

REPORT OF THE

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

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



REPORT DOCUMENT NO. 21

**COMMONWEALTH OF VIRGINIA
RICHMOND
2015**

TABLE OF CONTENTS

HISTORY OF THE CONFERENCE	1
OPERATION OF THE CONFERENCE.....	2
VALUE FOR VIRGINIA AND THE STATES.....	3
STATE APPROPRIATIONS	4
OTHER FINANCIAL CONTRIBUTORS	4
PROCESS FOR CREATION OF UNIFORM AND MODEL ACTS	5
THE IMPORTANCE OF VIRGINIA'S CONTRIBUTION.....	6
ACTIVITIES OF THE VIRGINIA COMMISSIONERS.....	6
ACTIVITIES OF THE 2014 VIRGINIA GENERAL ASSEMBLY	8
Uniform Law-Related Bills Passed by the 2014 General Assembly Session and Signed by the Governor	8
REPORT OF PROCEEDINGS OF THE 2014 ANNUAL MEETING	9
2014 ADOPTIONS BY CONFERENCE	10
SUMMARIES	10
Uniform Fiduciary Access to Digital Assets Act	10
Uniform Recognition of Substitute Decision-Making Documents Act	10
Amendments to the Uniform Voidable Transactions Act	10
Amendments to the Uniform Common Interest Ownership Act	11
2015 ANNUAL MEETING.....	11
NEW DRAFTING PROJECTS	11
REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS	13

**Up-to-date information is available on the website of the National
Conference of Commissioners on Uniform State Laws
www.uniformlaws.org/**

**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, 2014 - December 31, 2014

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 Springs, 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. Former Supreme Court Justices Brandeis, Souter, and Rutledge, and former 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 Commission (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. 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, which provides advisors to all ULC drafting committees and many ULC study committees. Additionally, liaison is continually maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the Conference of Chief Justices, and the National Center for State Courts. Other organizations 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 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 annual budget and audit report of the Conference are available on request.

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 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. 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.

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 between \$1 and \$2 million per project.

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. Each of these comprehensive projects cost much more than the actual budget of the ULC, and represents much larger contributions--in terms of time--from the ULC membership.

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 is \$2,681,900 in fiscal year 2015. The smallest state contribution is \$29,000 and the largest is \$157,500. Virginia's dues for FY 2015 are \$56,100. The annual budget of the ULC for FY 2015 is \$4,028,062. Of this amount, \$976,644 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. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is \$301,162. In addition, \$741,728 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$457,227 is spent on the annual meeting. Public education for uniform and model acts costs about \$146,327 and includes contractual services, materials costs and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

OTHER FINANCIAL CONTRIBUTORS

Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts.

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 established 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 completely autonomous.

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 ULC Executive Committee.

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. Participating observers 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. A short act may require one or two committee meetings. Major acts may require many more meetings 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 (one vote to each state). 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.

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 ULC.

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). Mary P. Devine, of Manakin-Sabot, Thomas Edmonds, of Richmond, and Christopher R. Nolen, of Glen Allen, are gubernatorial appointees.

In addition to the Governor's appointments, the Constitution of the Conference authorizes the appointment of life members upon recommendation of the Executive Committee. Virginia's life members are Ellen F. Dyke, of Vienna, H. Lane Kneedler, of Charlottesville, Brockenbrough Lamb, Jr., of Richmond, Esson McKenzie Miller, Jr., of Richmond, and Carlyle C. Ring, Jr., of Alexandria.

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. Robert L. Tavenner, who became Director of the Division of Legislative Services in July 2011, became a member at that time. Jessica D. French, senior attorney with the Division, has been designated an associate member.

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

Mary P. Devine — Member, Committee on Non-Parental Rights to Child Custody and Visitation.

Ellen F. Dyke — Member, Drafting Committee on Commercial Real Estate Receiverships Act.

Thomas Edmonds — Member, Committee on Liaison with the American Bar Association; and Member, Drafting Committee on Commercial Real Estate Receiverships Act.

Jessica D. French — Vice-chair, Committee of Legislative Attorneys; Member, Standby Committee on Collateral Consequences of Conviction Act; and Member, Study Committee on Third Party Child Custody and Visitation Act.

H. Lane Kneedler — Member, Legislative Council (Atlantic Region); Member, Standby Committee on Model State Administrative Procedure Act; Member, Drafting Committee on Prevention of and Remedies for Human Trafficking; Member, Standby Committee on Uniform Collateral Consequences of Conviction Act; Member, Committee on Federalism and State Law; and Reporter, Study Committee on Firearms Information.

Esson McKenzie Miller, Jr. — Chair, Standby Committee on Uniform Certificate of Title for Vessels Act; Member, Committee of Legislative Attorneys; Member, Drafting Committee on Prevention of and Remedies for Human Trafficking; Member, Study Committee on Firearms Information, and Member, Study Committee on State Regulation of Driverless Cars.

Carlyle C. Ring, Jr. — Chair, Committee on Uniform Commercial Code; Chair, Executive Subcommittee of the Permanent Editorial Board for Uniform Commercial Code; Member, Permanent Editorial Board for Uniform Commercial Code; Member, Committee on Federalism and State Law; Liaison Member, Uniform Law Foundation Trustees; Member, Drafting Committee on Home Foreclosure Procedures Act; and Chair, Special Subcommittee for ULC Input for Mortgage Note Registry.

Robert L. Tavenner — Observer, Study Committee on Firearms Information; and Observer, Study Committee on Criminal Records Accuracy and Access.

ACTIVITIES OF THE 2014 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in Report Document No. 376, 2014, covering the period January 1, 2013, through December 31, 2013, and other initiatives, the following actions regarding uniform laws were taken by the 2014 Virginia General Assembly.

Uniform Law-Related Bills Passed by the 2014 General Assembly Session and Signed by the Governor

Uniform Foreign Country Money-Judgments Recognition Act

SB 473; Senator Obenshain. Uniform Foreign Country Money-Judgments Recognition Act. Replaces the Uniform Foreign Country Money-Judgments Recognition Act enacted in Virginia in 1990 with the version approved by the National Conference of Commissioners on Uniform State Laws in 2005, which has been adopted in 18 states and the District of Columbia. Both versions provide for recognition and enforcement of foreign-country judgments in a United States state court. Judgments on taxes, fines, or criminal-like penalties and judgments relating to domestic relations are not covered by the Act. The Act provides that a foreign-country judgment will not be recognized if it comes from a court system that is not impartial or that dishonors due process, or when there is no personal jurisdiction over the defendant or over the subject matter of the litigation. The 2005 Act clarifies that a judgment entitled to full faith and credit under the United States Constitution is not enforceable under this Act and expressly provides that a party seeking recognition of a foreign-country judgment has the burden to prove that the judgment is subject to the Uniform Act. The Act imposes the burden of proof for establishing a specific ground for nonrecognition upon the party raising it, addresses the specific procedure for seeking enforcement, and provides a statute of limitations on enforcement of a foreign-country judgment.

Amendments to Uniform Certificate of Title for Watercraft Act

SB 504; Senator Wagner. Watercraft titling certificates. Amends the Virginia Uniform Certificate of Title for Watercraft Act to conform it to other watercraft-related laws; the Act, passed by the 2013 General Assembly, contains a delayed effective date of July 1, 2014. The bill redefines "watercraft" to include only vessels with mechanical propulsion and to exclude vessels that measure 18 feet in length or less or have valid marine documents issued by the United States Coast Guard. The bill also clarifies the relationship between the titling statutes and the existing registration laws and makes technical amendments.

REPORT OF PROCEEDINGS OF THE 2014 ANNUAL MEETING

The 2014 annual meeting of the Conference was held July 11 - July 17, in Seattle, Washington. Commissioners Devine, Dyke, Edmonds, French, Miller, Nolen, Ring, and Tavenner attended.

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

- *Uniform Fiduciary Access to Digital Assets Act*
- *Uniform Recognition of Substitute Decision-Making Documents Act*
- *Amendments to the Uniform Voidable Transactions Act*
- *Amendments to the Uniform Common Interest Ownership Act*

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

- *Home Foreclosure Procedures Act*
- *Revision to the Uniform Residential Landlord and Tenant Act*
- *Model Act on Commercial Real Estate Receiverships Act*
- *Amendments to the Uniform Athlete Agents Act*
- *Family Law Arbitration Act*
- *Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act*
- *Series of Unincorporated Business Entities Act*
- *Trust Decanting Act*

2014 ADOPTIONS BY CONFERENCE

SUMMARIES

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

Uniform Fiduciary Access to Digital Assets Act

The Uniform Fiduciary Access to Digital Assets Act is a comprehensive new law. In the modern world, digital assets have largely replaced tangible ones. Documents are stored in electronic files rather than in file cabinets. Photographs are uploaded to web sites rather than printed on paper. However, the laws governing fiduciary access to these digital assets are in need of an update.

The Uniform Fiduciary Access to Digital Assets Act (UFADAA) solves the problem using the concept of “media neutrality.” If a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. UFADAA governs four common types of fiduciaries: personal representatives of a deceased person’s estate; guardians or conservators of a protected person’s estate; agents under a power of attorney; and trustees. UFADAA defers to an account holder’s privacy choices as expressed in a document (such as a will or trust), or online by an affirmative act separate from the general terms-of-service agreement. Therefore, an account holder’s desire to keep certain assets private will be honored under UFADAA.

Uniform Recognition of Substitute Decision-Making Documents Act

The Uniform Recognition of Substitute Decision-Making Documents Act is a joint endeavor of the Uniform Law Commission and the Uniform Law Conference of Canada. The project was undertaken to promote the portability and usefulness of substitute decision-making documents for property, health care, and personal care, without regard to whether the documents are created within or outside of the jurisdiction where a substitute decision is needed. Common examples of substitute decision-making documents include powers of attorney and proxy delegations for personal decision making.

Amendments to the Uniform Voidable Transactions Act

Amendments to the Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act) were approved. The amendments address a small number of narrowly-defined issues, and are not comprehensive revisions.

Amendments include a new Section 10, which sets forth a choice of law rule for claims of the nature governed by the Act, as well as the addition of uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act.

Amendments to the Uniform Common Interest Ownership Act

Amendments to Section 3-116 of the Uniform Common Interest Ownership Act concern the six-month “limited priority” lien for unpaid common expense assessments owed to community associations.

2015 ANNUAL MEETING

The 2015 Annual Meeting will be hosted by Virginia and will be held at the Williamsburg Lodge in Williamsburg, Virginia, from Friday, July 1 through Thursday July 16, 2015. This will be the first annual meeting held in Virginia since 1903.

NEW DRAFTING PROJECTS

At the 2014 Annual Meeting, the ULC Executive Committee authorized the appointment of four new drafting committees and two new study committees. The committees are:

Drafting Committees

Drafting Committee on Divided Trusteeship. An increasingly common practice in contemporary estate planning and asset management is the naming of a trustee that is given custody of the trust property, but with one or more of the investment, distribution or administration functions of the trusteeship being given to a person or persons who are not formally designated as trustees. This is the problem of divided trusteeship. There is much uncertainty about the fiduciary status of nontrustees who have control or potential control over a function of trusteeship and about the fiduciary responsibility of trustees with regard to actions taken by such nontrustees. Existing uniform trust and estate statutes inadequately address the issues and are at risk of becoming obsolete unless they are amended to take account of these developments. This Committee will draft legislation on divided trusteeship and also will draft conforming amendments to other uniform trust and estate acts as appropriate.

Drafting Committee to Revise or Amend the Uniform Guardianship and Protective Proceedings Act. The UGPPA was approved by the ULC in 1982, and

amended in 1989 and last revised in 1997. Nearly 20 states have enacted one or the other version of the act. This drafting committee will revise selected portions of the UGPPA in order to implement some of the recommendations of the Third National Guardianship Summit and otherwise to update the act. The National Guardianship Network is a collaboration of 10 national organizations that work toward effective adult guardianship law and practice.

Drafting Committee on Non-Parental Rights to Child Custody and Visitation. State legislation and judicial decisions concerning the rights of third parties who are not parents (such as grandparents, stepparents, domestic partners, and siblings) to rights of custody of or visitation with a child vary greatly. Those rights are also affected by the decision of the United States Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), which held that courts must give deference to decisions of fit parents concerning the raising of children, including concerning grandparents' visitation rights. This drafting committee will draft an act concerning the rights of third parties other than parents to custody of or visitation with a child. The drafting committee is not authorized to undertake any revisions or the Uniform Parentage Act.

Drafting Committee on Social Media Privacy. The use of social media in the United States is burgeoning, and it is now not uncommon for employers to ask current and prospective employees to grant the employer access to social media accounts. Educational institutions also sometimes seek to examine the social media presence of current or prospective students. During 2012 - 2014, 17 states enacted varying legislation on social media privacy, and numerous additional bills on these topics were introduced during the 2014 legislative sessions. This drafting committee will draft legislation concerning employer's access to employees' or prospective employees' social media accounts and educational institutions' access to students' or prospective students' social media accounts, and the committee's charge is limited to these issues.

Study Committees

Study Committee on State Regulation of Driverless Cars. Autonomous vehicle technology is rapidly maturing, and that technology (or driverless cars) will soon be ready to test nationwide. Four states and the District of Columbia have already enacted legislation concerning some aspects of state regulation of driverless cars, and the National Highway Transportation Safety Administration has issued guidelines for states that may seek to regulate driverless cars. This study committee will study the need for and feasibility of drafting state legislation concerning the regulation of driverless cars.

Study Committee on the Transfer and Recording of Consumer Debt. Consumer debt, particularly past-due consumer credit-card debt, is frequently sold by the original creditor to other entities that specialize in debt collection. The Office of the Comptroller of the Currency in 2013 issued a “Best Practices” document that expressed concern about safety, soundness and consumer protection issues involved with such sales of consumer debt, and some have proposed the creation of a national debt registry, or multiple registries, that would track title to consumer debt that has been transferred. This study committee will study the need for and feasibility of state legislation on the transfer and recording of consumer debt and will also investigate the viability of a registration system to record transfers of consumer debt.

**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,

Carlyle C. Ring, Jr., Chairman
Mary P. Devine
Ellen F. Dyke
Thomas Edmonds
Jessica D. French
H. Lane Kneeder
Brockenbrough Lamb, Jr.
E. M. Miller, Jr.
Christopher R. Nolen
Robert L. Tavenner