

**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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VIRGINIA COMMISSIONERS

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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, 1986 - June 30, 1987

In the 1987 session, the General Assembly considered, but did not enact, three uniform acts: The Uniform Conservation Easement Act, Uniform Foreign Country Money Judgments Acts, and Uniform Enforcement of Foreign Judgments Act. In the 1986 session, the Uniform Trade Secret Act and the Uniform Arbitration Act were enacted by the General Assembly.

Virginia has now enacted 37 uniform acts on the Conference "active list," including the most significant and important product of the Conference, the Uniform Commercial Code. The average number of acts on the "active list" enacted in all states is 32.

HISTORY OF THE CONFERENCE

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. The next year the New York legislature authorized the appointment of commissioners "to examine certain subjects of national importance that seem to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states." In the same year, the American Bar Association passed a resolution recommending that each state provide for Commissioners to confer with the Commissioners of other states on the subject of uniformity of legislation on certain subjects. In August, 1892, the first National Conference of Commissioners on Uniform State Laws convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. There have been 95 conferences since that time.

By 1912, every state was participating in the Conference. Since then, the Conference has steadily increased its contribution to state law and has attracted some of the most outstanding members of the legal profession. Prior to his more notable political prominence and service as President of the United States, Woodrow Wilson became a member in 1912. Supreme Court Justices Brandeis and Rutledge, current Chief Justice Rehnquist, and such legal scholars as Professors Wigmore, Williston, Pound and Bogart have all served on the Commission.

The Conference began because of the concerns of state government for the improvement of the law and for better interstate relationships, and its sole purpose remains service to state government and the improvement of state law.

THE OPERATION OF THE CONFERENCE

The National Conference is convened as a body once a year. It meets for a period of eight to twelve days, usually in the first two weeks in August. Throughout the year, drafting committees composed of Commissioners work from Friday morning until Sunday afternoon on drafts which are to be considered at the annual meeting. At each National Conference, the work of the drafting committees is read, line by line, and thoroughly debated. Each Act must be considered over a number of years. Most Acts have been read before the Conference three or more times. Each Act deemed by the Conference to be ready for consideration in the state legislatures is put to a vote of the states, during which each state caucuses and votes as a unit.

The governing body, the Executive Committee, is composed of the officers, certain ex-officio members, and members appointed by the President of the Conference.

The seven-person Conference staff is located in Chicago and operates the national office of the Conference.

All members of the Conference contribute a minimum of two hundred hours a year to the careful drafting work of the Conference. They receive reimbursement for their expenses, but otherwise volunteer their time and effort. The cumulative value of the time donated by the Commissioners for 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 1986-87. 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 work of the Conference 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.

STATE APPROPRIATIONS

Virginia's contributions to the operations of the Conference are relatively small. Virginia contributed \$12,400 to the Conference in 1986-87 and paid travel expenses for the Virginia Commissioners to the annual conference. The contribution is based upon population and in 1987-88 the contribution from Virginia will increase slightly to \$12,800. Approximately \$10,000 will be spent for reimbursement of Commissioners' out-of-pocket travel expenses.

ACTIVITIES OF THE VIRGINIA COMMISSIONERS

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

Brockenbrough Lamb, Jr. - Chairman, Standby Committee on Uniform Limited Partnership Act.

H. Lane Kneedler, III - Chairman, Drafting Committee to revise Uniform Partnership Act; Member, Standby Committee on Criminal History Records Act.

Stephen G. Johnakin - Member, Drafting Committee on Franchise and Business Opportunities Act.

Carlyle C. Ring, Jr. - Immediate Past President of the Conference; Member of the Executive Committee; Co-Chairman of the Drafting Committee on Modern Payment Systems (amendments to the UCC to provide for whole sale wire transfers); Member, Permanent Editorial Board for Uniform Commercial Code; Member, Standing Legislative Committee.

Mary P. Devine - Member, Standing Committee on Appointment of and Attendance by Associate Members.

In addition, Professor Walter Waldington of the University of Virginia Law School, is serving as the Reporter for the new drafting project "Status of Children of the New Biology."

REPORT OF THE PROCEEDINGS OF THE ANNUAL CONFERENCE IN BOSTON, MASSACHUSETTS

The 1986 annual conference was held in Boston, Massachusetts, from August 1 through August 8. Commissioners Lamb, Ring, Kneedler, Johnakin and Associate Member Devine attended.

The annual conference in Boston, Massachusetts, adopted the following Uniform Acts for consideration by the states:

Uniform Commercial Code Article 2A - Leases

Uniform Criminal History Records Act

Uniform Dormant Mineral Interests Act

Revised Uniform Rules of Evidence (1986)

Uniform Statutory Rule Against Perpetuities

Summaries of the Acts promulgated at the 1986 Conference are attached.

REPORT OF THE PROCEEDINGS OF THE
ANNUAL CONFERENCE IN NEWPORT BEACH, CALIFORNIA

The 1987 Annual Conference was held in Newport Beach, California, from July 31 through August 7. Commissioners Lamb, Ring, Kneedler, and Johnakin and Associate Member Devine attended.

The Annual Conference in Newport Beach, California, adopted the following acts for consideration by the states:

Uniform Custodial Trust Act
Revised Uniform Rules of Criminal Procedure
Uniform Franchise and Business Opportunities Act
Uniform Construction Lien Act

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 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 *
Uniform Commercial Code Article 2A - Personal Property Leases

The Virginia Commissioners especially recommend for consideration and adoption by the 1988 General Assembly the following Uniform Acts which make significant contribution to important subjects that deserve immediate enactment:

Uniform Transfers to Minors Act

Uniform Fraudulent Transfer Act

Uniform Enforcement of Foreign Judgments Act

Article 2A - Personal Property Leases, Uniform Commercial Code

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.

Article 2A - Personal Property Leases, Uniform Commercial Code, provides specific rules for "true leases" for anything from yard equipment to commercial aircraft, items which previously have been governed solely by the common law. The provisions are heavily based upon Article 2 of the Uniform Commercial Code with appropriate and necessary modifications. The draft also makes an amendment to the definition of secured transactions in order to more sharply define a true lease governed by Article 2A and a lease as a secured transaction under Article 9. Article 2A has been approved by the American Law Institute and by the American Bar Association.

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 may be appropriate for consideration by the Conference. Appropriate topics are those 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 created new drafting committees dealing with the following topics:

Rights of Putative Fathers

Bulk Transfers (amendments to Article 6 of the UCC)

Current Payment Methods and Wire Transfers (amendments to
Articles 3, 4, and 4A of UCC)

Employment Termination Act

Non-probate Transfers at Death Act

Status of Children of the New Biology

Partnerships

Damage to Surface Estates

Preventative Detention

Payment of Foreign Judgments

Periodic Payments (amendments to 1980 Model Act)

Controlled Substances (amendments to 1973 Act)

Statutory Form for Power of Attorney

Respectfully submitted,

Carlyle C. Ring, Jr.
Brockenbrough Lamb, Jr.
H. Lane Kneedler, III
Stephen G. Johnakin
John B. Boatright, Jr.
John A. Banks, Jr.
Mary P. Devine

* 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 Boatwright believe that current Virginia law, with minor amendments, is superior to the Uniform Probate Code.

SHORT SUMMARIES, 1986 ACTS

UNIFORM COMMERCIAL CODE, ARTICLE 2A - LEASES

The Uniform Commercial Code (UCC), Article 2A - Leases, governs any lease or 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. Article 2A is largely derived from the sales article of the UCC - Article 2. It provides basic contract rules, including matters of offer and acceptance, statutes of frauds, warranties, assignment of interests, and remedies upon breach of contract.

UNIFORM CRIMINAL HISTORY RECORDS ACT

The Uniform Criminal History Records Act governs the gathering, maintenance and disclosure of "criminal history records information (CHRI) which is information on the arrest, prosecution, sentencing and punishment of specific individuals as collected by law enforcement agencies. The Act establishes a central repository for gathering CHRI from all law enforcement agencies in a state. Law enforcement agencies have primary access to this information for their work. All citizens may have access to conviction information and to other records that are no more than one year old. A person has access to his or her own records, as well, and to the record of access accorded any other person or agency. Also, a process for correcting erroneous records is provided. If authorized for access is blocked by the central repository, the right of access may be enforced in court. If unauthorized access is permitted, there are civil and criminal penalties.

UNIFORM DORMANT MINERAL INTERESTS ACT

The Uniform Dormant Mineral Interests Act establishes the criteria by which a severed mineral interest in real estate becomes dormant. Once a mineral interest becomes dormant, it may be merged with the surface interest in an action to quiet title. A mineral interest becomes dormant if there is no actual "use" of the interest for twenty years or more. The term "use" means exploring for or taking minerals, generally, but includes such exercises of ownership as paying taxes on the interest or recording a judgment pertaining to it, as well. Even if a holder of a mineral interest does not use it, the interest can be kept current by filing a "notice of intent to preserve" in the real property records. Over time, dormant mineral interests become difficult to keep track of and, as fee interests, cannot be extinguished or merged with surface interests without an Act such as the Dormant Mineral Interests Act. Otherwise, land titles can remain clouded and muddled forever.

UNIFORM RULES OF EVIDENCE (1986)

In 1986, amendments affected eight sections of the Uniform Rules of Evidence, promulgated originally in 1974. These amendments came from the Federal Rules of Evidence, from cases interpreting the Federal Rules (and Uniform Rules) since 1974, and from new policy concerns not raised in 1974. These amendments:

1. Limit evidence of a victim's past sexual behavior in criminal actions involving sexual offenses.
2. Expand the lawyer-client privilege to any communication to anyone employed to provide legal representation.
3. Limit the husband and wife privilege in criminal cases to the defendant's spouse.
4. Provide for evidence of a witness' bias, prejudice or interest to attack the witness' credibility.
5. Add a new category of nonhearsay statement pertaining to identification of a person shortly after perceiving that person.
6. Allow an accused person to introduce public records and police investigative reports in a criminal action.
7. Allow an audio-visual statement of a minor under 12, in a sexual abuse case or physical abuse case, to be introduced under strict control and a child's deposition to be taken in evidence in similar circumstances, when direct testimony would subject the minor to severe emotional or psychological distress.
8. Establish the certification requirements for introducing foreign or domestic records without "extrinsic evidence of authenticity."

UNIFORM STATUTORY RULE AGAINST PERPETUITIES

The Uniform Statutory Rule Against Perpetuities validates nonvested future interests in property as the common-law "Rule Against Perpetuities" does, by measuring the time for vesting in terms of lives in being plus 21 years. In contrast to the common-law Rule, the Statutory Rule does not invalidate future interests that may, even against enormous probabilities, not vest within the prescribed time. The Uniform Statutory Rule provides a 90-year period in which de facto vesting of an interest can take place. If an interest actually vests within the 90 years, it is valid, even though its vesting is not, hypothetically, an absolute certainty at the time the future interest is created. The Uniform Statutory Rule also provides a procedure by which a court may vest interests within the allotted 90-year time to avoid invalidity. In addition, the Uniform Statutory Rule carefully sets out the kinds of interests and are excluded from the operation of the Perpetuities Rule.

SHORT SUMMARIES, 1987 Acts

AMENDMENTS TO THE UNIFORM ANATOMICAL GIFT ACT

Because of the chronic shortage of organs available for transplantations, amendments were approved for the Uniform Anatomical Gift Act, enacted by all 50 states and the District of Columbia. Included are provisions requiring health care providers to inquire about donations from potential donors or family members when a person is admitted to a facility (the so-called "required request"). Also included are provisions allowing medical examiners or designated public officials to authorize the taking of organs unless there is a specific objection.

UNIFORM RULES OF CRIMINAL PROCEDURE

This is a redrafting of the Uniform Rules of Criminal Procedure, completed in 1952 and updated in 1974. The main goal of the current revision is to implement the ABA Standards of Criminal Justice published after 1974. One change of note is the inclusion of mental health standards based upon the Criminal Justice Mental Health Standards of the ABA.

UNIFORM CUSTODIAL TRUST ACT

This act is designed to make the benefits of trusts available to people without extensive financial assets. The act permits a new, simplified, and inexpensive inter vivos trust. It should be no harder to set up than it currently is to set up a custodianship under the Transfers to Minors Act. The major users will be people who want to take potential future incapacity into account in financial and estate planning.

UNIFORM CONSTRUCTION LIEN ACT

The Uniform Simplification of Land Transfers Act was adopted by the Conference in 1975. It deals with a number of topics in real estate law, including provisions in Article 5 for what are variously called mechanic's liens, materialman's liens, or construction liens. This new act makes Article 5 of USOLTA a separate act.

UNIFORM FRANCHISE AND BUSINESS OPPORTUNITIES

The primary purpose of this act is to govern franchise contracts. In addition, it also governs contracts in which a person buys the right to do business with a promoter using the promoter's goods or services, and with the assistance of the promoter. Standards of conduct and disclosure of relevant information are the substantive topics of this act.

