

**REPORT OF THE**

**VIRGINIA COMMISSIONERS TO  
THE NATIONAL CONFERENCE  
OF COMMISSIONERS ON  
UNIFORM STATE LAWS**

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



**HOUSE DOCUMENT NO. 68**

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## APPENDIX

Short Summaries 1997

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 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 1996-97 fiscal year for conference maintenance was \$27,900.

The total requested contribution of all the states to the operation of the ULC is \$1,143,800 for 1997-98. The smallest state contribution is \$7,350, and the largest is \$106,900. 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 48.

The annual budget of the National Conference comes to \$1,520,650 for the current fiscal year (July 1 to June 30). Of this amount, \$533,400 goes to the drafting effort, including travel expenses for drafting committee meetings and printing, publication, editing, personnel, and miscellaneous administrative costs. \$252,700 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 \$160,000 is spent on the annual meeting.

Public education for uniform and model acts, including contractual services, material costs and travel expenses, costs about \$64,500. 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; Member, Uniform Power of Sale Foreclosure Act.

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,

**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  
Parentage  
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 1997

### UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

This act replaces the Uniform Child Custody Jurisdiction Act, promulgated in 1968. The new act combines rules for taking jurisdiction over child custody disputes with rules for enforcing child custody (and visitation) orders issued by courts of another state. A state may take jurisdiction if it is the child's home state, there is a significant connection between the parties and the state, there is no state that is the home state and the litigants are all within the state, or there is danger of abuse to the child, a sibling or a parent unless the state takes jurisdiction. The latter ground for jurisdiction authorizes temporary, emergency jurisdiction, only. Any state that is the child's home state has preference over any other state in taking jurisdiction over a child custody dispute. Once a state takes jurisdiction as provided in this act, that state holds continuing, exclusive jurisdiction until all parties to the dispute have left that state entirely. Once a court of a state with jurisdiction has issued an order, the courts of that state are the only courts that can modify that order so long as the state has continuing exclusive jurisdiction. Enforcement of child custody and visitation orders issued in one state may be enforced in another state under this act by registering the order in the second state so that it becomes as if it is a domestic order of that state, or by petitioning for an expedited proceeding that is a habeas corpus type proceeding. Prosecuting attorneys have the power to enforce custody and visitation orders and to use law enforcement to investigate and secure the presence of children. There is provision for issuance of warrants to secure the presence of children.

### UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

This act replaces the Uniform Guardianship and Protective Proceedings Act promulgated in 1982. This act provides for the selection and appointment of guardians and conservators. A guardian takes care of the person of an unemancipated minor who is no longer subject to parental care or an incapacitated adult who cannot care for himself or herself. The minor or incapacitated person is called a ward of the guardian. A conservator takes charge of the assets of an unemancipated minor or an incapacitated person, receiving, administering, investing and disbursing them for the minor or incapacitated person's benefit. The minor or incapacitated person for whom a conservator is appointed is called a protected person. Parents may appoint guardians for minor children or for incapacitated adult children. Other guardians must be court-appointed. Conservators are always court-appointed. Appointment of guardians and conservators requires proceedings with due process, rights to counsel, visitors, professional evaluation of incapacitated persons, disclosure to persons subject to such proceedings, and notice of proceedings. A new concept in the 1997 act is the "standby guardian" which may be

appointed for a minor child or an incapacitated adult child by a parent. The appointment is confirmed by a court before the parents actually become incapacitated or die. This is a method of appointing guardians when parents are faced with serious, pending health problems. The appointment is good for 2 years. Both guardians and conservators must provide information to the courts with jurisdiction over their appointments. Both must provide yearly reports. A conservator must, also, provide a plan for managing assets and an inventory almost immediately after appointment. Conservators are provided delegation powers that enhance exercise of prudent investment of assets.

## **UNIFORM MANAGEMENT OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS**

This act governs the obligations and powers of trustees for public employee retirement systems. It provides that every system is held by its administrators in trust form, and that trustees have the standard of care, duty of loyalty, obligation of good faith and liability for breach of duty commensurate with fiduciary status. One fiduciary obligation is to invest the assets of the trust as a prudent investor would, relying upon the principles of modern portfolio theory. The trustee must make an appropriate risk/return analysis, diversify assets to reduce risk, and make a broad analysis of economic factors with bearing on investment decisions. By fulfilling these obligations, all prior limitations upon the kinds of assets in which a trust can invest are lifted. In addition, the trustee will be judged on the performance of the whole investment portfolio, and not on the performance of each and every individual investment property. The trustee also has the power to delegate investment authority in a prudent manner. The trustee is also obliged to create a comprehensive retirement system plan, a yearly disclosure document with detailed financial and actuarial information and an annual report that summarizes financial and actuarial information. These information sources must be available to participants in a timely manner and must be filed with a designated agency.

## **UNIFORM PRINCIPAL AND INCOME ACT (1997)**

This act replaces the Uniform Principal and Income Act of 1962 and 1931. It provides rules for trustees of trusts to use in determining which trust assets that come into their possession are designated as principal or income. A trustee must balance the interests of income beneficiaries and remainder beneficiaries. The allocations of assets to principal and to income are the means by which the appropriate balance is achieved and by which a trustee satisfies his or her fiduciary obligations. Principal is generally any asset that produces income for the trust. Income is generally what principal produces. There are times and instances in which assets that are otherwise income must be treated as principal. The new act accounts for those. The new act provides for trust property that simply didn't exist in 1931 and 1962, such as derivatives and options. The new act provides substantial authority for the trustee to adjust principal and income to account for the results of prudent investment under the Uniform Prudent Investor Act and to avoid adverse tax consequences.



