

**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, 1996 - December 31, 1996

**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 12 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 1996-97, 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 six-person, full-time staff in Chicago includes the legislative director, legal counsel, executive secretary and legislative assistant. The position of executive director is part time 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 pursues 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 1996-97 fiscal year for conference maintenance was \$26,500.

The total requested contribution of all the states to the operation of the ULC is \$1,165,000 for 1996-97. The smallest state contribution is \$7,000, and the largest is \$101,800. 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 46.

The annual budget of the National Conference comes to \$1,473,800 for the current fiscal year (July 1 to June 30). Of this amount, \$422,900 goes to the drafting effort, including travel expenses for drafting committee meetings and printing, publication, editing, personnel, and miscellaneous administrative costs. \$190,700 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 \$175,000 is spent on the annual meeting.

Public education for uniform and model acts, including contractual services, material costs and travel expenses, costs about \$71,300. 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. Each was reappointed in 1996. 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;

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

Carlyle C. Ring, Jr. - Chairman, Committee on Uniform Commercial Code; Chairman, Standby Committee on Revised Article 5 of the U.C.C.; Chairman, Drafting Committee for Article 2B of the Uniform Commercial Code; 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 SAN ANTONIO, TEXAS**

The 1996 annual meeting was held July 11 - July 19, 1996, in San Antonio, Texas. 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:

Model Punitive Damages Act

Amendments to the Uniform Partnership Act (1996); Limited Liability Partnerships

Amendments to the Uniform Interstate Family Support Act

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

### **ACTIVITIES OF THE 1996 GENERAL ASSEMBLY**

The Uniform Interstate Family Support Act was again amended to clarify (i) that the Division of Child Support Enforcement has no authority to establish or to enforce support orders for only spousal support and (ii) that when enforcement of an out-of-state support order is sought, if the parties both now live in Virginia, the Department may register or enforce the order.

The Revised Uniform Partnership Act was first introduced by Delegate George H. Heilig, Jr., in 1994 but was 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 and upon the committee's recommendation, the Revised Act was enacted in 1996. As a result of the close contact between members of the Virginia Bar Association and the conference, Virginia's 1996 enactment included the substantive amendments approved by the conference at the 1996 annual meeting.



The Uniform Commercial Code, Revised Article 8 - Investment Securities was introduced in 1995 but left in committee. Upon recommendation of the U.C.C. study committee and the Virginia Bar Association, revised Article 8 was enacted 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 1997 General Assembly:

Repeal or Revision of Article 6, Uniform Commercial Code

Revised Article 5, Uniform Commercial Code (1995)

Uniform Unclaimed Property Act (1995)

Amendments to the Uniform Interstate Family Support Act (1996)

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 5 - Letters of Credit 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. The Virginia treasurer has expressed an interest in a study of the uniform act in order to bring all interested parties together to review the changes.

1996 Amendments to the Uniform Interstate Family Support Act clarify that employers must comply with out-of-state wage withholding orders and that the law of the enforcing state will apply to issues such as processing fees, limitations on the amount of withholding and priority among competing support obligations. The amendments also clarify the procedures to be used in cases involving enforcement of an out-of-state order in a state in which both the obligee and the obligor currently reside

**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  
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

## **SHORT SUMMARIES 1996**

### **Model Punitive Damages Act**

This act requires proof of either malicious intent or conscious and flagrant disregard of others by clear and convincing evidence before punitive damages (damages meant to punish) can be awarded in any personal injury action. The amount of punitive damages that may be awarded in any case is determined by an explicit list of factors, including the defendant's financial condition and any adverse effect of the award on innocent persons. If more than one cause of action may be based upon the same conduct, there are limitations upon multiple awards of punitive damages. This Act is a model act, which means that states are encouraged to use it as a guide for individual legislation rather than as a mandate for uniformity between the states.

### **Limited Liability Partnership Amendments to the Uniform Partnership Act: Uniform Partnership Act (1996)**

In 1996, the Uniform Partnership Act, officially revised in 1994, has been amended to include registered limited liability partnerships. The amendments permit any partnership to register as a limited liability partnership. In a limited liability partnership, all partners have a full liability shield for the obligations of the partnership, however incurred. Only the assets of the partnership may be taken to meet partnership obligations. Any partner, however, remains liable for any obligations personally incurred. A limited liability partnership must identify itself as such to obtain limitation of partners' liability in any transactions with third parties. For all other purposes and outcomes, including liability of partners to each other, a registered limited liability partnership remains exactly the same as an ordinary partnership under the Uniform Partnership Act.

### **Uniform Interstate Family Support Act Amendments: Uniform Interstate Family Support Act (1996)**

The Uniform Interstate Family Support Act was officially promulgated in 1992. These amendments are clarification of provisions of the original Act, necessitated by experience with the Act in a number of states. The principal clarification regards choice of law rules applying to specific incidents of income withholding orders sent interstate directly to obligors' employers. An employer of an obligor will use the law of an obligor's work state to determine processing fees that may be charged, limitations upon garnishment of income, and priorities in paying multiple support obligations. The amendments clarify what the contents of an effective income withholding order are so that employers may have better guidelines for payment of orders, and there is explicit immunity for employers who in good faith pay as mandated by the Act. Other amendments clarify modification rules when all parties subject to an order move from an issuing state to another state. Other amendments clarify the relationship of the Uniform Act to requirements of reciprocity necessary for international enforcement of support orders.

