

**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

January 1, 1990 - December 31, 1990

HISTORY OF THE CONFERENCE

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. The following 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 late July or early August. Throughout the year, drafting committees composed of Commissioners work over several weekends on drafts of legislation 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, 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. At the Conference's national office 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 conservatively ranges from \$8 to \$10 million annually. 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 \$13,900 to the Conference in 1989-90 and paid travel expenses for the Virginia Commissioners to the annual meeting. All state contributions are based upon population. In 1990-91 the contribution from Virginia increased to \$14,600, which 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 Kneedler III to the Conference. Mr. Johnakin and Mr. Kneedler have since been reappointed for consecutive terms. Governor Gerald L. Baliles appointed Charles K. Woltz in 1988. Mildred Robinson was appointed to replace Mr. Woltz in mid-1990 by Governor L. Douglas Wilder. 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 membership as an associate member to the principal administrative officer of the state agency "charged by

law with the duty of drafting legislation, or his designee." E. M. Miller, Jr., Director of the Division of Legislative Services since 1989, and Mary P. Devine, senior 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 Kneedler 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 MILWAUKEE, WISCONSIN

The 1990 annual meeting was held July 13-20, 1990, in Milwaukee, Wisconsin. Commissioners Lamb, Ring, Kneedler, Johnakin, and Devine attended.

The agenda for the annual conference was quite full. The following Uniform Acts were adopted for consideration by the states:

Amendments to Article 2A of the Uniform Commercial Code

Revisions to Article 3 (Negotiable Instruments) of the Uniform Commercial Code and Companion Amendments to Article 4

Uniform Controlled Substances Act

Uniform Marketable Title Act

Uniform Periodic Payment of Judgments Act

Revisions to Article II of the Uniform Probate Code - Intestacy, Wills and Donative Transfers

Model Surface Use and Mineral Development Accommodation Act

ACTIVITIES OF THE 1990 GENERAL ASSEMBLY

Virginia has enacted 42 uniform acts on the Conference's "active list," including the most significant product of the Conference, the Uniform Commercial Code. During the 1990 Session, the General Assembly enacted four uniform acts. Virginia became the first state to enact Article 4A of the Uniform Commercial Code (House Bill No. 138). Article 4A prescribes comprehensive rules governing fund transfers by wire. A simple mechanism for establishing custodial trusts for adult beneficiaries was authorized by enactment of the Uniform Custodial Trusts Act (House Bill No. 257). The Foreign Country Money Judgment Act (House Bill No. 518) adopts procedures for the enforcement of money judgments rendered in other countries.

The Virginia anatomical gifts statute was revised, conforming to amendments adopted by the Conference to facilitate organ donations (House Bill No. 830). Virginia estate law was significantly modified to abolish a surviving spouse's dower or curtesy interest in favor of an elective share in the decedent's "augmented estate." Provisions of the Uniform Probate Code served as a model for this legislation (House Bill No. 864). Finally, the legislative committee chaired by Delegate Heilig to review revisions and additions to the U.C.C. was continued, specifically to look at Articles 2A and 6 and revisions to Articles 3 and 4 (House Joint Resolution No. 15).

The Uniform Fraudulent Transfers Act (House Bill No. 243) was introduced but carried over for further consideration during the 1991 Session. Also carried over were two identical bills (House Bill No. 23; Senate Bill No. 14) which deal with issues involved in surrogacy contracts and contain provisions relating to court approval of these contracts which are derived from the Uniform Status of Children of Assisted Conception Act.

RECOMMENDATIONS FOR ENACTMENT

The Virginia Commissioners believe the following acts, approved by the Conference for consideration by the states, should be enacted in Virginia: 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 been approved by the Conference, make significant contributions to important subjects, and the Virginia Commissioners strongly recommend these acts for consideration and adoption by the 1991 General Assembly:

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

Revisions to Article 3 (Negotiable Instruments) of the Uniform Commercial Code

Uniform Fraudulent Transfers Act

Uniform Conflict of Laws - Limitations Act

Uniform Foreign Money Claims Act

Uniform Periodic Payment of Judgments 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 3, and corresponding amendments to Article 4 of the Uniform Commercial Code (1990) revises current negotiable instruments law to take account of modern business practices, such as check truncation, and forty years' experience with the U.C.C.

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

Uniform Conflict of Laws - Limitations Act (1982) addresses problems, such as forum shopping, which result when choice of law rules are applied to determine the appropriate limitations period in civil actions involving the laws of more than one state. The Act treats limitations periods as matters of substantive law. This practice requires the court to apply the limitations period of the state whose substantive law applies under the choice of law rules governing the forum court. An exception is provided to avoid patently unfair results.

Uniform Foreign Money Claims Act (1989) dissolves the old limitations on acceptance of foreign currency. 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. 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 forms 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 "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 Periodic Payment of Judgments Act (1990) provides an alternative to lump-sum payment of future damages for bodily injuries. Either party to a tort action for such injuries may petition for a periodic payment award if anticipated damages exceed \$100,000. A short summary of the Act is included in the appendix to this report.

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 on 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 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, defamation, adoption, crime victims reparation, partnerships, and support enforcement.

During the 1990 annual meeting, the following new drafting committees were authorized: Uniform Civil Forfeiture for Drug Offenses Act, Uniform Unincorporated Associations Act, and Revisions to Article 5 of the Uniform Commercial Code (Letters of Credit). Additionally, committees have been created to study whether uniform acts would be desirable to cover the following areas: oil, gas and minerals laws; computer software; tort reform; certification of questions of law; insurance cancellation and non-renewal; pre- and post-judgment interest; and the need for revisions to the Uniform Unclaimed Property Act.

Respectfully submitted,

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SHORT SUMMARIES, 1990

Uniform Commercial Code Article 2A Amendments (1990)

Amendments were adopted in 1990 for the leasing article of the UCC. For the most part the amendments are for the purposes of clarifying existing UCC 2A provisions or adjusting existing provisions in relatively minor ways. There are three substantive issues addressed. The term "finance lease" is changed to allow leases to qualify with notice to lessees of the character of the purchase agreement between supplier and lessor or notification as to where information of that nature can be obtained, as well as tendering a copy of the purchase contract to the lessee, itself. Although parties to a lease contract may agree to restrict the right to assign interests in the contract, assignments are ineffective against those who hold secured interests in the rents derived from such contracts. Amendments permit rescision of the lease contract only if the breaches are material enough to call for rescision, while retaining the right to damages.

Uniform Commercial Code Revised Article 3 - Negotiable Instruments

In 1990, the Uniform Law Commissioners revised Article 3 of the Uniform Commercial Code for the first time since the Uniform Commercial Code was promulgated in 1951. The basic concepts of negotiable instruments are retained. The revisions take care of problems that have accumulated, as evidenced in the case law, since the original Article 3 was unveiled. The scope of the article contracts, slightly. Original Article 3 applies to certain instruments that are not negotiable. The revision applies the Article only to fully negotiable instruments, except bank checks. Bank checks are subject to revised Article 3, even though they may not be negotiable. The revision relieves the problem of negotiability for adjustable rate instruments. They become fully negotiable under the revisions. The revised act has contribution rules for liable multiple parties to a negotiable instrument, something original Article 3 lacked. A statute of limitations provision is included in revised Article 3, again an omission in the original. These are examples of the improvements that the revisions provides for the essentials of negotiable instrument law.

**Uniform Commercial Code Article 4 Conforming and
Miscellaneous Amendments (1990)**

Article 4 is a companion to Article 3 of the Uniform Commercial Code. In 1990, it has been amended to assure it continues to complement the revisions to Article 3. Included in the amendments are provisions for truncation agreements between banks, a statute of limitations provision, and warranties pertaining to correct encoding of information and for retention of items in the event they are subject to a truncation agreement. It becomes possible for financial institutions to offer accounts with statements that do not include the customer's actual cancelled checks. However, the institution must keep checks for seven years so that they are available to customers on demand.

Uniform Controlled Substances Act (1990)

The Uniform Controlled Substances Act, promulgated originally in 1971, is the primary law pertaining to narcotic drugs at the state level in the United States. In 1990, the Uniform Law Commissioners have prepared the first revision of this Act. Included in these revisions are a completely updated schedule of narcotic drugs, emergency scheduling provisions for newly identified analogues to existing controlled substances, special penalties for trafficking in analogues, complete penalty provisions, including penalties for trafficking in the vicinity of schools, and new provisions for monitoring and stemming diversion of legal controlled substances into the illegal market.

Uniform Marketable Title Act

This Act, derived from Article 3 of the Uniform Simplification of Land Transfers Act, extinguishes interests in land that are not found in the root of title, dated back 30 years from the time that interests must be determined. These are ancient, unasserted interests that have the effect of clouding title and restricting marketability. Exceptions include interests that are easily found by reasonable inspection, including interests of those actually occupying land, and interests of the federal government. Even interests that precede the 30 year period may be preserved by recordation every thirty years.

Uniform Periodic Payment of Judgments Act

Under this Act, judgments for future damages in tort actions involving bodily injury may be established in periodic payment form rather than lump-sum form. Either party to an action may petition for a periodic payment award, if the damages are likely to exceed \$100,000. Explicit procedures for establishing the judgment, including inflation adjustment factors, are contained in the Act. A list of qualified insurers, who are able to fund periodic payment awards, must be kept in the state. Attorney's fees are to be paid, initially, out of future non-economic damages.

Uniform Probate Code Article II - Intestacy, Wills, and Donative Transfers

The Uniform Probate Code was promulgated originally in 1969. The Uniform Law Commissioners have provided the first revision of Article II in 1990. Included are improved protection for surviving spouses in intestate succession. The elective share provisions are realigned to meet principles of marital property. Antilapse provisions are provided for both devises under wills and nonprobate transfers. The Uniform Statutory Rule against Perpetuities is incorporated in the Uniform Probate Code.

Uniform Law Commissioners' Model Surface Use and Mineral Development Accommodation Act

This new Act requires owners of mineral interests in land to seek accommodation agreements with owners of surface interests in order to avoid liability for damage to surface interests. It also permits surface owners to seek protection for surface uses and improvements by notifying owners of mineral interests. If there are objections in either case, there are provisions for resolution in court. There are also damage provisions when there is liability for injury to surface interests.