The meeting of the Committee on Scope and Program was convened at the World Golf Village Renaissance Resort in St. Augustine, Florida on Saturday, July 29, 2000, by Chairman Barry Evenchick. Commissioners William Henning, Carl Lisman, Harry Tindall and Martha Lee Walters, members of the Committee, were also present, as were, from time to time, John McClaughtery, President of the Conference; King Burnett, chair of the Executive Committee; Michael Houghton, chair of the Legislative Committee; Fred Miller, Executive Director; Bill Pierce, Executive Director Emeritus; John McCabe, Legal Counsel; Ellyce Anapolsky, Chief Administrative Officer; Gene Lebrun, past President; Commissioners Jack Davies, Kenneth Foran, Pat Fry, John Langbein, Peter Langrock, E.M. Miller, Neal Ossen, Connie Ring, Battle Robinson and Bob Robinson; and William Pierce, founding President of the National Council on Adoptions.

The meeting was in session from 9:00 a.m. until 11:55 a.m. and from 1:00 p.m. to 4:30 p.m on July 29, 2000, from 8:30 a.m. to 11:56 a.m. on July 30, 2000, and from 10:35 a.m. to 10:40 a.m. on August 1, 2000.

Minutes

The minutes of the January 14-15, 2000 meeting were reviewed and approved.

Federal Advisory Commission on Electronic Commerce

Commissioner Gene Lebrun reported on the activities and recommendations of the federal Advisory Commission on Electronic Commerce. The Commission was unable to reach consensus, and produced majority and minority reports.

Nonetheless, one recommendation was to have the ULC prepare a uniform law that would treat equally the sales and use tax implications for sales made in a store, ordered through a catalog or purchased from a remote vendor on the internet. However, the National Conference of State Legislators and the National Governors Association have already started to draft such a law.

John McCabe reported that the NCSL and NGA task force has been pursuing an interstate compact as the means to implement their approach. The ULC has not been invited to participate. Mr. McCabe was invited to attend a recent meeting but was unable to do so.

The Committee discussed whether the ULC should review the NCSL product and then
forward it to Congress to approve as an interstate compact.

Different concerns were expressed by members of the Committee about whether the ULC can (or should) undertake this type of role.

The Committee on Scope and Program previously recommended the appointment of a special committee, which has been appointed.

Commissioner Lebrun recommended that no action be formally taken at this time, although the ULC may need to act quickly in the future. The Committee concurred with his recommendation.

Uniform Interstate Family Support Act

Commissioner Battle Robinson and Reporter Jack Sampson proposed that amendments be made to UIFSA. The Stand-by Committee has been dissolved, and the Family Law JEB cannot, according to ULC policy, draft the amendments.

UIFSA has been adopted in all states, and one billion dollars was collected in interstate support in 1997.

Reporter Sampson discussed the nature of the proposed amendments.

The following recommendation was adopted:

RESOLVED, the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee be appointed to draft amendments to the Uniform Interstate Family Support Act.

RESOLVED, the Committee on Scope and Program further recommends to the Executive Committee that the scope of the task of the Drafting Committee be limited to the issues raised in the Paikin memorandum, dated July 5, 2000 (see attached), as well as the requirement of certified orders, original and continuing jurisdiction and international aspects.

Family Law Relocation Act

At its prior meeting, the Committee on Scope and Program suggested that the Family Law JEB reconsider its request that a drafting committee to write a uniform law on family relocation be appointed. The concern was whether there is a need for uniformity.

Currently, standards and procedures are not uniform. Commissioner Robinson proposed that the Act would deal only with procedure (such as notice of intent to move, burden of proof, modification vs. new), and not prescribe substantive standards. Commissioner Tindall argued that an Act, if drafted, should also deal with substantive issues in order to deal appropriately with the
subject matter.

Commissioner Walters and others questioned the need for uniformity in procedure or standards.

The Committee decided to recommend no action at this time, primarily because there is no apparent need for uniformity in this area. Although a well-drafted law might assist in improving the state of the law throughout the country, the Committee is unpersuaded at this time that the resources of the Conference should be devoted to a project addressing this subject. The Committee encourages the JEB - Family Law to further report on this topic.

Uniform Consumer Credit Code

Commissioners Neal Ossen and Jack Davies pointed out that many States have adopted portions of the UCCC. A recent law review article encourages an updating of the UCCC. They argued that a Study Committee could consider the adequacy of protections of the interests of consumers in consumer credit transactions, including payday loans. The Study Committee could also consider an appropriate name for a drafting project.

Commissioner Davies believes that it is important for the ULC to keep current the various acts it has promulgated.

Fred Miller argued that the UCCC was ahead of its time, but was not politically astute. It offended consumers, lenders and retailers, among other groups. Colorado has recently revised its version of the UCCC, but its revisions would not serve as the basis for a complete revision of the UCCC.

If a Study Committee were to make a positive recommendation, a law could be written as a model act to ensure that fewer compromises are made to foster enactments.

Recommending usury rates would be outside the scope of the Study Committee.

The Committee on Scope and Program determined to defer this matter to a future date so that members of the Committee can discuss this proposal with interested persons.

Debtor-Creditor Code

Commissioner Davies proposed a debtor-creditor code addressing, among other topics, attachments, garnishments, sequestration, levies, duration of judgments, exemptions and replevin. It could include repossession of goods.

Commissioner Henning wondered about the need for uniformity.
The Committee decided that this subject is not appropriate for action by the ULC because these subjects are uniquely local in character and do not readily lend themselves to uniformity.

**Subprime Lending Practices**

Commissioner Benny Kass forwarded to the Committee an article from the *Washington Post* addressing this topic. Consumers with poor credit ratings can get loans at interest rates above conventional rates, and the article suggested that there are abuses.

Commissioner Ossen suggested that this topic be included in the Study Committee on the UCCC, if one is appointed.

This subject will be joined with the UCCC analysis to be undertaken by the Committee on Scope and Program.

**Violence Against Women**

Commissioner Walters reported that the portion of the federal Violence Against Women Act giving a private right of action was declared unconstitutional by the Supreme Court. Her intent was to propose an act that could be picked up by the states.

The Committee agreed to take no action at this time because no action is required.

**Business Trusts**

Commissioner Tindle wondered whether the Committee on Scope and Program should revisit the decision made in January, 2000 not to recommend a Drafting Committee regarding business trusts, because Delaware’s law attracts significant formations.

Fred Miller argued that there is not much demand for this, and the Committee concurred.

**Recommendations to Drafting Committee Chairs**

Fred Miller has drafted a letter (still in draft form) to drafting committee chairs dealing with the role of observers and other matters relating to enactability, including consumer participation in the drafting process and the impact of uniform laws on consumers.

The ABA Business Law Section has produced Suggested Guidelines for drafters of Uniform Laws Affecting Consumers. It has been discussing the funding of consumer representatives.

Commissioner King Burnett repeated that Fred Miller will send his letter to chairs of the Drafting Committees.
How to get consumer participation in the drafting process was discussed, including holding meetings where consumer representatives reside, producing agendas in advance of the meeting, and providing funding for consumer representatives. It is clear that the ULC cannot fund the attendance of consumer representatives at drafting meetings.

More broadly, the Committee also considered how to facilitate the representation of those who are usually under-represented in the drafting process. The Committee will discuss this issue further at its next meeting.

Privacy

At the Committee’s meeting in January, 2000, it discussed whether the ULC should become involved in drafting an act on privacy protections more extensive than in the federal Gramm-Leach-Bliley legislation.

Fred Miller has discussed this possibility with representatives of business interests, who were not supportive.

The Committee determined to take no action at this time, but will keep this subject on its agenda.

Official Comments to Acts

Commissioner Tindall inquired whether a process could be instituted to review official Comments before publication. The Committee decided to take no action until the January, 2001 meeting.

Revisions to UCC Article 7

Fred Miller delivered a report to the Committee.

This Article deals with bills of lading (receipts and contracts for carriage of goods) and warehouse receipts (receipts and contracts for storage of goods). The bill of lading area is dealt with in federal legislation which pretty much preempts the area.

The law of warehouse receipts is mostly state law. Although there has not been a lot of litigation in this area, there is some of large magnitude.

The ABA Task Force looked at this area sometime ago and recommended that no action be taken at that time, primarily because it believed that there was no likelihood that the federal law will be amended, electronic issues were premature and there had not been enough cases on the subject.

Now the Task Force has decided that Article 7 should be revised: Congress is working on
changes in the federal law, there is more experience in electronic transactions, and case law has been developing.

The ALI has approved a project to revise Article 7.

The Committee discussed the impact of the current Article 9 problems and the Conference’s relationship with the ALI.

The following resolution was unanimously adopted:

RESOLVED, the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee be appointed to update and make necessary changes to Article 7 of the Uniform Commercial Code consistent with the report furnished to this Committee. The charge to the Drafting Committee should limit it to only those changes which are of significance or which considerably improve the law.

Revisions to UCC Articles 3 and 4

The Committee did not receive a report from the Drafting Committee considering amendments to the payment provisions of the Uniform Commercial Code. The Committee concluded that this subject can appropriately be placed on the agenda of the Executive Committee for action without input from the Committee on Scope and Program.

Civil Unions

Commissioner Langrock proposed that the ULC consider an act on civil unions. There are perhaps 20 million gays and lesbians in the United States. Uniformity is desirable, but the topic is politically explosive.

Commissioner Henning referred to the Conference’s Statement of Policy’s second of the three negative criteria as a reason for not taking action at this time. The Committee agreed.

The Committee decided to make no recommendation at this time. Chairman Evenchick will advise the Family Law JEB that this topic has been raised.

Committee to Review Conference Acts

The Report and Addendum Report of the Committee to Review Conference Acts were considered.

The Committee on Scope and Program concurs with the recommendation in the Report to withdraw the Uniform Parentage Act, the 1988 Model Putative and Unknown Fathers Act and the 1988 Uniform Status of Children of Assisted Conception Act.
The Committee on Scope and Program concurs with the recommendations in the Addendum Report to withdraw the Uniform Conflicts of Laws - Limitations Act and the Uniform Deceptive Trade Practices Act and to move the Periodic Payment of Judgments Act to “model act” status. It also concurs that a Study Committee be appointed to consider revisions to the Uniform Conflicts of Laws - Limitations Act.

The Committee to Review Conference Acts will be asked to report whether the Uniform Comparative Fault Act should be withdrawn.

Concealed Hand Guns

Commissioners Foran, Miller and Ring appeared before the Committee and presented a resolution adopted by the Virginia legislature asking the ULC to form a committee to produce a model act relating to concealed hand gun permits and licenses. Virginia has such a law and believes that it could serve as the basis for a model act in light of interstate travel. It would serve to protect those who are licensed in one state while in another state.

The Virginia resolution was promoted by the speaker of the House of Delegates.

Some states prohibit the carrying of hand guns, whether concealed or not.

In deciding to recommend no action, the Committee determined to send a letter to the Virginia legislature explaining that the proposal is not consistent the ULC’s criteria to which acts proposed for action by the Conference must conform.

Surrogacy Agreements

This subject was raised by Commissioner Tindle. However, it is now covered by the new Parentage Act, so no action is needed at this time. Because the Committee has accepted the report of the Committee to Review Conference Acts, the provisions relating to surrogacy in the 1988 Uniform Status of Children of Assisted Conception Act will be withdrawn.

Report of Study Committee on International Developments

Commissioner King Burnett reported that the ULC has committees dealing with Canada, international organizations, and the international aspects of federal relations. He believes that the ULC needs to be better organized in this area and to be aware of foreign law implications in uniform acts.

A Special Committee has recommended appointment of a Committee on International Legal Developments, which would consolidate the subject matter of the foregoing committees, and further recommends that all drafting committees consider the international implications of their acts. The consolidation of the three committees would be in the form of a Special Committee.
The Committee also discussed the ULC’s relations with other organizations.

The Committee assumes that the Canadian representatives to the Conference will be made members of this Committee’s appropriate subcommittees.

The following resolution was unanimously adopted:

RESOLVED, the Committee on Scope and Program recommends to the Executive Committee that a Special Committee on International Legal Developments be appointed, replacing the Committee on Liaison with the Uniform Law Conference of Canada and International Organizations and the Joint Committee on Cooperation between the ULC and the Uniform Law Conference of Canada, and assuming the international aspects of the Committee on Liaison with the Federal Government; the functions of this Committee should be as set forth in the Final report of the Study Committee on International Developments, dated June 30, 2000.

Abandoned Children

Commissioner Bob Robinson previously submitted a letter and supporting materials to the Committee on Scope and Program. He fears the possibility that states will act non-uniformly and not necessarily appropriately in this area. Thirteen states have already passed laws dealing with protection of abandoned babies and decriminalizing the mother’s abandonment.

William Pierce is the founding President of the National Council on Adoptions. He has been involved with the ULC in the Adoption Act and the Standby Guardianship Act.

Mr. Pierce noted that, since 1999, when Texas passed its law, 12 other states have passed similar laws. The Texas law has served as the model for many states. Georgia refused to pass a law. There is a website - www.babymoses.com - which encourages these laws. Congress has agreed that this topic should be dealt with at the state level. Bills are pending in a dozen or so states.

He pointed out that one of biggest issues is the interstate disposition of a baby, including possibility of kidnaping, whether there is a relative who wants the baby and the like. He also referred to the rights of the putative father.

He noted only the Department of Justice currently keeps records. If a woman, or someone acting on her behalf, takes a baby to a designated safe place, no crime of child abandonment would arise; the state would be prohibited from tracking down the mother. On the other hand, it might be seen to encourage sinful behavior and deprive these children of medical records. Most of the states which have adopted a law provide for remorse and allow the mother to reclaim the baby.

Half the States have adopted or are looking to adopt a law on this subject, suggesting that a Conference product will be untimely. The Committee questioned whether uniformity is necessary
or would make a substantial contribution.

The Committee concluded that no action should be taken on this proposal.

**Uniform Child Custody Jurisdiction Enforcement Act Amendments**

Commissioner Tindall reported that there may be a problem with the jurisdictional definition of adoption in the Uniform Child Custody Jurisdiction and Enforcement Act arising out of the fact that the same term is defined differently in other law. Some states, which do not have an adoption law that deals with jurisdiction and are using the Act as a jurisdictional basis for adoptions. The problem described by Commissioner Tindle may be capable of resolution by a Comment, or it may require an amendment.

The Legislative Committee has prepared a memorandum, addressing this subject, which is being shared with all Commissioners.

The Committee decided that no action is required by the Committee at this time.

**Internet Practice of Medicine**

There are many issues which are raised by the practice of medicine using the internet. Former Commissioner Lewis Bart Stone raised the matter. The American Medical Association is interested in pursuing this subject.

The AMA has now produced a discussion outline of potential subjects for legislation.

Any action on this subject would not include licensure. Commissioner Henning reminded the Committee of the Conference’s apprehension in dealing with tort law subjects.

Fred Miller wondered what the priorities of a law might be. He noted that the compilation of existing laws provided to the Committee suggests that current law is not consistent, applying to doctors, dentists, nurses and others; applying different rules on practice; and so on.

Chairman Evenchick proposed that this matter be retained on the Committee’s agenda until its next meeting.

**Electronic Transactions Shield**

Commissioner Pat Frye reported that a condition for overriding of the federal Electronic Signatures in Global and National Commerce Act requires a specific reference to ESIGN. She has drafted a short-form recommendation for statutorily-required language, statutory text, a Comment and instructions which would address this requirement.
This provision is not needed for UETA, but is essential for other laws that dealing with the legal effect, validity or enforceability of records and signatures.

Commissioner Fry believes that non-preemption can be served by asking all chairs and reporters of drafting committees to be aware of ESIGN and, if an act deals with “records” in interstate commerce, then to incorporate her proposed or similar language. This warning could go in the drafting manual.

In addition to this issue, there is the reality that Acts currently under consideration, including the Arbitration Act, Sports Agents, UCC Article 2, UCC Article 2A and Money-Services Businesses, do not conform to ESIGN. Assuming that these Acts will be approved this summer, there may be a need to revise them to ensure effectiveness. Article 4.3(b) of the Constitution empowers the Executive Committee to amend an Act to conform to the requirements of federal law.

As to Acts previously approved, a process needs to be implemented to ensure that those Acts are in proper form to ensure preemption.

Third, ESIGN has provisions addressing the authority of state filing officers to require paper or electronic filings. However, it does not address county or other subdivision filings. Congress may amend this provision.

The following resolution was unanimously adopted:

RESOLVED, the Committee on Scope and Program recommends to the Executive Committee that it take action to develop a standard approach to shield uniform acts from preemption by the federal Electronic Signatures in Global and National Commerce Act.

Uniform Management of Institutional Funds Act

Commissioner John Langbein asked whether the Uniform Management of Institutional Funds Act, adopted in about 47 States, should be updated. It was originally encouraged by the Ford Foundation, which commissioned a study which began the process leading to the Act.

He advanced three reasons: The Connecticut Supreme Court has held that the donor of substantial funds had no standing to challenge the use of the donated funds. There is uncertainty about the extent of the Act’s application. And there is uncertainty how the standards of Uniform Prudent Investor Act fit with UMIFA.

This Act is not within the jurisdiction of the JEB - Trust and Estates Acts.

Groups interested in the subject matter of UMIFA were discussed.

RESOLVED, the Committee on Scope and Program recommends to the Executive
Committee that a Study Committee be appointed to determine whether and to what extent changes should be made to the Uniform Management of Institutional Funds Act.

Study Committees

Fred Miller reported that a number of Study Committees have been appointed.

Certificates of Title. A report will be solicited.

Electronic Payment Systems. Commissioner Lee McCorkle chairs this Committee. He continues to attend ABA meetings on this subject. There are a number of products but they lack market share, suggesting that it is premature to set out statutory rules.

Fiduciaries. The report of the Study Committee is to take no action at this time. In light of the report of the Study Committee that no drafting effort be made, the Committee on Scope and Program recommends to the Executive Committee that the Study Committee be discharged.

Foreign Money Judgments. The ALI has commenced a project on enforcement of foreign judgments. A convention is under negotiation, and the ALI project will propose a federal law to implement it. If the convention is not approved, it is unclear whether the ALI project will continue. The Study Committee is reviewing the ALI criticism of the Act to determine whether the ULC should take any action. A report will be solicited.

Genetics. A report will be solicited (Minutes, 1/00).

Internet Privacy. A report will be solicited.

Interstate Guardianship. A report will be solicited from the Standby Committee (Minutes, 1/99).

Native American Tribes. A Special Committee has been appointed.

Public Employee Retirement Systems. This Committee has been discharged.

Tort Reform. No report is due.

The Chair will ask that the report of the Vice President be provided to members of this Committee, because it is the best source for timely information on the status of the work of the various study committees.

Conference Schedule

President McClaugherty reported on the tentative schedule for the 2001 annual meeting. He
anticipates the following will be ready for final readings:

- UCC Article 1
- UCC Articles 3, 4, 4A
- UCC Articles 2 and 2A
- Consumer Leases
- Limited Partnership
- Mediation
- Testimony by Minors

He indicated that the following should be ready for a first reading:

- Apportionment of Tort Liability
- Cross Entity Mergers
- Estate Tax Apportionment
- Foreclosure
- Securities

He was unsure about the status of Health Care Information.

**Adjournment**

There being no further business, the meeting was thereupon adjourned.

Respectfully submitted,

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Barry Evenchick, Chair