

## RESEARCHING UNIFORM AND MODEL LAWS

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*Teachable Moments for Students ... is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a "teachable moment," a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own "teachable moments for students" to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.*

When researching judicial interpretations of a statute or looking for legislative intent, a helpful research angle that is sometimes overlooked is to check to see whether the pertinent statute is a uniform, model, or "borrowed" law. What are these laws? Where do they come from? How are they useful?

### Model or Uniform Law?

The line differentiating model laws from uniform laws is often blurred. Generally model codes emerge from the work product of any of several scholarly entities such as the American Bar Association (e.g., Model Code of Professional Responsibility), the American Law Institute (ALI) (e.g., Model Penal Code), the Council of State Governments,<sup>1</sup> or the National Conference of Commissioners on Uniform State Laws, to name

<sup>1</sup> See its annual publication *Suggested State Legislation*, Council of State Governments, Lexington, Ky. (1946–present). The model acts in these volumes are usually taken from an actual state statute already in effect. Each act is accompanied by a short explanatory statement; no extensive commentary is provided.

just a few. If the act or statute you are researching describes itself as "uniform" (e.g., Uniform Probate Code, Uniform Child Custody Jurisdiction Act, Uniform Electronic Transactions Act), it is likely<sup>2</sup> to be the product of the National Conference of Commissioners on Uniform State Laws (NCCUSL). Sometimes a uniform act is the result of a collaboration between entities, as in the case of the Uniform Commercial Code, which is an ongoing joint effort of the American Law Institute and the NCCUSL.

In theory, a uniform law would read exactly the same in each state that has adopted it. The rationale is that uniformity of state laws in some areas is important for reciprocity reasons (e.g., Uniform Child Custody Jurisdiction Act) or to promote ease of conducting commerce in multiple states (e.g., Uniform Commercial Code). Widespread adoption of uniform laws has probably been most successful in the business environment. By contrast, model laws are offered up as a recommended example, but strict adherence to every word is not deemed essential. Model laws can be edited and modified to suit an individual state's needs. NCCUSL also considers the interstate implications and how likely an act is to be widely adopted, when categorizing an act as "uniform" or "model." If it is seen as less important or less likely that a particular act will be adopted widely, it will be labeled a "model" act. The reality is that state legislatures often modify uniform as well as model acts, so that in the end, the difference between the two, if it exists at all, becomes a matter of degree.

### The National Conference of Commissioners on Uniform State Laws

The American Law Institute, while best known for its well-respected Restatements of the common law, also studies and drafts model laws, as does the American Bar Association. The organization, however, whose primary purpose for more than 100 years has been to draft and promote uniform laws, is the NCCUSL. A uniform or model law proffered by the NCCUSL has been through an arduous process of being scrutinized and voted

<sup>2</sup> Of course, there are exceptions to this rule! The Uniform Building Code, for example, is authored by the International Conference of Building Officials.

upon by lawyer members in all 50 states. The NCCUSL is the result of a movement begun in the late 1800s to “promote uniformity in the law among the several states on subjects as to which uniformity is desirable and practicable.”<sup>3</sup> The goal is to simplify “the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state.”<sup>4</sup>

Each state has a delegation of uniform law commissioners who participate in the NCCUSL. It is up to each state to choose its representatives in the NCCUSL, and even to choose how many delegates to send. NCCUSL’s only requirement is that each state delegate be a member of a bar. Most states provide by statute the manner of choosing their uniform law commissioners; often the appointment may be made by the governor. However, these positions are not seen as partisan, and many commissioners continue to serve while governors come and go. Uniform law commissioners in some states may be legislators, but often they are not. They come from the private sector, academic sector, and government offices. NCCUSL accomplishes much of its work with the use of working committees, whose responsibility it is to research and draft uniform/model acts in areas that another committee has previously determined would be most useful. Once a year, commissioners from every state meet and, acting as a giant committee of the whole, they review, section by section, each draft uniform/model act. An act must withstand this scrutiny for two annual conferences before it can be approved by vote of the members and adopted as an NCCUSL uniform/model act. It must be no small feat for more than 300 lawyer delegates to agree on statutory language! In the end, an act must be approved by a majority of the states present (each state has one vote), and in no event can this majority be fewer than 20 states. Of course, adoption of an act by the NCCUSL still does not give it the force and effect of law anywhere. An act that has passed all of these hurdles must still be presented to each state legislature by its uniform law commissioners.

<sup>3</sup>NCCUSL Constitution, Art. I, Section 1.2.

<sup>4</sup>From the Web site of the National Conference of Commissioners on Uniform State Laws: “About Us: Procedures,” <[www.nccusl.org/nccusl/aboutus.asp](http://www.nccusl.org/nccusl/aboutus.asp)> (August 30, 2001).

### Becoming a Real Law

The exact method by which a uniform act is presented to a state legislature varies by state. In states such as Nevada, whose uniform law commissioners are by statute either legislators or legislative staff, the commissioners naturally may introduce the proposed legislation themselves. In other states, nonlegislator uniform law commissioners must seek an introduction of the act by individual legislators. It is the duty of the uniform law commissioners to seek *consideration* of NCCUSL uniform laws by their legislatures, but they are not required to sponsor or lobby for the bill. After introduction of the bill, in many cases, it is the House or Senate judiciary committees that first consider a uniform law, and then the bill may be referred to the legislative committee that usually has charge of bills concerning the relevant subject. The committees will usually hold hearings and take testimony regarding the proposed legislation and then make recommendations to the House or Senate about whether the bill should pass. A uniform law is subject to editing and revisions by legislators just as any other bill is, and it is not uncommon for a uniform law to be modified during the legislative process, despite NCCUSL’s goal of uniformity. If the legislation passes, it will be codified along with the rest of the state laws.

Given that sometimes the changes a state legislature makes to a uniform law may include a change to the original title, how does one find out that the law is a uniform law? One method is to check the legislative history records of the bill. If the bill is the result of a proposal from the NCCUSL, that fact will likely be mentioned in the records. Another option is to start from the other side: check NCCUSL uniform acts by the appropriate subject of your law.

### Resources

There are several good sources to consult to help you research uniform laws. NCCUSL publishes an annual *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Annual Conference Meeting*. This book provides information on the uniform law commissioners from every state and provides reports of committees and

resolutions by which it adopted uniform laws that year, as well as the full text and commentary accompanying each of those uniform laws. It is a wonderful source of information, but unfortunately, in the 1980s, NCCUSL fell behind in its publication of these handbooks and is still trying to catch up. Currently there is about a seven-year time lag, the proceedings of the 1994 conference being the most recent publication in 2001. Fortunately, much of the information contained in the handbooks is available on NCCUSL's Web site, <[www.nccusl.org](http://www.nccusl.org)>, and on a Web site hosted for NCCUSL by the University of Pennsylvania Law School: <[www.law.upenn.edu/bll/ulc/ulc\\_frame.htm](http://www.law.upenn.edu/bll/ulc/ulc_frame.htm)>. On these Web sites, researchers not only can find current information on uniform and model laws, but also can review drafts of uniform and model laws that are currently under discussion. One can look up a particular act and see which states have adopted it; one can also look up his or her own state and see which uniform acts have been introduced this year in the state legislature, and whether or not they have been enacted.

West Group has also put together an extremely useful research tool for studying uniform laws: the *Uniform Laws Annotated*<sup>®</sup>, Master Edition, or the ULA<sup>®</sup>. It does not include all of the laws that NCCUSL has adopted, because it publishes a uniform law only if it has been enacted in at least one state. It does include some uniform laws promulgated by other entities (e.g., ALI's Model Penal Code). The ULA provides comprehensive coverage for the laws it publishes. Information provided includes the full text of the law itself and accompanying history, amendments, and commentary; information on which states have adopted which acts (listed both by state and alphabetically); the statutory citations and effective date for each adopting state; and the full text and information about any additions or modifications each state may have made; cross-references to law review articles and other relevant sources; and, happily, West Group provides case annotations from the various states, so that if an act is too new in your jurisdiction to have been the subject of case law, you may find persuasive authority from other jurisdictions that have enacted the uniform act. As per West Group's usual style, this multi-

volume publication has convenient subject indexing, tables, and regular pocket part or stand-alone softbound supplements to each volume. The subject index is especially useful if you are not sure of the title of the uniform act.

An additional source for uniform laws is less comprehensive but may be more likely to be found in your own law office: Martindale-Hubbell publishes some uniform laws in the U.S. Law Digest volumes of the *Martindale-Hubbell Law Directory*.

### Borrowed Laws

Finally, if you are short of case law or legislative intent on a statute in your own jurisdiction, don't be discouraged if you don't find your statute to be part of an official uniform or model law. Check other states for similar statutes anyway. In reality, states borrow the language of statutes from each other all the time. As the librarian for the Idaho State Legislature, I am frequently asked by my own legislators to obtain copies of other state statutes on such-and-such a topic, and I am also asked by legislators from other states for copies of particular Idaho statutes. This is so common that it is one of the main reasons an organization like the National Conference of State Legislatures exists: to act as a resource-sharing center for state legislatures. There is no point in reinventing the wheel, as they say. When a state sees an act working well in another state, it is helpful to borrow that language from the other state, both from a drafting standpoint, and also to add strength to the sponsor's argument that this act or statute has already been working well in X state and would likely also work well in Y state. Therefore, if you have no mandatory case authority in your own jurisdiction, you may be able to find helpful legislative intent or judicial interpretations from a state with an identical or similar statute, be it a uniform or model act or not. If, however, your statute is a uniform or model act, especially from the NCCUSL, be happy in the knowledge that much of the research compilation has already been done and awaits you in the resources mentioned. Happy researching!

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