

**THE NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS (“NCCUSL”)
AND THE AMERICAN BAR ASSOCIATION: A WORKING RELATIONSHIP**

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***Report on the Process of NCCUSL and ABA Drafting Projects
Such As the Uniform Power of Attorney Act***

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The following information relates to the process by which uniform acts are promulgated and the important role the American Bar Association plays in the drafting of NCCUSL products. It is intended to both educate those less familiar with this process and encourage ABA members to get involved in the drafting, approval and state enactment of uniform acts. Ms. Clayton may be contacted at mclayton@nccusl.org.

What is NCCUSL?

The National Conference of Commissioners on Uniform State Laws is:

- The oldest state governmental organization in existence. Since 1892 it has assumed a primary institutional role in the U.S. for the improvement of state law.
- An organization of the legal profession.

NCCUSL’s Core Values

- NCCUSL’s work reduces pressure for federal preemption of inconsistent state law.
- NCCUSL helps preserve the federal system crafted in Philadelphia over 200 years ago.
- NCCUSL helps sustain state independence while achieving a uniform legal system for the nation through NCCUSL Acts.

Membership

The current membership consists of 315 lawyers, who fall generally into four categories:

- Private Practitioners - 193
- Governmental Lawyers - 44
- Judges - 28
- Educators - 50

There are 32 legislators in the NCCUSL, many of whom are also private practitioners or educators.

Appointment

- Uniform Law Commissioners are state officials.
- Each state determines the mode of appointment. Appointing authorities are generally set by statute.
- The principal administrative officer of each state legislative reference bureau or like agency (or the chief legal officer, if the administrative officer is not a lawyer) is an Associate Member. This is an ex officio position and requires no appointment.

Uniform Law Commissioners

Commissioners represent their states, *without compensation*, by:

- Serving on NCCUSL study, drafting and other committees.
- Representing their states at the NCCUSL Annual Meeting.
- Carrying Uniform and Model Acts back to their states for legislative consideration.

NCCUSL Funding

- Over 70 percent of the organization's current \$2 million-plus budget comes from state contributions. Every state, along with Puerto Rico, D.C., and the US Virgin Islands is assessed an amount based on population.
- The American Bar Association makes an annual contribution of \$20,000.00.
- The remainder comes from foundation or federal grants.

Uniform Commercial Code Funding

- The Uniform Commercial Code is a joint project between the NCCUSL and the American Law Institute. Drafting work on the UCC is largely funded from an original grant from the Falk Foundation. Falk Foundation funds are replenished by licensing the UCC to publishers. Most of NCCUSL's UCC drafting committee expenses are paid for with Falk Foundation's funds.

Private Funding

- NCCUSL does not take money for drafting Uniform or Model Acts from private enterprise.

Drafting Uniform and Model Acts

- The Scope and Program Committee sets the agenda. It reviews all proposals and reports recommendations to the NCCUSL Executive Committee and to the NCCUSL.
- If there is an accepted recommendation to draft, the President is authorized to appoint a drafting committee.

Standards for Uniformity

- “the subject...shall be such that uniformity of law among states will produce significant benefits to the public through improvements in the law (for example, facilitating interstate, economic, social or political relations, or responding to a need common to many states...)...or will avoid significant disadvantages likely to arise from diversity of state law...”

Characteristic Benefits of Acts

- Historically, uniform acts:
 - Facilitate the flow of commercial transactions across state lines
 - Resolve conflict of laws problems
 - Provide reciprocity of rights and remedies between the states and their residents
 - Fill emergent legal needs, modernize antiquated legal concepts, or codify enhanced common law concepts

Common Subject Areas

- Commercial Law
- Family or Domestic Relations Law
- **Estates, Probate and Trusts**
- **Real Estate**
- Implementation of Full Faith and Credit
- Interstate Enforcement of Judgments
- Alternate Dispute Resolution

NCCUSL works in areas of private law, avoiding regulatory law for the most part.

Drafting Committees

- Drafting committee members are appointed by the NCCUSL President from the body of uniform law commissioners.
- A reporter is usually recruited for each drafting committee. Generally a scholar with credentials in that particular area of law is recruited.
- **The American Bar Association appoints advisors by agreement between the ABA and NCCUSL.**

Committee Work

- Drafting Committees meet over long weekends. Issues are identified, policies debated, and drafts critiqued.
- Meetings are open to anyone who wants to participate. *Committees actively seek to identify and invite all interests to participate.*
- Those who do not desire to participate in meetings are invited to provide written commentary.
- A drafting committee works at least two years before an act is put to a final vote of the whole NCCUSL.
- The NCCUSL website, www.nccusl.org, maintains calendars and allows committees to establish bulletin boards and listserves.

Participation in Drafting Committee Meetings

- The Chair of each committee is in charge of the meeting.
- Committee decisions are made by committee members only. Majority vote.
- Advisors and observers are generally permitted to contribute to committee discussions and to submit written comments.

Example, Uniform Electronic Transactions Act (UETA)

- 98 individuals received meeting notices and drafts and were invited to participate with the Drafting Committee in committee meetings.
- Committee meetings were attended by up to 50 people.
- Interests Represented in UETA Meetings: Life Insurance Industry, Motion Picture Industry, Mutual Fund Industry, Computer Hardware Industry, Banking Industry, Federal Reserve Board and Banks, Software Industry, Libraries, Securities Industry, Secondary Mortgage Market, Asset Based Lenders
- Consumer groups submitted written commentary

Annual Meeting Consideration of Acts

- 9 intensive days in July/August
- Every drafting committee must read and defend its act before the entire body of the uniform law commissioners during at least two annual meetings.
- Once the whole body of the commissioners is satisfied on an act's substance, it is put to a vote by states for final promulgation.

Exceptional Meetings

“I have seen many deliberative bodies before and since, but in none were the discussions of the same high quality.”

*William H. Rehnquist
Chief Justice of the United States Supreme Court
NCCUSL Commissioner from 1963-69*

Style Committee

- Every act must go through the Conference's Committee on Style, before it is regarded as final.
- The members of the Style Committee are usually professional bill drafters from the state agencies.

Final Disposal

- No uniform or model act becomes law until a state legislature enacts it and a state governor signs it. The Uniform Law Commissioners may propose, but the state legislatures must enact.
- The Uniform Law Commissioners do not ever draft legislation for Congress, and oppose all efforts to federalize subject areas in which uniform and model acts are drafted.

Recent Uniform Acts

2003

- Uniform Commercial Code, Revised Articles 2/2A
- Uniform Commercial Code, Revised Article 7
- Uniform Environmental Covenants Act
- Uniform Estate Tax Apportionment Act

2004

- Uniform Residential Mortgage Satisfaction Act
- Uniform Real Property Electronic Recording Act
- Uniform Wage Withholding and Unemployment Insurance Procedure Act
- Model Entity Transactions Act

Major Uniform and Model Acts

- Uniform Commercial Code
- ***Uniform Probate Code***
- ***Uniform Trust Code***
- Uniform Partnership Act
- Uniform Common Interest Ownership Act
- Uniform Child Custody Jurisdiction and Enforcement Act
- Uniform Controlled Substances Act
- Model State Administrative Procedures Act
- Uniform Rules of Evidence

NCCUSL Website

www.nccusl.org is the NCCUSL website. It contains:

- organizational information;
- current drafting committees;
- press releases;
- legislative information and enactment status of selected acts, updated regularly;
- drafts of current projects and texts of most final uniform acts, which can be downloaded.

NCCUSL AND ABA - HISTORY AND PROCESS

(The following information is adapted from a letter dated 9/20/2003 from NCCUSL's President, Fred Miller, to the ABA House of Delegates)

History

NCCUSL and the ABA have worked together for more than a century to improve the law. Since its founding in 1878, one of the core purposes of the ABA, as stated in its constitution, is "...to promote throughout the nation ... the uniformity of legislation..." (see Section 1.2). In the early 1890's, six states formed state commissions on uniformity, and the ABA created a Committee on Uniform Laws. NCCUSL finds its genesis in the efforts of those states, and in the report of the ABA Committee.

NCCUSL is a state governmental organization independent of the ABA. Our some 350 commissioners are appointed by state governments and we are directly funded by state appropriations. NCCUSL commissioners are attorneys, and our ranks include state and local bar presidents, active practitioners, legislators, judges, law professors, and legislative drafting experts. However, we do work with other groups, and the ABA is one of the most important. Our process is an open one – anyone may observe our drafting committee or annual meetings and we do invite interested observers (who actually can participate) from all points of view to advise us during drafting committee discussions. Our materials, drafts, and acts are freely disseminated on the web and by request. We do not seek or accept funding from interest or trade groups in the preparation of our proposals, nor do we seek to promote any particular agenda beyond the promotion and refinement of the law and the protection of the role of state law in the federalist scheme. Our staff consists of nine full-time employees, based in Chicago, and we operate on revenues from the states of less than \$2 million per year.

The Uniform Act Process -- ABA Advisors

Our process begins with the submission of a uniform or model law proposal to our Committee on Scope and Program. A proposal can come from any source, and a number have originated in the ABA. Upon review, the Scope and Program committee can recommend the establishment of a study committee, which gathers research and reviews the statutory and case law surrounding the proposed subject. On occasion, a proposal from the ABA comes with such an exhaustive study that approval, or denial, without further study is possible. Under our arrangement with the ABA, the ABA will not go further on a matter of interest to it, such as preparing a proposed form of uniform law reflective of the study, unless NCCUSL declines to work on a proposal. At the conclusion of any study, a report is submitted back to our Committee on Scope and Program and a recommendation is again made to our Executive Committee as to whether the proposed project should go forward as a drafting committee. Each year, we circulate for purposes of coordination, a list of our active study committees to the ABA for dissemination to the respective sections, divisions, and other entities.

If the decision is made to go forward with a drafting project, commissioners with an interest and expertise in that subject are appointed to a drafting committee, a reporter (usually an academic) is selected, and the ABA is invited to appoint an official advisor. While this ABA advisor often is chosen from a section with an obvious interest in the subject matter, the official ABA advisor is expected to represent the interest of the ABA generally, and is expected to submit regular reports for dissemination throughout the ABA. Frequently, more than one section has a direct interest in a NCCUSL project; in that case additional sections may designate additional advisors to represent the particular interests of that section.

Our constitution requires that an act be read and debated on the floor of at least two annual meetings; however it is not unusual for the work of a complex project to extend several years beyond this minimum. Our meetings are working meetings – our commissioners are unpaid volunteers, and donate immense amounts of time and legal expertise to our projects. ABA advisors sit with the drafting committees, and likewise participate in the discussion. Our drafting committees meet in intense 3-day sessions throughout the year. At our annual meeting, we typically meet as an assembled body from 8:30 a.m. to 5:00 p.m. every day for a week, debating and refining the language and policy of our draft acts. ABA Advisors have the privileges of the floor at annual meetings and are recognized as an important part of the process.

The Uniform Act Process – HOD Approval

When the work of a uniform act is finished, it is submitted at our annual meeting for a vote by states, where our commissioners approve or reject the proposed act in their capacity as official appointees of their respective states. For an act to be promulgated, it has to be approved by an affirmative vote of at least twenty states, and the vote must also constitute a majority of the states voting on the act. Upon

promulgation, the act is submitted for a final stylistic review, the official comments are appended, and the act is distributed to the several states for possible introduction. It also is submitted to the relevant Sections of the ABA for a recommendation which is then passed on to the members of the House of Delegates for final ABA approval.

The resolution posed to the House of Delegates for approval pertaining to NCCUSL Uniform acts is not one of policy adoption or endorsement, but rather an assessment by the House that the act in question is “**an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.**” While we always strive for consensus, it is often impossible to fully satisfy all parties with an interest in a particular piece of legislation. The NCCUSL resolution recognizes this reality, preserves the necessary independence of NCCUSL as a state governmental organization, and does not commit the ABA, as an organization, to a position of endorsing every individual provision and policy choice within an act. Rather, if the House of Delegates votes in favor of the resolution, it in effect says that this act, **on the whole**, is a reasonable choice for those states that decide to enact it.

It should also be noted that while substantive amendments are not in order before the House, as problems and new considerations emerge, NCCUSL does provide a process for the further refinement of our acts. For several years following the promulgation of an act, we maintain a standby committee empowered to receive suggestions and consider further changes, and we can (and often do) periodically review our acts in light of recent developments and promulgate official amendments and revisions.

In Closing

NCCUSL greatly values its relationship with the American Bar Association. The expertise provided by the ABA advisors and section advisors is an invaluable asset to our drafting process, and helps ensure that our end products reflect the best legal analysis possible. We also are grateful for the financial support the ABA provides our drafting process and to the work of our Joint Editorial Boards (Family Law, Real Property, Trust and Estates, and Unincorporated Entities, respectively).

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is thankful for the outstanding contribution of time, effort, and expertise to the development of the legal profession and the law through its active participation in our process. We look forward to another century of working with the ABA to improve and refine the law. Additional information about NCCUSL and the ABA can be obtained on the ABA website at <http://www.abanet.org/leadership/nccusl>.

Some Salient Facts about the NCCUSL-ABA Working Relationship

- The National Conference of Commissioners on Uniform State Laws is a state governmental organization independent of the ABA. NCCUSL Commissioners are official appointees of state governments, and NCCUSL acts are deemed promulgated upon approval by the assembled NCCUSL state delegations. The protocol between the NCCUSL and the ABA explicitly states that the Conference may promulgate Acts approved at its Annual Meeting even though the Act has not been considered by the ABA House of Delegates.
- In 1995, the House of Delegates adopted (in Report 400) the following language for ABA approval of NCCUSL Uniform Acts: “Resolved, That the American Bar Association approves the Uniform ____ Act promulgated in ____ by the National Conference of Commissioners on Uniform State Laws as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein. Further Resolved, That the House of Delegates shall consider an Act as a whole, and neither the Resolution approving the Act or the Act shall be subject to amendment.”
- NCCUSL’s Committee on Scope and Program meets twice each year, at our Midyear Meeting in January and at the NCCUSL Annual Meeting, to consider new proposals, receive reports on ongoing study and drafting projects, and to recommend the creation of new projects. We welcome input and proposal submissions from all ABA entities and members in this process.
- When a new NCCUSL drafting project is authorized, the ABA NCCUSL Staff Liaison is notified and the ABA is invited to appoint an official ABA Advisor to that Drafting Committee. The ABA Staff Liaison to NCCUSL is Robin Roy, Staff Director for the Section on Real Property, Probate, and Trust Law. The ABA Advisor participates in all the work of the committee and in addition to serving as a valuable expert participant, is charged with the task as serving as liaison and information conduit to and from all of the interested parties and entities within the ABA concerning the project. In addition, various Sections, Divisions, and other ABA entities may request the appointment of an ABA Section Advisor to a particular NCCUSL project; such advisors serve on behalf of their respective Section, Division or other entity in a role similar to that which official ABA Advisors serve to the ABA as a whole.
- Under the NCCUSL-ABA protocol, after each NCCUSL drafting committee meeting the ABA advisor is charged with submitting a report on the progress of the proposed act to the Chair of his or her own entity and the Chair of all other ABA entities interested in the project, among others. The ABA advisor is also charged with soliciting comments on the proposed Act from all interested ABA entities and to make known to the drafting committee the view of all interested ABA entities, not just his or her own particular entity.