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, 2001 - December 31, 2001

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, and 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 regarding legislation on certain issues. In August of 1892, the first National Conference of Commissioners on Uniform State Laws (NCCUSL) 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 1901. 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. This distinguished body has guaranteed that the products of the Conference are of the highest quality and are enormously influential upon the process of the law.

The Conference, also known as the Uniform Law Commissioners (ULC) began more than 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 ULC 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 ULC 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 ULC, 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 ULC. 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 ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association. 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 national office in Chicago, a small staff provides administrative and clerical assistance to the ULC and the individual members, as well as advice and coordinating assistance in securing the passage of uniform acts. The staff includes a legislative director/legal counsel, deputy legislative director/legal counsel, legislative counsel, chief administrative officer and communications officer and several administrative assistants. The position of executive director is part time and is traditionally occupied by a law school faculty member. In addition, the ULC contracts with "reporters" for professional services to aid in drafting. Reporters are engaged at a modest honoraria to work with drafting committees on specific acts. The Conference also employs professional independent contractors for work on part of its public information and educational materials. The annual budget and audit report of the Conference are available on request.

Members of the ULC contribute numerous hours each 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 ULC strengthens the state and federal system of government. In many areas of the law, the states must solve problems through cooperative action or the issues are likely to be preempted by Congress. The ULC is one of the few institutions that pursues solutions to problems on a cooperative basis by the states. Without the ULC, more legislative activities would undoubtedly shift from the state capitals to Washington, D. C.

VALUE FOR VIRGINIA AND THE STATES

The process of drafting a uniform act is lengthy and deliberate, yet cost-efficient. A committee is appointed from the membership of the ULC. The American Bar Association is invited to appoint an advisor to each drafting committee. The by-laws of the ULC require at least two years for drafting and two readings of the draft at annual meetings of the ULC. Through this unique system--the only one like it in American political life--comprehensive legislation receives painstaking and balanced, non-partisan consideration.

The price tag for this process represents true value to the states. With 98 percent of the annual budget of the ULC coming from state government contributions, here is a look at some of the costs and benefits.

Let us assume that a drafting committee will meet twice a year and that a given act will receive about 16 hours of debate. The average committee meeting costs $10,000. Four meetings over a two-year period will cost $40,000. Sixteen hours of annual meeting debate translates into an additional $66,000, figuring the amount budgeted for annual meeting expenses and hours devoted to a specific act. Based on these assumptions, the total cost to the states for a uniform act is $106,000.

The states would have to come up with an additional $1,014,000 to duplicate these same services on their own, estimating a $250 hourly fee for professional services for a total cost of $1,120,000. The main difference: Uniform Law Commissioners donate their professional services, spending hundreds of hours on uniform state laws as a public service because of their commitment to good law. The cumulative value of this donated time in the development of uniform and model acts averages about $6,000,000 per year.

Of course, the hypothetical committee that meets twice a year over a period of two years is just that. The average revision of an article of the Uniform Commercial Code takes four years, with three to five committee meetings per year. The original Uniform Probate Code took a full decade to develop and promulgate. The Uniform Adoption Act (1994) required five years, with extensive committee meetings. Each of these comprehensive projects cost much more from the actual budget of the ULC, and represents much larger contributions--in terms of time--from the ULC membership.

The hypothetical example does not consider still other benefits to the state. Major committees of the ULC draw extensive advisory and observer groups into the drafting process. Meetings of the Uniform Commercial Code committees regularly draw advisors and observers in a ratio of two or three to one commissioner. These advisor and observer groups represent various interests, provide outside expertise and facilitate dissemination of the act. It is impossible to place a dollar value on their input, which state funds do not pay.

It is also not possible to measure the worth of the intellectual participation by all who are involved. There is no process at either the state or federal level of the United States government today that compares to the uniform law process--intense, non-partisan scrutiny of both policy and execution of the law.

STATE APPROPRIATIONS

The ULC is a state service organization that 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 ULC. In addition, each state delegation requests an amount to cover its commissioners' travel expenses for the Conference annual meeting. The total requested contribution of all the states to the operation of the ULC is $1,498,961 in fiscal year 2002. The smallest state contribution is $9,350 and the largest is $121,600. Virginia's contribution for FY 2002 was $34, 870. The annual budget of the ULC for FY 2002 was $2,189,452. Of this amount $1,015,500 goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and editing and personnel costs. $441,053 is spent in assisting state legislatures with bills based on uniform and model acts.

OTHER FINANCIAL CONTRIBUTORS

The American Bar Association makes a yearly contribution to the ULC. For FY 2002, it has contributed $56,250. The ULC also seeks grants from the federal government and from foundations for specific drafting efforts. The last federal grant

was a grant of $30,000 to fund the drafting effort for a Uniform Environmental Covenants Act.

The Uniform Commercial Code (UCC) is a joint venture between the ULC and the American Law Institute (ALI). The ALI holds Falk Foundation funds that are allocated to work on the UCC. The original Falk Foundation grant came in the late-1940's for the original development of the UCC. Proceeds from copyright licensing of UCC materials provide revenue to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of ULC and ALI costs are paid from the Falk Foundation income.

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.

PROCESS FOR 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, which consists solely of commissioners, considers subject areas of state law for potential uniform or model acts. The Committee reviews suggestions for uniform or model acts from many sources, including organized bar groups, state governments and private persons. The recommendations of the Scope and Program Committee go to the Executive Committee and to the entire ULC for approval.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged, although a few committees work without professional assistance.

Advisors and participating observers 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 interest 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 and participating observers 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 ULC. The most current draft is read and debated. This scrutiny continues from annual meeting to annual meeting until a draft satisfies the whole body of the commissioners. No act is promulgated without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting, and a final reading at a subsequent annual meeting. An act becomes official by a majority vote of the states. As mentioned earlier, each state commission caucuses to represent its state's position and each state receives one vote. The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

ACTIVITIES OF THE VIRGINIA COMMISSIONERS

The Governor is authorized to appoint three members, each to serve a four-year term (§ 30-196, Code of Virginia). The three gubernatorial appointees are: Pamela Meade Sargent of Abingdon, Kenneth Lawrence Foran of Alexandria and Kimberly A. Taylor of Richmond.

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. Jessica D. French, senior attorney with the Division, was designated an associate member in July 1999.

The Virginia commissioners have served on the following committees during the past year:

Kenneth L. Foran - Member, Drafting Committee to Revise Uniform Health-Care Information Act.

Carlyle C. Ring, Jr. - Chairman, Committee on Uniform Commercial Code; Enactment Plan Coordinator, Drafting Committee to Revise Uniform Commercial Code Article 1; Chairman, Standby Committee on Uniform Computer Information

Transactions Act; Member, Permanent Editorial Board for Uniform Commercial Code; Member, Millennium Committee; Member, Committee on Federal Relations.

Pamela M. Sargent - Member, Standby Committee on Uniform Electronic Transactions Act.

Kimberly A. Taylor, Member, Drafting Committee for the Uniform Mergers and Conversions Act.

Esson McKenzie Miller, Jr. - Member, Study Committee on Certificate of Title Laws, Member, Committee on Liaison with Legislative Drafting Agencies; Member, Legislative Committee, Committee on Parliamentary Practice.

ACTIVITIES OF THE 2001 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in House Document No. 61, 2001, covering the period January 1, 2000, through December 31, 2000, and other initiatives, the following actions regarding uniform laws were taken by the 2001 Virginia General Assembly:

VIRGINIA
2001 BILLS ENACTED

Uniform Child Custody Jurisdiction and Enforcement Act

The 2001 Virginia General Assembly adopted the Uniform Child Custody Jurisdiction and Enforcement Act as Senate Bill 462, patroned by Senator Mims. The Act replaces the former UCCJA (1979) with an updated version addressing jurisdictional issues and expands the act to cover issues involving enforcement of custody and visitation orders issued out of state. Jurisdiction is authorized if a significant connection exists between the parties and the Commonwealth, no other state fits the definition of the child's home state and the parties are all within the Commonwealth. Additionally, a court may exercise temporary emergency jurisdiction if a reasonable apprehension of abuse or mistreatment to the child, a sibling or a parent exists. Once a court exercises jurisdiction, that jurisdiction continues and is exclusive until all parties have left the state, and any orders issued may be modified only by the state having continuing, exclusive jurisdiction. The bill therefore eliminates the current problems created when competing orders are issued in more than one state. Orders issued in other states may be registered in the juvenile courts here and enforced as Virginia orders.

Uniform Probate Code

The 2001 Virginia General Assembly enacted a modified version of Section 6-101 of the Uniform Probate Code as House Bill 1729, patroned by Delegate Howell. The bill specifies that a provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. The bill clarifies recent court decisions on the subject.

Uniform Commercial Code, Article 9

The 2001 Virginia General Assembly enacted House Bill 1769, patroned by Delegate Cox and Senate Bill 911, patroned by Senator Norment. The identical bills provided that Article 9 of the Uniform Commercial Code (Secured Transactions) does not apply to a sale of promissory notes by the Commonwealth or a governmental unit of the Commonwealth in connection with or in furtherance of its borrowing power. Also exempt is the creation, perfection, priority, and enforcement of a security interest, lien or pledge created, made or granted by the governmental unit to pay or secure any bonds, notes, obligations or other debt securities issued thereby. Security interests, liens or pledges created by the governmental unit in goods or software, or the proceeds thereof, are governed by the UCC.

The 2001 Virginia General Assembly enacted House Bill 1810, which was patroned by Delegate Woodrum. Although the bill deals with the Structured Settlement Protection Act, it amends Article 9 of the Uniform Commercial Code to provide that the UCC's general restriction on assignments of certain receivables is made inapplicable to certain claims or rights to receive compensation for injuries or sickness. The bill conditions transfers of structured settlement payments rights upon findings by a court or responsible administrative authority that (i) the transfer is in the best interest of the payee, (ii) the payee has been advised to seek independent professional advice and has received or waived such advice, and (iii) the transfer does not contravene a statute or order of a court or other governmental authority. Payees are required to be given a disclosure statement three days (rather than 10 days as currently provided) prior to signing a transfer agreement, which statement shall provide that the payee will have the right to cancel the agreement within three days after it is signed. Other changes (a) limit the courts that can approve transfers to those where the payee, insurer, or obligor resides; (b) clarify that the act is not intended to apply to a bank's blanket security interest unless it attempts to execute upon the settlement payments; (c) make the transferee liable for failure to comply with the act; and (d) prohibit confessed judgments. The measure repeals a sunset clause that

provides that the act will expire on July 1, 2001, unless certain federal legislation has been enacted.

Uniform Computer Information Transactions Act

The 2001 Virginia General Assembly enacted House Bill 2412, patroned by Delegate May. The bill amends several provisions of the Uniform Computer Information Transactions Act (UCITA) to clarify the definitions of "electronic agent" and "mass-market transaction"; modify UCITA's scope over motion pictures and online service providers; clarify the applicability of other statutes, rules and regulations; provide that a contract term that specifies a judicial forum must be expressly stated, and in a mass-market transaction, such contract term must be expressly and conspicuously stated; modify the terms of mass-market licenses; create a special rule for using standard form licenses with nonprofit libraries, archives, and educational institutions; modify the terms governing transferability; clarify the definition of automatic restraint; and modify the restrictions on use of electronic self-help.

The 2001 Virginia General Assembly enacted House Bill 2387, patroned by Delegate Clement, which makes several amendments to the Uniform Computer Information Transactions Act (UCITA) (§ 59.1-501.1 et seq.) and the Virginia Consumer Protection Act (VCPA) (§ 59.1-196 et seq.). The bill changes UCITA's references to other laws or rules to other statutes, administrative rules, regulations or procedures where applicable. The bill also changes references to the VCPA to other consumer protection statutes, administrative rules or regulations including, but not limited to, the VCPA. The bill provides that a mass-market license may be transferred if such transfer involves making a gift or donation of a computer along with mass-market software to a public school, a public library, a charity or a consumer. The bill amends the definition of "goods" as used in the VCPA to include "computer information" and "informational rights" as defined in UCITA.

Uniform Electronic Transactions Act

The 2001 Virginia General Assembly enacted House Bill 2411, patroned by Delegate May, which makes two technical amendments to the Uniform Electronic Transactions Act (UETA) (§ 59.1-479 et seq.). The predecessor electronic signatures and records law, Chapter 39 (§ 59.1-467 et seq.) of Title 59.1, repealed in 2000, had excluded electronic filing with the courts from its scope to protect the autonomy and integrity of the courts. Instead, Article 4 (§ 17.1-255 et seq.) of Chapter 2 of Title 17.1 had provided that the courts were to follow the rules adopted by the Supreme Court of Virginia regarding electronic filing. When the 2000 General Assembly adopted UETA, the General Assembly retained the exclusion for the courts. However, the 2000 General Assembly also enacted legislation that modified Article 4 of Chapter 2 of Title 17.1 to provide that electronic filing with the courts must meet the requirements set

out under UETA. Thus a conflict was created in that one section of the Code of Virginia excludes the court filings from UETA and another section of the Code of Virginia requires electronic filings with the courts to be in accordance with UETA. The bill remedies this conflict by deleting the court filing exclusion from UETA. In addition, several provisions of UETA refer to Title 8.9 of the Code of Virginia. The 2000 General Assembly enacted legislation that would repeal Title 8.9 and replace it with new Title 8.9A effective July 1, 2001. The bill amends the cross-references from Title 8.9 to Title 8.9A.

The Virginia General Assembly enacted Senate Bill 1019, patroned by Senator Newman, which directs the Attorney General, in consultation with the Secretary of Technology, to develop guidelines to the Uniform Electronic Transactions Act's implications on state agencies' implementation of electronic transactions. Upon receiving the guidelines, each agency is directed to examine the provisions of the Code of Virginia specific to that agency and identify where changes are necessary to facilitate the agency's implementation of electronic transactions and report its findings to the Secretary of Technology.

REPORT OF PROCEEDINGS OF THE 2001 ANNUAL CONFERENCE

The 2001 annual meeting was held August 10-17, in White Sulphur Springs, West Virginia. Commissioners Lamb, Ring, Sargent, Foran, Taylor, Miller and French attended.

The following five uniform acts were approved at the annual meeting:

- ***Amendments to Uniform Commercial Code Article 1***
- ***Uniform Consumer Leases Act***
- ***Amendments to Uniform Interstate Family Support Act***
- ***Revisions to the Uniform Limited Partnership Act***
- ***Uniform Mediation Act***

In addition to the approved acts listed in this paragraph, the following uniform acts were considered by the Conference at its annual meeting:

- ***Uniform Estate Tax Apportionment Act***
- ***Uniform Probate Code***
- ***Uniform Nonjudicial Foreclosure Act***
- ***Amendments to the Uniform Commercial Code, Article 2 and 2A***
- ***Uniform Securities Act***
- ***Uniform Child Witness Testimony by Alternative Methods Act***
- ***Uniform Apportionment of Tort Responsibility***

2001 ADOPTIONS BY ANNUAL CONFERENCE

SUMMARIES

Summaries of the five acts adopted by the Conference are as follows:

Revised Article 1 of The Uniform Commercial Code

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions that, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender-neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature need to be made.

The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in Section 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Perhaps the most important change to Article 1, however, has to do with default choice-of-law provisions found in Section 1-301, which replaces previous Section 1-105. Under Article 1 before the 2001 amendments, parties to a transaction may agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances. With respect to all transactions, an agreement by the parties to use the law of any state (or in the case of an international transaction, country) is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice-of-law provision in a contract may not deprive the

consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country that has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

Uniform Consumer Leases

The Uniform Consumer Leases Act (UCLA) was promulgated in 2001 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to provide substantive contractual and procedural protections to consumer lessees of personal property. The UCLA bridges the gap between federal law (the Consumer Leases Act, and associated Regulation M of the Federal Reserve Board), which primarily addresses fair disclosure of lease terms, and Article 2A of the Uniform Commercial Code, which provides the basic contract rules for personal property leasing in every state except Louisiana. In short, the UCLA seeks to define a fair balance of interests between lessors and consumer lessees, and in so doing establishes reasoned, substantive law covering leasing agreements.

Unlike many uniform laws promulgated by NCCUSL, the UCLA is not a "default" statute. The protections it offers to consumers may not be waived by agreement. The parties to a consumer lease under the Act are free to define almost all of the financial terms of the agreement. The Act's provisions may be supplemented by other state and federal law. Otherwise, the procedural and other consumer protections it contains may only be waived in the narrow context of settling a dispute or collection claim.

The UCLA does not cover all leases of personal property. It does not apply to a lease with a term of less than four months, or a total value that exceeds $150,000. Also, while parties may contractually agree to make otherwise non-qualifying transactions subject to the Act, only leases of property for the personal, family, or household uses of the lessee are expressly covered. Thus, the Act does not apply to commercial leases, nor does it apply to short-term rental car or tool rental agreements, or to rent-to-own arrangements.

The Act is organized as follows:

Article 1 of the UCLA states the scope of coverage of the Act, establishes standards of good faith and unconscionability, reasonably limits choice of law and forum to convenient jurisdictions for the lessee, and restricts waivers of lessee rights under the Act.

Article 2 addresses informational responsibilities of lessors. It prohibits deceptive advertising about leases. It adopts the federal Consumer Leasing Act disclosure rules for all leases covered by the Act, entitles lease customers to a copy of the lease form before entering a contract, specifies certain informational content for the lease itself, and requires lessors to furnish statements of account and payoff information on request.

Article 3 imposes restraints on certain terms and practices to assure that consumers are not subjected to unfairness in the marketing or content of lease transactions. Specifically, the Act provides that a lessor must promptly return a trade-in and refund payments received if the lessee's application is disapproved. Absent such a rule, consumers are vulnerable to manipulation, especially in "spot delivery" situations. Certain onerous types of lease terms, such as confessions of judgment and wage assignments, are prohibited. The Act bars a lessor from taking a broad security interest in the lessee's property in addition to its residual interest in the leased goods themselves. Late, delinquency, and default charges are restricted, and consumers are afforded a reciprocal right to attorney's fees if the lease provides them for the lessor. The Act incorporates standard protections now available to consumers purchasing on credit by denying "holder in due course" status to anyone to whom the lessor assigns lease rights. This means a lessee's transactional claims and defenses may also be raised against that assignee of the lessor's rights. The UCLA constrains a lessor's ability to overcharge in connection with force-placed insurance coverage, and prohibits "referral" gimmicks in lease marketing. Finally, the UCLA extends lessee warranty protection to include implied warranties whenever the supplier of the leased goods makes a written warranty or provides a service contract, as is the case with regard to consumer buyers under the federal Magnuson Moss Warranty Act.

Article 4 deals with issues at the termination stage. It prohibits the imposition of so-called "gap liability" on consumer lessees when the leased goods are lost or destroyed. It establishes a right of the lessee to "cure" delinquent payments (within a set period of at least 30 days) before repossession can occur. Controls are placed on the manner of establishing the realized value of leased goods as a premise for fixing the lessee's termination liability. Protective standards are imposed on the practice of assessing early termination charges and excess wear-and-tear charges against lessees, and consumers are protected from adverse credit reports when there is a voluntary early termination of the lease.

Article 5 creates an enforcement structure for the Act, both by designated public officials, and also by consumers themselves. As incentives for private enforcement, lessees may recover statutory damages for certain violations, and court costs and attorneys' fees for all violations. Class actions are authorized only for actual damages. Sections 502-505 provide various limitations on civil liability, patterned on those provided under the federal Consumer Leasing Act.

Uniform enactment of the UCLA would assure a level playing field for lessors, and respectable but not intrusive protections for consumer lessees of all forms of consumer goods whether transactions are conducted face-to-face or at a distance. The federal Consumer Leasing Act and its implementing Regulation M, as revised in 1996, mandate important disclosures in most consumer leases, but do not impose specific restraints on lease terms or practices. The UCLA encourages the nationwide development and innovation of consumer lease products and practices, subject to baseline protections for consumers in those transactions. The UCLA attempts to protect a fair balance between the need to provide consumer protections and the commercial realities of personal property lessors, and should be a valuable addition to state consumer protection law.

Amendments to the Uniform Interstate Family Support Act

In 1992, the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated the Uniform Interstate Family Support Act (UIFSA), which replaced the Uniform Reciprocal Enforcement of Support Act (URESA). URESA, was originally promulgated in 1950, and was adopted by every state. UIFSA has now replaced URESA in every American jurisdiction.

UIFSA provides universal and uniform rules for the enforcement of family support orders, by setting basic jurisdictional standards for state courts, by determining the basis for a state to exercise continuing exclusive jurisdiction over a child support proceeding, by establishing rules for determining which state issues the controlling order in the event proceedings are initiated in multiple jurisdictions, and by providing rules for modifying or refusing to modify another state's child support order.

The adoption of UIFSA in all American jurisdictions in some respects tracked the development of welfare reform efforts in the mid-1990s. Certain provisions of UIFSA were amended in 1996 following a review and analysis requested by state child support enforcement community representative. A month after these adoptions were promulgated by NCCUSL, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act, the last major expression of child support enforcement reform from the Congress. As a result, federal grants to a state for child support enforcement became partially dependent upon the enactment of UIFSA.

The 2001 Amendments to UIFSA again follow a review and analysis requested by representatives of the state child support enforcement community. While some of these changes are procedural, and others substantive, none make a fundamental change in UIFSA policies and procedures. UIFSA continues to serve the basic principle of one order from one state that will be enforced in other states. The amendments are meant to enhance that basic objective.

The 2001 Amendments

One of the most important accomplishments of UIFSA was the establishment of bedrock jurisdictional rules under which a tribunal in one state only would issue or modify one support order only. That order would be the order any other state would enforce and would not modify. Further, if more than one state tribunal issues an order pertaining to the same beneficiary, one of those would become the enforceable, controlling order. The 2001 amendments clarify jurisdictional rules limiting the ability of parties to seek modifications of orders in states other than the issuing state (in particular, that all parties and the child must have left the issuing state and that the petitioner in such a situation must be a nonresident of the state where the modification is sought), but allow for situations where parties might voluntarily seek to have an order issued or modified in a state in which they do not reside.

The amendments also spell out in greater specificity how a controlling order is to be determined and reconciled in the event multiple orders are issued, and clarify the procedures to be followed by state support enforcement agencies in these circumstances, including submission to a tribunal where appropriate.

The amendments give notice that UIFSA is not the exclusive method of establishing or enforcing a support order within a given state, for example, a nonresident may voluntarily submit to the jurisdiction of a state for purposes of a divorce proceeding or child support determination, and seek the issuance of an original support order at that tribunal. The amendments also clarify, however, that the jurisdictional basis for the issuance of support orders and child custody jurisdiction are separate, and a party submitting to a court's jurisdiction for purposes of a support determination does automatically submit to the jurisdiction of the responding state with regard to child custody or visitation.

The amendments also provide clearer guidance to state support agencies with regard to the redirection of support payments to an obligee's current state of residence, clarifies that the local law of a responding state applies with regard to enforcement procedures and remedies, and fixes the duration of a child support order to that required under the law of the state originally issuing the order (i.e., a second state cannot modify an order to extend to age 21 if the issuing state limits support to age 18).

The amendments incorporate certain technical updates in response to changes in the law in the intervening years since 1996, specifically, the use of electronic communications in legal and other contexts (i.e., E-Sign and the Uniform Electronic Transactions Act) and the evolution of federal and state agency practice (including specifically the usage of certain forms and the sealing of records in connection with certain child custody action information), and make other nonsubstantive changes to grammar and organization in an effort to clarify certain provisions.

Finally, the amendments expand UIFSA to include coverage of support orders from foreign country jurisdictions pursuant to reciprocity and comity principles. While a determination by the U.S. State Department that a foreign nation is a reciprocating country is binding on all states, recognition of additional foreign support orders through comity is not forbidden by federal law. UIFSA clearly provides that a foreign country order may be enforced as a matter of comity. In the event a party can establish that a foreign jurisdiction will not or may not exercise jurisdiction to modify its own order, a state tribunal is also authorized to do so.

Uniform Mediation Act

Mediation is a process by which a third party facilitates communication and negotiation between parties to a dispute to assist them in reaching a voluntary agreement resolving that dispute. Because it is a voluntary process, and because of the relatively low costs associated with mediation versus a more formal legal proceeding or even an arbitration, mediation has become one of the most ubiquitous forms of dispute resolution in America today. Mediation is available in a wide variety of contexts, and state law has adopted various situation-specific rules to cope with the growth in the use of mediation. The widespread success of mediation as a form of dispute resolution has led to some problems, however, in that over 2500 separate state statutes affect mediation proceedings in some manner. In many cases, mediating parties cannot be sure which laws might apply to their efforts (especially in a multistate context). This complexity is especially troublesome when it undermines one of the most important factors promoting mediation as a means of dispute resolution, namely the parties' ability to depend on the confidentiality of the proceeding, and their power to walk away without prejudice if an agreement cannot be voluntarily reached.

The Uniform Mediation Act (UMA) is intended to address this core concern about the confidentiality of mediation proceedings. The result of a unique joint drafting effort between NCCUSL and the American Bar Association through its Dispute Resolution Section, the UMA is intended as a statute of general applicability that will apply to almost all mediations, except those involving collective bargaining, minors in a primary or secondary school peer review context, prison inmate mediation, and proceedings conducted by judicial officers who might rule in a dispute or who are not prohibited by court rule from disclosing mediation communications with a court, agency, or other authority.

The UMA's prime concern is keeping mediation communications confidential. Parties engaged in a mediation, as well as nonparty participants, must be able to speak with full candor for a mediation to be successful and for a settlement to be voluntary. For this reason, the central rule of the UMA is that a mediation communication is confidential, and if privileged, is not subject to discovery or admission into evidence in

a formal proceeding [see Sec. 5(a)]. In proceedings following a mediation, a party may refuse to disclose, and prevent any other person from disclosing, a mediation communication. Mediators and nonparty participants may refuse to disclose their own statements made during mediation, and may prevent others from disclosing them, as well. Thus, for a person's own mediation communication to be disclosed in a subsequent hearing, that person must agree and so must the parties to the mediation. Waiver of these privileges must be in a record or made orally during a proceeding to be effective. There is no waiver by conduct.

As is the case with all general rules, there are exceptions. First, it should be noted that the privilege extends only to mediation communications, and not the underlying facts of the dispute. Evidence that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its use in a mediation. A party that discloses a mediation communication and thereby prejudices another person in a proceeding is precluded from asserting the privilege to the extent necessary for the prejudiced person to respond. A person who intentionally uses a mediation to plan or attempt to commit a crime, or to conceal an ongoing crime, cannot assert the privilege.

Also, there is no assertable privilege against disclosure of a communication made during a mediation session that is open to the public that contains a threat to inflict bodily injury, that is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding where a child or adult protective agency is a party, that would prove or disprove a claim of professional misconduct filed against a mediator, or against a party, party representative, or nonparty participant based on conduct during a mediation. If a court, administrative agency, or arbitration panel finds that the need for the information outweighs the interest in confidentiality in a felony proceeding, or a proceeding to prove a claim of defense to reform or avoid liability on a contract arising out of the mediation, there is no privilege.

The Uniform Mediation Act is meant to have broad application, while at the same time preserving party autonomy. While a mediation proceeding subject to the Act can result from an agreement of the parties, or be required by statute, a government entity, or as part of an arbitration, the Act allows parties to opt out of the confidentiality and privilege rules described above. Also, the Act does not prescribe qualifications or other professional standards for mediators, allowing parties (and potentially states) to make that determination. The Act generally prohibits a mediator, other than a judicial officer, from submitting a report, assessment, evaluation, finding, or other communication to a court agency, or other authority that may make a ruling on the dispute that is the subject of the mediation. The mediator may report the bare facts that a mediation is ongoing or has concluded, who participated, and, mediation communications evidencing abuse, neglect, or abandonment, or, other nonprivileged mediation matters. The Act also contains model provisions calling for a mediator to disclose conflicts of interest before accepting a mediation (or as soon as practicable

after discovery). His or her qualifications as a mediator must be disclosed to any requesting party to the dispute.

The Uniform Mediation Act will further the goals of alternative dispute resolution by promoting candor of the parties by fostering prompt, economical, and amicable resolution of disputes, by retaining decision-making authority with the parties, and by promoting predictability with regard to the process and the level of confidentiality that can be expected by participants.

RECOMMENDATIONS FOR ENACTMENT

The following uniform acts, which have been approved by the Conference, make significant contributions to important subjects. The Virginia commissioners recommend these acts for consideration and adoption by the 2002 General Assembly:

- Amendments to the Uniform Interstate Family Support Act
- Uniform Arbitration Act
- Uniform Interstate Enforcement of Domestic Violence Orders Act

CURRENT DRAFTING PROJECTS

There are currently 15 ULC drafting committees working on new and revised uniform acts. In addition, seven study committees are considering subjects for possible future drafting.

CURRENT DRAFTING COMMITTEES

Drafting Committee on Apportionment of Tort Liability. This committee will set out rules to allocate financial responsibility among multiple parties liable to others for negligent or willful misconduct.

Drafting Committee on Uniform Child Witness Testimony by Alternative Methods Act. This committee will address procedural issues when children are witnesses, and draft an act on the methods of taking and preserving the testimony of children.

Drafting Committee to Revise Uniform Commercial Code Article 2, Sales, and Article 2A, Leases. This committee is revising both Articles 2 and 2A of the Uniform Commercial Code to modernize these articles and keep them responsive to contemporary commercial realities.

Drafting Committee to Prepare Amendments to Uniform Commercial Code Article 3, Negotiable Instruments, Article 4, Bank Deposits and Collections, and Article 4A, Funds Transfers. This committee is drafting amendments to Articles 3, 4, and 4A of the Uniform Commercial Code. The primary charge of the drafting committee is to "repatriate" the check-clearance and settlement provisions of Federal Reserve Board Regulation CC into Article 4.

Drafting Committee to Revise Uniform Commercial Code Article 7, Warehouse Receipts, Bills of Lading and Other Documents of Title. This committee is revising Article 7 of the Uniform Commercial Code, the only article of the UCC that has had no extensive amendments or revisions since it was initially drafted more than 50 years ago. A revision is necessary in light of changes in federal law, and the growing use of electronic transactions.

Drafting Committee on Conversion or Merger of Different Types of Business Organization Act. This committee will draft an act that allows conversion of one kind of business organization to another, or the merger of two or more different kinds of business organizations into one organization. When completed, this act will serve as a bridge between the Uniform Partnership Act, the Uniform Limited Partnership Act and the Uniform Limited Liability Company Act.

Drafting Committee on Uniform Environmental Covenants Act. This drafting committee will focus on environmental land use controls in the field of contaminated property.

Drafting Committee to Revise Uniform Estate Tax Apportionment Act and Section 3-916 of the Uniform Probate Code. This drafting committee will revise Section 3-916 of the Uniform Probate Code and the free-standing provision in the Uniform Estate Tax Apportionment Act in light of judicial decisions interpreting the Section and subsequent federal and state legislation.

Drafting Committee to Revise the Uniform Management of Institutional Funds Act. This committee will revise the 1972 UMIFA, which provides guidelines for management, investment and expenditures of the endowment funds of institutions. A revision is necessary to make the act more consistent with the Uniform Prudent Investor Act, the Uniform Principal and Income Act, and the Uniform Trust Code, and to address recent case law development.

Drafting Committee on Nonjudicial Foreclosure Act. This committee will create a separate power of sale foreclosure act from the Uniform Land Security Interest Act.

Drafting Committee to Revise Uniform Securities Act. This committee will consider revisions of earlier Uniform Securities Acts.

Drafting Committee on Uniform Wage Withholding Procedure Act. This committee will draft an act that will lead to a simpler and more efficient employment tax reporting system. The new act, when completed, should enable the states to harmonize their rules for withholding tax and unemployment contributions with the federal system.

Study Committees:

Study Committee on Certificate of Title Laws
Study Committee on Electronic Payment Systems
Study Committee on Uniform Conflict of Laws-Limitations Act
Study Committee on Internet Private Law
Study Committee on Misuse of Genetic Information
Study Committee on Recognition of Foreign Judgments
Study Committee on Tort Law

REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS

The Virginia Commissioners welcome suggestions from the Governor, the General Assembly, the Attorney General, the organized bar, state governmental entities, private interest groups and private citizens on ideas for new uniform or model acts. Appropriate topics are those where (i) uniformity in the law among the states will produce significant benefits to the public and (ii) it is anticipated that a majority of the states would adopt such an act.

Respectfully submitted,

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