

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

Uniform State Laws

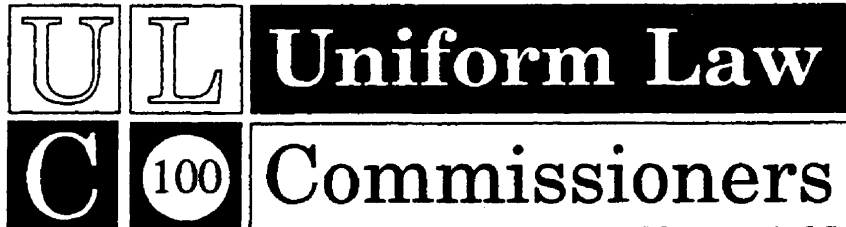
**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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RICHMOND
1992**

DIVERSITY *of* THOUGHT—UNIFORMITY *of* LAW



A CENTURY *of* SERVICE

1892-1992



The Virginia Commissioners

John B. Boatwright, Jr.
Brockenbrough Lamb, Jr.
Carlyle C. Ring, Jr.
Stephen G. Johnakin

H. Lane Kneedler III
Mildred Robinson
Mary P. Devine
E.M. Miller, Jr.

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, 1991 - December 31, 1991

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.

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 100 years ago 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 elected by vote of the Commissioners, and five members who are appointed annually by the President of the Conference. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee superintends the relationships of the conference to the state legislatures.

The Conference maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which annually contributes to the operation of the Conference. Additionally, liaison is continually maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures. Other associations are frequently contacted and advised of Conference activities as interests and activities necessitate. At the Conference's national office in Chicago, a small 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 \$14,600 to the Conference in 1990-91 and paid travel expenses for the Virginia Commissioners to the annual meeting. All state contributions are based upon population. In 1991-92, as a result of revised census figures, the contribution from Virginia increased to \$21,600.

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. Mr. Woltz resigned in

mid-1990 for health reasons and Mildred Robinson was appointed as his replacement 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, is an associate member, and Mary P. Devine, senior attorney with the Division, continues to serve as an associate member.

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

Brockenbrough Lamb, Jr. - Chairman, Standby Committee on the 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, Committee to Revise U.C.C. Article 8 Opportunities Act; member, Review Committee on Unincorporated Nonprofit Associations Act.

Carlyle C. Ring, Jr. - Chairman, Drafting Committee to Revise Article 5 of the U.C.C., Co-Chairman of the Standby Committee on Amendments to Articles 3 and 4 of the U.C.C.; member, Act Management Subcommittee for Article 4A of the U.C.C.; member, Permanent Editorial Board for the Uniform Commercial Code; member, Legislative Committee; member, Committee on the Centennial Celebration.

Mildred W. Robinson - Member, Health-Care Decisions Act Drafting Committee; member, Prudent Investor Act Review Committee.

Mary P. Devine - Member, Standing Committee on Appointment of and Attendance by Associate Members; member, Committee on the Centennial Celebration; member, Child Visitation Act Study Committee.

REPORT OF PROCEEDINGS OF THE ANNUAL CONFERENCE IN NAPLES, FLORIDA

The 1991 annual meeting was held August 1-9, 1991, in Naples, Florida. Commissioners Lamb, Ring, Kneedler, Johnakin, Robinson, Miller and Devine attended.

The agenda for the annual conference was very full. As always, the debates were spirited, lengthy but fruitful. Many Acts were held over for further debate

next year. These include the Uniform Partnership Act, the Uniform Adoption Act, the Uniform Victims of Crime Act, and the Uniform Reciprocal Enforcement of Support Act. The following Uniform Acts were adopted for consideration by the states:

Uniform Transfer of Litigation Act

Uniform Act on Intestacy, Wills and Donative Transfers (revised Article II of the Uniform Probate Code)

Model Employment Termination Act

ACTIVITIES OF THE 1991 GENERAL ASSEMBLY

Virginia has enacted 43 Uniform Acts on the Conference's "active list," including the most significant product of the Conference, the Uniform Commercial Code.

Three Uniform Acts were considered during the 1991 Session of the General Assembly. The Uniform Fraudulent Transfers Act (House Bill No. 243 - Cranwell) had been carried over to the 1991 Session at the request of the Virginia Commissioners. The Virginia Bar Association and the Virginia Bankers Association were unable to thoroughly review the Act during that time and, therefore, the Virginia Commissioners agreed to their request that consideration of the Act be deferred until 1992. The Uniform Foreign Money Claims Act (House Bill No. 1342 - Robinson) was also approved. It is a companion measure to the Uniform Foreign Country Money Judgments Acts enacted in 1990.

Finally, Article 2A of the U.C.C. was enacted. The new article governs leases of personal property.

In addition to the three Acts, the General Assembly approved two resolutions concerning the Conference. The first resolution was requested by the joint subcommittee created by the 1990 General Assembly to study credit card fraud. The resolution asks the Conference to consider adoption of a Uniform Telemarketing Fraud Act in order to more effectively combat the growing use of fraudulent interstate telemarketing schemes.

The second resolution commends the Conference, and particularly the Virginia Commissioners who have served the Conference so well, upon its Centennial.

RECOMMENDATIONS FOR ENACTMENT

The following Uniform Acts, which have been approved by the Conference, make significant contributions to important subjects. The Virginia Commissioners strongly recommend these Acts for consideration and adoption by the 1991 General Assembly:

Revised Article 3 (Negotiable Instruments) of the Uniform Commercial Code

Repeal of Article 6, Uniform Commercial Code

Uniform Fraudulent Transfers Act

Uniform Conflict of Laws - Limitations Act

Uniform Transfer of Litigation Act

Uniform Controlled Substances Act

Uniform Health-Care Information Act

Uniform Commercial Code Revised Article 3--Negotiable Instruments retains the basic concepts of negotiable instruments as first promulgated in 1951 while responding to problems evidenced in the case law. While the original Article 3 applied to certain instruments that are not negotiable, the revision applies 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 provide for the essentials of negotiable instrument law.

Companion amendments to Article 4 are included. Included 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 is 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 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 Transfer of Litigation Act (1991) permits courts of an adopting state to transfer litigation to the courts of another state or to the federal courts, and to accept litigation similarly transferred to it from a court in another state or a federal court. Both transfer of litigation to another jurisdiction and acceptance of litigation from another jurisdiction are matters of discretion for the court. No court is either forced to transfer or to accept transfer under this Act. There are appropriate procedural provisions to accomplish the exercise of these authorities.

Uniform Controlled Substances Act (1990) revises the 1970 Uniform Act which has become the primary law pertaining to narcotic drugs at the state level in the United States. 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 Health-Care Information Act (1985) 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.

REQUEST FOR TOPICS APPROPRIATE
FOR CONSIDERATION AS UNIFORM ACTS

In the next several years, the Conference will be considering proposed Uniform Acts covering defamation, adoption, crime victims' reparation, partnerships, and support enforcement. During the 1991 annual meeting, the following new drafting committees were authorized: Committee to Revise Uniform Commercial Code Article 2 (Sales); Committee to Revise Uniform Commercial Code Article 8 (Investment Securities); Committee on Health-Care Decisions Act; Committee on Prudent Investor [Act] [Rule]; and Committee to Revise Uniform Unclaimed Property Act. Study Committees were authorized to examine proposals for an Interstate Child Visitation Act, Limited Liability Company Act, and a State Public Employees' Retirement Income Security Act. Additionally, the study committee on computer software contracts was modified to become a "special committee."

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.

Respectfully submitted,

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SHORT SUMMARIES, 1991

UNIFORM LAW COMMISSIONERS' MODEL EMPLOYMENT TERMINATION ACT

An employee may not be discharged under this Act except for "good cause." Good cause may be improper or inadequate performance on the part of the employee. Good cause may also be the economic goals and needs of the enterprise in which the employee works. An employee may file an action against an employer, alleging that a dismissal is not for good cause. The remedy for dismissing an employee without good cause is reinstatement, backpay, lost benefits, or, in the alternative, a lump-sum severance payment. There are no compensatory, intangible, or punitive damages allowed, otherwise. The action that the employee files is for arbitration of the allegation. The arbitration award may be reviewed in a court of law only for abuse of discretion or office of the arbitrators. The Act applies to all employers who employ five or more employees. An employee must be employed at least one year prior to the dismissal to have the benefit of this Act. The right to "good cause" dismissal may be waived or modified by specific contract, although full waiver requires agreement by the employer to substantial severance pay. Nothing in the Act displaces rights and obligations under any collective bargaining agreement or the rights of state and federal employees under civil service or other law.

UNIFORM ACT ON INTESTACY, WILLS, AND DONATIVE TRANSFERS

The Uniform Probate Code was promulgated originally in 1969. The Uniform Law Commissioners provided the first revision of Article II in 1990. Revised Article II has been incorporated in a separate, free-standing Uniform Act, the Uniform Act on Intestacy, Wills, and Donative Transfers, in 1991. Included is 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. Rules of construction for wills and nonprobate transfers are aligned and made as parallel as possible in one comprehensive Uniform Act.

UNIFORM SIMULTANEOUS DEATH ACT (1991)

A revision of an Act originally promulgated in 1940 and incorporated into the Uniform Probate Code Article II and the Uniform Act on Intestacy, Wills, and Donative Transfers, this Act provides that any persons who die within 120 hours of each other, by law, predecease each other. This rule keeps the property of one deceased person from passing through the estate of another deceased person before passing to those who survive both.

UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT (1991)

This Act is a revision of an Act originally promulgated in 1960. The text of the 1991 Act is also incorporated into the Uniform Probate Code Article II and the Uniform Act on Intestacy, Wills, and Donative Transfers. This Act authorizes a provision in a will that transfers property at death to a trust. This type of provision is commonly called a "pour-over" provision and the trust is called a "pour-over" trust. Such trusts are commonly used in estate planning, and such provisions are not thought to be permitted without statutory authorization. The 1991 version improves the flexibility of such provisions and guarantees that such provisions are valid for trusts that are not funded until funded by the actual pour-over.

UNIFORM TRANSFER OF LITIGATION ACT

This Act permits courts of an adopting state to transfer litigation to the courts of another state or to the federal courts, and to accept litigation similarly transferred to it from a court in another state or a federal court. Both transfer of litigation to another jurisdiction and acceptance of litigation from another jurisdiction are matters of discretion for the court. No court is either forced to transfer or to accept transfer under this Act. There are appropriate procedural provisions to accomplish the exercise of these authorities.