

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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**Up to date information is available on the website of the National
Conference of Commissioners on Uniform State Laws
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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, 2007 - December 31, 2007

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 (Conference or 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, the late 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 officers elected by vote of the commissioners, ex-officio members, and 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 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 pursue 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 bylaws 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, nonpartisan 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 \$70,000, 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 \$120,000.

The states would have to come up with an additional \$1,010,000 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 million 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, nonpartisan 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's annual meeting. The total requested contribution of all the states to the operation of the ULC was \$2,082,700 in fiscal year 2007. The smallest state contribution was \$19,000 and the largest was \$140,000. Virginia's contribution for FY 2007 was \$42,200. The annual

budget of the ULC for FY 2007 was \$3,218,450. Of this amount, \$754,960 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. In addition, \$674,275 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$489,289 is spent on the annual meeting. Public education for uniform and model acts costs about \$194,555 and includes contractual services, materials costs and travel expenses. The remainder of the budget pays general administrative costs.

OTHER FINANCIAL CONTRIBUTORS

The Commission also receives limited funds from the American Bar Association and the American Law Institute. Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts. By seeking grants for specific projects, the Commission expands the value of every state dollar invested in its work.

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 1940s 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.

In addition, the Commission has recently established new royalty agreements with major legal publishers, which reprint the ULC's uniform and model acts in their publications.

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 new 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. If a subject area cannot be adequately studied by Scope and Program Committee, it is likely to be given to a special study committee. Study committees report back to the Scope and Program Committee. The recommendations of the Scope and Program Committee go to the NCCUSL 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. 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 noon on Sunday, 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. There is often more than one interim reading and a drafting process that exceeds two years in duration. 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.

The cost of this process to the states is in travel expenses, paper and publication costs, and meeting costs. Nearly all the services are donated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has extraordinary value.

THE IMPORTANCE OF VIRGINIA'S CONTRIBUTION

Virginia's participation, both in terms of appointing uniform law commissioners and contributing funds, is essential. Virginia benefits from the excellent body of law created for its consideration. The Conference, and all the states, benefit from having Virginia's direct contribution to the work of NCCUSL. Virginia's ideas and experience influence the whole, and the uniform law process is not complete without them. Value contributed returns value, and everybody in every state benefits.

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: H. Lane Kneedler of Charlottesville, Ellen F. Dyke of Vienna, and Thomas Edmonds 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." Esson McKenzie 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:

Carlyle C. Ring, Jr. — Chairman, Committee on Uniform Commercial Code; Chairman, Standby Committee to Revise Uniform Anatomical Gift Act; Member, Drafting Committee on Environmental Controls and Hazards Notice System; Member, Executive Subcommittee of the Permanent Editorial Board for Uniform Commercial Code; Member, Permanent Editorial Board for Uniform Commercial Code; Member, Standby Committee to Revise Uniform

Commercial Code Article 1, General Provisions; Member, Committee on Federal Relations; and Liaison Member, Uniform Law Foundation Trustees.

Ellen F. Dyke — Member, Drafting Committee to Prepare Amendments to Uniform Common Interest Ownership Act.

Thomas Edmonds — Member, Study Committee on the Law of Payment Systems and Member, Committee on Liaison with the American Bar Association.

H. Lane Kneedler — Secretary, Executive Committee; Member, Drafting Committee on Uniform Collateral Consequences of Conviction; Member, Standby Committee on Uniform Certificate of Title Act; and Member, Drafting Committee to Revise Model State Administrative Procedures Act.

Esson McKenzie Miller, Jr. — Member, Standby Committee on Uniform Certificate of Title Act and Member, Legislative Committee.

Jessica D. French — Member, Drafting Committee on Collateral Consequences of Conviction and Member, Legislative Committee.

ACTIVITIES OF THE 2007 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in Report Document No. 133, 2007, covering the period January 1, 2006, through December 31, 2006, and other initiatives, the following actions regarding uniform laws were taken by the 2007 Virginia General Assembly.

Uniform Law-Related Bills Introduced by the 2007 General Assembly Session

Uniform Trust Code

House Bill 1838; Delegate Fralin; Uniform Trust Code; irrevocable trusts; trustee's duty to inform and report. Provides that if a trustee has a good faith belief that furnishing information to a beneficiary would be unreasonable under the circumstances or contrary to the purposes of the settlor he shall not be subject to removal or other sanctions.

House Bill 2251 Delegate Waddell; Uniform Trust Code; public notice when modifying or terminating charitable trusts. Provides that notice by publication shall be given to the general public when there is a court

proceeding to modify or terminate a charitable trust or to sell its real estate, in order to give members of the public the opportunity to share their views with the Attorney General. A court shall make a finding that the required notice has been given before conducting any trial or hearing.

House Bill 2395; Delegate Armstrong; Uniform Trust Code; deeding property. Provides that deeds or other instruments that purport to convey or transfer real or personal property to a trust instead of to the trustee shall be deemed to have conveyed or transferred the property to the trustee as fully as if the property was conveyed or transferred directly to the trustee.

House Bill 2832; Delegate Waddell; Uniform Trust Code; spendthrift trust; related duties. Changes § 55-541.05 to make the statute more consistent with other related code sections and the common law rule imposing on trustees the duty to act in good faith in accordance with the terms of the trust and the interests of the beneficiaries. Changes to §§ 55-545.01, 55-545.03 and 55-545.06 make it clear that an exception creditor cannot reach a beneficiary's interest even if the instrument contains a spendthrift provision, allow the court to limit an exception creditor's access to a beneficiary's benefits, and define mandatory distribution, respectively.

House Bill 2836; Delegate Peace; Uniform Trust Code; revocable trusts; Corrects the numbering scheme of the statute to conform to the uniform trust law.

Uniform Limited Partnership Act

House Bill 2142; Delegate Kilgore; Limited partnerships and partnerships; prohibits transaction of business thereas unless registered. Prohibits the transaction of business as a limited partnership unless the business is a Virginia limited partnership or a foreign limited partnership registered to transact business in Virginia. The measure includes numerous technical amendments that ensure that terminology in the Virginia Limited Partnership Act and Partnership Act conforms to provisions of other Virginia business entity laws. Other provisions centralize and expand the delayed effective date provisions for Virginia limited partnership organizational documents; move the provisions for the conversion of a partnership to a limited partnership to the Limited Partnership Act; amend the filing fees for limited partnership and registered limited liability partnership amendments and cancellations; and transfer responsibility for the filing of amended and restated certificates of limited partnership in circuit court from the Commission to the limited partnership.

Revised Uniform Anatomical Gift Act

House Bill 2684 / Senate Bill 918; Delegate Frederick and Senator Howell; Revised Uniform Anatomical Gift Act (UAGA). Replaces current provisions in the Virginia Code with this Act, which was adopted, in substantial part, by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in July of 2006. The original UAGA was promulgated by NCCUSL in 1968 and enacted by all states. In 1987, the UAGA was revised and updated, but only Virginia and 25 other states adopted that version. Since 1987, many states have adopted nonuniform amendments to their anatomical gift acts. This Act clarifies current law in Virginia, addresses the lack of uniformity among states, and brings the law into harmony with federal laws applicable to organ, tissue and eye donation.

The revised Act addresses each step in the donation process and establishes rules of decision to resolve uncertainties and ambiguities that have arisen under prior versions of the UAGA. It ensures that if an individual wishes to make an anatomical gift or to refuse to make such a gift, those wishes will be respected without exception. It preserves the right of other persons to make an anatomical gift if the decedent did not make a gift during life, and clarifies how, to whom, and for what purpose, the gift may be made. The Act facilitates donation by expanding the list of persons who can make an anatomical gift and by establishing the priority and circumstances under which such persons may make a gift, including when they will be considered available to exercise their right to consent to, or refuse, an anatomical gift. There are numerous default rules for the interpretation of a document of gift that lacks specificity. The Act affirms that procurement organizations will have access to documents of gift in donor registries, medical records, and DMV records. It also provides that taking measures to preserve the viability of organs, tissues and eyes for their donative purpose is not inconsistent with a health-care directive requesting the withholding or withdrawal of life support systems. Other provisions address the relationship between the medical examiner and procurement organizations to ensure, to the maximum extent possible, that anatomical gifts are made from decedents under the jurisdiction of the medical examiner. The revised Act creates a new crime of falsification of a gift document and continues to prohibit the sale of bodies or body parts and increases the criminal penalty from a Class 6 to a Class 4 felony.

Power of Attorney

House Bill 2864; Delegate Moran; Powers of attorney; duties and liabilities of agents. States that a holder of any power of attorney has a fiduciary relationship with the subject of the power of attorney and may be

held liable for any breach of that fiduciary duty. The bill also expands the financial accounting requirement for a holder of the power of attorney from two years prior to the request to five years. The bill also provides that if the holder of the power of attorney is removed from his position by the court due to abuse, neglect, or exploitation of the principal, the holder of the power of attorney shall bear the costs and fees associated with the performance of his duties.

Senate Bill 1235; Senator Obenshain; Attorneys-in-fact; challenges thereto after death of principal. Clarifies that challenges may be made to actions of an attorney-in-fact and that discovery may be obtained after the death of the principal by a person who was interested in the welfare of the principal, including the personal representative of the estate of the deceased principal. This bill is a recommendation of the Boyd Graves Conference.

REPORT OF PROCEEDINGS OF THE 2007 ANNUAL CONFERENCE

The 2007 annual meeting of the Conference was held July 26 - August 3, in Pasadena, California. Commissioners Dyke, French, Kneedler, Miller and Ring attended.

The following uniform acts or amendments to uniform acts were approved at the annual meeting:

- *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*
- *Uniform Rules Relating to Discovery of Electronically Stored Information*
- *Uniform Interstate Depositions and Discovery Act*
- *Uniform Limited Cooperative Association Act*
- *Amendments to Uniform Emergency Volunteer Health Practitioners Act*
- *Amendments to Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act*

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

- *Uniform Collateral Consequences of Conviction Act*
- *Certification of Unsworn Foreign Declarations Act*
- *Amendments to Uniform Common Interest Ownership Act*

- *Uniform Statutory Trust Entity Act*
- *Amendments to Intestacy Provisions of the Uniform Probate Code*
- *Revised Model State Administrative Procedures Act*
- *Business Organizations Act*

2007 ADOPTIONS BY ANNUAL CONFERENCE

SUMMARIES

Summaries of the acts adopted or amended by the Conference are as follows:

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Under the act, a “guardian” is appointed to make decisions regarding the person of an incapacitated adult, and a “conservator” is appointed to manage the property. The objective of the new uniform act is simple: to ensure that only one state has jurisdiction at any one time. To that end, the act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The act does this by prioritizing the states which might claim jurisdiction. The state with primary jurisdiction is the “home state,” defined as the state in which the adult has lived for at least six consecutive months immediately before the beginning of the adult guardianship or protective proceeding. The second is the “significant-connection state,” which is broadly defined to include the location of the individual’s family, a state where the individual might have lived for many years, or the state where the individual’s property is located. The act provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred; it also avoids the existing functional requirement of having to restart the guardianship process anew whenever the protected party crosses state lines. The act also provides transfer procedures from one state to another. In this and other respects, the new act accomplishes for adult guardianship determinations the same certainty that has occurred in child custody law with the promulgation of the 1997 Uniform Child Custody Jurisdiction and Enforcement Act, now the law in 48 states.

Uniform Rules Relating to Discovery of Electronically Stored Information

The primary purpose of the new Uniform Rules Relating to the Discovery of Electronically Stored Information is to provide states with up-to-date rules for the discovery of electronic documents in civil cases. The Uniform Rules provide procedures for parties in a civil case to jointly follow relating to a number of issues, including the preservation of the electronic information; the form in which the information will be produced; and the period of time in which the information must be produced. The Uniform Rules limit the sanctions which may be imposed on a party for failure to provide electronic information that has been lost as the result of routine operation of an electronic information system. This rule applies to information lost due to the routine operation of an information system only if the system was operated in good faith. The Uniform Rules address the unique difficulties in accessing some electronic information by providing certain restrictions on its discovery. For instance, a party may object to discovery of electronically stored information on the grounds that the information is not reasonably accessible because of undue burden or expense. However, the court may order discovery of such information if it is shown that the likely benefit of the proposed discovery outweighs the likely burden or expense, and may allocate between the parties the expense of conducting the discovery.

Uniform Interstate Depositions and Discovery Act

The Uniform Interstate Depositions and Discovery Act provides efficient and inexpensive procedures to enable a party in one state to effectuate depositions of witnesses, discover documents or inspect premises in other states. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased. The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena must comply with the rules of the state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the rules the discovery state. The goal of the Act is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation.

Uniform Limited Cooperative Association Act

The Uniform Limited Cooperative Association Act creates a new form of business entity and is an alternative to other cooperative and unincorporated structures. This Act is more flexible than most current laws, and provides a default template that encourages planners to utilize tested cooperative principles for a broad range of entities and purposes. It promotes rural development by creating the option of a statutorily-defined entity that combines traditional cooperative values with modern financing mechanisms. The Act would, for example, allow a group of wheat farmers to build a value-added pasta facility, keeping their business in a cooperative form while being able to attract and utilize investment capital. The Act will be equally useful in an urban setting, where the cooperative value of individuals getting together to democratically own, run, and share in the benefit of their business can be combined with modern financing techniques. For example, it might be used by an urban food coop to attract investment capital to build facilities for the operation of the cooperative's business.

Amendments to Uniform Emergency Volunteer Health Practitioners Act

The Uniform Emergency Volunteer Health Practitioners Act, first approved in 2006, allows state governments to give reciprocity to other states' licensed emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements. Amendments to UEVHPA were approved in 2007 to complete previously reserved sections addressing the civil liability of disaster volunteers and the care of volunteers who are injured, become ill or die while delivering emergency services. With regard to civil liability, the act provides two options. In "Alternative A," a volunteer health practitioner is not liable for acts or omissions, nor can any party be held vicariously liable for a volunteer practitioner's acts or omissions, unless the conduct in question rises to the level of willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct, represents an intentional tort, involves a breach of contract, is a claim by a host or deploying entity, or is an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle. "Alternative B" utilizes the same basic exclusions, but caps the compensation a volunteer can receive in connection with the emergency (not including reimbursement of reasonable expenses) at \$500 per year, and does not include the limitation on vicarious liability. It is anticipated that enacting states will choose the alternative that most closely tracks their existing state provisions regard "Good Samaritan" liability protection and/or each state's implementation of federal law on this subject. The 2007 Amendments also provide that a volunteer health practitioner who is not otherwise covered by the workers' compensation laws of

the host or deploying state may elect to be deemed an employee of the host state for purposes of making a claim under the host state's workers' compensation system. The act directs enacting states to coordinate implementation of this coverage with other enacting states.

Amendments to Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act

The Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act (URCANCPA) tries to answer a question that has plagued domestic relations law for a long time: "who should represent a child in a custody or abuse and neglect proceeding, and what is the nature of that representation?" URCANCPA, as amended in 2007, establishes three categories of representatives: a child's attorney, a best interests attorney, and a best interests advocate. A child's attorney represents the child as a traditional client-directed lawyer. A best interests attorney is also a lawyer for the child but must advocate the child's "best interests" based on applicable legal criteria and the unique circumstances and needs of the child. The best interests advocate is a non-lawyer representative appointed by the court to investigate and make recommendations regarding the child's welfare. Because of the fundamental importance of the interests at stake in child protective cases, URCANCPA requires the court to appoint either a child's attorney or a best interests attorney for every child in an abuse or neglect proceeding. For custody cases, in contrast, the appointment of any representative is a matter of court discretion. The Act identifies the many duties of legal representation that are common to both categories of attorney, and it also clarifies the distinct responsibilities of the child's attorney and the best interests attorney. URCANCPA should not only bring greater certainty to the roles and expectations of children's representatives across the United States but also improve the quality of representation by providing needed standards of conduct.

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 2008 General Assembly:

- *Uniform Power of Attorney Act*
- *Uniform Prudent Management of Institutional Funds*

CURRENT DRAFTING PROJECTS

There are currently 24 ULC drafting committees working on new and revised uniform acts. In addition, 14 study committees are considering subjects for possible future drafting.

Current Drafting Committees

Drafting Committee on a Business Organizations Act. The purpose of this committee is to draft common provisions of business organization law such as definitions; the mechanics of filings; names of entities, registered agents and registered offices; qualification of foreign entities; and administrative powers of the Secretary of State; and incorporate Model Entity Transactions Act provisions on merger, interest exchanges, conversions, domestications and divisions. Working in partnership with an ABA committee, the drafting committee will also consider future expansion of the project.

Drafting Committee on Uniform Collateral Consequences of Conviction Act. This committee is drafting a statute addressing the various penalties and disqualifications that individuals face incidental to criminal sentencing, including disqualification from voting, prohibitions from running for office, exclusion from certain types of employment, etc. The act is intended to be narrow in scope, applying only to the procedures surrounding collateral sanctions, not defining or limiting what those sanctions are.

Drafting Committee on a Collaborative Law Act. This committee will draft an act on collaborative law, a new kind of alternative dispute resolution framework used in many states today in a family law context, i.e., divorce, custody, and support proceedings. The core idea is that lawyers (and parties) to a dispute agree in advance that the lawyers will withdraw if the dispute goes to trial. The committee will also consider whether the act should be limited to family law cases or expanded to other areas of the law such as estate planning.

Drafting Committee on Amendments to the Uniform Common Interest Ownership Act. UCIOA, first promulgated in 1982 and revised in 1994, is a comprehensive statute relating to condominiums, planned communities and cooperatives. This committee is revising UCIOA in light of intervening developments in this area of law and will study and recommend corresponding amendments to the Uniform Condominium, Planned Community, and Real Estate Cooperative Acts. The committee will consider a number of topics, including owner access to budget and financial records of the

association, the establishment and funding of reserve accounts, and issues to improve the usefulness of the act.

Drafting Committee on a Faithless Presidential Electors Act.

This committee will draft an act providing a state statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state.

Drafting Committee to Amend Intestacy Provisions of the Uniform Probate Code.

This committee will amend the intestacy provisions of the UPC that deal with inheritance by children. Newer reproductive technologies – including posthumous conception – are becoming more and more commonplace, and yet the inheritance rules that govern in these circumstances are outdated or nonexistent. This committee will amend specific sections of the UPC, and possibly carve those sections off as a freestanding uniform act. The Committee also will consider a limited number of potential amendments to other portions of the UPC.

Drafting Committee on Misuse of Genetic Information in Employment and Insurance Act.

This committee will draft uniform or model legislation on the misuse of genetic information in the context of employment and health insurance discrimination.

Drafting Committee to Revise the Model State Administrative Procedures Act.

This committee is revising the 1980 Model State Administrative Procedures Act, which provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. A revision is necessary to update the act to recognize electronic communications and other state procedural innovations since the act was originally promulgated. Upon completion of its main charge, the committee will study the development of an administrative procedures act for use by interstate compact entities.

Drafting Committee on Regulation of Medical Examiners Act.

This committee will draft an act regulating state and local forensic medical examination systems in an effort to improve the current standards. The committee will consider the areas of accreditation and quality assurance programs which play a crucially important role in the criminal justice system.

Drafting Committee on a Relocation of Children Act.

This committee will draft an act on the relocation of children from one jurisdiction to another in the context of custody disputes. Relocation involves a parent who wants to move with a child over the objections of the other parent; it is one of the fastest-growing kinds of custody litigation in the country.

Drafting Committee on Uniform Statutory Trust Entity Act. The business trust format — often used in mutual funds, ERISA pension funds, and various types of regulatory compliance trusts — is increasingly used as an alternative to other business entities such as a corporation and limited partnership. Business trusts are special purpose vehicles, the closest equivalent being limited partnerships. Although there are few business trusts compared to other types of business forms, trillions of dollars of assets are invested in this business format. This committee is drafting an act that will apply to business trusts and other analogous statutory trusts. It will not apply to the kind of trusts used in estate planning.

Drafting Committee on a Transfer on Death for Real Property Act. This committee will draft an act that will permit real property to be transferred outside of probate upon death by beneficiary designation, similar to current beneficiary designations now used on securities accounts. At least eight states now permit this kind of real estate transfer on death.

Drafting Committee to Create a Harmonized Legal Framework for Unincorporated Nonprofit Associations in North America. This committee will review developments relative to the Uniform Unincorporated Association Act, last amended in 1995, and will draft updated amendments to promote the act's national uniform adoption in conjunction with an effort to harmonize similar applicable laws in Canada and Mexico.

Drafting Committee on a Certification of Unsworn Foreign Declarations Act. This committee will draft an act that would permit, in state court proceedings, unsworn declarations under penalty of perjury to be executed by witnesses located outside the United States in lieu of affidavits, verifications, or other sworn court filings. Obtaining an affidavit abroad can be a costly and time-consuming process. A uniform state law on this subject would be extremely useful in transnational litigation.

Committee to Amend the Uniform Interstate Family Support Act. The purpose of this committee is to consider the impact of the expected November 2007 completion of the Hague Convention on Family Maintenance, which deals with international recovery of child support and other forms of family maintenance. The committee is expected to draft amendments to UIFSA that would comply with the new Hague Convention.

Drafting Committee on Tenancy-in-Common Partition Act. The purpose of this committee is to draft a uniform act that will address the issue of tenancy-in-common land ownership. Tenancy in common is a type of joint ownership without right of survivorship. When there is no right of survivorship, the death of a tenant in common can trigger an action to

partition the land to satisfy the deceased tenant's heirs. In a partition, the land is sold to satisfy tenant in common interests, often in a sale that does not meet market value. This committee will draft a new law to protect vulnerable landowners by providing a buy-out option; balancing factors for judges on partition of real property; sale price minimums if dispossession occurs; and a waiting period of up to three years for strangers to title.

Drafting Committee to Revise the Uniform Division of Income for Tax Purposes Act. This committee will revise the Uniform Division of Income for Tax Purposes Act, last amended in 1966. Twenty-five states have adopted UDITPA and a number of others have effectively done so by joining the Multistate Tax Commission. The drafting committee will focus in part on revisions to Section 17 of UDITPA, which deals with sales factor sourcing for transactions other than sales of tangible goods, but also will engage in a comprehensive review of the Act.

Drafting Committee on Electronic Recordation of Custodial Interrogations. This committee will draft an act addressing the issue of the use of audio and/or video electronic devices to record law-enforcement officers' interviews of criminal suspects who are in custody.

Drafting Committee on Environmental Controls and Hazards Notice System Act. This committee will draft an act to work with existing "one-call" systems (which allow landowners, contractors, and other workers to call prior to breaking ground in order to determine if underground utilities are present). It is hoped that these one-call systems will be significantly enhanced if environmental use controls and hazards are included in such notice systems.

Drafting Committee on Insurable Interests Relating to Trusts Act. This committee will draft an act to address concerns regarding the purchase of life insurance trusts by trustees as it relates to insurable interest law. Life insurance trusts are a standard estate planning tool because proceeds of an irrevocable life insurance trust are not subject to estate taxes. Recent case law has raised the possible need for uniform law on insurable interests. The scope of the project is narrow and might be drafted within the Uniform Trust Code or as a free-standing act.

Drafting Committee to Revise the Uniform Law on Notarial Acts. The purpose of this drafting committee is to revise the notarial law since the 1982 promulgation of the Uniform Law on Notarial Acts and address issues relating to new technologies. The charge is limited to notary responsibilities, electronic recording, interstate recognition, and remedies.

Drafting Committee on Record Owners of Business Act. This committee will draft an act to conform uniform entity laws, including the

Uniform Partnership Act (1997), Uniform Limited Partnership Act (2001), Uniform Limited Liability Act (2006) and the Uniform Unincorporated Nonprofit Association Act (1996), to address the availability of information regarding the owners of entities established under state law. The act would help address some national security concerns relating to companies operating for the purpose of organized crime, terrorist financing, securities fraud, tax evasion and other misconduct, while at the same time balancing important privacy concerns.

Drafting Committee on the Regulation of Charities. This committee will draft an act to address the state regulation of charities. The committee will focus on state attorneys general authority with regard to the protection of charitable assets, notice requirements, remedies and principles to guide attorneys general in interstate and multi-state cases.

Joint Drafting Committee for Implementation of the UN Convention on Independent Guarantees and Stand-by Letters of Credit. This committee will work with the American Law Institute, the Uniform Law Conference of Canada and the Mexican Center for Uniform Laws to draft language to implement the UN Convention on Independent Guarantees and Stand-by Letters of Credit, and to assist Canada in developing letter-of-credit law consistent with UCC Article 5. The Convention is designed to facilitate the use of independent guarantees and stand-by letters of credit, in particular where only one or the other of these instruments may be traditionally in use.

Study Committees

Study Committee on the 1996 Hague Convention on the Protection of Children
Study Committee on the Law of Payment Systems
Study Committee on Administrative Procedures for Interstate Compact Entities
Study Committee on Bank Deposits Act
Study Committee on Health Care Information Interoperability
Study Committee on a Certificate of Title System for Boats
Study Committee on Disposal of Electronic Products
Study Committee to Revise Model Drug Dependence Treatment and
Rehabilitation Act
Study Committee to Revise Uniform Federal Lien Registration Act
Study Committee on the Hague Convention on Choice of Court Agreements

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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