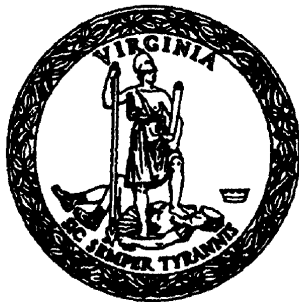


**REPORT OF THE
VIRGINIA COMMISSIONERS
TO THE NATIONAL CONFERENCE
OF COMMISSIONERS ON**

UNIFORM STATE LAWS

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



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**COMMONWEALTH OF VIRGINIA
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VIRGINIA COMMISSIONERS

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H. Lane Kneeder III
Stephen G. Johnakin
John B. Boatwright, Jr.
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ASSOCIATE MEMBERS

E. M. Miller, 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, 1989 - December 31, 1989

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 of the laws of the states, 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. There have been 99 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 as members of the Conference.

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

OPERATION OF THE CONFERENCE

The National Conference convenes as a body once a year. The annual meeting lasts eight to twelve days and is usually held in the first two weeks of 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. The work of the drafting committees is read, line by line, and thoroughly debated at the annual meeting. Each act must be considered over a number of years; most are read and debated by the Conference two or more times. Those acts deemed by the Conference to be ready for consideration in the state legislatures are put to a vote of the states. Each state caucuses and votes as a unit.

The governing body of the Conference is the Executive Committee. The Executive Committee is composed of the officers of the Conference who are elected by vote of the Commissioners, and five members who are appointed annually by the President of the Conference.

The national office of the Conference is located in Chicago. A seven-person staff provides administrative and clerical assistance to the Conference and the individual members, as well as advice and coordinating assistance in securing the passage of uniform acts.

All members of the Conference contribute a minimum of 200 hours a year to drafting acts for consideration by the Conference. The members volunteer their time and effort but are reimbursed for expenses. 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, at a conservative estimate. The total cost 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. The work product of the Conference guarantees a 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 capitals to Washington.

STATE APPROPRIATIONS

Virginia's contributions to the operation of the Conference are relatively small. Virginia contributed \$13,500 to the Conference in 1988-89 and paid travel expenses for the Virginia Commissioners to the annual conference. All state contributions are based upon population. In 1989-90 the contribution from Virginia will increase slightly to \$13,900, and in 1990-91 to \$14,600. Approximately \$15,000 will be spent for reimbursement of Commissioners' out-of-pocket travel expenses.

ACTIVITIES OF THE VIRGINIA COMMISSIONERS

The Governor is authorized to appoint three members to serve a two-year term (§ 9-49, Code of Virginia). In 1982, Governor Charles S. Robb appointed Stephen G. Johnakin and H. Lane Kneeder III to the Conference. Mr. Johnakin and Mr. Kneeder have since been reappointed for consecutive terms. Governor Gerald L. Baliles appointed Charles K. Woltz in 1988. In addition to the Governor's appointments, the Constitution of the Conference authorizes the appointment of life members upon recommendation of the Executive Committee. To be eligible for life membership, a Commissioner must have served as President of the Conference or as a Commissioner for at least twenty years. Virginia's life members are John B. Boatwright, Jr., a member since 1950; Brockenbrough Lamb, Jr., a member since 1953; and Carlyle C. Ring, Jr., a member since 1970 and President of the Conference from 1983 to 1985.

The Constitution of the Conference also grants the principal administrative officer of the state agency "charged by law with the duty of drafting legislation, or his designee," membership as an associate member. E. M. Miller, Jr., Director of the Division of Legislative Services, and Mary P. Devine, a staff attorney with the Division, are associate members of the 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.

H. Lane Kneeder III - Chairman, Drafting Committee to Revise the Uniform Partnership Act; member, Standby Committee on Criminal History Records Act.

Stephen G. Johnakin - Member, Standby Committee on Franchise and Business Opportunities Act; member, Study Committee on Unincorporated Associations Act.

Carlyle C. Ring, Jr. - Co-Chairman of the Drafting Committee on Article 4A to the UCC and Amendments to Articles 3 and 4 of the UCC; member, Permanent Editorial Board for the Uniform Commercial Code; member, Standing Legislative Committee.

Mary P. Devine - Member, Standing Committee on Appointment of and Attendance by Associate Members; drafting liaison, Revisions to the Uniform Principal and Interest Act.

REPORT OF PROCEEDINGS OF THE
ANNUAL CONFERENCE IN KAUAI, HAWAII

The 1989 annual conference was held at Poipu Beach on the Island of Kauai, Hawaii, from July 29 through August 5, 1989. Commissioners Lamb, Ring, Kneeder, Johnakin, Devine, Woltz and Miller attended.

The following Uniform Acts were adopted for consideration by the states:

Article 4A (Wholesale Wire Transfers) to the Uniform Commercial Code

Amendments to Article 3 (Commercial Paper) of the Uniform Commercial Code (including an amendment to Article 1)

Revised Uniform Rights of the Terminally Ill Act (1989)

Amendments to the Uniform Probate Code, Article VI - Non-Probate Transfers at Death

Uniform Pretrial Detention Act

Uniform Foreign Money Claims Act

RECOMMENDATIONS FOR ENACTMENT

In the 1989 Session, the General Assembly considered but deferred action on the Uniform Custodial Trust Act and Revised Uniform Anatomical Gift Act. Virginia has enacted 38 uniform acts on the Conference's "active list", including the most significant product of the Conference, the Uniform Commercial Code.

The following acts have been approved by the Conference for consideration by the states but have not been enacted in Virginia: 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 Dormant Mineral Interests Act, Uniform Rules of Evidence (1986), Uniform Franchise and Business Opportunity Act, Uniform Construction Lien Act, Uniform Foreign Money Claims Act, Uniform Pretrial Detention Act.

The following Uniform Acts, which have also been approved, make significant contributions to important subjects, and the Virginia Commissioners strongly recommend these acts for consideration and adoption by the 1990 General Assembly:

Article 2A of the Uniform Commercial Code - Personal Property Leases

Article 4A of the Uniform Commercial Code - Wholesale Wire Transfers

Revised Uniform Anatomical Gift Act

Uniform Custodial Trust Act

Uniform Fraudulent Transfer Act

Article 2A of the Uniform Commercial Code (1986) provides specific uniform rules for a "true lease" of anything from yard equipment to commercial aircraft. Such items were previously governed solely by common law. The provisions of the Act are based on Article 2 of the Uniform Commercial Code. The draft amends the definition of secured transactions in order to more sharply distinguish 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.

Article 4A of the Uniform Commercial Code (1989) provides the first comprehensive rules for a rapidly growing payment system. Wholesale wire transfers now average \$1 trillion daily with peak days up to \$2 trillion. Just five years ago, the average daily transfers were \$300 million. Total daily transfers by wire exceed manyfold the total for all checks, debit and credit cards; yet there is no law governing responsibilities, obligations and liabilities in the event of error, mistake, fraud, intervention or insolvency. It is estimated that, in dollar amount, less than ten percent of these transactions are governed by contracts between the parties. While the

Federal Reserve rules cover the inter-bank portion of the Fedwire transactions, and the CHIPS (Clearing House Inter-bank Payment Systems) rules cover inter-bank relationships for that system, there are no comprehensive rules covering the wire transfer from the originator through the banking system to the beneficiary. Article 4A balances the interests of the Federal Reserve System, the corporate users, and the banking community. The Act is supported by all interested parties, who agree that comprehensive uniform rules are needed. In order to avoid federal preemption and to preserve state law in payment systems, it is critical that Article 4A be promptly adopted by the various states.

Amendments to the Uniform Anatomical Gift Act (1987) are 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. The Virginia Transplant Council has been reviewing the revised Act and will be making recommendations which we believe will be generally supportive of the substantive provisions of the Act, while perhaps questioning some of the administrative provisions included in the revised Act.

The Uniform Custodial Trust Act (1987) provides for a trust arrangement similar to that established for gifts to minors in the Uniform Transfers to Minors Act. The Transfers to Minors Act was adopted by Virginia in 1988. It provides a simple mechanism for the establishment of custodial trusts for adults when a simple trust arrangement is appropriate or necessary.

The Uniform Fraudulent Transfer Act (1984) the predecessor Uniform Fraudulent Transfers Act to the present Bankruptcy Code provisions and decisional law. The Act provides better protection for creditors.

REQUEST FOR TOPICS APPROPRIATE
FOR CONSIDERATION AS UNIFORM ACTS

The Virginia Commissioners welcome suggestions from the Governor, the General Assembly, the Attorney General and executive branch agencies 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 is anticipated that a majority of the states would adopt such an act.

In the next several years, the Conference will be considering proposed uniform acts covering employment termination, controlled substances, partnerships, and damage to surface estates.

During the 1989 annual meeting, the following new drafting committees were authorized: Uniform Adoption Act, Uniform Marketable Title Act, Uniform Statutory Construction Act, Uniform Defamation Remedies Act and a Crime Victims Reparations and Rights Act. Additionally, committees have been created to study whether uniform acts would be desirable to cover the following areas: oil, gas and minerals laws; unincorporated associations;

computer software; tort reform; certification of questions of law; insurance cancellation and non-renewal; and pre- and post-judgment interest.

Respectfully submitted,

John B. Boatwright, Jr.
Brockenbrough Lamb, Jr.
Carlyle C. Ring, Jr.
Stephen G. Johnakin
H. Lane Kneedler III
Mary P. Devine
Charles K. Woltz
E. M. Miller, Jr.

*Commissioner Johnakin does not believe that adoption of the 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 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, 1989

REVISED UNIFORM COMMERCIAL CODE ARTICLE 3 - NEGOTIABLE INSTRUMENTS

The law pertaining to drafts, checks, and notes, and the rules for negotiation of these instruments have been contained in Uniform Commercial Code Article 3 since 1951. It carried forward the earlier Negotiable Instruments Law, promulgated in 1986. These instruments for payment of money or creation of debt are distinguished by the ability to transfer them freely from person to person. They always contain an unconditional promise to pay money and are of two forms, order or bearer instruments. They are negotiated by delivery from one holder to another, and in the case of order instruments, by appropriate indorsement. To encourage free transfer of such instruments and to make sure of an unimpeded market, Article 3 establishes the "holder in due course," who is any holder or possessor of the instrument, receiving it for value in good faith and without knowledge of any defects in it. The holder in due course may obtain payment of the instrument when due, even when it is defective. Revised Article 3 continues these principles in an updated form. The revisions do not change the general character of negotiable instruments, but solve problems that have inevitably arisen in the 38 years since Article 3 was promulgated. For example, under revised Article 3, negotiability is assumed for an instrument, unless there is language on the face of the instrument making it non-negotiable. This contrasts with the original formal and mechanical rules for establishing the character of the instrument. These rules were punitive for any person who made a simple mistake in the drafting of a negotiable instrument. The new Article 3 modernizes the law, hopefully for the next 40 years.

UNIFORM COMMERCIAL CODE ARTICLE 4A - FUNDS TRANSFERS

Article 4A is an entirely new article for the Uniform Commercial Code. It governs transfers of large sums of money between commercial entities, generally by electronic means through the banking system. Consumer transactions are excluded from Article 4A and are subject to federal law under the Electronic Funds Transfer Act of 1978. There are two systems, nationally, that most banks use for large transfers, the Federal Reserve network (Fedwire) and the Clearing House Interbank Payments Systems (CHIPS). The rules of such networks supercede the rules in Article 4A. Article 4A, otherwise, establishes basic rules governing the payment of large sums of money. Payment begins with payment orders initiated by entities to banks with which these entities have contracts for processing such orders. Successive payment orders are sent from bank to bank until the final one reaches the bank designated to receive the

payment on behalf of the entity that is to be paid. When the funds are finally available to the entity at the final receiving bank, the transfer is complete. The banks then settle their accounts by crediting or debiting appropriate accounts. Article 4A is particularly important for establishing which entity or bank is liable in the event something goes wrong with the ordered payment. Generally, the liability falls to the entity responsible for the error. Banks may mitigate liability by establishing commercially reasonable security systems for the benefit of their customers. Article 4A applies mostly to large corporate transfers of money for which electronic transfers are the most efficient.

**REVISED UNIFORM PROBATE CODE ARTICLE VI
UNIFORM NONPROBATE TRANSFERS AT DEATH ACT
UNIFORM TOD SECURITY REGISTRATION ACT**

Article VI of the Uniform Probate Code provides for multiple-party deposit accounts and pay-on-death (POD) clauses applying to such accounts. Multiple-party deposit accounts are accounts owned by more than one person. They may or may not be owned with right of survivorship between owners. Under Article VI, deposit accounts may be established with POD provisions, which allows the money in the account to be paid to a named beneficiary when the last owner of an account dies. A POD provision is nontestamentary and the money passes to the beneficiary without probate. Revised Article VI updates the law on multiple-party accounts and makes them easier to use. It also adds to the existing multiple-party account provisions, new provisions allowing transfer-on-death provisions for investment securities. Stocks, bonds, security accounts, and the like, may contain provisions that permit them to be transferred on the death of the owner to a named beneficiary. Such provisions are nontestamentary and the securities pass to the beneficiary without probate. Revised Article VI, also, is offered as two separate free-standing uniform acts, the Uniform Nonprobate Transfers at Death Act and the Uniform TOD Security Registration Act. Multiple-party deposit accounts and POD provisions are in the first of these two acts, and transfer-on-death provisions for investment securities are the subject of the latter.

UNIFORM FOREIGN-MONEY CLAIMS ACT

In the United States, judgments are stated and paid in dollars, notwithstanding the fact that in litigation, arbitration, and other actions pertaining to the allocation of money, a foreign currency may be the better alternative for the establishment of damages or of allocated shares in a fund of money. This act dissolves the old limitations on acceptance of foreign currency. A litigant can petition to have a lawsuit valued in a foreign currency. If the foreign currency is deemed to be the one most related to the transaction or the legal loss that is the basis of the action, the court may use the foreign

currency to establish damages. Foreign currency can also be used to value an arbitration award, and to value what are called in this Act, "distribution proceedings." Because it may be necessary to obtain actual payment of a judgment in dollars, the act allows conversion from the foreign currency into dollar value at the date the judgment is paid. This date reduces the risk of currency fluctuation for successful litigants.

UNIFORM PRETRIAL DETENTION ACT

This Act permits a defendant charged with a violently committed felony to be confined without bail while waiting for trial. In order for the prosecution to have such a defendant detained, it must move for pretrial detention, and prove certain specific elements pertaining to the likelihood of a successful prosecution, the objective dangerousness to others if the defendant is released, and the lack of an appropriate release program for the defendant. The defendant has a right to counsel and a full hearing. An adverse decision may be reopened upon petition. If detention is ordered, the time confined will be deducted from any sentence imposed.

UNIFORM RIGHTS OF THE TERMINALLY ILL ACT (1989)

This Act provides alternative means for a competent adult to provide instructions to a physician regarding withdrawal of life-sustaining treatment when the individual is suffering the last stages of a terminal illness and is no longer capable of communicating with the physician. The first alternative is a declaration that treatment be withdrawn. Such declarations are commonly known as "living wills." The other alternative is a declaration appointing another person to make such decisions as a surrogate or attorney-in-fact. These are fully enforceable declarations. The Act, also, provides for family members to consent to the withdrawal of life-sustaining treatment in such a situation in the event an individual has not executed such a declaration. Family members are able to consent in a specific order of priority.

