

**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  
[www.uniformlaws.org/](http://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, 2015 - December 31, 2015**

**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) 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 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 \$2,716,100 in fiscal year 2016. The smallest state contribution is \$18,200 and the largest is \$159,000. Virginia's dues for FY 2016 are \$56,600. The annual budget of the ULC for FY 2016 is \$3,976,000. Of this amount, \$1,100,000 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 \$328,000. In addition, \$627,000 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$439,000 is spent on the annual meeting. Public education for uniform and model acts costs about \$254,000 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 two or three 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, Drafting Committee on Non-Parental Rights to Child Custody and Visitation Act.

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.

H. Lane Kneedler — Chair, Division A; Member, Legislative Council (Atlantic Region); Member, Standby Committee on Model State Administrative Procedure Act; Member, Committee on State and Federal Relations; Member, Committee on Other Organizations; 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, Study Committee on Firearms Information; Member, Study Committee on Involuntary Pornography Websites; and Member, Study Committee on State Regulation of Driverless Cars.

Christopher R. Nolen — Member, Study Committee on Bad Faith Patent Demand Letters.

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 State and Federal Relations; Liaison Member, Uniform Law Foundation Trustees; Member, Drafting Committee on Home Foreclosure Procedures Act; and Co-chair, Electronic Registry for Residential Mortgage Notes.

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

## ACTIVITIES OF THE 2015 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in Report Document No. 21, 2015, covering the period January 1, 2014, through December 31, 2014, and other initiatives, the following actions regarding uniform laws were taken by the 2015 Virginia General Assembly.

### **Uniform Law-Related Bills Passed by the 2015 General Assembly Session and Signed by the Governor**

#### **Uniform Interstate Family Support Act**

**HB 1601; Delegate Watts. Uniform Interstate Family Support Act.** Amends the Uniform Interstate Family Support Act (UIFSA) to comply with amendments to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance that were adopted in 2008. The amendments modify the current version of UIFSA's international provisions to comport with the obligations of the United States under the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The bill contains an emergency clause and became effective April 15, 2015.

#### **Uniform Military and Overseas Voters Act**

**HB 2397; Delegate Taylor. Uniform Military and Overseas Voters Act; efficiencies reforms.** Makes several changes to the Uniform Military and Overseas Voters Act (UMOVA) and other Code of Virginia sections relating to absentee voting by those voters covered under UMOVA. The bill requires the Department of Elections to make available, at least 100 days prior to a regularly scheduled election, information about the election to be used with the federal write-in absentee ballot and to provide a copy of such information to any UMOVA voter who requests it. Currently, this is a local responsibility. The bill also permits localities to use paper ballots for UMOVA voters who are eligible to vote only in federal elections. Localities are also permitted to obtain other evidence of mailing, rather than purchasing a certificate of mailing, when mailing absentee ballots to UMOVA voters. The section providing for an early absentee ballot for statewide offices is repealed, as it was rendered obsolete by 2011 legislation that expanded the use of federal write-in absentee ballots to all elections. This bill also contains technical amendments to reflect the administrative reorganization of the Department of Elections that took effect July 1, 2014.

## REPORT OF PROCEEDINGS OF THE 2015 ANNUAL MEETING

The 2015 annual meeting of the Conference was hosted by Virginia and was held July 10 - July 16, in Williamsburg, Virginia. Commissioners Devine, Dyke, Edmonds, French, Lamb, Miller, Nolen, Ring, and Tavenner attended. This was the first annual meeting held in Virginia since 1903.

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

- *Revised Uniform Athlete Agents Act*
- *Uniform Commercial Real Estate Receivership Act*
- *Revised Uniform Fiduciary Access to Digital Assets Act*
- *Uniform Home Foreclosure Procedures Act*
- *Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act*
- *Revised Uniform Residential Landlord and Tenant Act*
- *Uniform Trust Decanting 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:

- *Family Law Arbitration Act*
- *Series of Unincorporated Business Entities Act*
- *Wage Garnishment Act*
- *Revised Uniform Unclaimed Property Act*
- *Social Media Privacy Act*

### 2015 ADOPTIONS BY CONFERENCE

#### SUMMARIES

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

#### Revised Uniform Athlete Agents Act

The Revised Uniform Athlete Agents Act (2015) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The Revised Act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

### **Uniform Commercial Real Estate Receivership Act**

Receivership is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules and the courts of different states have applied widely varying standards. This Uniform Commercial Real Estate Receivership Act applies to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. It will result in greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership.

### **Revised Uniform Fiduciary Access to Digital Assets Act**

A fiduciary is a person appointed to manage the property of another person, subject to strict duties to act in the other person’s best interest. Common types of fiduciaries include executors of a decedent’s estate, trustees, conservators, and agents under a power of attorney. The Revised Uniform Fiduciary Access to Digital Assets Act extends the traditional power of a fiduciary to manage tangible property to include management of a person’s digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary’s access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

### **Uniform Home Foreclosure Procedures Act**

The recent wave of residential foreclosure actions revealed flaws in the foreclosure system, particularly in states where court systems were overwhelmed. The Uniform Home Foreclosure Procedures Act provides a balanced set of rules and procedures to standardize and streamline the foreclosure process. The act protects homeowners by requiring adequate notice and documentation before a foreclosure action can proceed. The act protects

lenders by precluding contrary municipal ordinances and expediting foreclosure of abandoned properties. Finally, the act includes rules for pre-foreclosure resolutions and negotiated transfers to encourage non-judicial solutions.

### **Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act**

The Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act provides for the enforcement of domestic violence protection orders issued by Canadian courts. Reflecting the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against victims of domestic violence. Canada has granted recognition to protection orders of the United States and other countries in the Uniform Enforcement of Canadian Judgments and Decrees Act. By this act, enacting states accord similar recognition to protection orders from Canada.

### **Revised Uniform Residential Landlord and Tenant Act**

The Revised Uniform Residential Landlord and Tenant Act is an updated version of the Uniform Residential Landlord and Tenant Act, which was first promulgated in 1972 and last amended in 1974. The purpose of the original Act was to eliminate all elements of outmoded common law from the landlord-tenant relationship and base all phases of the rental agreement on contract law. The Revised Act includes new articles covering the disposition of tenant property, lease termination in case of domestic violence or sexual assault, and security deposits. The Revised Act also includes an appendix for states that only want to enact the updated provisions.

### **Uniform Trust Decanting Act**

“Decanting” is the term used to describe the distribution of assets from one trust into a second trust, like wine is decanted from the bottle to another vessel. Decanting can be a useful strategy for changing the outdated terms of an otherwise irrevocable trust, but can also be abused to defeat the settlor’s intent. The Uniform Trust Decanting Act allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor’s original intent. The act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

## NEW DRAFTING PROJECTS

At the 2015 Annual Meeting, the ULC Executive Committee authorized the appointment of two new drafting committees and three new study committees. The committees are:

### Drafting Committees

**Drafting Committee on a Uniform Electronic Registry for Residential Mortgage Notes.** The development of securitization as a common practice with regard to residential mortgage notes has created the need for a more efficient and less costly means than the current paper-based rules of UCC Article 3 to identify who is entitled to enforce a residential mortgage note and how the debt evidenced by the note is transferred. A more efficient system will benefit not only those engaged in the secondary mortgage market, but also note obligors who will have a clear, certain, and easily accessible way to determine who is the person entitled to enforce their obligation, and thus the person with whom they must deal with regard to enforcement related issues such as payoff and loan modification. Given the importance of the secondary mortgage market to the availability of capital for residential mortgage loans, a more efficient system is likely to benefit home buyers seeking residential mortgage loans as well. The drafting committee will develop a uniform electronic registry for residential mortgage notes that will be national in its effect, taking into account among other things the appropriate relationship between the registry and other law.

**Drafting Committee to Revise the Uniform Principal and Income Act.** Originally enacted in 1931 and then revised in 1962, the Uniform Principal and Income Act (UPAIA) was last comprehensively revised in 1997. Much has changed in the nearly two decades since then. The drafting committee will undertake a number of revisions to bring the UPAIA up to date and to add a unitrust provision. Modern trust law requires a trustee to invest for the best total return and simultaneously to treat income and remainder beneficiaries impartially. In order to fulfill these duties, a trustee should be able to make adjustments between income and principal or to make a unitrust election. The drafting committee will address other issues, including the treatment of money that a trust receives in partial liquidation of an entity in which the trust owns an interest, and the allocation of capital gains to income for income tax purposes.

## Study Committees

**Study Committee on Involuntary Pornography.** Revenge porn is the common name for what is more accurately termed “nonconsensual pornography” – the distribution of sexually graphic images of individuals without their consent. This includes images originally obtained without consent, as well as images originally obtained with consent, usually within the context of a private or confidential relationship. Nonconsensual pornography is particularly problematic when a victim’s name and contact information are disclosed along with the photos. This leads to harassment, stalking, and solicitation by strangers who have seen the images, and can also result in destruction of reputation and lost employment opportunities. The internet compounds such effects because it provides a convenient conduit for nonconsensual pornography to be disseminated and spread rapidly. The study committee will study the need for and feasibility of state legislation to provide remedies for people who are victimized by involuntary pornography.

**Study Committee on Model Equal Rights Act.** Over the last several years, advancement of civil rights at the federal level has slowed and advancements against discrimination have practically halted. The United States Commission on Civil Rights is no longer as powerful a voice as in the past. One state has enacted legislation prohibiting discrimination in employment based on race, creed, religion, color, national origin, age, physical or mental disability, marital status, or sex (including maternity and pregnancy), and another has enacted equal rights legislation making it illegal for employers and landlords to discriminate on the basis of sexual orientation or gender identity, except in cases involving religious organizations and their affiliates. The study committee will consider the need for and feasibility of model state legislation on a comprehensive equal rights act.

**Study Committee on Regulation of Drones.** Unmanned aircraft systems, also known as unmanned aerial vehicles, or drones, have a range of applications, including law enforcement, wildlife tracking, search and rescue, land surveillance, border patrol, disaster response, and photography. The FAA’s drone regulation largely focuses on regulation of the national airspace, with the ultimate goal of integrating drones into that airspace. Several states have enacted legislation addressing law enforcement use of drones. Some states have created crimes based on unlawful use of a drone, and have created civil penalties; these enactments, as well as those limiting police drone use, aim to protect civilian privacy. While Congress has considered three privacy-related drone bills, it has not enacted any of those bills. Given the federal focus on airspace regulation, issues such as privacy and police use of drones

have fallen to the states. The study committee will study the need for and feasibility of state legislation concerning the regulation of the use of drones, or unmanned aerial vehicles.

**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  
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