

**REPORT OF THE
VIRGINIA COMMISSIONERS TO
THE NATIONAL CONFERENCE
OF COMMISSIONERS ON**

Uniform State Laws

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
RICHMOND
1986**

VIRGINIA COMMISSIONERS

Carlyle C. Ring, Jr.
Brockenbrough Lamb, Jr.
H. Lane Kneedler, III
Stephen G. Johnakin
John B. Boatwright, Jr.



ASSOCIATE MEMBERS

John A. Banks, Jr.
Mary P. Devine

**Report of the
Virginia Commissioners to the
National Conference of Commissioners**

**on Uniform State Laws
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
July 1, 1984 - June 30, 1985**

TO: Honorable Charles S. Robb, Governor of Virginia

and

The General Assembly of Virginia

In the 1985 General Assembly two Uniform Acts were adopted – the Uniform Revised Limited Partnership Act and the Uniform Premarital Agreement Act. In 1984, the Uniform Unclaimed Property Act and Article 8 revisions to the Uniform Commercial Code were enacted. In 1983, Virginia adopted the Uniform Audio-Visual Deposition Act, and in 1982, the Uniform Disposition of Community Property Rights at Death Act and the ULC Model Real Estate Cooperative Act.

Virginia has now adopted 35 Uniform Acts on the “active list,” including the Uniform Commercial Code.

ACTIVITIES OF THE VIRGINIA COMMISSIONER

Virginia Commissioner Carlyle C. Ring Jr. was President of the Conference for a two-year term which ended in August 1985. Commissioner Ring was the first Virginian to hold the office of President in the 94-year history of the National Conference.

The Virginia Commissioners have served on the following committees during the past year:

Brockenbrough Lamb Jr. - Chairman, Standby Committee on Uniform Limited Partnership Act; Member, Standby Committee on Uniform Transfers to Minors Act.

H. Lane Kneeder III - Member, Drafting Committee on Criminal Records.

Stephen G. Johnakin - Member, Drafting Committee on Business Opportunities Act; Member, Standing Legislative Committee and Legislative Council for that Committee.

Carlyle C. Ring Jr. - President of the Conference, Ex-Officio member of each drafting and administrative committee; Member, Drafting Committee on Uniform Payments Code (Amendments to U.C.C., Articles II and VI); Member, A.B.A. House of Delegates representing the Conference.

REPORT OF THE PROCEEDINGS OF THE

ANNUAL CONFERENCE IN KEYSTONE, COLORADO

The Annual Conference was held in Keystone, Colorado, from July 27, 1984, to August 3, 1984. Commissioners Lamb, Ring, Kneeder and Johnakin and Associate Commissioner Mary P. Devine attended.

The Commissioners from the various states include practicing attorneys, law professors, state

legislators, and state and federal judges. All Commissioners serve without compensation with reimbursement of their expenses only. The process by which Uniform Acts are promulgated is thorough, involving frequent meetings of the Drafting Committee, oversight by the Review Committee, line-by-line consideration by the entire Conference at least twice, a vote by the states and consideration by the A.B.A. House of Delegates.

The Annual Conference in Keystone adopted the following Uniform Acts for consideration by the states:

Model Defense of Insanity Act

Uniform Statutory Wills Act

Uniform Fraudulent Transfer Act

In addition, the Conference considered on first or partial reading the Revised Uniform Securities Act, Health-Care Information Act, Rights of the Terminally Ill Act, and Personal Property Leasing Act.

During 1984-1985 the following Committees met to present Acts for first reading in 1985 or 1986:

Business Opportunities Act

Criminal Records Act

Dormant Mineral Estates Act

Rule Against Perpetuities Act

Revised Uniform Evidence Act

Revised Uniform Rules of Criminal Procedure Act

Amendments to Uniform Trade Secrets Act

Uniform Land Security Interest Act

Summaries of the Acts promulgated at the 1984 Conference are attached.

RECOMMENDATIONS FOR ENACTMENT

The Virginia Commissioners recommended the following Uniform and Model Acts for consideration by the General Assembly:

Uniform Fraudulent Transfer Act

Uniform Conflict of Laws-Limitation Act

Uniform Transfers to Minors Act

Uniform Enforcement of Foreign Judgments Act

Uniform Common Interest Ownership Act*

Uniform Conservation Easement Act

Uniform Health-Care Information Act

Uniform Extradition and Rendition Act

Uniform Marital Property Act*

Uniform Law on Notarial Acts

Uniform Trade Secrets Act

Uniform Statutory Wills Act

Model Health Care Consent Act

Model Defense of Insanity Act*

Uniform Probate Code*

Uniform Arbitration Act

The Virginia Commissioners especially recommend the adoption of the Uniform Transfers to Minors Act, Uniform Trade Secrets Act and Uniform Fraudulent Transfer Act.

The Uniform Transfers to Minors Act replaces the widely enacted Uniform Gifts to Minors Act. The new Act was adopted in thirteen states in 1985. It extends custodial accounts for minors, which were previously limited to holding securities, to include other property transfers. The administrative provisions of the Act are also substantially improved.

The Uniform Fraudulent Transfer Act conforms the earlier Act to the present Bankruptcy Code provisions and decisional law, and resolves substantial legal issues that provide better protection for creditors from fraudulent transfers.

With the commitment made by the State to attract new high technology industry, adoption of the Uniform Trade Secrets Act is vital. The Act provides protection for proprietary data, which is essential to high technology firms.

STATE APPROPRIATIONS

Virginia's contribution to the operations of the Conference is relatively small. Virginia contributed \$12,000 to the Conference in 1985 and paid travel expenses for the Virginia Commissioners to the Annual Conference. The contribution for each state is based upon population. In 1986 the contribution will be \$12,400.

The Commissioners from the various states all participate without any compensation for their time and effort. The Conference estimates that each Commissioner devotes at least 200 hours a year to the Conference work, including work on the various drafting committees and attendance at the Annual Meeting. The cumulative value of this donated time in the development of Uniform and Model Acts averages about \$6,000,000 a year on a conservative basis. The total costs to the states for the effort was a little over \$600,000 in 1984-85. The largest contribution is over \$40,000 and the smallest is \$3,600. Since in many areas of law to which the Conference devotes itself uniformity is either required or highly desirable, the work product of the Conference obviously guarantees a very substantial return on each dollar invested by the various states. The average number of Uniform Acts on the "active list" adopted in all states is 32. As previously reported, Virginia has adopted 35 Uniform Acts on the "active list."

The work of the Conference also has been useful because it strengthens the state and federal system of government. In many areas of the law, either the states must solve the problem through cooperative action, or the issues are likely to be preempted by Congress. The Conference is one of the few institutions that pursue solutions to problems on a cooperative basis by the states. Without the Conference, more legislative activities would undoubtedly shift from the state capitols to Washington.

The full-time staff of the Conference is comprised of six people, located in Chicago. The reporters of the Drafting Committees either contribute their time or receive a very modest honorarium (usually \$1,000 for two or more years' effort).

NEW DRAFTING COMMITTEES

During this year, the Conference has appointed new drafting committees which will be reporting to the Conference next summer and at future meetings. These drafting committees include:

Revised Articles 3 and 4 to the Uniform Commercial

Code (payment systems)

Putative Fathers Act

Status of Children of the New Biology

Revisions to Uniform Anatomical Gift Act

REQUEST FOR TOPICS APPROPRIATE FOR

CONSIDERATION AS UNIFORM ACTS

The Conference welcomes suggestions from the General Assembly, the Governor, executive agencies, and the Attorney General as to topics that might be appropriately considered by the Conference where there exists a need for uniformity in the law among the various states, and it can be anticipated that a majority of the states would probably adopt such an act.

Respectfully submitted,
Carlyle C. Ring Jr.
Brockenbrough Lamb Jr.
H. Lane Kneedler III
Stephen G. Johnakin
John B. Boatright Jr.
Mary P. Devine (Associate Commissioner)

October 30, 1985

*Commissioner Johnakin does not believe that adoption of Uniform Common Interest Ownership Act or the Model Defense of Insanity Act is necessary or desirable at this time.

*Commissioners Johnakin and Lamb have reservations concerning the applicability of the Uniform Marital Property Act.

*Commissioners Lamb and Boatright believe that current Virginia law, with minor amendments, is superior to the Uniform Probate Code.

SHORT SUMMARIES, 1984 ACTS

UNIFORM FRAUDULENT TRANSFER ACT

The Uniform Fraudulent Transfer Act substantially revises the Uniform Fraudulent Conveyance Act of 1918. It creates a class of transfers of property by debtors that is fraudulent to creditors. This class of transfers would, generally, have the effect of depriving creditors of assets that would, otherwise, be available to satisfy debts when the debtor becomes insolvent or is about to become insolvent. Transfers that are intended to defraud creditors, that are made "without receiving reasonably equivalent value" to make the debtor "judgment proof," or that are made "without receiving reasonably equivalent value" when the debtor is insolvent are examples of fraudulent transfers. Such transfers are generally voidable on behalf of creditors. Creditors may, also, have damages. The new Act updates terminology that has become obsolete since 1918. It is more specific on what constitutes fraud, and introduces new law on "insider" transactions and on the effect of fraudulent transfers on innocent transferees.

UNIFORM LAW COMMISSIONERS' MODEL INSANITY DEFENSE AND POST-TRIAL DISPOSITION ACT

The Model Insanity Defense and Post-Trial Disposition Act provides a "cognitive" test for determining whether a criminal defendant lacks criminal responsibility. There is no criminal responsibility if the defendant "is substantially unable to appreciate the wrongfulness of the conduct." The burden of proof for establishing criminal responsibility remains with the prosecution. The Act provides procedures for obtaining expert opinion on the defendant's mental condition and for disposition of anyone found not criminally responsible into appropriate treatment for dangerous mental illness.

UNIFORM STATUTORY WILL ACT

The Uniform Statutory Will Act provides anyone who desires to leave most of an estate to a spouse with a simple, effective system of distribution that may be elected merely by incorporating the statute by reference in a will. The election offered in this Act allows a person to avoid intestate succession, but, at the same time, saves the expense of a fully written will. The distribution under this Act would go to the spouse, entirely, if there are no children. If there are children, the spouse gets the residential home of the testator, all tangible personal property, and either one-half the remaining estate or assets of value up to \$300,000, whichever is greater. The remainder goes into trust for the surviving spouse's life. The surviving spouse receives the income from the trust, and the trust is divided equally among children at the death of the surviving spouse. If there are children and no surviving spouse, children share equally. A trust is created to hold and manage the estate of minor children until they come of age. If no spouse, children, or issue of the testator, the estate goes by intestate succession.

