

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

Uniform State Laws

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



House Document No. 3

**COMMONWEALTH OF VIRGINIA
RICHMOND
1987**

VIRGINIA COMMISSIONERS

Carlyle C. Ring, Jr.
Brockenbrough Lamb, Jr.
H. Lane Kneeder, 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, 1985 - June 30, 1986

In 1986, the General Assembly adopted two additional Uniform Acts, the Uniform Trade Secrets Act and the Uniform Arbitration Act. In the two previous sessions of the General Assembly, four acts were adopted: the Uniform Revised Limited Partnership Act, Uniform Premarital Agreement Act, Uniform Unclaimed Property Act and Article 8 Revisions to the Uniform Commercial Code.

Virginia now has adopted 37 uniform acts on the "active list," including the most significant and important, the Uniform Commercial Code.

ACTIVITIES OF THE VIRGINIA COMMISSIONERS

Virginia Commissioner Carlyle C. Ring, Jr., completed his two-year term as president of the Conference in August of 1985. He is currently serving as a member of the Executive Committee of the conference as the immediate past president.

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 Kneedler, 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. - Immediate past president of the Conference, member of the Executive Committee, and Co-Chairman of the Drafting Committee on Modern Payment Systems (amendments to the UCC to provide for wholesale wire transfers).

**REPORT OF THE PROCEEDINGS OF THE
ANNUAL CONFERENCE IN MINNEAPOLIS, MINNESOTA**

The annual conference was held in Minneapolis, Minnesota from August 2 to 9, 1985. Commissioners Lamb, Ring, Kneedler and Johnakin attended.

The annual conference in Minneapolis adopted the following uniform acts for consideration by the states:

Uniform Health Care Information Act

Uniform Land Security Interest Act

Uniform Securities Act

Uniform Trade Secret Act Amendments

Amendments to Uniform Limited Partnership Act

Uniform Personal Property Leasing Act

Uniform Rights of the Terminally Ill Act

In addition, the Conference considered on first or partial reading the Business Opportunities Act, Criminal Records Act, Dormant Mineral Estates Act, Rule Against Perpetuities Act, Revised

Uniform Rules of Evidence Act, Revised Uniform Rules of Criminal Procedures Act.

Summaries of the acts promulgated at the 1985 Conference are attached.

RECOMMENDATIONS FOR ENACTMENT

The Virginia Commissioners recommend the following Uniform or Model Acts for consideration by the General Assembly:

- Uniform Fraudulent Transfer Act
- Uniform Conflict of Laws - Limitations Act
- Uniform Transfers to Minors Act
- Uniform Enforcement of Foreign Judgments Act
- Uniform Health Care Information Act
- Uniform Land Security Interest Act
- Uniform Personal Property Leasing Act (as an amendment to Article 2 of the UCC)
- Uniform Common Interest Ownership Act *
- Uniform Conservation Easement Act
- Uniform Extradition and Rendition Act
- Uniform Marital Property Act *
- Uniform Law on Notarial Acts
- Uniform Statutory Wills Act
- Uniform Probate Code *
- Model Health Care Consent Act
- Model Defense of Insanity Act *

The Virginia Commissioners especially recommend for consideration and adoption at the 1987 General Assembly:

- Uniform Transfers to Minors Act
- Uniform Fraudulent Transfer Act
- Uniform Enforcement of Foreign Judgments 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.

The Uniform Enforcement of Foreign Judgments Act provides for reciprocity and reasonable facility in enforcing foreign judgments in Virginia and for Virginia's judgments to be enforced in those states that have adopted this Uniform Act. With increased interstate commerce, it is essential to provide a more convenient and procedurally safe manner to enable foreign judgments to be enforced throughout the United States.

STATE APPROPRIATIONS

Virginia's contributions to the operations of the Conference are relatively small. Virginia contributed \$12,300 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 and in 1988 the contribution will increase slightly to \$12,800.

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 1985-86. 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 37 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 Committee either contribute their time or receive a very modest honorarium (usually \$1,000 for two or more years' effort).

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 need be appropriately considered by the Conference where (i) there exists a need for uniformity in the law among the various states and (ii) it can be anticipated that a majority of the states would probably adopt such an act. The Conference has recently begun new drafting committees with respect to Putative Fathers, Status of Children of the New Biology, Revisions to the Uniform Anatomical Gift Act (to facilitate the new medical technologies), Bulk Transfers (amendment to Article 6 of the UCC), Construction Lien Act, Employment Termination Act, Nonprobate Transfers at Death Act, and Personal Custodian Trust 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)

June 30, 1986

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

* Commissioners Boatright, 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, 1985 ACTS

UNIFORM HEALTH-CARE INFORMATION ACT

The Uniform Health-Care Information Act governs access to a patient's health-care records held by any person or entity providing health-care services. A patient must consent to disclosure of his or her own health-care records to any other person, unless the disclosure fits one of a limited number of exceptions. Exceptions relate to specific instances when disclosure is essential to the patient's health or is absolutely essential to the functioning of the health-care provider. A patient, also, has a right to inspect and copy his or her own records and to demand correction of any errors. The only exceptions involve clearly demonstrated cases in which such access to his or her own records would injure the patient. Remedies are provided, including criminal penalties, for violations of the Act.

UNIFORM LAND SECURITY INTEREST ACT

The Uniform Land Security Interest Act is derived from Article 3 of the Uniform Land Transactions Act. Its provisions for establishing a valid security agreement, assignment of interests under such agreements, and default. It also provides for usury. An agreement is, generally, effective according to its terms. A security interest on the part of a creditor in real property "attaches" when a security agreement is signed, value has been given, and the debtor acquires his or her interest in the property. The Act prohibits clogging the equity of redemption. Priorities between creditors with competing security interests generally are based on first in time to record or attach. Future advances relate back to the time the security interest is effective for advances initially agreed upon or made to protect collateral. Adopting jurisdictions may choose their approach to usury. The alternatives permit either agreement between parties to determine interest rates in all cases, or agreement between the parties, except interest rates for residential real estate security interests. A ceiling would apply to such interest rates. Upon default, property may be foreclosed, as agreed by the parties, by judicial foreclosure or by "power of sale." When security interests attach to residential property, the debtor is known as a protected party and benefits from a number of special provisions in the Act.

UNIFORM LIMITED PARTNERSHIP ACT AMENDMENTS

The 1985 amendments to the Uniform Limited Partnership Act provide for a notice certificate, which does not contain the kinds of information on partner identification and contributions that formerly were required. Much of the information that the certificate contained must be retained for the benefit of partners in the partnership agreement or the partnership records. A reliance test, based on the conduct of a limited partner, replaces the prior test for determining when a limited partner loses limited liability. The so-called "safe harbor" provisions are expanded, so that certain actions available to limited partners do no result in liability as general partners. Less than unanimous consent for admission of new general partners may be provided for in the partnership agreement. These substantive amendments are accompanied by other clarifying and conforming amendments.

UNIFORM PERSONAL PROPERTY LEASING ACT

The Uniform Personal Property Leasing Act governs any lease of personal property (or goods), whether the transaction is a "true lease" or a "finance lease." The former occurs when the lessor gives possession and right to use the personal property to the lessee for a fixed period of time in return for rent. The title to the property remains with the lessor. A "finance lease" occurs when the lessor is not the fundamental supplier of the goods leased, but leases goods to lessees as a means of financing their sale. The Act is largely derived from the sales article of the UCC, Article 2. The Act provides basic contract rules, including matters of offer and acceptance, statutes of frauds, warranties, assignment of interests, and remedies upon breach of contract. An appendix to the Act provides an amendment to Article 9 of the UCC that would clearly make "finance leases" subject to Article 9.

UNIFORM RIGHTS OF THE TERMINALLY ILL ACT

The Uniform Rights of the Terminally Ill Act provides for a declaration (popularly known as a living will) that instructs attending physicians to withhold life-sustaining treatment for any person who makes such a declaration in writing, in the event that person is in the last stages of a terminal illness and is unable to express his or her requirements, personally. The declaration must be witnessed. It is effective when communicated to any attending physician, and is a binding instruction. The Act provides language that may be used to make a declaration, though a person may provide any instructions that he or she wants to provide. "Life-sustaining treatment" and "terminal illness" are defined. Even though treatment may be "life-sustaining treatment," it

must be continued if the "comfort care" of the patient requires it.

UNIFORM SECURITIES ACT (1985)

The Uniform Securities Act (1985) updates the 1956 Uniform Securities Act. It provides for the licensing of those who sell securities and those who advise buyers. It provides for all registration of securities issues in one of three ways - "registration by filing," "registration by coordination," and "registration by qualification." The first two types of registration are available to issuers that have qualified to sell under applicable federal law. The last type of registration involves full merit review by the state administrator. Certain specified securities issues and transactions are exempted from registration. In general, exemptions apply if other law or institutional arrangements provide protection for buyers. The Act has anti-fraud provisions, including new provisions prohibiting market manipulations. A person injured by these kinds of fraudulent activities may seek a remedy in a court of law. The administrator has substantial enforcement powers, as well, including powers to investigate, to hear allegations of violation of the Act, to issue cease and desist orders, and to exact monetary penalties.

UNIFORM TRADE SECRETS ACT AMENDMENTS

The Uniform Trade Secrets Act was amended in 1985 to provide: (1) that contractual remedies are subject to contract law, even though a misappropriation may have occurred under the Act; (2) that a continuing misappropriation, beginning before the Act becomes effective, is subject to prior law; (3) that damages may be assessed in the form of a reasonable royalty, if other methods of measuring damages are inadequate; and (4) that a reasonable royalty as an equitable remedy is available when "exceptional circumstances" require - exceptional circumstances being any situation in which a party has materially changed position so that injunctive relief would not be adequate to the situation.

