

**Testimony of Thomas Earl Geu**  
**Reporter, Drafting Committee on Uniform Business Cooperative Act,**  
**National Conference of Commissioners on Uniform State Laws**

**August 26, 2003**

Mr. Chairman, Members of the Committee:

My name is Tom Geu and I am a Professor of Law at the University of South Dakota. It is indeed a privilege to testify as Reporter for the Drafting Committee on Uniform Business Cooperatives of the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The Drafting Committee was approved just this month by the Conference based on the recommendation of a Study Committee for which I also served as Reporter. The scope of the Drafting Committee is currently limited to “new generation” agricultural cooperatives whose structure is more conducive to value-added processing. Its goal is to draft a Uniform Cooperative Act for promulgation to the individual states for adoption as state law. The promulgation of a uniform act will take at least two, and likely three, years. The NCCUSL procedure is more comprehensively introduced in Appendices A and B submitted with this testimony.

The state organizational law of cooperatives is in flux. The Wyoming Processing Cooperative Law went effective in 2001; the Minnesota Cooperative Associations Act was passed this past legislative session; and an Act similar to the Minnesota Act was introduced in the Wisconsin legislature. An industry study group has been formed in Iowa. I do not know whether legislative study activity in other states has been undertaken at this time. I do know, however, that inflammatory lead-ins like one in a recent article appearing in The McKinsey Quarterly should continue to stoke interest in forming groups and studying possible legislative change. It states:

Despite the \$1.5 trillion a year that agriculture and the activities associated with it bring to the US economy - fully 16 percent of GDP - much of the industry is destroying value. The problem is not only the agricultural boom-and-bust cycle and the vagaries of the weather but also the performance of one of the industry’s traditional business models: agricultural cooperatives. Co-ops, a substantial part of the industry, handle \$121 billion annually out of a total of \$675 billion (exhibit omitted).

Jack J. Dempsey, Ashish A. Kumar, Bernard Loyd, and Loula S. Merkel, “A value culture for agriculture,” The McKinsey Quarterly, Issue 3, 2002, p.64 at 64-5.

To be fairer, the article also states, “most coops have changed” but “the world around them has changed even more.” It also states that cooperatives organized using hybrid structures outside traditional lines have had success. Although the NCCUSL Study Report did not cite or use the article from The McKinsey Quarterly, it did highlight the economic development success of a “new generation cooperative,” the Dakota Growers Pasta Company, a cooperative from Carrington, North Dakota. Dakota Growers provides a case study for the positive development

possible through the use of cooperatives and was used solely for that purpose in the NCCUSL Report. It might be an example, too, of the restrictions of the current cooperative structure because in July 2002 it converted from a cooperative to a corporation. According to a story in the Grand Forks Herald (Ap. 7, 2002) which quoted SEC filings:

The filing says the change would enhance the possibility of relationships with strategic partners and improve the liquidity of the corporation's capital stock. Conversion will afford greater access to capital markets, which may allow it to expand its business over time, the company says in the filing.

The document says the company is unlikely to obtain significant additional capital from its current members or other durum wheat producers and has been having difficulty getting durum - a consequence of widespread disease problems in recent North Dakota crops.

In the last three years, the company has relied on non-members for durum but doesn't say how much. The co-op maintains it hasn't run afoul of federal income tax rules but acknowledges concerns.

(T)here is legal authority suggesting that, if a cooperative's inputs are obtained predominantly from non-patron sources, its tax status as a cooperative might be jeopardized, the filing says.

The Dakota Growers Pasta Company is a story of rural economic success. As a so-called "new generation cooperative" it was owned by between 1000-1100 farmers in North Dakota and expanded by acquisition of plants near Minneapolis. It invested over \$45 million in plant property and equipment between 1993 and 1997. According to a case study by the Illinois Institute for Rural Affairs the coop provided premium prices to farmers, created almost 200 jobs in Carrington, and earned farmer-members a twenty percent annual return through 1995. In 1999 the shares, which were originally issued at \$3.85, were worth approximately \$10. Its story seems to be an example of both the advantages and disadvantages of the cooperative form cited by proponents of structural change.

In addition to the new Wyoming and Minnesota Cooperative Acts, several states, including Colorado, have reportedly consolidated some of their various special purpose cooperative statutes into a more coherent and centralized legislative scheme in the past decade. In the late 1980s and 1990s, Minnesota, Colorado and Ohio redrafted their cooperative statutes. The recodification of Minnesota's cooperative statutes is instructive: "In Minnesota, five different stock and nonstock cooperative statutes were recodified and revised into one corporate cooperative statute" in 1989. Moreover, coop lawyer Mark Hanson states that "many" states loosened the statutory restrictions in their commodity marketing acts to allow nonagricultural producers to form cooperatives. Again according to Hanson, "[t]he modern corporate cooperative statutes are general cooperative statutes with certain provisions to accommodate agricultural producer cooperatives." Nonetheless, there is a marked lack of uniformity in state cooperative statutes that reflect the needs underlying what appears to be a state law trend toward more flexible cooperative statutes.

This renewed interest in cooperatives appears to be a result of business globalization

which may require larger entities; a change to farm subsidy programs putting pressure on farmers to seek value-added processing; and, reflect that cooperatives may still represent one of the best forms of economic development in rural (and other) areas.

I want to highlight a few of the criteria NCCUSL uses for designating and considering uniform acts because I believe they bear on the issues before this Committee. A complete statement of criteria that NCCUSL uses for designating and considering acts has been submitted as Appendix B.

First, of course, “[t]he subject matter must be appropriate for state legislation in view of the powers granted by the Constitution of the United States to the Congress.” (Stat. of Policy Est. Criteria 1/13/01). Second, the subject matter of the act must further the objective of the Conference which is “to promote uniformity in the law among the several states on subjects where uniformity is desirable and practicable” (*id.*, quoting NCCUSL Const.). Third, according to the NCCUSL Statement of Policy, consideration should be given to whether the act “facilitate(s) the flow of commercial transactions across State lines”; and whether the act is “conceived to fill emergent needs, to modernize antiquated concepts, or to codify common law” (*id.*, emphasis added). Finally, the criteria for selecting uniform acts specifically states that they “may promote uniformity indirectly as well as by substantially verbatim adoptions as, for example, by: . . . extensive adoptions in principle [or] . . . impact on case law and teaching practices . . .” (*id.*).

I mention each of the previous criteria because they frame NCCUSL’s recognition that the law of cooperatives needs careful re-examination and possible modernization at the state level. These same criteria seem to evidence the possible need for changes in federal law and policy as well.

First, the organizational law of cooperatives is traditionally state law as is, of course, the law of business entities generally. Just as obviously, federal law is undeniably important in the law of cooperatives just as it is in the larger scope of business entities. Particularly in the area of cooperatives, state law is developed in the context of federal law and policy concerning taxation, securities regulation, antitrust, finance and the provision of both direct and indirect government services. The Legal, Tax & Accounting Committee of the National Council of Farmer Cooperatives (NCFC) has been following the legal and economic developments concerning cooperatives closely. At a committee conference, J. Gary McDavid attributed the success of cooperatives to several factors including: “1. Tax, SEC, antitrust, and other benefits provided to co-ops, 2. Special banks that provided financing for co-ops, 3. Encouragement and assistance from USDA and NCFC, and 4. the fact the concept worked.” The law of cooperatives, therefore, develops in a coevolutionary environment. That is, the environment in which individual coops are built and operate is the legal infrastructure that results from the interplay of state and federal law.

A good example of the coevolution of this environment occurred with the promulgation of the “check-the-box” treasury regulations. State law and federal tax law provided a virtuous

circle (self-reinforcing feedback loop) that resulted in a number of innovative and efficient entities in the states. These entities include, for example, entities formed under state versions of the following NCCUSL Acts: the Uniform Limited Liability Company Act, the Limited Liability Partnership Amendments to the Uniform Partnership Act and the new Uniform Limited Partnership Act (2001). ULPA (2001) was recently adopted by Hawaii, the first state to do so. The legal infrastructure of federal and state law which evolved to meet the need for economic efficiency and flexibility by individual businesses, when aggregated, encourages economic development. In approving the drafting committee on cooperatives NCCUSL tacitly recognized the role of state legislation in the legal infrastructure of economic development.

The same federal tax -- state law interplay seems it seems to be extending to cooperatives. For example, in 1996 Iowa enacted a cooperative statute specifically designed for agricultural value-added purposes. It was a corporation-based statute and it required, among other things, that "farming entities" have at least 60 percent of the voting and financial rights. Further, it provided "authorized persons" to have 75 percent of the voting and financial rights. Some organizations incorporated under the 1996 Iowa Act sought "Exempt Farmer Cooperative" Certification from the IRS under § 521 and, according to coop lawyer Mark Hanson, questions were raised whether they qualified for § 521 status as operating on a cooperative basis. As a result of these questions the Iowa statute was amended to replace corporate terms like "incorporation," "stock" and "shareholders" with unincorporated entity terms like "organizers", "members" and "interests" so that the organization might qualify for partnership income tax status (like a limited liability company under state law) and, therefore, be taxed on a purer flow-through basis under Subchapter K.

This different statutory design that attempts to take advantage of partnership tax classification should not be underestimated because it evidences that the organizers were willing to leave the traditional protective confines of the corporate tax structure as modified by Subchapter T in order to make value-added processing financially viable based on a different capital structure. In other words, the approach evolved from perceived real-world need.

Wyoming enacted a "Wyoming Processing Cooperative Law", effective in 2001, for purposes similar to Iowa's law. The impetus for the Wyoming law was from lamb producers in Wyoming and adjoining states. Its purpose was to allow the producers to "acquire lamb, meat, wool and pelt processing and marketing businesses to make lamb production more marketable on a cooperative basis." It was drafted to allow for partnership taxation or, at the discretion of the particular entity, to elect corporate taxation and thereby be eligible for Subchapter T and, perhaps, § 521 tax treatment. As a result, the Wyoming Act is more flexible than traditional cooperative acts and gives far more freedom to the organizers in their entity documents than typically afforded under traditional cooperative statutes.

Neither the Wyoming nor the Iowa cooperative statutes, to my knowledge, have received revenue rulings, however, an entity organized under the Wyoming Act apparently received a private letter ruling (PLR) from the Internal Revenue Service in 2001 indicating that it is eligible for partnership income tax classification. Identifying facts are excised from published letter

rulings. Nonetheless PLR 2001-125369 included the following statement of relevant fact:

Company A is a new entity that will be organized on Date 1, under the State Cooperative LLC Act (Act). The Act was enacted on Date 2, with an effective date of Date 1. The Act defines “Cooperative” as association organized under this article conducting business on a cooperative plan as provided under this Article.

It concluded:

In the present case, Company A is organized as an unincorporated association under the Act, which does not refer to an association as incorporated or as a corporation, body corporate, or body politic... Therefore, it is an “eligible entity” and not a per se corporation under section 301.7701-2(b)(1).

I want to particularly emphasize the NCCUSL selection criteria concerning the third consideration I mentioned. It is, in part, whether the act in question is “conceived to fill emergent needs, to modernize antiquated concepts, or to codify common law.” Most of the Report of the NCCUSL Study Committee on a Uniform Business Cooperative Act was directly related to this consideration. A major factor in this renewed interest in cooperative business organizations and statutes by NCCUSL is the advent of the value-added agricultural cooperative, including those for ethanol production. A book published by the Illinois Institute for Rural Affairs delineates this evolution as follows:

The development of cooperatives in the Upper Midwest from the 1970s through the 1990s provides vivid examples of several new phenomena and trends. Among the most important are the New Generation Cooperatives (NGCs). The term, used since the mid-1990s, was proposed by the Centre for the Study of Cooperatives, University of Saskatchewan, Canada [citation omitted]. These NGCs represent the newest wave of U.S. co-ops. While earlier generations had emerged in the 1900s, the 1920s, and again in the 1940s, NGCs have several features that distinguish them from traditional farmers co-ops.

The “New Generation Cooperative” is the favored form for new cooperatives. New Generation Cooperatives (NGCs) include some combination of features, not typical of traditional cooperatives. A list of nontraditional features include appreciable equity shares which may or may not be transferable; limited but real opportunity for outside equity investment; legally binding delivery contracts or uniform grower agreements which may or may not be transferable; minimum up-front equity investment by members, closed membership, and a way for members to redeem, transfer, or otherwise recognize the appreciation of their equitable shares. All these features reflect theoretically identified economic inefficiencies in the operation of traditionally organized cooperatives. Indeed one of the primary driving forces for NGCs is the need for equity capital to build capital intensive processing and manufacturing facilities like ethanol plants. The adoption and use of nontraditional features by cooperatives often requires organizing under state LLC laws rather than under state cooperative laws and being taxed as a partnership rather than as a cooperative under Supchapter T of the Internal Revenue Code.

J. Gary McDavid identified the same general structural challenges for cooperatives as

those previously identified. Given the advent of other entity choices, structural challenges he mentioned included “lack of outside equity” and the “inability to access going concern value.” Other challenges included “competition from LLCs” and the desire of investment return on the part of member-investors and stock options in order to retain qualified management. Specifically the speech stated, “some cooperatives have converted to LLCs and many new ventures are structured as LLCs... [because] LLCs are flexible vehicles and allow patronage and non-patronage income to pass through to the members.” Indeed, the article from The McKinsey Quarterly observes:

In general, a co-op that has a strong plan and uses alternative governance structures such as the LLC will find it easier to raise capital from both farmers (who are willing to invest in strong plans) and outside sources (which are now put off by the convoluted governance of most large co-ops).

Jack J. Dempsey, Ashish A. Kumar, Bernard Loyd, and Loula S. Merkel, “A value culture for agriculture,” The McKinsey Quarterly, Issue 3, 2002, p.64 at 72.

McDavid’s comments seem to be supported generally by agricultural economists. For example, a 1995 article in the American Journal of Agricultural Economics lists five problems inherent in operating within the traditional cooperative structure. All five relate to “vaguely defined property rights.” According to the article, a free-rider problem exists for open-membership cooperatives because new members receive the same patronage dividends as do members who originally invested in the cooperative; portfolio and horizon problems arise due to lack of share transferability; that is, members cannot adjust their investment over time to match their investment profiles; and, there is a disincentive for members to invest more capital because of lack of liquidity of the investment and lack of the ability for the investor to time sales (e.g. redemption fixed upon death or retirement). Finally, the control and influence cost problems (e.g. agency cost and monitoring costs) inherent in any nonpublicly traded business are present in cooperatives. According to follow-up research conducted in 1996 and 1997, “[e]mpirical work confirmed the connection between theory and practice.”

The research analyzed,

[A]ll rural or agricultural-related cooperative formations in the Upper Midwest between 1988 and 1996... and made the following observations:

1. More than 80 percent of cooperative formations in the Upper Midwest adopted non-traditional cooperative organization characteristics.
2. Why? According to the results of the survey – to solve for a set of problems cause by vaguely defined property rights.
3. A coordinated set of simple organizational policies to solve for vaguely defined property rights; transferable and appreciable equity shares, defined membership, uniform grower agreements, and a minimum up-front equity investment requirement were identified.
4. Ninety-six percent of the cooperatives in the survey reduced the free-rider problem by linking member investment to use.

5. Ninety-four percent allowed members the ability to adjust their asset portfolio to meet the risk preferences by allowing the transfer of equity shares.
6. In addition, 93.6 percent of the cooperatives allowed producers to realize changes in the cooperative's value upon divestment of their equity shares.
7. Defined (closed) membership policies were popular among newly organized agricultural cooperatives with 98 percent of the survey cooperatives implementing a defined membership structure.
8. Direct investment through the sale of nonvoting equity stock was the primary method employed to raise producer equity in these cooperatives. Nearly 98.7 percent of equity raised from producers took this form.

Michael L. Cook, Constantine Iliopoulos, *Beginning to Inform the Theory of the Cooperative Firm: Emergence of the New Generation Cooperation* 1999 THE FINNISH JOURNAL OF BUSINESS ECONOMICS 525 at 530 (Issue 4).

These findings are consistent with the more theoretical suggestions to amend the cooperative form to include some combination of features like transferability of equity shares, appreciable equity shares, defined membership, legally binding delivery contract or uniform grower agreement, and minimum up-front equity investment. These features, however, are not necessarily consistent with cooperative values as described by the Rochdale Principles, and organizing cooperatives under state LLC laws, however, comes with transactional costs and risk born of uncertainty caused by differing definitions of cooperatives between and among laws at the state and federal levels. It also raises issues about registration of nontraditionally organized coops doing business in states other than their state of organization. There is some fear, too, that some embedded efficiencies under current statutes for selected industries may be inadvertently lost. Finally, some of the defining principles of cooperatives, for example those referred to as the "Rochdale Principles," are not reflected by the law of other entities like LLCs though the principles may be added to the governing documents of the LLC or other organization.

The Rochdale principles have been stated a number of ways. The original principles contained a list of twelve. Some sources now have consolidated that list to eight or even four. I think they can be summarized by five principles. These principles are: (1) business at cost with returns paid to members based on patronage; (2) democratic control, one person, one vote; (3) limited dividends on invested equity capital; (4) ownership (or beneficial membership) limited to patrons; and (5) open membership.

Finally, the NCCUSL Study Committee Report briefly referred to cooperatives in the transnational and international context. There seems to be a resurgent interest in cooperatives in other countries as well as in the United States as capital markets have become increasingly important worldwide. The role of capital markets is a change in emphasis and infrastructure for European businesses, generally, and presents challenges to its cooperatives, too. The Pellervo Confederation of Finnish Cooperatives organized a Working Group to consider issues related to the new business environment of cooperatives in 1999. According to the Foreword of its initial

Report issued in 2000:

The proliferation of share ownership and the development of the capital markets have led to the effective supervision of management by the capital markets. The decisions of major corporations are assessed daily by the owners, as well as by the hundreds if not thousands of analysts and investors.

*Ownership in a cooperative is different from that in a listed company because cooperative shares are not normally freely transferable and so there is no market for them. In practice, the benefit and added value produced by a cooperative accrues to the owners, that is the members of the society, via the business relations between them and the cooperative.*

. . . The role of cooperative member-owners and their responsibility for the success of the enterprise is in actual fact greater than in publicly quoted companies as the market continuously monitors the company and distributes information via the media.

The management of cooperatives, both professional and lay, has certainly improved during the last decade. Likewise transparency has increased. The requirements, however, are growing continuously and *cooperatives are subject to the same pressures for greater efficiency and change in corporate governance as other enterprises*. For this reason, it is important for cooperatives to consider corporate governance within the framework of their cooperative origins. It is useful to think about building up an effective system of internal control simply because even the largest cooperatives lack the kind of control that comes from the stock market. The general discussion concerning joint stock companies will provide many suggestions, but the cooperatives themselves must find solutions suitable to their form of enterprise, field of operation and operating environment. This discussion should concern itself with good governance practice, that is how internal control is organised, as well as broader issues as how to run cooperatives so that their resources produce the best possible benefits to their members. . . . The report aims at stimulating discussion of this vital subject within the cooperative movement rather than offering readymade models.

The European Commission D.G. Agriculture generously contributed towards the cost of translating the report into English. The translation was made by Michael Wynne-Ellis. This paper has been provided also for the Corporate Governance seminar organised by the General Committee of Agricultural Cooperatives in the EU (COGECA) in Brussels in November, 2000.

### Corporate Governance and Control in Cooperatives, Pellervo Confederation of Finnish Cooperatives (Nov. 2000).

I think this evidences, too, a worldwide recognition of the growing importance of cooperatives, their potential, and the challenges confronting them today. The appointment of a drafting committee by NCCUSL, too, evidences this importance and it is hoped the resulting uniform law will help cooperatives respond to these challenges and continue to be a source of economic development through a modernization and unification of state law. Many of the challenges faced by coops today, however, are also matters of federal law and policy.

Thank you for the opportunity to testify, and I welcome any questions you may have.

## APPENDIX A

### **NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS**

#### **PURPOSE**

The purpose of the National Conference of Commissioners on Uniform State Laws is to promote uniformity in state law on all subjects where uniformity is desirable and practicable. To accomplish this, the Commissioners participate in drafting Acts on various subjects and endeavor to secure enactment of the approved Acts in the various States.

#### **ORGANIZATION**

The National Conference is composed of the Commissioners on Uniform State Laws from each State, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. In addition, the principal officer of the state agency, such as the legislative reference bureau, charged with responsibility of drafting legislation for the State is generally an Associate Member of the Conference.

The Governors of the States and other appointing authorities have appointed lawyers, judges, legislators, and law school professors as Commissioners. While a common term is three or four years, it is common practice for Commissioners to be reappointed, without regard to their political affiliation, if they have actively participated in the work of the Conference. Commissioners who have served by official appointment for twenty or more years are eligible for Life Membership. All Commissioners are members of the bar.

The organizational plan of the Conference makes its nonpartisan nature self-evident. Moreover, while Commissioners are obligated to endeavor to procure enactment of Uniform Acts, they represent no special interest.

A small staff is maintained at the Conference headquarters in Chicago to serve the organization's administrative needs.

#### **HISTORY**

The Conference, one of the oldest of state organizations designed to encourage interstate cooperation, was organized in 1892 to promote uniformity by voluntary action of each state government. Since its organization, the Conference has drafted hundreds of uniform laws on numerous subjects and in various fields of law. Many of these, like the Uniform Commercial Code, have been universally enacted, or nearly so.

With the development of interstate transportation and electronic transactions, the States have become increasingly interdependent socially and economically so that a single transaction may cross many state lines and involve citizens in many States. Citizens of one state constantly travel to other states or move their residence. A confusion or difference of laws among the several states may present, in some fields, a deterrent to the free flow of goods, credit, services,

and persons among the States; restrain full economic and social development; disrupt personal planning; and generate pressures for federal intervention to compel uniformity. The Conference seeks to alleviate these problems in areas of law traditionally left to the states, thus preserving the federal system.

The Conference occasionally drafts Model Acts on subjects which do not directly affect relationships among the States, but which involve problems common to many if not all the States. On other occasions, it drafts model legislation on subjects where state legislation could help implement international treaties of the United States or where uniformity would be desirable.

## **FINANCIAL SUPPORT**

The Conference is considered a state organization. The major portion of its financial support comes from state appropriations. The expenses are apportioned among the States primarily based upon their population. Individual Commissioners receive no salary or compensation, and in some cases they pay their own expenses to attend the annual meeting of the Conference.

The American Bar Association and, in connection with the Uniform Commercial Code, The American Law Institute, make a yearly contribution to the conduct of Conference business. Moreover, as some projects have involved extraordinary expenditures for extensive research, drafting experts working on a sustained basis, and numerous meetings of advisors, the Conference and the Uniform Law Foundation have sought financial help from foundations and other public-spirited persons and groups. Because the Conference is composed of Commissioners designated by the States and prepares Uniform Acts for States and is supported by States, the Internal Revenue Service has recognized the Uniform Law Foundation as qualified to receive tax-deductible contributions under federal law as contributions to state government or organizations of state government for public purposes.

## **PROCEDURES**

The Conference meets annually to consider drafts of proposed uniform legislation. Proposals that Uniform Acts be drafted, received from many sources, are referred to a Committee on Scope and Program that makes an investigation, sometimes hears interested parties or recommends a further study, and reports to the Conference whether the subject is one on which it is desirable and feasible to draft a uniform law.

If the Conference decides to accept a subject, a special committee of Commissioners is appointed to prepare a draft of an Act. In the case of the Uniform Commercial Code, representatives of The American Law Institute are appointed to the committee. The American Bar Association is invited to appoint an advisor to each drafting committee. Drafts are not submitted to the Conference until they have received extensive committee consideration.

A draft Act must be discussed and considered section by section by the entire Conference at normally no fewer than two Annual Meetings before the Conference may decide by a vote of

States whether to promulgate the draft as a Uniform Act. Each State is entitled to one vote, and an Act is not promulgated unless a majority of the States represented at an Annual Meeting and at least twenty jurisdictions have approved the draft.

In addition, each Uniform Act may be submitted for consideration to the American Bar Association. The Drafting Committees of the Conference establish liaison with the American Bar Association and other interested groups throughout the drafting process.

## **PUBLICATIONS**

The text of each approved Uniform and Model Act, with notes and comments, is published in pamphlet and other forms by the Conference. Working drafts, as well as current Acts of the Conference with the exception of the Uniform Commercial Code, are also available on the Internet at [www.nccusl.org](http://www.nccusl.org).

In addition, it publishes a Handbook of the National Conference of Commissioners on Uniform State Laws that contains the proceedings of the annual meeting of the Conference and basic statistical data about the various Uniform and Model Acts promulgated by the Commissioners, including a list of the Acts adopted and the States which have adopted them.

Copies of the Acts and the Handbook are available from the Conference headquarters in Chicago.

## **WEB SITE**

The address of the Conference Web site is [www.nccusl.org](http://www.nccusl.org), where you'll find:

- Uniform Acts, factsheets, and summaries
- Information on drafting projects
- Current drafting committee meeting information
- Bill tracking features
- Press releases
- Archives of drafts and final acts
- Links to state legislatures and other organizations

## **OTHER SELECTED NCCUSL COMMITTEES AND ACTS**

Uniform Commercial Code  
Uniform partnership Act (1997)  
Uniform Probate Code  
Drafting Committee on Electronic Payment Systems  
Standby Committee on Uniform Rules of Evidence  
Drafting Committee on Nonjudicial Foreclosure Act  
Drafting Committee to Revise Uniform Management of Institutional Funds Act  
Drafting Committee to Revise Uniform Securities Act  
Drafting Committee on Uniform Wage withholding Procedure Act

## **APPENDIX B**

### **STATEMENT OF POLICY ESTABLISHING CRITERIA AND PROCEDURES FOR DESIGNATION AND CONSIDERATION OF ACTS**

**January 13, 2001**

The Conference and its committees shall conform to the following criteria and procedures in proposing or considering Acts:

#### **1. CRITERIA.**

(a) The subject matter must be appropriate for state legislation in view of the powers granted by the Constitution of the United States to the Congress. If it properly falls within the exclusive jurisdiction of the Congress, it is obviously not appropriate for legislation by the several States. However, if the subject matter is within the concurrent jurisdiction of the federal and state governments and the Congress has not pre-empted the field, it may be appropriate for action by the States and hence by the Conference.

(b) The subject matter must be such that approval of the Act by the Conference would be consistent with the objectives of the Conference, as stated in Article 1.2 of its Constitution: "to promote uniformity in the law among the several States on subjects where uniformity is desirable and practicable."

(c) Every Act drafted by the Conference shall conform to the following requirements:

(i) there shall be an obvious reason for an Act on the subject such that its preparation will be a practical step toward uniformity of state law or at least toward minimizing its diversity;

(ii) there must be a reasonable probability that an Act, when approved, either will be accepted and enacted into law by a substantial number of jurisdictions or, if not, will promote uniformity indirectly;

(iii) the subject of the Act 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 as to which uniform legislation may be more effective, more efficient, and more widely and easily understood) or will avoid significant disadvantages likely to arise from diversity of state law (for example, the tendency of diverse laws to mislead, prejudice, inconvenience or otherwise adversely affect the citizens of the States in their activities or dealings in other States or with citizens of other States or in moving from State to State).

(d) Experience demonstrates that Acts to accomplish the following purposes have met with the widest acceptance by state legislatures;

(I) Acts to facilitate the flow of commercial transactions across state lines, such as the Uniform Commercial Code;

(ii) Acts to avoid conflict of laws when the laws of more than one State may apply to a transaction or series of transactions, such as the Uniform Act on Transfers to Minors, the Uniform Certification of Questions of Law Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, and the Uniform Attendance of Out of State Witnesses Act;

(iii) Acts without substantial interstate implications but conceived and drafted to fill emergent needs, to modernize antiquated concepts, or to codify the common law, such as the Uniform Acts on Simultaneous Death, Limited Partnership, Partnership, Limited Liability Company, Rules of Evidence, Common Trust Fund, Principal and Income, and Fraudulent Transfers.

(e) Acts may promote uniformity indirectly as well as by substantially verbatim adoptions, as, for example, by:

(I) extensive adoptions in principle, such as the Uniform Alcoholism and Intoxication Treatment Act;

(ii) impact on case law and teaching practices, such as the Uniform Rules of Evidence;

(iii) gradually increasing adoptions, either in statutes or in case law, of particular sections or parts of a Uniform or Model Act addressing specific problems within the larger area to which the Act is directed, as for example, the Uniform Acts on Intestacy, Wills and Donative Transfers, Testamentary Additions to Trusts, Disclaimer of Property Interests, Statutory Rule Against Perpetuities, International Wills, Succession without Administration, Trustee Powers, Estate Tax Apportionment, Guardianship and Protective Proceedings, Durable Powers of Attorney, and Nonprobate Transfers on Death, which address specific and discrete problems within the larger area to which the Uniform Probate Code is directed.

(f) As a general rule, the Conference should consider past experience in determining future projects and should avoid consideration of subjects that are:

(I) entirely novel and with regard to which neither legislative nor administrative experience is available;

(ii) controversial because of disparities in social, economic or political policies or philosophies among the various States; and

(iii) of purely local or state concern and without substantial interstate implications unless conceived and drafted to fill emergent needs or to modernize antiquated concepts.