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There Oughta Be a Law—A Model Law*

Mary Whisner**

Uniform and model laws are frequently proposed to standardize “what the law is or should be” for specific jurisdictions. These model acts can come from national or international drafting organizations, such as the Uniform Law Commission, or from interest groups or associations that want to promote specific policies. Ms. Whisner provides an overview of the various types of model laws that researchers should know about.

¶1 I have never drafted a statute, but I think it would be hard to do well. You’d want to learn a lot about the problem you want to address, the groups affected by it, and other approaches that have been tried. You’d want to think carefully about definitions, remedies, and administrative mechanisms. And you’d have to keep your eye out for potential ambiguities and hidden loopholes, as well as ways that the legislation could cause damage that you don’t intend. Facing all of these challenges, I would welcome a law that had already been researched, drafted, and reviewed by people who knew what they were doing—a model law.¹ But model laws aren’t just for the convenience of legislators. They also serve the interests of the groups or individuals who draft them. If you are concerned about a problem and think there might be a good legislative solution, then drafting a model law and getting it into the hands of legislators who would advocate for it would be a way to advance your cause.

* © Mary Whisner, 2014. I thank Nancy Unger and Barbara Bintliff for helpful comments on a draft of this piece. A.J. Blechner, Jonathan Germann, Heather Joy, and Sarah Weldon also provided assistance.

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1. Maybe my assumption that models would be welcome is not universally held. One author advises drafters to “start with a draft prepared by someone else when there is good reason to do so, but start from scratch whenever you can.” TOBIAS A. DORSEY, *LEGISLATIVE DRAFTER’S DESKBOOK* 198 (2006). I have not found any book or article advising legislators to look for and use model legislation or offering suggestions on how to review and modify legislation with which they are presented. LAWRENCE E. FILSON & SANDRA L. STROKOFF, *THE LEGISLATIVE DRAFTER’S DESK REFERENCE* 108–14 (2d ed. 2008) has a section headed “Using models,” but it is not about model legislation in the sense I’m using the term; instead, it discusses, for example, using one federal grant program as a model when drafting a new federal grant program. Dorsey, Filson, and Strokoff all gained their drafting experience in the Office of Legislative Council of the U.S. House of Representatives—that is, a place where they have probably seldom encountered model state legislation. Perhaps drafting guides written by people with experience in the state legislatures would discuss model laws.

¶2 A few organizations are noted for their work drafting model legislation. The most visible is the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), founded in 1892.² It has produced hundreds of model laws, many widely adopted in the states.³ The Uniform Law Commission distinguishes between “uniform laws” and “model acts”: a uniform law “seeks to establish the same law on a subject among the various jurisdictions,” while a model act’s “principal purposes can be substantially achieved even if the act is not adopted in its entirety by every state.”⁴ Once uniform laws are approved, Commissioners are obligated to “endeavor to procure consideration by the legislature of the state, unless the commissioners consider the act inappropriate for enactment in their state.”⁵ The paradigmatic example of a uniform law is the Uniform Commercial Code, which smooths business transactions across state lines; parts of it have been adopted in all U.S. jurisdictions.⁶ Another example is the Uniform Child Custody Jurisdiction and Enforcement Act—also adopted throughout the states—which is meant to remove the incentives for parents fighting over custody to shift their kids from state to state to try to work the court system to their advantage.⁷ Not all of the

2. The name “National Conference of Commissioners on Uniform State Laws” is a mouthful. Some people refer to the organization by its initials, NCCUSL, but even “nuh-Kews’ll” doesn’t really roll off the tongue. Several years ago, the commissioners recognized this problem and changed NCCUSL’s constitution to include the alternative name “the Uniform Law Commission.” NAT’L CONFERENCE OF COMM’RS ON UNIF. STATE LAWS, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE HUNDRED AND SIXTEENTH ANNUAL CONFERENCE 168 (2007); NAT’L CONFERENCE OF COMM’RS ON UNIF. STATE LAWS, CONSTITUTION, art. 1 [hereinafter NCCUSL CONST.], <http://uniformlaws.org/Narrative.aspx?title=Constitution> (last visited Nov. 8, 2013).

3. “In its history, the Conference has promulgated well over three hundred uniform or model acts . . .” Nim Razook, *Uniform Private Laws, National Conference of Commissioners for [sic] Uniform State Laws Signaling and Federal Preemption*, 38 AM. BUS. L.J. 41, 45 (2000). Razook observes that it is difficult to come up with a precise number, among other reasons because of uncertainty about whether to count separately each article of a code like the U.C.C. and whether to count revised acts. *Id.* at 45 n.16. He provides a chronological listing of acts through 1999 in an appendix. *Id.* at 82–97. The *Directory of Uniform Acts and Codes Tables—Index* pamphlet that accompanies *Uniform Laws Annotated* lists some acts more than once (e.g., the Supervision of Trustees for Charitable Purposes Act is listed three times: under S and as a subheading under Probate and under Trusts), so counting the laws in the *Directory of Uniform Acts* isn’t a reliable way to find the total. (There are 445 entries, by the way, according to a count by A.J. Blechner, a graduate assistant at the University of Washington.) I counted 130 laws in the organization’s 2012 list of laws currently recommended for adoption. UNIF. LAW COMM’N, GUIDE TO UNIFORM AND MODEL ACTS 2012–2013 (2012) [hereinafter UNIF. LAW COMM’N GUIDE].

4. *Frequently Asked Questions*, UNIFORM LAW COMM’N [hereinafter NCCUSL FAQ], <http://uniformlaws.org/Narrative.aspx?title=Frequently%20Asked%20Questions> (last visited Nov. 8, 2013).

5. *Statement of Policy Establishing Criteria and Procedures for Designation and Consideration of Uniform and Model Acts*, UNIF. LAW COMM’N, <http://www.uniformlaws.org/Narrative.aspx?title=Criteria%20for%20New%20Projects> (last visited Nov. 27, 2013).

6. The U.C.C., a joint project of the Uniform Law Commission and the American Law Institute, has been adopted throughout the United States. For example, articles 3 and 4 (Negotiable Instruments and Bank Deposits and Collections) have been adopted in fifty-two jurisdictions. UNIF. LAW COMM’N GUIDE, *supra* note 3, at 9. The *Guide* counts adoptions in fifty-three jurisdictions: fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. *Id.* at 1. The holdout for articles 3 and 4 is New York, *id.* at 33, and yet New Yorkers seem to be able to conduct business with the rest of us. There must be a story there, but I won’t pursue this particular digression here.

7. See UNIF. CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT § 101 Cmt., 9 U.L.A. 657 (1999). This uniform act has been adopted in fifty-one jurisdictions. UNIF. LAW COMM’N GUIDE, *supra* note 3, at 8. The two jurisdictions that have not adopted it are Massachusetts and Puerto Rico. *Id.* at 33.

uniform laws have been embraced by the states (or the District of Columbia, Puerto Rico, or the Virgin Islands). Here are some of the least popular uniform laws, as of 2012: Uniform Assignment of Rents Act (2005), three adoptions; Uniform Certificate of Title Act (2005, 2006), zero adoptions; Uniform Computer Information Transaction Act (UCITA) (1999, 2000, 2002), two adoptions; Uniform Estate Tax Apportionment Act (2003), six adoptions; Uniform Guardianship and Protective Proceedings Act (1997), four adoptions.⁸ So having “uniform” in its name does not indicate that a law has been uniformly adopted. Several model laws have not been adopted at all, despite having been around for a decade or more.⁹

¶3 The Uniform Law Commission can fairly be characterized as mainstream, part of the establishment. It has always had close ties to the American Bar Association.¹⁰ All of the commissioners are attorneys, in most states appointed by governors.¹¹ They include judges, law professors, lawyers in private practice, and government lawyers.¹² An index entry in 1965 was “National Conference of Commissioners on Uniform State Laws, members of not revolutionaries.”¹³ While still not revolutionaries, the commissioners today are working on new issues. Recent model legislation includes the Uniform Asset-Freezing Orders Act (2012),¹⁴ the Uniform Deployed Parents Custody and Visitation Act (2012),¹⁵ the Uniform Electronic Legal Material Act (2011),¹⁶ and the Uniform Prevention of and Remedies for Human Trafficking Act (2013).¹⁷

8. UNIF. LAW COMM’N GUIDE, *supra* note 3, at 7, 11, 15, 16. (I didn’t list any of the laws proposed in the past couple of years because the legislatures wouldn’t have had time to adopt them yet.)

9. *E.g.*, Model Apportionment of Tort Responsibility Act (2002, 2003), Model Rules of Criminal Procedure (1974, 1987), Model Employment Termination Act (1991), Model Nonjudicial Foreclosure Act (2002), Model Periodic Payment of Judgments Act (1990), Model Punitive Damages Act (1996), Model Surface Use and Mineral Development Accommodation Act (1990), Model Transfer of Litigation Act (1991). *Id.* at 6, 12, 14, 19, 20, 23, 25.

10. *See* WALTER P. ARMSTRONG, JR., A CENTURY OF SERVICE: A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 11 (1991) (founding meeting of NCCUSL held in conjunction with ABA meeting); NCCUSL CONST., *supra* note 2, art. 7 (“The President shall also cause an annual written report to be made to the House of Delegates of the American Bar Association upon the work and recommendations of the Conference during the preceding year. The President shall file for the records of the American Bar Association copies of Uniform Acts finally approved and recommended by the Conference for enactment by the several States.”).

11. NCCUSL FAQ, *supra* note 4.

12. To get a quick sample, I chose a recent law (the Uniform Debt Management Services Act (2011)), and searched for information about the members of the drafting committee. The eleven men, from seven states and the District of Columbia, included a bankruptcy court judge (who chaired the committee), two law professors (one was the reporter for the project), six very experienced lawyers (admitted dates ranged from 1943 to 1968), a government attorney, and the president of the board of the National Consumer Law Center. I think this committee was unusual (for this century) in having only men, but I would guess that it was typical in having a judge, several lawyers in private practice, and a couple of academics.

13. William E. Hogan, *The NCCUSL: With a Name Like That It Must Be Useful*, CORNELL L.F., June 1979, at 2, 4 (quoting 2 GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY 1423 (1965)).

14. UNIF. ASSET-FREEZING ORDERS ACT, 12 U.L.A. 1 (Supp. 2013).

15. UNIF. DEPLOYED PARENTS CUSTODY AND VISITATION ACT, 9 pt. 1B U.L.A. 1 (Supp. 2013).

16. UNIF. ELECTRONIC LEGAL MATERIAL ACT, 7A pt. 1 U.L.A. 223 (Supp. 2013).

17. UNIF. PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING ACT, <http://uniformlaws.org/Act.aspx?title=Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking> (last visited Nov. 8, 2013).

¶4 The Uniform Law Commission is also in the mainstream of legal research. That is, its proposed laws, along with commentary and supporting material, are easy to find. *Uniform Laws Annotated* is a standard source in print and on Westlaw. It looks and feels like the annotated statutory codes we're used to. It enables researchers to find case law from different jurisdictions interpreting the uniform laws and model acts promulgated by the Uniform Law Commission.¹⁸ Researchers may also follow the work of the commission through its published annual proceedings.¹⁹

¶5 The American Law Institute (ALI), founded in 1923, is likewise a part of the legal establishment. Its members are "eminent judges, lawyers, and law professors from all areas of the United States and from many foreign countries, selected on the basis of professional achievement and demonstrated interest in improving the law."²⁰ Perhaps best known for its restatements, the ALI also produces model legislation. Projects have included

- Code of Criminal Procedure (1924–30)
- Complex Litigation: Statutory Recommendations and Analysis (1984–94)
- Contribution Among Tortfeasors Act (with Uniform Law Commission) (1936–39) (later: Uniform Contribution Among Tortfeasors Act)
- Law of Airflight (with Uniform Law Commission) (1937) (later: Uniform Law of Airflight)
- Law of Property Act (with Uniform Law Commission) (1935–38) (later: Uniform Property Act)
- Model Code of Evidence (1939–42)
- Model Code of Pre-Arrest Procedure (1963–75)
- Model Land Development Code (1960, 1965–76)
- Model Penal Code (1950–62)
- Model Penal Code: Sentencing (1999–)
- Model Penal Code: Sexual Assault and Related Offenses (2012–)
- Model Penal Code Commentaries (1976–85)
- Uniform Commercial Code (with Uniform Law Commission) (1942–52)

18. *Uniform Laws Annotated* was published by Edward Thompson Company beginning in 1922 and by West Publishing and its successors since 1969. ARMSTRONG, *supra* note 9, at 138. Researchers who think of uniform laws as *laws* might be surprised to find the resource listed under secondary sources in Westlaw Classic and WestlawNext—but of course the uniform laws and model acts are not laws at all until they are adopted by a legislature.

19. The title since 1920 has been *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the . . . Annual Conference*. HeinOnline offers a library with material from the National Conference of Commissioners of Uniform State Laws:

This provides access to the full text of all Model Acts drafted, recommended or endorsed by the Conference. It includes the NCCUSL—Archive Publications, Handbook of the NCCUSL and Proceedings of the Annual Conference Meeting, 1st–119th Conference (1891–2010) are all available transcripts of the Proceedings of each Annual Meeting, as well as the transcripts of the discussions in the Committee of the whole of each Uniform and Model Act. Also included are the approved 'successive drafts' of each Uniform and Model Act.

List of Libraries, HEINONLINE, <http://home.heinonline.org/content/list-of-libraries/> (last visited Nov. 8, 2013).

20. *Membership Overview*, AM. LAW INST., <http://www.ali.org/index.cfm?fuseaction=membership.membership> (last visited Nov. 8, 2013).

- Youth Correction Authority Act/Program (1938–40, 1944–51)
- Youth Court Act (1938–41)²¹

¶6 The ALI projects done in conjunction with the Uniform Law Commission are easy to research: the text, notes about adoption, and annotations are in *Uniform Laws Annotated*. Others are separately published. For example, the Model Land Development Code was published in 1975, with the full title *A Model Land Development Code: Proposed Official Draft, Complete Text and Commentary: Submitted by the Council to the Members of the American Law Institute for Discussion at the Fifty-Second Annual Meeting on May 20, 21, 22, and 23, 1975*. To my knowledge, there isn't a single source (like *Uniform Laws Annotated*) that lists adopting jurisdictions and judicial interpretations for these individual model laws. Instead, we can learn about the model laws' influence through secondary sources. For instance, a treatise on land use informs me that the Model Land Development Code has had its greatest effect in influencing states' regional growth controls.²² ALI's drafts and the proceedings of its governing bodies (the council and the membership) are widely available to researchers, in print and online.²³

¶7 The ALI's approach is cautious and measured. According to its own style manual, "it has avoided 'novel social legislation.' Codifications such as the Uniform Commercial Code, the Model Penal Code, and the Federal Securities Code have built upon, rationalized, and synthesized previous legislation in these areas rather than proposing legislation in fields where it had not previously existed."²⁴ A few years ago, the ALI addressed the hot-button issue of the death penalty, but it did so in its usual scholarly, process-filled manner. You can read the resolutions, transcripts of discussions, and background papers in a 114-page report.²⁵ The result was a motion passed by the membership and approved by the ALI Council: "For reasons stated in Part V of the Council's report to the membership, the Institute withdraws Section 210.6 of the Model Penal Code in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment."²⁶ The resolution only takes capital punishment out of the Model Penal Code, without, say, denouncing it as immoral or calling for states

21. AM. LAW INST., PAST AND PRESENT ALI PROJECTS, available at http://www.ali.org/doc/past_present_ALIprojects.pdf, (last visited Nov. 8, 2013).

22. JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW § 3.24 (3d ed. 2013).

23. For example, ALI's annual proceedings are available on Westlaw, and the Model Penal Code is on Bloomberg Law, LexisNexis, and Westlaw. HeinOnline's American Law Institute Library "[c]ontains full runs of the Institute's Annual Reports, Proceedings, Annual Meeting Speeches, and the Institute's newsletter, *The ALI Reporter*. It also includes the Restatements of the Law, Uniform Commercial Code, Model Penal Code, ALI-ABA Periodicals, and the Statement of Essential Human Rights (a pioneering ALI project of the mid-1940s)." HEINONLINE, *supra* note 19.

24. AM. LAW INST., CAPTURING THE VOICE OF THE AMERICAN LAW INSTITUTE: A HANDBOOK FOR ALI REPORTERS AND THOSE WHO REVIEW THEIR WORK 11–12 (2005).

25. AM. LAW INST., REPORT OF THE COUNCIL TO THE MEMBERSHIP OF THE AMERICAN LAW INSTITUTE ON THE MATTER OF THE DEATH PENALTY (2009).

26. Roberta Cooper Ramo, *President's Letter: Capital Punishment and Other Matters*, ALI REP., Fall 2009, at 1.

to abandon it.²⁷ It could be that such a measured position will be more influential than something more heated.²⁸

¶8 The American Bar Association (ABA) also proposes model laws. The Business Law Section developed the Model Business Corporation Act and the Model Nonprofit Corporation Act, which are published as separate works—and rather hefty works, at that.²⁹ Other laws from the ABA are harder to find and research. For example, the ABA approved the Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings in August 2011,³⁰ but the only copy of the act I found on the ABA's web site still cautions: “This Act has not been approved by the ABA House of Delegates, nor by the Section of Litigation and should not be construed as ABA Policy.”³¹ The ABA's Model Act Governing Assisted Reproductive Technology, approved in 2008, was published in the *Family Law Quarterly*.³² The ABA has other model laws, but I have not found a list of all of them.

¶9 The Council of State Governments does not draft or advocate for model laws of its own. Instead, its Committee on Suggested State Legislation reviews legislation for inclusion in an annual publication and on a web site that is updated several times a year.³³ Among other things, the committee considers whether the

27. Different possibilities were debated:

Three possible alternatives were at issue at today's meeting: (1) Withdraw Section 210.6 without comment—the Council's position; (2) Withdraw Section 210.6 with a comment from the Steiker Report and the ultimate phrase: ‘the Institute calls for the rejection of capital punishment as a penal option’—the Leahy amendment; and (3) A compromise—the two proposals—Withdraw Section 210.6 with a comment, but without the ultimate phrase—the Garner amendment to the Leahy amendment.”

Mark Stichel, *The Matter of the Death Penalty*, 86TH ANNUAL MEETING, ANNUAL MEETING BLOG (May 19, 2009, 7:18 PM), http://www.ali.org/index.cfm?fuseaction=meetings.annual_blog&startrow=21.

“In essence, the body split the baby in half: it . . . rejected an explicit call for the abolition of capital punishment, but it also adopted the language from our report recognizing ‘current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment.’” Carol S. Steiker & Jordan M. Steiker, *Special Feature: No More Tinkering: The American Law Institute and the Death Penalty Provisions of the Model Penal Code*, 89 TEX. L. REV. 353, 360 (2010).

28. For discussion of the likely influence of the ALI resolution, see Steiker & Steiker, *supra* note 27, at 364–65.

29. NONPROFIT ORGS. COMM., AM. BAR ASS'N, MODEL NONPROFIT CORPORATION ACT (3d ed. 2009) (700 pages); CORP. LAWS COMM., AM. BAR ASS'N, MODEL BUSINESS CORPORATION ACT (annotated 4th ed. 2008) (4 volumes); CORP. LAWS COMM., AM. BAR ASS'N, MODEL BUSINESS CORPORATION ACT: OFFICIAL TEXT WITH OFFICIAL COMMENTS AND STATUTORY CROSS-REFERENCES REVISED THROUGH DECEMBER 2010 (2011) (750 pages).

30. Andrea Khoury, *ABA Adopts Model Act on Child Representation in Abuse and Neglect Cases*, 30 CHILD L. PRAC. 106 (2011).

31. ABA MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS, available at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/model_act_final.authcheckdam.pdf (last visited Nov. 8, 2013). “The Act incorporates some language from provisions of the NCCUSL Representation of Children in Abuse, Neglect and Custody Proceedings Act.” *Id.* at 1 n.1.

32. *American Bar Association Model Act Governing Assisted Reproductive Technology* (February 2008), 42 FAM. L.Q. 171 (2008).

33. COMM. ON SUGGESTED STATE LEGISLATION, COUNCIL OF STATE GOV'TS, SUGGESTED STATE LEGISLATION 6 (2013), available at <http://www.csg.org/programs/policyprograms/SSL.aspx>.

issue addressed by the model law is significant nationally or regionally and sufficiently complex “that a bill drafter would benefit from having a comprehensive draft available.”³⁴ A recent volume includes laws on autonomous vehicles (Florida), brew pubs (Illinois), adoption agencies (allowing religious organizations to refuse placement if it would violate its religious principles) (Virginia), fracking (Texas), electronic communications by jurors (California), and sexting and cyberbullying (Nevada).³⁵

¶10 The Uniform Law Commission, the ALI, the ABA, and the Council of State Governments all have wide-reaching interests: virtually anything that can be addressed by legislation. Organizations with more focused substantive interests often propose model laws too. For instance, the Animal Legal Defense Fund offers a Model Animal Protection Laws Collection.³⁶ The National Council of Examiners for Engineering and Surveying recently revised its model law for engineering and surveying licensing boards.³⁷ The National Alliance for Public Charter Schools publishes a model law³⁸ and also has an interactive tool for comparing existing state laws with the provisions of the model.³⁹ AARP’s web site has model bills on payday loans,⁴⁰ check cashing,⁴¹ homeowner associations,⁴² and accessory dwelling units.⁴³ And the Specialty Equipment Market Association, a trade association for companies and individuals that “make, buy, sell and use all kinds of specialty parts and accessories to make vehicles more attractive, more unique, more convenient, faster, safer, more fun and even like new again,”⁴⁴ offers four model bills (for state or local government) related to custom automobiles.⁴⁵

34. *Id.*

35. *Id.* at 14, 19, 21, 43, 57, 94.

36. *Model Animal Protection Laws Collection*, ANIMAL LEGAL DEFENSE FUND, <http://aldf.org/resources/advocating-for-animals/model-animal-protection-laws-collection/> (last visited Nov. 8, 2013).

37. NAT’L COUNCIL OF EXAMINERS FOR ENG’G & SURVEYING, MODEL LAW (2013), available at <http://cdn3.ncees.co/wp-content/uploads/2012/11/Model-Law-2013.pdf>.

38. NAT’L ALLIANCE FOR PUB. CHARTER SCHS., A NEW MODEL LAW FOR SUPPORTING THE GROWTH OF HIGH-QUALITY PUBLIC CHARTER SCHOOLS 25 (2009), available at http://www.publiccharters.org/data/files/Publication_docs/ModelLaw_P7-wCVR_20110402T222341.pdf.

39. *Measuring Up to the Model: A Tool for Comparing State Charter School Laws*, NAT’L ALLIANCE FOR PUB. CHARTER SCHS., <http://www.publiccharters.org/law/> (last visited Nov. 8, 2013).

40. ELIZABETH RENUART, PAYDAY LOANS: A MODEL STATE STATUTE (2000), available at http://assets.aarp.org/rgcenter/consume/d16954_payday.pdf.

41. SANDRA B. ESKIN, CHECK CASHING: A MODEL STATE STATUTE (1999), available at http://assets.aarp.org/rgcenter/consume/d16910_check_cash.pdf.

42. DAVID A. KAHNE, A BILL OF RIGHTS FOR HOMEOWNERS IN ASSOCIATIONS: BASIC PRINCIPLES OF CONSUMER PROTECTION AND SAMPLE MODEL STATUTE (2006), available at http://assets.aarp.org/rgcenter/consume/2006_15_homeowner.pdf.

43. RODNEY L. COBB & SCOTT DVORAK, ACCESSORY DWELLING UNITS MODEL STATE ACT AND LOCAL ORDINANCE (2000), available at http://assets.aarp.org/rgcenter/consume/d17158_dwell.pdf.

44. *About SEMA*, SPECIALTY EQUIP. MKTG. ASS’N, <http://www.semasan.com/page.asp?content=about&g=semaga> (last visited Nov. 8, 2013).

45. *SEMA Model Bills*, SPECIALTY EQUIP. MKTG. ASS’N, http://www.semasan.com/page.asp?content=model_leg&g=semaga (last visited Dec. 22, 2013). The Street Rod/Custom Vehicle SEMA-Model Bill has been enacted in twenty-two states. *Id.*

¶11 Doctors also take an interest in legislation. The American Medical Association (AMA) has model laws on

- Physician-led health-care teams⁴⁶
- Corporate practice of medicine⁴⁷
- Obesity (includes Competitive School Food and Beverage Act, Healthy Schools Act, and Menu Labeling Act)⁴⁸
- The patient-physician relationship⁴⁹
- Public safety (includes Prohibit the Shackling of Pregnant Prisoners Act and Prohibit Minors Access to Indoor Tanning Act)⁵⁰
- Truth in advertising (Health Care Professional Transparency Act)⁵¹

I have not seen any of these model bills, though, because they may only be viewed by AMA members.⁵² I can only speculate about why the organization would not want everyone to see its proposals. Perhaps leaders are concerned that others would modify the bills (to physicians' disadvantage) and then present them to legislators as AMA bills. Or perhaps they want to get them to legislators before potential opponents can create rival bills.

¶12 You don't have to have an organization behind you to propose a model law. The pages of law reviews include model laws drafted by lawyers,⁵³ academics,⁵⁴ and

46. See *Physician-Led Team Based Care*, AM. MED. ASS'N, <http://ama-assn.org/ama/pub/advocacy/state-advocacy-arc/state-advocacy-campaigns/physician-team-based-care.page?> (last visited Nov. 8, 2013).

47. See *Protecting the Business of Medicine*, AM. MED. ASS'N, <http://www.ama-assn.org/ama/pub/advocacy/state-advocacy-arc/state-advocacy-campaigns/protecting-physicians-business-interests.page?> (last visited Nov. 8, 2013).

48. See *Public Health Improvement*, AM. MED. ASS'N, <http://www.ama-assn.org/ama/pub/advocacy/state-advocacy-arc/state-advocacy-campaigns/public-health-improvement.page?> (last visited Nov. 8, 2013).

49. See *id.*

50. See *id.*

51. See *Truth in Advertising*, AM. MED. ASS'N, <http://www.ama-assn.org/ama/pub/advocacy/state-advocacy-arc/state-advocacy-campaigns/truth-in-advertising.page?> (last visited Nov. 8, 2013).

52. There was an option to create an account, and I did, but my nonmember account did not allow me to access the legislative advocacy resources.

53. See, e.g., Frank L. McGuane, Jr., *Model Marital Arbitration Act: A Proposal*, 14 J. AM. ACAD. MATRIMONIAL LAW. 393 (1997).

54. See, e.g., JENNIFER C. PIZER & SHEILA JAMES KUEHL, SAME-SEX COUPLES AND MARRIAGE: MODEL LEGISLATION FOR ALLOWING SAME-SEX COUPLES TO MARRY OR ALL COUPLES TO FORM A CIVIL UNION (2012), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Pizer-Kuehl-Model-Marriage-Report.pdf> (Kuehl was a professor at the time of writing, but had been a legislator for many years before that); Robert Benson, *The Seventh Generation Act: A Model Law Allowing Law Suits for Damage to Natural Resources Needed to Sustain Future Generations*, 54 GUILD PRAC. 185 (1997); Bernard V. Keenan, *Condominium Conversion of Rental Units: A Proposal for State Regulation and a Model Act*, 20 U. MICH. J.L. REFORM 639 (1987); Thomas L. McGovern III, *Employee Drug-Testing Legislation: Redrawing the Battlelines in the War on Drugs*, 39 STAN. L. REV. 1453 (1987) (includes model law for California); J.B. Ruhl et al., *Proposal for a Model State Watershed Management Act*, 33 ENVTL. L. 929 (2003) (authors include professors of law, geography, agribusiness economics, and anthropology, along with the director of a water quality laboratory).

law students.⁵⁵ There was even a model law crafted by students in an eighth-grade social studies class.⁵⁶

¶13 Although I was familiar with the work of the Uniform Law Commission and the ALI—and I knew that professional associations, public interest groups, and individual scholars propose model laws—until quite recently, I was unaware of another major player in the field. The American Legislative Exchange Council (ALEC) was founded in 1973 as a “nonpartisan membership association for conservative state lawmakers who shared a common belief in limited government, free markets, federalism, and individual liberty.”⁵⁷ ALEC’s task forces “actively solicit more input from private sector members, seizing upon ALEC’s long-time philosophy that the private sector should be an ally rather than an adversary in developing sound public policy.”⁵⁸ The task forces have produced hundreds of model bills on a wide range of topics.⁵⁹ According to ALEC, “Each year, close to 1,000 bills, based at least in part on ALEC Model Legislation, are introduced in the states. Of these, an average of 20 percent become law.”⁶⁰ The Center for Media and Democracy counted 466 bills introduced in 2013—at least one in each state—of which 84 passed.⁶¹

¶14 ALEC has become controversial for reasons of both substance and procedure. Some critics disagree with the legislative solutions ALEC favors, such as “stand your ground” laws, “right to work” laws, and tort reform proposals.⁶² And much criticism is aimed at the way ALEC works. Although ALEC says that it is bipartisan, only a few of the thousand or so legislators who belong are Democrats.⁶³ Many large corporations are members and pay handsomely for the access that membership gives them to the legislators.⁶⁴ ALEC did not make its model laws

55. See, e.g., Walter Hill Levie III, Comment, *Buckling Down to Buckle Up: A Jurisdictional Survey of the Admissibility of Seat Belt Evidence and the Need for a Model Seat Belt Act*, 41 CUMB. L. REV. 333 (2011); Tracie M. Kester, Note, *Uniform Acts—Can the Dead Hand Control the Dead Body? The Case for a Uniform Bodily Remains Law*, 29 W. NEW ENG. L. REV. 571 (2007); Emily Robertson, Note, *Finding a Compromise in the Debate over Genetically Modified Food: An Introduction to a Model State Consumer Right-to-Know Act*, 9 B.U. J. SCI. & TECH. L. 156 (2003); Michael J. Saks et al., *Model Prevention and Remedy of Erroneous Convictions Act*, 33 ARIZ. ST. L.J. 669 (2001) (act drafted by law students in a yearlong seminar); Eric T. Secoy, Note, *Providing Access to Voter Registration: A Model State Statute*, 24 HARV. J. ON LEGIS. 479 (1987); Jeffrey T. Wise, *Embryo Banking as a Novel Option for the Infertile? Law, Policy, and a Proposed Model Act*, 8 HOUS. J. HEALTH L. & POL’Y 163 (2007).

56. See James Maguire, “Everyone Does It to Everyone”: *An Epidemic of Bullying and the Legislation of Transgression in American Schools*, 16 NEW CRIM. L. REV. 413, 428–29 (2013).

57. *History*, AM. LEGIS. EXCH. COUNCIL, <http://www.alec.org/about-alec/history/> (last visited Nov. 8, 2013).

58. *Id.*

59. *Id.*

60. *Id.*

61. CTR. FOR MEDIA & DEMOCRACY, *ALEC AT 40: TURNING BACK THE CLOCK ON PROSPERITY AND PROGRESS* (2013), available at http://www.sourcewatch.org/images/8/88/ALEC_report_2013.pdf.

62. *Id.* See also Ellen Dannin, *Privatizing Government Services in the Era of ALEC and the Great Recession*, 43 U. TOL. L. REV. 503 (2011) (discussing ALEC bills on education and public-sector collective bargaining); Andrew N. Ireland Moore, Comment, *Caging Animal Advocates’ Political Freedoms: The Unconstitutionality of the Animal and Ecological Terrorism Act*, 11 ANIMAL L. 255 (2005).

63. *United States of ALEC—a Follow-Up*, MOYERS & CO. (June 21, 2013), <http://billmoyers.com/episode/full-show-united-states-of-alec-a-follow-up> (transcript available at <http://billmoyers.com/wp-content/themes/billmoyers/transcript-print.php?post=33823>).

64. Dues for legislators are \$100 for two years. *Membership Application*, AM. LEGIS. EXCH. COUNCIL, available at <http://www.alec.org/wp-content/uploads/Legislative-Membership.pdf> (last visited Nov. 8, 2013). Basic dues for a corporation start at \$7000; private members pay extra for membership on

publicly available until the Center for Media and Democracy obtained and posted more than 800 bills and resolutions.⁶⁵ Now ALEC's own web site has a searchable list of model measures.⁶⁶ But ALEC still wants to protect many of its communications: it stamps documents with a disclaimer stating that documents sent to legislators are not subject to public records laws.⁶⁷ Some critics have urged the IRS to withdraw ALEC's tax-exempt status, alleging that ALEC's activities include lobbying.⁶⁸ Defenders compare ALEC to the National Conference of State Legislatures, which takes donations from large corporations.⁶⁹

¶15 There are many other model and uniform laws (and creators of model legislation) that I haven't had a chance to explore, including the *Uniform Building Code*⁷⁰ and the *Manual on Uniform Traffic Control Devices*.⁷¹ Did you know that the United States Department of Commerce created the widely adopted Standard State Zoning Enabling Act in the 1920s?⁷² And there are international models too—for instance, the UNCTAD Model Law on Cross-Border Insolvency.⁷³ So I can't pretend to have covered the field. But I hope I've offered a helpful survey of the model laws and some of the major organizations that draft and promote them.

task forces. *Private Sector Membership*, AM. LEGIS. EXCH. COUNCIL, <http://www.alec.org/membership/private-sector-membership/> (last visited Nov. 8, 2013). Under pressure from civil rights groups and others, some corporations have withdrawn from ALEC since 2011. See Editorial, *Exit ALEC*, NATION, May 14, 2012, at 3.

65. *Welcome to the Center for Media and Democracy's ALECEXPOSED.ORG!*, CTR. FOR MEDIA & DEMOCRACY, http://www.alecexposed.org/wiki/About_ALEC_Exposed (last visited Nov. 8, 2013).

66. *Model Legislation* (2013), AM. LEGIS. EXCH. COUNCIL, <http://www.alec.org/model-legislation/>.

67. See Steven Verburg, *J.B. Van Hollen Defends Senator's Claim of Immunity from Lawsuits*, WISC. ST. J. (Sept. 18, 2013, 5:30 AM), http://host.madison.com/news/local/govt-and-politics/j-b-van-hollen-defends-senator-s-claim-of-immunity/article_82d811c8-72e5-585b-bd50-86659069edb5.html.

68. See, e.g., Allison Boldt, *Rhetoric vs. Reality: ALEC's Disguise as a Nonprofit Despite Its Extensive Lobbying*, 34 HAMLIN J. PUB. L. & POL'Y 35 (2012); Editorial, *Partisanship Disguised as Charity*, N.Y. TIMES, July 12, 2012, at A22; Diane Freda, *ALEC Wisconsin State Filings Contradict Form 990, Ohio Pastors Say*, DAILY TAX REP., Oct. 26, 2012, at G-3; Liz White, *Common Cause Files IRS Complaint Alleging Nonprofit Violated Exempt Status*, DAILY TAX REP., Apr. 24, 2012, at G-3.

69. See, e.g., Steven Greenhut, *Attacks on ALEC Hypocritical, Unfair*, HUMAN EVENTS, Apr. 30, 2012, at 20.

70. Apparently the *Uniform Building Code*, published for years by the International Conference of Building Officials, has been superseded by the *International Building Code*, published by the International Code Council. See *About ICC*, INT'L CODE COUNCIL, <http://www.iccsafe.org/AboutICC/Pages/default.aspx> (last visited Nov. 8, 2013). Even mentioning something that I *don't* want to discuss starts me down a path.

71. FED. HIGHWAY ADMIN., U.S. DEP'T OF TRANSP., MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (2009 with 2012 revisions), available at http://mutcd.fhwa.dot.gov/kno_2009r1r2.htm. For some roadway trivia, including the years and locations of the first white stripe on a road and the first three-color traffic light, see *The Evolution of MUCTD*, FED. HIGHWAY ADMIN., U.S. DEP'T OF TRANSP., <http://mutcd.fhwa.dot.gov/kno-history.htm> (last modified Oct. 21, 2013).

72. See STUART MECK & KENNETH PEARLMAN, OHIO PLANNING AND ZONING LAW § 3:3 (2013).

73. U.N. Comm'n on Int'l Trade Law, Model Law on Cross-Border Insolvency with Guide to Enactment (1997), U.N. Sales No. E.99.V.3. See Jay Lawrence Westbrook, *An Empirical Study of the Implementation in the United States of the Model Law on Cross Border Insolvency*, 87 AM. BANKR. L.J. 247 (2013) (discussing the model law).