins poorly may never overcome the deficiency. We have experienced the failure of some products that probably never should have begun. We continue to take steps to enhance our Scope and Program Committee process, including the assignment of liaison duties to Scope members with respect to study committees. We have worked to improve study committee reports, preparing guidelines for study committees. Competent analysis at this point tends to ensure that we will not waste resources on acts that we cannot get passed, or that otherwise do not add to state law, and that therefore detract from our reputation. We sometimes need reporters, and we sometimes need research done for the study committee. In this respect the Uniform Law Foundation has made grants to assist Conference efforts at obtaining reporters and research time for our study committees. We have begun to have ABA advisors for some study committees, which has proven to be a worthwhile step. Scope and Program has also initiated a broad range of solicitations for ideas for uniform or model acts.

Relations with ABA and ALI

We continue to improve not only our relationship with the ABA Board of Governors, but also with the ABA House of Delegates, as well as the ABA Sections and the Section Officers Conference. We have also worked to improve the procedures concerning advisors to our drafting committees who are appointed by the ABA and its Sections. We have instituted procedures to inform ABA Sections of our Scope and Program, study, and drafting work, and, in appropriate cases, we have accepted appointments of ABA advisors to study committees, which has brought us valuable and timely input. The relationship we have with the ABA is one of our greatest resources.

The Conference and the American Law Institute have had a formal, long-standing relationship over the years with the Uniform Commercial Code. Beyond that, we have extended advisory membership to a representative of the ALI, and continue our dialogue with their leadership on all subjects of mutual interest. For one, ALI members worked with us in obtaining a determination that the Office of the Comptroller of the Currency regulation did not preempt the Uniform Commercial Code. This is an important recognition of the value of state law and, in particular, of one of our premier products. We have worked with the ALI in relation to trust law and, more recently, we have begun cooperation on issues related to non-profits and charities. And of course, we have long-standing cooperation on the Permanent Editorial Board for the Uniform Commercial Code, lately manifested in connection with comments on "Check 21," a law passed by Congress to expedite the processing of checks. We will continue to strive to work cooperatively with the ALI and I have every reason to believe we can look forward to ever-closer cooperation in the future. After all, our goals are the same – to improve the law, even though the Conference does it through statutes and the ALI through progressive restatements.

Diversity

At the Conference’s midyear Executive Committee meeting, the Committee approved the adoption of a new Executive Committee policy. The policy states: “Policy on Diversity: The President shall consider among other important factors, diversity, including race, ethnicity, and gender when making appointments to the committees of the Conference under the authority of Article 5 of the Constitution of the National Conference of Commissioners on Uniform State Laws. The objective is to make the Conference as inclusive as possible so that all points of view are respected and considered in the conduct of the business of the Conference, based upon the membership of the Conference at the time appointments are made. This factor is especially important for drafting committees, where the basic work on uniform and model acts take place. The Conference is a state-governmental organization whose members are attorneys from every state, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Uniform and Model Acts are meant for enactment in every one of these jurisdictions. The best way to assure representation of the citizens of all of its member jurisdictions is to strive for the principle of diversity in the fundamental work the Conference does for them.”

This policy recognizes the fact that the Conference has no power over the appointing authorities in the states.
“The Conference is doing all that it can to encourage and then utilize a diverse membership. We have always been a diverse geographic group, for obvious reasons, and the time is appropriate to continue our effort to become more inclusive in other respects.”

However, the report forms which are provided to commissioners to be prepared for circulation to governors, legislatures, bar associations, etc., will be revised to include the following statement: “The National Conference encourages the appointing authorities to consider among other important factors, diversity, including race, ethnicity and gender, of membership in their uniform law commissions in making appointments.”

The Conference is doing all that it can to encourage and then utilize a diverse membership. We have always been a diverse geographic group, for obvious reasons, and the time is appropriate to continue our effort to become more inclusive in other respects. Simply put, uniform acts are better served when many points of view are available. The more diverse our membership, the more opinions we’ll have, the better off we’ll be.

Future of the Conference
I firmly believe in both the necessity for and value of our work, and that most people, when they become familiar with the Conference and with our products, fully support our efforts. There is certainly no pending crisis now facing the Conference, but there are troublesome signs, including ever-increasing attempts at federal preemption. We must make sure our processes and products, as excellent as they have proven to be, continue to be appropriate for the times.

For these reasons, I have recommended that a committee be established that will continually examine Conference procedures, rules and traditions over a long period to determine whether those procedures have continued viability or can be improved and in what way.

Conclusion
That, in sum, is the state of the Conference on a number of important considerations. Overall, I believe we are in very good shape, and are attuned to the need to ensure we do what is necessary or desirable to stay that way.

That being said, this past year has passed quickly. The challenges have been great and the burden heavy, but the experience has been unequalled. I am pleased to turn over the helm to our new officers, and confident that they will carry on and that we have a sound structure to enable them to do so.

Fred H. Miller, President

Conclusion
T he National Conference of Commissioners on Uniform State Laws has worked for the uniformity of state laws since 1892. It was originally created by state government to consider state law, determine in which areas of the law uniformity is important, and then draft uniform and model acts for consideration by the states. For well over a century, the Conference’s work has brought consistency, clarity and stability to state statutory law. Included in this work have been such pivotal contributions to state law as the Uniform Commercial Code, the Uniform Anatomical Gift Act, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Management of Institutional Funds Act, the Uniform Interstate Family Support Act, the Uniform Electronic Transactions Act and the Uniform Arbitration Act.

The Conference’s major asset is its commissioners — more than 300 of the best legal minds in the country. Its statutes are balanced because the Conference is an organization comprised of representatives appointed by every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. All commissioners must be lawyers, qualified to practice law. While some serve as state legislators, or employees of state government, most are private practitioners, judges or teachers of the law. Commissioners donate their time and expertise as a pro bono service and receive no salary or fee for their work with the Conference.

The Conference receives the predominant portion of its financial support from state appropriations, based on each state’s population. It provides the states with related services: drafting uniform state laws on subjects where uniformity is desirable and practical, and then working for the adoption of completed acts in the legislatures so that the states can receive the full benefit of uniformity.

The procedures of the Conference insure meticulous consideration of each uniform or model act. While the Conference spends a minimum of two years on each draft, work on large-scale projects, such as the Uniform Commercial Code, can take up to a decade to complete. No single state has the resources to draft a uniform law for the states with two related services: drafting uniform state laws and providing related services.

The Conference seemed like a very good idea to its founders in 1892. They saw nearly insoluble problems resulting from the rapid growth of the United States against confusing patterns of inadequate state law.

Today, the Conference continues to be a very good idea. The states have chosen to maintain the Conference because it has been useful to their citizens. Every day, when a person conducts business, enters a contract, makes a purchase or sale, or takes care of a family matter, rules of law originated by the Conference probably apply.

Equally important, the organization continues to strengthen the states in the federal system of government. As new technology wears away geographical borders and matters of law implicate more than one state, consistency in rules and procedures becomes ever more critical. Without a state-sponsored, national institution like the Conference, more and more legislative activity would shift from the state capitols to Capitol Hill in Washington, D.C. The Conference continues its commitment to help sustain the independence of the states, while achieving a uniform legal system for the nation.

As the Conference works for the states, the mission of the Conference is evolving. Globalization of business activities is growing dramatically. Similarly, the lives of individuals and families are increasingly multinational. The modern global economy and global society urgently need laws that are harmonized across national borders or laws that are uniform in international scope. Working on state law, therefore, requires the Conference to consider and, to the degree possible, to influence international legal developments. In part, the Conference’s participation is to fulfill its traditional role as defender of state law against federalization. In part, also, participation is necessary to serve a goal of greater harmonization of American law with international law when it is in the best interests of the states to do so. The Conference has a potentially significant role to play in these developments.

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Model Tribal Code Completed

After nearly four years of drafting, the Conference completed its work on a Model Tribal Secured Transactions Act (“MTA”) in 2005. By establishing a substantive and procedural framework that will provide certainty to secured transactions, the MTA should be beneficial to economic development for Native American tribes.

Many Native American tribes, tribal entities, tribal-owned businesses and Native American consumers have encountered significant barriers when seeking loans or other financing from off-reservation sources. One reason frequently cited is the lack of sufficient tribal commercial law to guide the parties in a business transaction that would fall within a tribe’s jurisdiction. Access to affordable credit is a fundamental component of sustainable economic development in all modern private market economies. When the rules governing lender/borrower relationships are uncertain or nonexistent, the risks to the lender increase and the lender may either refuse to lend or may increase the interest rate and other costs of the transaction to offset the risks. Therefore, to effectively enable access to credit by businesses and individuals at affordable rates and on competitive terms, rules are needed to govern these lender/borrower relationships.

Like other sovereign nations around the world, tribes and their members are increasingly interacting commercially with lenders and other businesses. Many tribes are seeking ways to build sound legal and business infrastructure to accommodate their growing cross-border commercial activity. The MTA will provide the certainty needed for this economic development.

Secured transactions laws provide these necessary rules. Secured transactions are agreements entered into between parties that involve giving property as collateral for loans or other financing arrangements. The kinds of transactions that come within the scope of secured transactions law are as varied as bank loans for business start-ups, consumer or business revolving lines of credit, auto loan financing, and installment loan purchases of home appliances, to name but a few.

Secured transaction laws in the United States generally fall within the jurisdiction of the states and not the federal government, and are encompasses in Article 9 of the Uniform Commercial Code (UCC). UCC Article 9 provides a statutory framework to govern transactions that involve the granting of credit secured by personal property.

The MTA was drafted with the objective of creating a uniform tribal secured transactions law that is, to the extent practicable, consistent with the core principles of UCC Article 9. In order to accommodate tribal business, legal, and cultural environments, the MTA differs from UCC Article 9 in a number of respects. However, the core principles, terminology, and processes that inform the MTA are sufficiently similar to the UCC to ensure that tribal and non-tribal practitioners will feel at ease working within both tribal and state jurisdictions.

Like UCC Article 9, the MTA provides a set of rules that specify how security interests may be created, perfected, and enforced, and who has first rights (or “priority”) when two or more competing creditors have legally enforceable interests in the collateral.

The MTA was drafted by the Conference’s Committee on Liaison with American Indian Tribes and Nations. The completion of the MTA is only a first step. The Committee will now work to facilitate enactment of the MTA by hosting training sessions and setting up a process to answer questions that may arise in the implementation of the Act.

FOUR NEW UNIFORM ACTS APPROVED IN 2005

The culmination of the work of the Conference takes place at its annual meeting each summer, when the Conference convenes as a Committee of the Whole. At its 114th Annual Meeting in Pittsburgh, Pennsylvania, July 22–29, 2005, four new uniform acts, as well as amendments to current acts, were approved. After receiving the Conference’s seal of approval, a uniform act is officially promulgated for consideration by the states, and legislatures are urged to adopt it.

The Uniform Debt-Management Services Act provides guidance and regulation to the debt counseling industry. Consumer debt counseling services have become a critical concern since Congress passed bankruptcy reform legislation this year. Many bankrupt consumers will be forced to seek consumer debt counseling as part of bankruptcy proceedings. The effect of bankruptcy reform is to privatize debt workouts. It is therefore important for the states to regulate the services for honest and responsible handling of consumer debt problems.

The Act applies to both consumer debt counseling services and debt management services (debt counseling services generally help a consumer repay all of his or her debt, while debt management services generally attempt to persuade creditors to settle for less than the full amount of the consumer’s debt). The Act is a comprehensive statute that provides rules for, among other things, registration requirements, bond requirements, disclosure requirements (including a list of goods and services – and the charges for each – that the agency will provide to the consumer), and penalties for non-compliance.

The Uniform Certificate of Title Act provides rules for the transfers of interests in motor vehicles (the Act does not apply to mobile homes or water craft). Each year, close to 70 million motor vehicles are titled in the United States. The Act, by providing improved administrative rules and remedies governing title issues, creates a consistent legal structure to facilitate efficient resolution of common title issues and the efficient handling of title-related transactions.

The Uniform Foreign Country Money Judgments Recognition Act is a revision of the Uniform Foreign Money Judgments Recognition Act of 1962, which simplified international business by recognizing money judgments obtained in other nations for the purpose of enforcement. This revision updates the 1962 Act, clarifying its provisions, and correcting problems created by the interpretation of provisions of that Act by the courts over the years since its promulgation.

The Uniform Assignment of Rents Act will bring consistency to commercial real property transactions by establishing a comprehensive statutory model for the creation, perfection, and enforcement of a security interest in rents.

Secured transaction laws generally fall within the jurisdiction of the states and not the federal government, and are encompassed in Article 9 of the Uniform Commercial Code (UCC). The MTA differs from UCC Article 9 in a number of respects. In order to accommodate tribal business, legal, and cultural environments, the MTA provides a consistent legal framework to govern transactions that involve the granting of credit secured by personal property.
A Look at the Uniform Real Property Electronic Recording Act

In April 2005, Arizona became the first state in the country to enact the Uniform Real Property Electronic Recording Act (URPERA). Since then, URPERA has also been enacted in Delaware, North Carolina and Texas. URPERA, drafted and approved by the Conference in 2004, is a very simple act: it gives county clerks and recorders the legal authority to begin accepting and storing real property records, including mortgages, in electronic form. The two most important provisions of the act: (1) equate the legal effect of electronic documents with that of written documents; and (2) establish a system of standards for recording officials to accept, store, report and exchange real estate instruments in electronic form.

With the adoption of the Uniform Electronic Transactions Act by 48 states and the federal enactment of the Digital Signatures in Global and National Commerce Act (E-Sign), electronic records and signatures memorializing land sales contracts and mortgage instruments (however designated) are now generally enforceable. Sellers, buyers and lenders can now do business electronically, and the electronic door at the basic transactional level has been open for a number of years.

Real estate transactions and recordation, however, are inextricably intertwined. Real estate interests are recorded in the local land records to provide a common system of notice and to establish the priority of various interests in the property. Most local real estate recorders have developed a strong interest in converting their traditional paper-based land recording systems to electronic form, sensing the needs of the marketplace and the technological feasibility. In the few cases in which digital systems for recording are developing, there has often been lack of clear authority to do so. The few statutes that do exist are mostly piecemeal, dealing with isolated issues rather than taking a comprehensive view of the necessary legal developments. URPERA will fill that void, but there is much to do even after URPERA is enacted in any state.

According to the Property Records Industry Association, there are more than 3600 recording jurisdictions nationwide. Property records are usually recorded in cities or counties. At latest count, fewer than 90 jurisdictions have some sort of system for e-recording either in place or in the process of converting to e-recording.

At this point in time, the majority of those localities that have implemented electronic recording of land records only record mortgage satisfactions or deed of trust cancellations electronically. Why are mortgage satisfactions and closings the first to be served by electronic recordation? They require communication only between two parties, a lender and a recording office. Other transactions are more complicated, requiring some coherence between sellers, buyers, agents and lenders in terms of technology and procedures. Not only do the recorders’ offices need to be on a system, so do all the transactors in the real estate marketplace, before full electronic recordation can be implemented.

URPERA opens the door to electronic recordation much as UETA and E-Sign opened the door to electronic real estate transactions. The full benefits of electronic recordation linked to electronic transactions depend upon the acquisition and utilization of the right technology by local recorders offices as well as those who transact real estate business. This means capital expenditure, adequate resources to support the technology over the long term and significant coordination between both the private and public sector. As URPERA progresses through the state legislatures, systems will develop. There undoubtedly will be a considerable phase-in period during which some instruments and documents will be electronically recorded and others will remain in paper. Ultimately there will be a migration to electronic means such that electronic recording will be the dominant mode. It may take some time to get to that point, but the door must be opened first. And that is the value of URPERA.

The 2004–2005 legislative year was a very successful year for the Conference, with 86 enactments of uniform acts and 201 introductions—a significant improvement over previous years. Numerous acts continued to perform well in the legislatures, and others gained momentum needed for broader enactment.

Uniform Environmental Covenants Act

The Uniform Environmental Covenants Act (UECA) out-performed all other uniform acts in the states, with 10 enactments in 2005. UECA, promulgated by the Conference in 2003, establishes requirements for a new valid real estate document—an “environmental covenant”—to control the future use of brownfields when real estate is transferred from one person to another.

A UECA Task Force was established last year to promote the enactment of UECA nationwide. The UECA Task Force comprises a broad coalition of stakeholders, including representatives of affected interest groups—federal and state regulators, environmental groups, real estate and environmental lawyers and law professors, title companies and municipalities. The Task Force will continue to be used for legislative outreach and educational purposes.

An environmental covenant is a legal device that restricts activities on sites where some contamination remains in place. While the general goal of most cappings is to return a site to a condition where it can be safely used for any purpose, this is not always technically possible or economically practicable. Then, use restrictions and institutional controls may be imposed on the real estate to supplement cleanup measures. Restrictions limit use to safe use. These restrictions are necessary to protect human health and the environment from the potential of inadvertent exposures to residual contamination while encouraging economic development.

The environmental covenants created under UECA would be based upon traditional property law principles and would be recorded in the local land records and thereby bind successive owners of the property. State and local governments would have clear rights to enforce the land use restrictions and thereby ensure with greater certainty the protection of human health and the environment throughout the life of the land use restriction and through real estate transactions or legal actions.

Uniform TOD Security Registration Act

The Uniform TOD Security Registration Act was enacted in two states in 2005: New York and North Carolina. With these two new enactments, only Louisiana now remains without TOD legislation.

The Uniform TOD Security Registration Act has been a huge success since it was promulgated in 1989. The Uniform Act simply provides for non-probate transfer of investment securities from owner to named beneficiaries at the owner’s death. TOD registrations are widely available at brokerage and mutual fund companies nationwide. Most citizens of this country have had TODs available to them for many years now, and TODs have become an accepted part of estate planning. With the enactments in New York and North Carolina, the citizens of those states now have the benefits of TODs available to them, too.

Uniform Management of Public Employee Retirement Systems Act

It’s not often that a uniform act records its first enactment nearly ten years after promulgation, but that’s just what happened this year to the Uniform Management of Public Employee Retirement Systems Act (UMPERSA). UMPERSA was introduced in two states this year and enacted in both: Maryland and Wyoming.

UMPERSA was approved by the Conference in 1997 to address what was perceived to be a growing problem with the management of public employee retirement systems. The timing simply wasn’t right, however. Given the economic boom time of the 1990s, there was no perceived need in the states for a “fix.” But now, with tales of mismanagement from state employee pension funds, the time may be right for more states to look at what UMPERSA offers.

There are more than $1 trillion in assets in state and local retirement systems. Unlike private retirement systems, which
are governed primarily by federal law (the Employee Retirement Income Security Act or ERISA), state and local retirement funds are regulated by state laws—laws that vary considerably and, in many cases, have not kept pace with modern investment practices. UMPERSA applies to all retirement programs and systems established or maintained on behalf of public employees. As retirement funds are held in trust for employees and their beneficiaries, a primary purpose of this Act is to incorporate modern trust investment practices into state law for public employee retirement systems. A number of state laws actually prevent the use of modern investment practices, resulting in billions of dollars of lost opportunities for investment income.

The Act revises the standards of prudent retirement fund investing by including a number of concepts now widely accepted in other investment areas: independence of trustees in making investment decisions; a standard of prudence applied to the total portfolio, rather than to individual investments; all categorical restrictions on types of investments eliminated; the power to delegate investment and management functions; the tradeoff between risk and return as the trustee's central investment consideration; diversification of assets as essential. UMPERSA clearly outlines the fiduciary obligations of trustees and others with discretionary authority over various aspects of a retirement system, and ensures that trustees have sufficient authority to fulfill those obligations. Trustees are not independent without constraint; they must comply with their fiduciary obligations when exercising judgment. The Act also facilitates effective monitoring of retirement systems by requiring regular and significant disclosure of the financial status of the system, not only to participants and beneficiaries, but also to the public.

There are more than $1 trillion in assets in state and local retirement systems. Unlike private retirement systems, which are governed primarily by federal law, state and local retirement funds are regulated by state laws. Retirement systems are not independent without constraint; they must comply with their fiduciary obligations when exercising judgment. The UMPERSA clearly outlines the fiduciary obligations of trustees and others with discretionary authority over various aspects of a retirement system, and ensures that trustees have sufficient authority to fulfill those obligations. Trustees are not independent without constraint; they must comply with their fiduciary obligations when exercising judgment. The Act also facilitates effective monitoring of retirement systems by requiring regular and significant disclosure of the financial status of the system, not only to participants and beneficiaries, but also to the public.

FINANCING THE UNIFORM LAW EFFORT

E ven in today’s economic climate, with states across the country continuing to struggle with their budgets, and some in deficit, the process of drafting a uniform law remains an immensely cost-effective endeavor. The annual budget of the National Conference for fiscal year 2004-2005 was $1,843,975, with support from state governments accounting for 71 percent of the budget. Every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the National Conference. The smallest contribution was $11,400; the largest, $128,300. All jurisdictions are also requested to fund their commissioners’ participation at the Annual Meeting, where so much of the work of the Conference is accomplished.

The remainder of Conference funding comes from the American Bar Association and the American Law Institute, and grants from foundations and the federal government, earmarked for specific drafting efforts. All money received from any source is accepted with the understanding that the Conference’s drafting work is autonomous. By seeking grants for specific drafting projects, the Conference expands the value of every state dollar invested in its work. The budget for the fiscal year ending June 30, 2005, including costs for salaries, benefits and contracts earmarked for specific activities was as follows: $437,688 (23.7%) went toward the drafting effort, including traveling expenses for drafting committee meetings; $408,729 (22.2%) was spent assisting state legislatures with enactments of uniform and model acts; $215,248 (11.7%) was spent on the annual meeting; and $228,578 (12.4%) was spent on public education for uniform and model acts. Administration costs totaled $553,732, or 30 percent of the annual budget.

States Get Maximum Value for their Contribution

No state can duplicate the benefits it receives from participation in the National Conference of Commissioners on Uniform State Laws for the money it spends. The organization is able to get maximum results on a minimum budget because uniform law commissioners donate their time and expertise. Uniform law commissioners devote hundreds and, in some cases, thousands of hours to the uniform law effort. The Conference estimates that each commissioner devotes at least 200 hours a year, including work on various drafting committees and attendance at the annual meeting. The cumulative value of this donated time in the development of uniform and model acts comes to literally thousands of hours annually.

The value of this donated time averages about $6 million dollars annually. By the most conservative estimate, states receive at least 6 dollars of legal expertise for every one dollar they invest in the Conference. What other state expenditure duplicates such a return on an investment?

It is not fully possible to measure the value of the intellectual participation by all who are involved in the important yet difficult process of bringing unity to the diversity of our federal system. Intense, non-partisan scrutiny of both policy and the drafting process of the law is too often the exception rather than the rule in American government. The National Conference of Commissioners on Uniform State Laws is committed to improving the law through the uniform law process and continues to deliver on this promise. It is unique in the annals of American law.

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Drifting committees composed of commissioners, with participation from observers, advisors and expert report-drafters, meet throughout the year. Tentative drafts are not submitted to the entire Conference until they have received extensive committee consideration.

There are currently 18 drafting committees working on new and revised uniform acts. In addition, 13 study committees are considering subjects for possible future drafting. Proposed acts are subject to rigorous examination and debate for at least two annual meetings before they become eligible for designation as Conference products. The final decision on whether an act is ready for promulgation to the states is made near the close of an annual meeting, on a vote-by-states basis, with an affirmative vote of 20 or more states necessary for final approval.

An act is designated as “uniform” if there is a substantial reason to anticipate enactment in a large number of jurisdictions and uniformity of the provisions of the proposed enactment among the various jurisdictions is a principal objective.

The Conference occasionally drafts model acts. An act is designed as a “model” if uniformity may be a desirable objective, although not a principal objective; if the act may promote uniformity and minimize diversity, even though a significant number of jurisdictions may not adopt the act in its entirety; or, if the purposes of the act can be substantially achieved, even though it is not adopted in its entirety by every state.

**Drafting Committees**

**Drafting Committee to Revise Uniform Anatomical Gift Act**

The UAGA was originally promulgated in 1968 and adopted in every state and the District of Columbia. The Act was revised in 1987 and subsequently adopted in 26 states. This new committee is revising the Uniform Anatomical Gift Act of 1987, to update the act in light of changes in federal law and regulations and related developments in the field of organ donation. Appropriate revisions to the act may also assist in increasing the availability of organ donations.

**Drafting Committee on Uniform Child Abduction Prevention Act**

This committee is drafting a statute regarding the prevention of child abduction in international and domestic child custody disputes (and possibly other circumstances). The committee is considering a checklist of factors for the court to consider in assessing the risk of child abduction, and the provision of suggested remedies where circumstances indicate an increased risk of abduction.

**Drafting Committee on Uniform Collateral Sanctions and Disqualifications Act**

This committee is drafting a statute addressing the various penalties and disqualifications that individuals face incidental to criminal sentencing, including disqualification from voting, prohibitions from running for office, exclusion from certain types of employment, etc. The act is intended to be narrow in scope, applying only to the procedures surrounding collateral sanctions, not defining or limiting what those sanctions are.

**Drafting Committee to Amend Uniform Common Interest Ownership Act**

UCIOA, first promulgated in 1982 and revised in 1994, is a comprehensive statute relating to condominiums, planned communities and cooperatives. This committee is revising UCIOA in light of intervening developments in this area of law, and will study and recommend corresponding amendments to the Uniform Condominium, Planned Community, and Real Estate Cooperative Acts. The committee will consider a number of topics, including owner access to budget and financial records of the association, the establishment and funding of reserve accounts, and other issues meant to improve the usefulness of the act.

**Drafting Committee on Uniform Cooperative Association Act**

This committee is drafting an act addressing the cooperative business format. Since the last NCCUSL effort in this area (the 1936 Uniform Agricultural Cooperative Association Act) there has been a tremendous amount of development in and use of this form of business entity, but with wide variation among the states. The committee is reexamining the use of this form in light of nearly 70 years of legal development, the clear need for greater uniformity in interstate operations, and the growing use of cooperatives in providing value-added marketing approaches, among other issues.

**Drafting Committee on Discovery of Electronic Records Act**

This committee is drafting an act to address a broad array of issues that arise in discovery requests for electronic records. With the emergence of electronic technology, the extent to which individuals and institutions store or maintain information in an electronic form has clearly increased since the adoption of rules governing discovery generally. The drafting committee will draft an act relating only to civil litigation.

**Drafting Committee on Uniform Guardianship Interstate Jurisdiction and Enforcement Act**

This committee is drafting an act that addresses the issue of jurisdiction with regard to guardianships, and may also draft conforming amendments to the Uniform Guardianship and Protective Proceedings Act and other acts impacted by guardianship jurisdiction.

**Drafting Committee on Interstate Depositions and Discovery of Documents Act**

This committee is drafting an act that would provide a procedure to enable a party to effectuate depositions and discover documents in other states and foreign jurisdictions. The drafting committee will draft an act that contains reciprocal provisions for taking the deposition testimony of a witness in one state for use in civil litigation pending in another state. When completed, the act should simplify the procedures for obtaining the testimony of out-of-state witnesses while minimizing the need for court involvement. The goal is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation.

**Drafting Committee to Amend Uniform Limited Liability Company Act**

The ULLCA was promulgated in 1995 and amended in 1996. Although it has only been enacted in nine states, virtually all states have enacted some sort of LLC legislation, and LLCs are now a firmly entrenched business entity. This committee is amending and updating the ULLCA, which permits the formation of limited liability companies, providing the owners with the advantages of both corporate-type limited liability and partnership tax treatment. As part of the committee’s charge, it is working with appropriate committees of the ABA Business Law Section and the JEB for Uniform Unincorporated Organizations Acts.

**Drafting Committee to Revise Uniform Management of Institutional Funds Act**

This committee is revising the 1972 Uniform Management of Institutional Funds Act to bring the law governing charitable institutions in line with modern investment practice. The 1972 UMIFA provided statutory guidelines for management, investment, and expenditure of endowment funds of charitable institutions – institutions such as colleges, universities, and hospitals. The revised UMIFA will incorporate provisions of modern portfolio theory, permitting more efficient management of funds for charitable purposes.

**Drafting Committee on Misuse of Genetic Information in Employment and Insurance Act**

This committee will draft uniform or model legislation on the misuse of genetic information in the context of employment and health insurance discrimination.

**Drafting Committee to Revise Model State Administrative Procedures Act**

This committee is revising the 1985 Model State Administrative Procedures Act, which provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. A revision is necessary to update the act to recognize electronic communications and other state procedural innovations since the act was originally promulgated.

**Drafting Committee on Uniform Power of Attorney Act**

This committee is revising the Uniform Durable Power of Attorney Act and making conforming changes to the Uniform Probate Code. The UDPOA was originally promulgated in 1969 and was extremely successful, having been adopted in nearly every jurisdiction. However, numerous states have since amended their DPA statutes. The drafting committee is updating the uniform act and addressing new issues such as procedures for activating springing powers and fiduciary duties of agents.

**Drafting Committee on Registered Agents and Annual Filing Requirements Act**

This committee will draft two model acts on specific filing requirements for various business entities in conjunction with committees from the American Bar Association and the International Association of Commercial Administrators already working on these projects. These projects deal with aspects of entity law that are peculiarly within the purview of secretaries of state and apply to both corporations and unincorporated associations.

**Drafting Committee on Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act**

This committee is drafting an act concerning the role of the appointed counsel for children in custody disputes and abuse and neglect proceedings. As noted in the recently adopted American Bar Association Standards on this subject, in many states lawyers appointed as “attorneys” are expected to be both the personal lawyer of the child and a special consultant to the court. The ABA Standards seek to separate and clarify these roles, and the drafting committee will extend this work into a Conference act designed to implement these policies in state law.
Drafting Committee on Statutory Trust Act
The business trust format – often used in mutual funds, ERISA pension funds, and various types of regulatory compliance trusts – is increasingly used as an alternative to a corporation. Business trusts are special purpose vehicles, the closest equivalent being a limited partnership. Although there are few business trusts compared to other types of business forms, trillions of dollars of assets are invested in this business format. This committee is drafting an act that will apply to business trusts and other statutory trusts.

Drafting Committee to Amend Uniform Unincorporated Nonprofit Association Act
This committee will review developments relative to the Unincorporated Nonprofit Association Act, last amended in 1995, and will draft updated amendments to promote the acts national uniform adoption.

Committee on Liaison with American Indian Tribes and Nations
This committee, in addition to providing a general liaison function for the introduction of applicable Uniform Laws into tribal codified, has completed work on a version of Article 9 of the Uniform Commercial Code suitable for use by tribal governments, and will continue to draft in other areas.

Study Committees

Study Committee on Administrative Procedure Act for Interstate Compact Entities
Study Committee on Bank Deposits Act
Study Committee on Regulation of Charities
Study Committee on Collaborative Law
Study Committee on Disposal of Electronic Products
Study Committee on E-Government Act
Study Committee on Electronic Payment Systems
Study Committee on Environmental Controls and Hazards Notice Systems
Study Committee on Faithless Presidential Electors
Study Committee on Health Care Information Interoperability
Study Committee on Implementation of International Conventions and Treaties
Study Committee on Internet Private Law
Study Committee on Regulation of Medical Examiners

The Conference Welcomes Ideas For Uniform or Model Acts
Ideas for new uniform or model acts are considered by the Committee on Scope and Program, which welcomes requests from the organized bar, state governmental entities, private interest groups, uniform law commissioners and private citizens. Any party wishing to suggest an idea for a uniform or model act may contact the Conference office in Chicago, which will forward the suggestion to the Committee on Scope and Program.
research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable. This keeps state law up-to-date by addressing important and timely legal issues, and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.

NCCUSL is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

NCCUSL's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states. NCCUSL's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.

NCCUSL Commissioners donate thousands of hours of their time and legal expertise every year as a public service, and receive no salary or compensation for their work.

NCCUSL's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.

About NCCUSL
The National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 114th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. NCCUSL's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.

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