REPORT ON THE LAW REVISION COMMISSION BY THE COMMERCIAL LAW AND UNIFORM STATE LAW COMMITTEE AND THE COUNCIL ON JUDICIAL ADMINISTRATION

A.6611-A	**M. of A. Bores**
S.4657-A	**Sen. Mayer**

AN ACT relating to the law revision commission membership appointment and review of judicial decisions

THIS BILL IS APPROVED

The New York City Bar Association (the "City Bar") recommends enactment of the A.6611-A (AM Bores) / S.4657-A (Sen. Mayer) (the "Bill"), a bill relating to the law revision commission ("LRC") membership appointment and review of judicial decisions, provided that certain recommendations, as described below, can be followed to ensure that the original purpose of this Commission, when it was first created, can be fulfilled today.

I. ENSURING THE LRC FULFILLS ITS DUTIES WITH RESPECT TO UNIFORM STATE LAWS

A revitalized LRC could benefit New Yorkers by providing the vital law reform role contemplated by Benjamin Cardozo in 1921, when he suggested such a commission.[1] The value of such a commission was demonstrated by an article that detailed the important work done by the LRC during its first year in existence.[2] That said, there were reasons why New York ceased funding the LRC in 2016, and perhaps there are lessons to be learned from those reasons.

From the LRC's inception, its first enumerated statutory function was "to receive and consider

[1] A Ministry of Justice, 35 Harv. L. Rev. 113 (1921). Judge Cardozo envisioned an agency that would be a means to alert the legislature of the need for law reform to enable judges to decide cases justly when the duty of judges to follow precedent made that difficult or impossible.

[2] THE LAW REVISION COMMISSION OF THE STATE OF NEW YORK: ITS ORGANIZATION, PROCEDURE, PROGRAM ANDACCOMPLISHMENT, John MacDonald & Simon Rosenzweig, Cornell Law Quarterly, Vol. 20, Is. 4, June 1935. The article details the 17 study projects and 13 resulting bills undertaken during the LRC's first year, two of which involved amending New York-enacted uniform commercial laws. Other topics involved tort law, real property law, the penal law, and contract law, as well as statutes of limitations and rules of evidence, all of which are subjects the Uniform Law Commission has addressed in its model uniform laws.

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has over 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

proposed changes in the law recommended by the American Law Institute, ***the commissioners for the promotion of uniformity of legislation in the United States*** [i.e. "**The Uniform Law Commission**"][3], any bar association, or other learned bodies." Section 1(a), Chapter 597 of the Laws of 1934. (italics supplied)

Thus, attention to the model uniform state laws approved by the National Conference of Commissioners on Uniform State Laws ("ULC") was always contemplated to be a key component of the LRC's work.

Despite this primary responsibility, during the last years prior to its defunding, the LRC had ceased to be a useful force in bringing the work of the ULC to the attention of the Legislature. New York law suffered as a result. New York's commercial laws, such as the Uniform Commercial Code and the Uniform Fraudulent Conveyance Law, were not timely or properly updated for decades.

To take these two major examples, New York still has not adopted the current version of the Uniform Commercial Code Articles 3 and 4 (dealing with checks, check fraud, and the depositor's relationship with its bank). New York is functioning with a version of these articles which predates the laptop computer and world-wide web and is generally no longer taught to law students. Similarly, New York failed until 2019 to update its 100-year-old uniform fraudulent conveyance law to the uniform fraudulent transfer act which the ULC had substantially revised in 1984 and to the voidable transaction act issued by the ULC in 2014.

Second, while the LRC was active, the New York Legislature was often deprived of the benefit of the insight and work product of the ULC and its expert advisors, including members of the American Law Institute, as a starting point for drafting contemplated New York laws on subjects the ULC had spent years analyzing and addressing. For example, in 2001, New York enacted the bare-boned Electronic Signatures and Records Act rather than the more comprehensive and robust Uniform Electronic Transactions Act, which has since been enacted in every other state. Similarly, when New York revised its laws governing powers of attorney and its Statutory Short Form Power of Attorney in 2009 and 2010, and again in 2021, for personal and estate planning purposes, the LRC failed to consider the Uniform Power of Attorney Act, or the ULC's commentary. As a result, the 2009 amendments unintentionally disrupted business arrangements and transactions which included powers of attorney by terminating pre-existing powers of attorney. This was only corrected after experienced commercial, banking, securities and business lawyers pointed out the error.

Modification of the proposed Bill, as described below, to require substantial experience in private practice for LRC members and to provide for communication and coordination by the LRC

[3] The Uniform Law Commission was established in 1892, in New York, to provide states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. It provides rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states. Its model statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government. It also helps states keep their laws up to date by addressing important and timely legal issues. It has issued 450 model laws dealing with, inter alia, commercial, business organizations, tort, regulatory matters, criminal law, real estate, consumer protection, family and estate planning matters, healthcare, litigation and dispute resolution, and financial institutions. Its most successful laws include the Uniform Commercial Code, enacted in all states, the Uniform Electronic Transactions Act, enacted in 49 states, the Uniform Voidable Transactions Act, enacted in all but a handful of states. The ULC is non-partisan and seeks to avoid drafting uniform laws on subjects that would be considered controversial in any state.

with the New York Uniform Law Commissioners and Bill Drafting Commissioners should go a long way to enable the revitalized LRC to fulfill its statutory duties and to prevent the problems that have hampered law reform in New York.

II. RECOMMENDATIONS

To assure that a revived LRC will be able to fulfill its mission to consider in a timely manner and advise the Legislature on revisions relating to uniform and model acts and updates approved or being considered by the ULC and other expert proponents of uniform laws, the City Bar believes the proposed Bill would be improved by three simple structural changes.

A. Qualifications of LRC Members

First, the bill should impose some minimal qualifications on the members of the revamped LRC relevant to its functions, which are the identification of anachronistic or otherwise undesirable law that the courts are unable to remedy using traditional judicial tools. To fulfill this role, it is critically important that the members of the LRC have extensive experience as lawyers in active practice. It is also important to have Supreme Court or Surrogates Court judges and New York law school professors among the members. Each member should have been admitted to practice in New York for a minimum of 15 years. Remuneration should only be in the form of ***per diem*** or an ***honorarium***. It is crucial to note that the New York Commission on Uniform State Laws ("CUSL") members do not receive any form of remuneration.

B. Formal Relationship of LRC and Commission on Uniform State Laws

Second, the bill should be amended to provide a formal relationship between the LRC and the CUSL, the commission whose members represent New York and function on the ULC.

New York State, a primary force behind the founding of the ULC, has had a commission on uniform state laws since 1892. Executive Law, §165. The five members of the CUSL are appointed by the Governor. These commissioners represent New York in the workings of the ULC.[4]

The CUSL is the vehicle through which New York participates in and makes its contributions to the work of the ULC in drafting potential uniform laws. The New York CUSL is also the body responsible for bringing to the attention of New York the work product of the ULC, to fulfill the legislative needs of New York.

Although the CUSL and the LRC have different and distinct roles, their two roles substantially overlap with respect to the work of the ULC. The CUSL participates in the study and drafting work of the ULC and is intimately knowledgeable about its work product. The LRC is concerned specifically about the revision of New York's laws. To the extent the uniform laws previously enacted by New York require updating and revision, both the CUSL and the LRC should be involved. This will prevent

[4] The statutory duties of the CUSL are stated as follows: "It shall be the object of the commission [on uniform state laws] to examine various statutes and fields of law and to consult and cooperate with similar commissions in other states with a view to promoting uniform legislation throughout the United States whenever practicable. The commission may recommend such legislation as may accomplish its objective…. The commission shall report to the legislature whenever the commission deems it necessary and shall report to the legislature upon its request. Such reports shall consist of an account of the transactions of the commission and its advice and recommendations."

New York's versions of uniform laws from becoming outdated and keep New York in the forefront of commercial and other areas of law and jurisprudence. To the extent the LRC believes other laws require adoption, updating or revision, for which an existing model uniform law may be relevant, both the CUSL and the LRC should be involved. This will enable New York to draft laws that take advantage of the existing best legal scholarship on the questions involved.

The City Bar also believes the proposed Bill to revitalize the LRC should provide for the LRC to maintain an active formal relationship with New York CUSL. This should help to ensure the LRC is in regular communication with the CUSL and that members of CUSL are invited to LRC meetings. In this way the two commissions can coordinate and cooperate with each other when their missions overlap.

C. Formal Relationship of LRC, CUSL and Legislative Bill Drafting Commission

Finally, there is a third New York commission that is relevant. This is the Legislative Bill Drafting Commission ("LBDC"). Legislative Law, § 24. This commission has two members appointed by the temporary president of the senate and the speaker of the assembly. The LBDC does the technical drafting of bills at the request of legislators and legislative committees. Legislative Law, § 25. Specifically, the work of the LBDC includes drafting bills upon request; advising on the effect of proposed legislation; and researching any subject of proposed legislation.

Under the constitution of the ULC, the members of the ULC are the commissioners appointed by each state and also "***the principal administrative officer of each state legislative reference bureau or other agency charged with the duty of drafting legislation, or an alternate named by the officer***." Constitution, Section 2.02 (italics supplied). Constitution - Uniform Law Commission. Thus, the New York LBDC is entitled to appoint a member to the New York delegation of commissioners to the ULC, in addition to the five provided by Statute and appointed by the Governor. Unfortunately, the LBDC may not be aware of this opportunity, and has not appointed a member to the ULC.

The LBDC, on request of the legislature, has occasion both to be involved with revisions to existing New York laws based on model uniform laws and to identify existing model uniform laws that are relevant to solving a problem requiring New York legislative action. For these reasons, the Committee also urges that the LRC Bill be modified to provide structurally for communication, cooperation and coordination of the LRC with the LBDC as well as CUSL, and for the LBDC to appoint a uniform laws commissioner, so that these three New York commissions work together constructively on matters involving or relating to model uniform laws promulgated by the ULC.

III. CONCLUSION

For the foregoing reasons, the City Bar supports enactment of the proposed Bill to revitalize the LRC if it is modified to specify relevant qualifications, particularly practical legal experience, as a prerequisite for service for the members of the commission; to provide only ***per diem*** or an h***onorarium*** for attendance at LRC meetings, legislative hearings, and meetings with legislators and with the Governor's office; to provide for the LRC to communicate, cooperate and coordinate its activities with the New York CUSL with respect to matters involving laws promulgated by the ULC; and to provide for the LBDC to appoint a member to the ULC and for the LRC to communicate and

cooperate with the LBDC, as well as the CUSL, on matters relating to model uniform laws promulgated by the ULC.

Commercial Law and Uniform State Laws Committee

Council on Judicial Administration

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