

**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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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, 1995 - December 31, 1995

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 to serve state governments and improve 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 1994-95, the ABA contributed \$10,000 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 seven-person, full-time staff in Chicago

includes the legal counsel, executive secretary and legislative assistant. The position of executive director is parttime and is traditionally occupied by a law school faculty member. 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 employs professional independent contractors for part of its public information and educational materials. In-house staff costs amount to 27 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 averages \$6 million annually.

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 for the Conference Annual Meeting. For Virginia, the amount requested for the 1993-94 fiscal year for Conference maintenance was \$22,800.

The total requested contribution of all the states to the operation of the ULC is \$1,108,700 for 1995-96. The smallest state contribution is \$6,600, and the largest is \$96,900. 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 45.

The annual budget of the National Conference comes to \$1,409,500 for the current fiscal year (July 1 to June 30). Of this amount, \$400,000 goes to the drafting effort, including travel expenses for drafting committee meetings and

printing, publication, editing, personnel, and miscellaneous administrative costs. \$160,000 is spent in assisting state legislatures with bills based on Uniform and Model Acts. This latter amount includes salaries, travel expenses, and administrative expenses. Approximately \$230,000 is spent on the annual meeting. Public education for uniform and model acts, including contractual services, material costs and travel expenses costs about \$70,000. The remainder of the budget pays general administrative costs.

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 organized bar groups, state governments, 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 then 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; in some cases, 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 or 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. As mentioned earlier, 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, each to serve a two-year term (§ 9-49, Code of Virginia). Governor Allen, in June of 1994, appointed three new commissioners: John Goode of Richmond, J. Rodney Johnson of Richmond and Pamela Meade Sargent of Abingdon. 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.

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.

 John Goode - Member, Disclaimer of Property Interests Drafting Committee; member, Act Management Committee.

J. Rodney Johnson - Member, Disclaimer of Property Interests Drafting Committee.

Pamela Meade Sargent - Member, Certification of Questions of Law Drafting Committee.

Carlyle C. Ring, Jr. - Chairman, Committee on Uniform Commercial Code; Chairman, Standby Committee on Revised Article 5 of the U.C.C.; Co-Chairman, 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.

Mary P. Devine - Member, Committee on Liaison with Legislative Drafting Agencies; member, Legislative Committee; member, Drafting Committee on the Uniform Disclaimers Act.

REPORT OF PROCEEDINGS OF THE ANNUAL CONFERENCE IN CHICAGO, ILLINOIS

The 1995 annual meeting was held July 28 - August 4, 1995, in Kansas City, Missouri. Commissioners Lamb, Ring, Goode, Johnson, Sargent, Miller and Devine attended.

The agenda for the annual conference was again very full. As always, the debates were spirited and lengthy, but fruitful. The following Uniform Acts were adopted by the conference for consideration by the states:

Uniform Certification of Questions of Law [Act] [Rule] (1995)

Uniform Commercial Code, Revised Article 5 - Letters of Credit

Uniform Statute and Rules Construction Act (amendments) (1995)

Uniform Unclaimed Property Act (1995)

Short summaries of these acts are attached as an appendix to this report.

ACTIVITIES OF THE 1995 GENERAL ASSEMBLY

The Uniform Interstate Family Support Act was amended by SB 778 to make the circuit courts the appropriate tribunals in which to file out-of-state orders.

The Uniform Commercial Code, Article 6 - Bulk Transfers was again introduced in 1994, upon recommendation of the study committee chaired by Delegate George H. Heilig, Jr., although this time both repeal (HB 471 - Woodrum) and revision (HB 645 - Heilig) were introduced. In 1993, 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, further review was undertaken by the U.C.C. study committee. Both versions were carried over by the House Courts of Justice Committee, which failed to take any action in 1995 with regard to either bill prior to the procedural deadline for dealing with carryover bills.

The Revised Uniform Partnership Act was introduced by Delegate George H. Heilig, Jr., in 1994 and carried over to allow the Virginia Bar Association to review the Act. No action was taken in 1995 prior to the procedural deadline for dealing with carryover bills. The Bar Association Committee continued its review, in preparation for the 1996 Session.

The Uniform International Wills Act was adopted unanimously, with support from the Virginia Bar Association.

The Uniform Commercial Code, Revised Article 8 - Investment Securities was introduced but left in committee. The U.C.C. study committee, in conjunction with the Virginia Bar Association, will continue to look at it with a view toward introduction and enactment in 1996.

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 1996 General Assembly:

Repeal or Revision of Article 6, Uniform Commercial Code

Revised Article 8, Uniform Commercial Code (1993)

Revised Article 5, Uniform Commercial Code (1995)

Uniform Partnership Act (1993)

Uniform Unclaimed Property Act (1995)

The Uniform Commercial Code, Article 6 - Bulk Transfers 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.

The Uniform Commercial Code, Revised Article 8 - Investment Securities governs the transfer of investment securities in recognition of the modern transfer and holding systems.

The Uniform Partnership Act (1993) revises the former act to establish a partnership as a separate legal entity.

The Uniform Commercial Code - Revised Article 5 was approved by the Conference and, with amendments approved by the Conference in 1995, by the American Law Institute. The revision incorporates important modernization and improvements in the U.C.C. provisions governing letters of credit.

The Uniform Unclaimed Property Act (1995) modernizes and supersedes the 1981 Act.

REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS

In the next several years, the Conference will be considering proposed Uniform Acts covering:

- Consumer Leases
- Disclaimers of Property Interest
- Guardianship and Protective Proceedings
- Interstate Child Visitation
- Management of Public Employee Pension Funds
- Principal and Income
- Punitive Damages
- Trusts
- U.C.C., Article 2 (Sales)
- U.C.C., Article 2A (Leases)
- U.C.C., Article 2B (Licenses)
- U.C.C., Article 9 (Secured Transactions)

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,

Brockenbrough Lamb, Jr.

Carlyle C. Ring, Jr.

John Goode

J. Rodney Johnson

Pamela Meade Sargent

E.M. Miller, Jr.

Mary P. Devine

