

**REPORT OF THE
VIRGINIA COMMISSIONER 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 to the
National Conference of Commissioners
on Uniform State Laws
to
The Governor and the General Assembly of Virginia
Richmond, Virginia

January 1, 1993 - December 31, 1994

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 purposes remain as 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 drafting effort on the Uniform Victims of Crime Act (1992) was aided by a federal grant. 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 five person, full-time staff in Chicago, includes

the legal counsel, executive secretary and legislative assistant. The position of executive director is part time and is traditionally occupied by someone from a law school. In addition, the Conference contracts with "reporters" for professional services to aid in drafting. These professional reporters are engaged at very modest honorariums (base rate \$150 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 Conference consideration. Although the members volunteer their time and effort, they 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 its Commissioners' travel expenses of to the Conference Annual Meeting. For Virginia, the amount requested for the 1992-93 fiscal year for Conference maintenance was \$21,700; the amount requested for the travel of the State Commission was \$11,300.

The total requested contribution of all the states to the operation of the ULC is \$1,000,705 for 1993-94. The smallest state contribution is \$5,900, and the largest is \$87,800. 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 70; Virginia has adopted 44.

The annual budget of the National Conference comes to \$1,189,381 for the current fiscal year (July 1 to June 30). Of this amount, \$988,081 goes to the drafting effort, including travel expenses for drafting committee meetings and printing, publication, editing, personnel, and miscellaneous administrative costs. \$201,300 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 form 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, paper, publication, and meetings. 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 20 years. Virginia's life members are 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. John B. Boatwright, Jr., was appointed to the Conference in 1950 and was a life member of the Conference at the time of his death on March 13, 1993.

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 Kneeder 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.

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

Mary P. Devine - Member, Committee on Liaison with Legislative Drafting Agencies; member, Child Visitation Act Study Committee.

REPORT OF PROCEEDINGS OF THE ANNUAL CONFERENCE IN CHARLESTON, SOUTH CAROLINA

The 1993 annual meeting was held July 30 - August 6, 1993, in Charleston, South Carolina. Commissioners Lamb, Ring, Kneeder, Johnakin, Robinson and Devine attended. A memorial to John B. Boatwright, Jr., was delivered to the Conference by Commissioner Lamb on behalf of the Virginia Commissioners. A copy of Commissioner Lamb's remarks is appended to this report.

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 Correction or Clarification of Defamation Act

Uniform Partnership Act

Uniform Health Care Decisions Act

Uniform Statute and Rule Construction Act

ACTIVITIES OF THE 1993 GENERAL ASSEMBLY

Uniform Interstate Family Support Act was sponsored by Delegate C. Richard Cranwell. There was no known opposition to House Bill 1628, but because of the large number of bills introduced it died for lack of action in the House Committee for Courts of Justice.

Uniform Commercial Code, Article 6 - Bulk Sales was introduced (HB 1785) upon recommendation of the study committee chaired by Delegate George H. Heilig, Jr. Lawyer-legislators from the rural areas of the state expressed concerns over the effect of repeal and elimination of the notice requirements of Article 6. In deference to these concerns, the bill was not reported from committee. However, House Joint Resolution No. 524, continuing the study of revisions to the U.C.C., was passed. The committee will revisit the issue of Article 6.

TOD - Security Registration was introduced by Delegate Clement upon recommendation of the Virginia Bar Association (HB 1621). Like the Uniform Interstate Family Support Act, there was no known opposition and not enough time for the House Courts of Justice Committee to consider the bill.

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 Nonprobate Transfers on Death Act (TOD) - Security
Registration Act

Uniform Interstate Family Support

Uniform Simultaneous Death Act (1991)

Uniform Partnership Act (1993)¹

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

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

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 nonprobate 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.

Uniform Simultaneous Death Act (1991) modifies the prior act in recognition of advances in medical technology which may prolong life. Where, for example, one spouse survives a common accident from which the other dies, but only by a period of less than 120 hours, the act presumes that they died simultaneously for purposes of disposing of the first decedent's estate. The act assumes that the first decedent intended the survivor to have some personal enjoyment of the property.

Uniform Partnership Act (1993) revises the former act to establish a partnership as a separate legal entity, although partners remain equally liable for the debts of the partnership.

REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS

In the next several years, the Conference will be considering proposed Uniform Acts covering adoption, sales, (UCC Article 2), investment securities (UCC Article 8), letters of credit (UCC Article 5) and civil forfeiture for drug offenses.

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,

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

UNIFORM LAW COMMISSIONERS

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SHORT SUMMARIES, 1993

UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

Under this Act, a person must make a timely request for a correction or clarification from the publisher of a defamation, in order to maintain an action for defamation. If the publisher of the defamation subsequently publishes a timely correction or clarification in a manner to reach the same public that the defamation reached, the defamed person can only receive economic losses if he or she prevails in the defamation action. A publisher may make an offer to correct or clarify after the time for a timely correction or clarification has passed and before trial. If the defamed person accepts the offer, the action is extinguished and the defamed person recovers his or her litigation expenses. If it is not accepted, the recovery is limited to economic losses and reasonable expenses of litigation. The substantive elements of an action in defamation are otherwise unaffected.

UNIFORM HEALTH-CARE DECISIONS ACT

This Act provides that an adult or emancipated minor may make all health-care decisions while legal capacity remains. A health-care decision made during legal capacity will have effect even after capacity is lost, but an individual with capacity also has other methods under this Act for taking care of health-care decisions after capacity to make them is lost. The individual may appoint an agent to make health-care decisions in a health-care power of attorney. A court-appointed guardian may, also, make health-care decisions, but cannot do so if there is an agent unless the relevant court authorizes the guardian to make them. If there is no guardian or agent, the individual also may select a surrogate by communicating with the supervising health-care provider. If a person gives no instructions and does not appoint or select someone else to make these decisions, those in a close relationship to the individual may come forward, in order of priority, to be a surrogate. Anyone who makes decisions for another must follow any patient's instructions. Otherwise, the person making decisions must act in the best interests of the patient. A health-care provider must honor decisions made under this Act, or make a reasonable effort to transfer care to another health-care provider who will. This Act applies to all health-care decisions including decisions to withdraw treatment, allowing a patient to die.

UNIFORM PARTNERSHIP ACT (1993)

This Act revises the Uniform Partnership Act of 1914. The 1993 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 1993 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 1993 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 STATUTE AND RULE CONSTRUCTION ACT

This Act provides rules for drafting and interpreting statutes and administrative rules. For example, it provides a list of common definitions that would preclude the need to define these terms in any other statute. It precisely establishes the meaning of important verbs in legislative drafting such as "shall," "must," and "may." The Act, in addition, provides some rules of interpretation for statutes and administrative rules and clarifies the issue of extrinsic aids to interpretation. For example, a court should interpret a statute or administrative rule to avoid an unconstitutional result. A statute or administrative rule should be construed to give effect to its whole. These are examples of the rules of construction in this Act. A court, in interpreting a statute or administrative rule must look to the text for meaning, initially. If the text does not resolve all uncertainty about interpretation, the court can look to extrinsic sources, including prior cases in states from which the statute or administrative rule was borrowed, and official comments that might accompany the development of the statute. The objective is to ease the drafting of statutes and administrative rules, and to make interpretation more consistent with legislative intent.

Memorial

JOHN BAKER BOATWRIGHT, JR.

National Conference of Commissioners on
Uniform State Forms
102nd Annual Meeting
July 30 - August 6, 1993
Charleston, South Carolina

John Baker Boatwright, Jr., was born in Buckingham County, Virginia, on August 13, 1915, the son of John B. Boatwright, Sr., and the former Grace Jones. He was educated in the Buckingham County schools and went on to graduate from Richmond College of the University of Richmond Phi Beta Kappa. He subsequently graduated from the T. C. Williams School of Law at the University of Richmond and was admitted to the Bar shortly thereafter.

He joined the Division of Legislative Services of the General Assembly of Virginia, then called the Bureau of Statutory Research and Drafting, in the 1940's, and in the early 1950's was named director. During that time, he served on the Commission that produced the 1950 recodification of the Code of Virginia. He also served as executive secretary of the Virginia Advisory Legislative Commission. In 1965, he joined the Virginia Railway Association, an organization that lobbied on behalf of all the railroads that did business in Virginia, as executive director, and served in that position until 1970. At that time, he returned to government service as director of the Division of Legislative Services, and returned to the Virginia Railway Association during the mid-1970's. He retired in the late 1970's and returned to live in the family home in Buckingham, Virginia. Following his retirement, he practiced law on a part-time basis until several years prior to his death on March 13, 1993.

He and his wife, the late Araminta Jefferson Rowe Boatwright, had two children, John B. Boatwright, III, a lawyer now in private practice in Richmond, Virginia, and Frederick William Boatwright, who died in infancy. Among other activities, he served as a Deacon of the Third and Tuckahoe Presbyterian Churches and was president of the Tuckahoe Elementary School Parent-Teacher Association. His hobbies included reading, hunting and fishing.

John was appointed a Commissioner from Virginia on July 1, 1950, and was elected to Life Membership in 1974. He served on the Legislative Committee; Drafting Committee for Council of State Governments; Revised State Administrative Procedures Act; Uniform Traffic and Vehicle Act; Special Committee on Uniform State Trademark Registration Act; and was Chairman of Section E for 4 years.

From time to time, John would join his fellow Commissioners in "meditation sessions" in which the participants would partake of that delicious bourbon whiskey known as Virginia Gentleman.

Following his death, he was honored by the House of Delegates of the General Assembly of Virginia in House Joint Resolution No. 1004 on April 7, 1993, in which both the House and Senate noted his service to "members of the General Assembly with keen intelligence and exemplary dedication and distinction . . ."

Respectfully submitted,

Brockenbrough Lamb, Jr.

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