

**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  
1989**

VIRGINIA COMMISSIONERS

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Stephen G Johnakin  
John B. Boatwright, Jr  
Charles K. Woltz (appointed July 1, 1988)

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

January 1, 1988 - December 31, 1988

In the 1988 Session, the General Assembly enacted the following four Uniform Acts

Uniform Federal Lien Registration Act  
Virginia (Uniform) Conservation Easement Act  
Uniform Enforcement of Foreign Judgments Act  
Virginia Uniform Transfers to Minors Act

Virginia has now enacted 38 Uniform Acts on the Conference "active list", including the most significant 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 1987-88. The largest contribution is over \$41,000 and the smallest is \$4,000. 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 \$12,800 to the Conference in 1987-88 and paid travel expenses for the Virginia Commissioners to the annual conference. The contribution is based upon population and in 1988-89 the contribution from Virginia will increase slightly to \$13,500. Approximately \$12,000 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

Carlyle C Ring, Jr - Past President of the Conference (1986), Co-Chairman of the Drafting Committee on Modern Payment Systems (amendments to the UCC to provide for wire transfers), Member, Permanent Editorial Board for Uniform Commercial Code, Member, Standing Legislative Committee

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

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

## REPORT OF PROCEEDINGS OF THE ANNUAL CONFERENCE IN WASHINGTON, D C.

The 1988 annual conference was held in Washington, D C. from July 29 through August 5, 1988. Commissioners Lamb, Ring, Kneedler, Johnakin, Devine and Woltz attended.

The annual conference in Washington, D C. adopted the following Uniform Acts for consideration by the states.

Uniform Putative and Unknown Fathers Act

Uniform Status of Children of Assisted Conception

Uniform Statutory Form Power of Attorney Act

Revised Uniform Commercial Code Article 6 - Bulk Sales

1988 Amendments to Uniform Securities Act (1985)

## 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 Health Care Information Act  
Uniform Land Security Interest Act  
Uniform Common Interest Ownership 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  
Uniform Dormant Mineral Interests Act  
Uniform Rules of Evidence (1986)  
Amendments to Uniform Anatomical Gift Act  
Uniform Custodial Trust Act  
Uniform Franchise and Business Opportunities Act  
Uniform Construction Lien Act

#### 1989 LEGISLATIVE PROGRAM

The Virginia Commissioners strongly recommend for consideration and adoption by the 1989 General Assembly the following Uniform Acts which make significant contributions to important subjects that deserve immediate enactment.

Uniform Fraudulent Transfer Act  
Article 2A - Personal Property Leases, Uniform Commercial Code  
Amendments to the Uniform Anatomical Gift Act

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 creditor's from fraudulent transfers

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.

Amendments to the Uniform Anatomical Gift Act is a response to the chronic shortage of organs available for transplantation. The Act includes 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.

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 (1) there exists a need for uniformity in the law among the various states and (11) 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:

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

Employment Termination Act

Non-probate Transfers at Death Act

Partnerships

Damage to Surface Estates

Preventative Detention

Payment of Foreign Judgments

Periodic Payments (amendments to 1980 Model Act)

Controlled Substances (amendments to 1973 Act)

UPC Article II - Interstate Succession and Wills

Amendments to Rights of Terminally Ill Act

Respectfully submitted,

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

\*Commissioner 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, UNIFORM ACTS OF 1988

### UNIFORM COMMERCIAL CODE REVISED ARTICLE 6 - BULK SALES

Two alternatives are presented in Revised Article 6, repeal of the entire article or adoption of a revised text. Any state that chooses not to repeal has a much improved Article 6 to replace the original. Article 6 protects a bulk seller's creditors by requiring the bulk sale buyer to give notice of the sale to the those creditors. Under Revised Article 6, a bulk sale is a sale of more than half of a business's inventory and related equipment outside the ordinary course of business. Revised Article 6 provides that the bulk sale buyer may give notice to creditors by filing with the Secretary of State if there are more than 200 creditors or the seller swears that there are more than 200 creditors. Otherwise, each creditor must receive notice. A schedule of distribution for proceeds must be kept by the bulk sale buyer for six months after the sale. The schedule must be given to any creditor who requests a copy. Non-compliance with Revised Article 6 entitles creditors to damages instead of voiding the sale, as was the case under original Article 6. Very small sales and very large sales are excluded from the requirements of Article 6, since creditor protection is not needed in either case. Revised Article 6 provides an updated, less burdensome version of bulk sales law for states that do not choose repeal. Repeal is the recommended alternative, however.

### UNIFORM PUTATIVE AND UNKNOWN FATHERS ACT

A man becomes a putative father when he or another on his behalf claims paternity of a child whose mother is not his wife. An unknown father is one whose identity is not known and cannot be found. The Uniform Putative and Unknown Fathers Act (UPUFA) permits putative fathers to have their paternity adjudicated and to have custody and visitation rights with respect to a child adjudicated. UPUFA, also, provides standards for the termination of putative or unknown fathers' rights. In a termination proceeding a putative father must be given notice under the applicable rules of civil procedure. If the father appears in the proceeding, the court determines the familial connection between the putative father and the child. A negative finding results in a termination. An effort must be made to identify an unknown father. Notice by publication may be given if the unknown father cannot be identified, and it is expected that such notice is likely to reach the unknown father. If the unknown father does not appear, his rights can be terminated. If he does appear, he becomes a putative father and his rights are adjudicated accordingly. Proper termination of parental rights is essential for successful adoptions of children.

### AMENDMENTS TO UNIFORM SECURITIES ACT (1985)

Five sections of the Uniform Securities Act (1985) USA 1985 were amended in 1988. Included are slight changes in such provisions as those affecting out-of-state broker-dealers and exempt non-issuer transactions. No material changes were made in any section.

### UNIFORM STATUS OF CHILDREN OF ASSISTED CONCEPTION ACT

Assisted conception occurs when insemination takes place by any means other than sexual intercourse, or by removal and implantation of an embryo after insemination of a woman's egg by sperm from someone other than her husband. The Uniform Status of Children of Assisted Conception Act (USCACA) establishes who the legal parents are when there is an assisted conception. Except when there is an enforceable contract for a surrogate mother, the birth mother is always the legal mother. The husband of any legal mother is the legal father, whether or not he is the genetic father. No donor of sperm or egg in an assisted conception can be a legal parent. No donor whose sperm or egg is used after his or her death is a legal parent. USCACA has alternative provisions for surrogate mother contracts. A state may choose to declare them void, or it may adopt a procedure in an appropriate court to validate such contracts. If a state adopts the second alternative, the court hears evidence very like that in an adoption proceeding. The proceeding takes place before conception, however. If the court is satisfied that the contract should be permitted, it becomes enforceable against the prospective parents upon conception and against the surrogate mother after 180 days following conception. A state can adopt either alternative.

### UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

The Uniform Statutory Form Power of Attorney Act (USFPAA) provides a set form for creating powers of attorney. The language of the form becomes available to any person for the purposes of creating exactly the power of attorney that is desired. Included in the form is a check-off list of categories of transactions that a person can choose. Examples of the categories are "real property transactions" and "tangible personal property transactions". USFPAA provides further for extensive definitions of those categories of transactions, thus clarifying what exactly a person holding a power of attorney may do. A person creating a power of attorney can, therefore, provide for specific powers, or for a general power of attorney

by checking the last category - the one that includes all others.  
If a state or jurisdiction provides for durable and/or springing  
powers of attorney by other law, these kinds of power of attorney  
can use the statutory form.

