

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

- **FUNDING MICHIGAN’S ANNUAL ASSESSMENT AND COMMISSIONERS’ EXPENSES**
- **STATE BAR OF MICHIGAN LIAISON**

Issues

1. Should the State Bar of Michigan’s Board of Commissioners appoint a liaison to the annual meeting of the National Conference of Commissioners on Uniform State Laws (“NCCUSL”), the national organization of lawyers who draft uniform model laws that are considered for adoption by all of the United States, provided that the liaison is charged with the responsibility of reporting the events of the annual meeting to the Chairperson of the Public Policy and Image Committee and the Chairperson of the Representative Assembly?
2. Should the State of Michigan pay its annual assessment to the NCCUSL, as well as the expenses of Michigan’s Uniform Law commissioners to attend NCCUSL’s annual meeting?

Synopsis

A. What is the NCCUSL ?

NCCUSL has worked for the uniformity of state laws since 1892. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Uniform Law Commissioners must be lawyers who are qualified to practice law. These Commissioners are lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys. They serve for specific terms, and receive no salaries or fees for their work with the Conference.

The Conference is a working organization. The uniform law commissioners participate in drafting specific acts; they discuss, consider, and amend drafts of other commissioners; they decide whether to recommend an act as a uniform or a model act; and they work toward enactment of Conference acts in their home jurisdictions.

Examples of NCCUSL works include: the Uniform Commercial Code, the Uniform Partnership Act, the Uniform Probate Code, the Uniform Child Custody Jurisdiction Enforcement Act, the Uniform Trust Code, and the Uniform Principal and Income Act.

The Michigan Court of Appeals underscored the profoundly important utility of NCCUSL in *Atchison v Atchison*, 256 Mich App 531, 536 (2003) [Emphasis added]:

Michigan adopted the Uniform Child Custody Jurisdiction Act (UCCJA) to provide standards to determine: (1) whether a state could take jurisdiction of a child-custody dispute, (2) whether other states were prohibited from subsequently taking jurisdiction, (3) enforcement of a custody decision, and (4) when modification of a child-custody decision was permitted. *In re Clausen*, 442 Mich. 648, 662-663, 502 N.W.2d 649 (1993). Despite the widespread adoption of the UCCJA, differing interpretations resulted in uncertainty regarding the enforcement of custody decisions. In response, Congress adopted the Parental Kidnapping Prevention Act (PKPA), 28 USC 1738A, to impose a duty on states to enforce a child-custody determination entered by a court in a sister state if the determination was consistent with the UCCJA. *Id.* at 664, 502 N.W.2d 649. However, inconsistency in interpretation of the UCCJA and the overlapping technicalities of the PKPA resulted in a loss of uniformity among the states. **Consequently, in 1997, the National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted and approved the UCCJEA to rectify thirty years of inconsistent case law and revise child-custody jurisdiction in light of overlapping federal enactments, including the Uniform Interstate Family Support Act.**

For more information on NCCUSL, visit its website at: <http://www.nccusl.org>

B. What is the Michigan Commission on Uniform State Laws?

Each jurisdiction within NCCUSL determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute. Michigan's statute is MCLA 4.1301 and it provides:

4.1301. Michigan commission on uniform state laws; creation; membership; purpose; expenses; commissioners under prior act

Sec. 301. (1) The Michigan commission on uniform state laws is created. The Michigan commission on uniform state laws shall consist of the following:

(a) Three members appointed by the council. Members appointed under this subdivision shall not be members of the legislature.¹

(b) Two members appointed by the majority leader of the senate, 1 from the minority party.²

¹ Current members are: James J. White (Chair), Thomas J. Buiteweg and Robert Webster

(c) Two members appointed by the speaker of the house, 1 from the minority party.³

(d) The director of the bureau or his or her designee.⁴

(2) The commissioners may meet and confer with commissioners of other states to bring about uniformity of state laws. The Michigan commission on uniform state laws shall report annually to the council.

(3) The expenses of the commissioners may be paid from appropriations made to the council upon vouchers approved by the council.

(4) The commissioners on uniform state laws for this state appointed under former Act No. 412 of the Public Acts of 1965 shall continue in office until commissioners for the Michigan commission on uniform state laws are appointed under this section. Commissioners on uniform state laws for this state appointed under former Act No. 412 of the Public Acts of 1965 may be appointed under this section to the Michigan commission on uniform state laws.

C. How is NCCUSL funded?

The major portion of financial support for the Conference comes from state appropriations. Expenses are apportioned among the states by means of an assessment based on population. The Conference gets maximum results from a minimum budget because its major asset, drafting expertise, is donated. The only compensation for commissioners is the satisfaction derived from solving important legal problems. Commissioners devote hundreds and even thousands of hours - amounting in some cases to millions of dollars worth of time - to the development of uniform and model acts. No state could afford the bills for the legal expertise that is donated to the drafting of uniform laws.

The expenses apportioned by the Conference to the State of Michigan for 2006 are approximately \$50,000.

D. What additional costs are associated with NCCUSL?

² Current members are: Sen. Bruce Patterson, Sen. Michael Switalski.

³ Current members are: Rep. David Law, Rep. Paul Condino.

⁴ Current member is: John Strand. There is one additional member, Life Member Tom Downs.

NCCUSL's 7-day annual meetings are working sessions that are vital to shaping Uniform Acts. During the meetings, proposed uniform acts are presented to the commissioners section by section during intense eight-hour plus daily sessions. Proposed laws are often changed based on comments from the floor and important policy decisions are frequently made by floor vote.

Each state is responsible for paying the expenses of its commissioners to attend the annual meeting. NCCUSL makes every effort to keep expenses low. Thus, attendance at the expense to the state for the 7-day meeting would likely average about \$2,500 per commissioner.

E. What has been Michigan's participation history in NCCUSL?

Michigan had a proud history of active participation with NCCUSL for 113 of its 115-year existence. However, in 2004, the state stopped paying its NCCUSL assessment. As a result, Michigan is approximately \$154,000 in arrears in assessments, and there is no budget to reimburse commissioners for their out-of-pocket expenses for attending the annual meeting.

F. What is the result of Michigan's failure to participate in NCCUSL?

In 2005, Michigan introduced only one (1) Uniform Acts and that Act was not enacted.

Michigan foregoes the opportunity to influence the drafting of uniform laws that will affect Michigan's multi-jurisdictional law practices whether or not those laws are adopted by Michigan.

Michigan-based law firms operating nationwide benefit enormously from good uniform laws reflecting input from Michigan commissioners. Conversely, Michigan practitioners and their clients are at risk if NCCUSL promulgates uniform laws adverse to Michigan's best interests.

Opposition to Proposal

None known.

Fiscal Impact on State Bar of Michigan

There would be no fiscal impact on the State Bar of Michigan regarding the first identified issue and proposal regarding state funding of the state's NCCUSL assessments and commissioners' expenses.

The fiscal impact on the State Bar of Michigan regarding the appointment of a liaison to the Commission would be approximately \$2,500 per year.

Suggested Resolution

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on April 29, 2006

Should the State of Michigan pay the assessments it owes to the National Conference of Commissioners on Uniform State Law and pay the costs necessary to permit Michigan's uniform law commissioners to attend NCCUSL's annual meeting?

a. Yes

or

b. No

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on April 29, 2006

Should the State Bar of Michigan's Board of Commissioners appoint and pay the expenses of a liaison to attend NCCUSL's annual meetings and report back to the Chairperson of the Public Policy and Image Committee and the Chairperson of the Representative Assembly regarding the events of the meetings for further dissemination to state bar section and committee chairpersons?

a. Yes

or

b. No