

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

Uniform State Laws

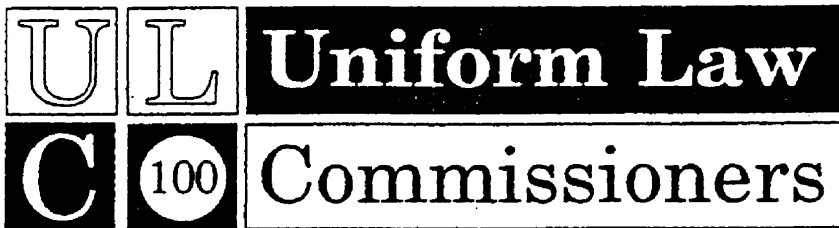
**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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1993**

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
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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, 1992 - December 31, 1993

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 issues. 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 over 100 years ago because of the interests of state governments in improvement of the law and 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. In fiscal year 1992-93, the ABA contributed \$16,000 to the Conference. The Conference also seeks grants from the federal government and from foundations for specific drafting efforts. The Conference will not take money from any source except on the understanding that its drafting work is autonomous. No source may dictate the contents of any Act because of a financial contribution. 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. The Conference has consciously limited its staff to prevent accrual of needless administrative costs. The full-time staff in Chicago numbers five, including the Executive Staff consisting of the Legal Counsel, Executive Secretary and Legislative Assistant. The position of Executive Director is part time and is traditionally occupied by someone from the law school community. In addition, the Conference contracts with "reporters" for professional services to aid in the drafting effort. These professional reporters are engaged at very modest honorariums (base rate \$150.00 per day) to work with Drafting Committees on specific Acts. The Conference also contracts with professional, independent contractors for part of its public information and educational materials. In-house staff costs amount to 35 percent of the budget. The Conference has annual budgets and audit reports which are available on request.

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, 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

The Conference is a state service organization which depends upon state appropriations for its continued operation. All states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the Conference. In addition, each state delegation requests an amount to cover travel expenses of its commissioners to the Conference Annual Meeting. For Virginia, the amount requested for the 1992-93 fiscal year for maintenance of the Conference is \$21,700; the amount requested for the travel of the state commission is \$11,300.

The total requested contribution of all the states to the operation of the ULC is \$948,800 for 1992-93. The smallest state contribution is \$5,600, and the largest is \$83,600. Even a modest use of the work product of the Conference guarantees any state a substantial return on each dollar invested. The average number of current Uniform and Model Acts adopted in all states is sixty-four; Virginia has adopted forty-four.

The annual budget of the National Conference comes to \$1,130,000 for the current fiscal year (July 1 to June 30). Of this amount \$960,500 goes to the drafting effort, including travel expenses for Drafting Committee meetings, printing and publication costs, editing and personnel costs, and miscellaneous administrative costs. \$169,500 is spent in assisting state legislatures with bills based on Uniform and Model Acts. This latter amount includes salaries, travel expenses, and administrative expenses.

CREATION OF UNIFORM AND MODEL ACTS

The procedures for drafting an Act are the result of long experience with the creation of legislation. The Scope and Program Committee considers new subject areas of state law as potentials for Uniform or Model Acts. The Committee, consisting solely of Commissioners, studies suggestions from many sources, including the organized bar, state government, and private persons. If a subject area cannot be adequately studied, it is likely to be given to a special study committee. The recommendations that come from this study mechanism go to the Executive Committee, and to the entire Conference for approval.

If a subject receives approval for drafting, a Drafting Committee is selected, and a budget is established for the Committee work. If there is a need for professional drafting assistance, and if the budget permits, a reporter from outside the Conference may be hired. Many Committees work without professional assistance, or in some cases, that assistance is donated.

Usually advisors are solicited to assist the Drafting Committee. The American Bar Association appoints official advisors for every Committee. Other advisors may come from state government, organizations with interests and expertise in a subject, and from the ranks of recognized experts in a subject.

They must donate their time, to the effort if they wish to participate. Advisors are invited to work with Drafting Committees and to contribute comments. They do not make final decisions with respect to the final contents of an Act. Only the Commissioners who compose the Drafting Committee may do this.

A Committee meets according to the needs of the project. Meetings ordinarily begin on Friday morning and finish by Sunday noon, so as to minimize conflict with ordinary working hours. A short Act may require one or two Committee meetings. Major Acts may require one meeting every month for a considerable period of time - several years, in some instances. A Committee may produce a number of successive drafts as an Act evolves.

At each Annual Meeting during its working life, the Drafting Committee must present its work to the whole body of the Conference. The most current draft is read and debated. This scrutiny continues until a draft can satisfy the whole body of the Commissioners. Every Act receives at least one interim reading, and is finalized when the whole Conference is satisfied as to its policies and technical quality. Then, it becomes an official Act by a vote of the states. Each state commission caucuses to represent its state's position; each state receives one vote. The vote by states completes the drafting work, and the Act is ready for consideration by the state legislatures.

The cost of this process to the states is primarily for travel expenses, paper and publication costs, and meeting costs. Nearly all the services are donated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has great advantages.

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. Mildred Robinson was appointed by Governor L. Douglas Wilder in mid-1990 and was reappointed for a full term in 1992. 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. Mary P. Devine, senior attorney with the Division, was designated in 1983 to represent the former Director and 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, Committee on Uniform Commercial Code; 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, Committee on Liason with Legislative Drafting Agencies; member, Committee on the Centennial Celebration; member, Child Visitation Act Study Committee.

REPORT OF PROCEEDINGS OF THE ANNUAL CONFERENCE IN NAPLES, FLORIDA

The 1992 annual meeting was held July 30 - August 6, 1992, in San Francisco, California. Commissioners Lamb, Ring, Kneedler, Miller and Devine attended.

The agenda for the annual conference was very full. As always, the debates were spirited and lengthy, but fruitful. The Acts held over for further debate next year include the Uniform Adoption Act. The following Uniform Acts were adopted for consideration by the states:

Uniform Interstate Family Support Act

Uniform Partnership Act

Uniform Unincorporated Nonprofit Associations Act

Uniform Victims of Crime Act

ACTIVITIES OF THE 1992 GENERAL ASSEMBLY

Revised Article 3 of the Uniform Commercial Code, with companion amendments to Article 4, was enacted (See Senate Bill No. 101). The Virginia Commissioners had strongly urged its enactment in their 1992 Report (House Document No. 18). Revised Article 3 applies to bank checks and to fully negotiable instruments.

Also passed was House Joint Resolution No. 147, recreating the joint study committee to review and make recommendations regarding conference-proposed revisions to the Uniform Commercial Code, particularly Article 6.

The Uniform Fraudulent Transfers Act was introduced again (Senate Bill No.144) and, as happened with House Bill No. 243 in 1990, was carried over to the 1992 Session. The Virginia Bar Association and the Virginia Bankers' Association have reviewed the act during this interim and will likely be prepared to take a position on the Act in 1993.

Also introduced and carried over was the Uniform Conflict of Laws-Statute of Limitations Act (Senate Bill No. 215). The Virginia Trial Lawyers Association spoke against the bill. The chief patron then asked that it be carried over to allow more time to consider their concerns. It is not anticipated that the bill will be considered during the 1993 Session. Rather, the Bar Association will review the bill during 1993 and report back to the Virginia Commissioners prior to the 1994 Session.

At the request of the chief patron, the Uniform Transfer of Litigation Act (House Bill No. 834) was stricken from the docket in the House Courts of Justice Committee. There were concerns that the bill would significantly modify Virginia's change of venue statute (§ 8.01-265), thereby undoing the 1991 compromise which eliminated venue disparity between in-state and out-of-state plaintiffs. The Bar Association will also review this bill during 1993.

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 1993 General Assembly:

Repeal of Article 6, Uniform Commercial Code

Uniform Fraudulent Transfers Act

Uniform Conflict of Laws - Limitations Act

Uniform Transfer of Litigation Act

Uniform Nonprobate Transfers on Death Act - Security
Registration Act

Uniform Interstate Family Support¹

Uniform Commercial Code, Article 6 - Bulk Sales is presented to the states by the Conference in the form of two alternatives, revision or repeal. Repeal is the recommended alternative. The Virginia Bar Association has endorsed repeal.

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.

¹See: Short Summaries, beginning at page (10).

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 Nonprobate Transfers at Death - Security Registration Act (Part 3 of Article VI of the Uniform Probate Code (1989)) allows the owner of securities to register the securities in transfer-on-death (TOD) form. Securities are thus given parity with existing TOD facilities for bank accounts and other non-probate assets. Following a study begun in April 1992, the Virginia Bar Association Section on Wills, Trusts and Estates recommends enactment.

Uniform Interstate Family Support Act (1992) completely revises URESA (Uniform Reciprocal Enforcement of Support Act). The U.S. Commission on Interstate Child Support has urged Congress to require states to enact the Act, or similar legislation. UIFSA is similar to the Uniform Child Custody Jurisdiction Act in restricting jurisdiction and modification of support orders to only one state.

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, health care decisions, sales, (UCC Article 2), investment securities (UCC Article 8), letters of credit (UCC Article 5) and civil forfeiture for drug offenses. During the 1992 annual meeting, the following new drafting committees were authorized: Limited Liability Company Act and Prudent Investor Rule. Study Committees were authorized to examine proposals for interstate child visitation, state employees retirement income security, transfer of real estate affected by hazardous substances and secured transactions (UCC Article 9). 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, 1992

UNIFORM INTERSTATE FAMILY SUPPORT ACT

This Act replaces the Uniform Reciprocal Enforcement of Support Act. It is designed to improve the interstate establishment and enforcement of spousal and child support awards, and to eliminate the possibility of multiple exercises of jurisdiction over support awards with attendant multiple, conflicting support awards from more than one state. Jurisdiction to modify an award is meant to be held by one and only one state at a time. This is accomplished by providing comprehensive long-arm provisions so that a state can take jurisdiction over a party to a child or spousal support dispute, who is outside the state, but who has a significant connection with the state and the dispute. A state that has taken jurisdiction, and which is the state of residence for any party, retains continuing exclusive jurisdiction as long as residency of a party continues. Continuing exclusive jurisdiction prevents other states from establishing a competing award or modifying the existing award. If simultaneous proceedings are initiated in more than one state with a basis for taking jurisdiction, the state that is the home state of the child takes priority over the other states in adjudicating the dispute and establishing an award. If a state initiates an enforcement action that is transmitted to another state, there are limitations upon the modification jurisdiction of the state that is the responding state. States have the capacity to bring and to transport actions pertaining to establishing or modifying support awards, including proceedings for initially determining parentage. This comprehensive Act will improve the course of establishing and enforcing child and spousal support awards in every state.

UNIFORM PARTNERSHIP ACT (1992)

This Act revises the Uniform Partnership Act of 1914. The 1992 Act establishes a partnership as a separate legal entity, and not merely as an aggregation of partners. It recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. It permits the filing of statements of authority that have the effect of affirming the authority of designated partners to do business on behalf of the partnership, and to impose limitations upon the authority of certain partners to conduct business on behalf of the partnership. The 1992 Act explicitly addresses the fiduciary responsibilities of partners to each other, providing

for express obligations of loyalty, due care, and good faith. Partnership property is held in the partnership name, and is not co-owned by the partners, individually. Partners own their partnership interest, but not specific property. Every dissociation of a partner with the partnership does not result in dissolution of the partnership and a winding-up of its affairs. Only dissociation with express intent of so doing will cause dissolution. There are provisions in the 1992 Act for conversion of a partnership to a limited partnership, and vice versa, and for merger of a partnership with other partnerships or limited partnerships. A partnership remains an association of one or more persons to do business for profit, and partners remain equally liable for the debts of the partnership.

UNIFORM UNINCORPORATED NONPROFIT ASSOCIATIONS ACT

This Act allows unincorporated nonprofit associations to receive, hold and transfer real and personal property in the name of the association. It provides limitation of liability of members and functionaries of such associations from contract and tort liability of the association, while permitting the association to incur liabilities in its own name. A nonprofit association may file a statement of authority for transferring real property on the property records. The statement may be relied upon by third parties involved in real estate transactions with the association. An association is permitted to designate an agent for service of process. These rules are applied to such associations without the obligation to create any sort of corporation.

UNIFORM VICTIMS OF CRIME ACT

This Act provides rights for victims of crime to certain protections in the criminal justice system, for information about criminal cases resulting from the crimes of which they are victims, and to appear in proceedings regarding the sentencing or other disposition of those convicted of the crimes of which they are victims. The Act further establishes a system of compensation for those personally injured as a result of criminal activity, with maximum compensation of \$25,000.00. The compensation system would take advantage of federal funding for such programs at the state level. This Act, also, provides a criminal remedy of monetary restitution for a victim's losses as part of the sentencing of the criminal defendant. Restitution is separate and apart from any civil remedy that a victim may have against the same criminal defendant.