

**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. 535**

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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, 2016 - December 31, 2016**

**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 National Association of Secretaries of State, 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 \$2,781,400 in fiscal year 2017. The smallest state contribution is \$18,500 and the largest is \$162,100. Virginia's dues for FY 2017 are \$57,700. The annual budget of the ULC for FY 2017 is \$3,930,219. Of this amount, \$1,037,103 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 \$230,629. In addition, \$670,881 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$472,470 is spent on the annual meeting. Public education for uniform and model acts costs about \$113,900 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). In the 1940s, the Falk Foundation supported the UCC's original development. Proceeds from copyright licensing of UCC materials replenish the original funds. Whenever work on the UCC commences, a percentage of ULC and ALI costs are paid from endowment income.

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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, Esson McKenzie Miller, Jr., of Richmond, and Carlyle C. Ring, Jr., of Alexandria. Brockenbrough Lamb, Jr., of Richmond, who passed away this year after serving as a member for 63 years, was a life member. Having been appointed initially by Governor John Battle in 1953, he became the longest serving commissioner in its 125-year history.

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. Mark J. Vucci, who became Acting Director of the Division of Legislative Services in January 2016, became a member at that time. Jessica D. French retired from



the Division after serving as an associate member for 18 years. Emma E. Buck, 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.

## ACTIVITIES OF THE 2016 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in Report Document No. 115, 2016, covering the period January 1, 2015, through December 31, 2015, and other initiatives, the following actions regarding uniform laws were taken by the 2016 Virginia General Assembly.

### **Uniform Law-Related Bills Passed by the 2016 General Assembly Session and Signed by the Governor**

#### **Amendments to the Uniform Probate Code**

**H.B. 231; Delegate Leftwich, and S.B. 181; Senator Chafin. Augmented estate; elective share of surviving spouse.** Revises provisions of the Code related to the elective share of the surviving spouse of a decedent dying on or after January 1, 2017, to track revisions made to the Uniform Probate Code by the Uniform Law Commission. The bill calculates the elective share of the surviving spouse as a graduated percentage, taking into account both spouses' assets and the length of marriage. Under current law, the surviving spouse is awarded 50% of the estate if there were no children and 33.3% if there were children. The bill also clarifies the process by which the elective share is to be claimed and provides instructions for the valuation of assets to encourage uniformity in the method of calculation of the elective share.

#### **Uniform Child Custody Jurisdiction and Enforcement Act**

**H.B. 497; Delegate Campbell. Uniform Child Custody Jurisdiction and Enforcement Act; exclusive, continuing jurisdiction.** Provides that the Commonwealth has exclusive, continuing jurisdiction to modify a child custody order that is subject to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) so long as a parent of the child continues to live in the Commonwealth. Under current state law, both parents must reside in the Commonwealth for the court to retain exclusive, continuing jurisdiction. The bill conforms the law to the UCCJEA. This bill is a recommendation of the Boyd-Graves Conference.

#### **Uniform Powers of Appointment Act**

**S.B. 127; Edwards. Uniform Powers of Appointment Act.** Codifies the Uniform Powers of Appointment Act (the Act), which governs the use of an estate planning tool that permits the owner of property to name a third party and give that person the power to direct the distribution of that property among some class of eligible recipients. The Act is based on the Restatement (Third)

of Property: Wills and Other Donative Transfers and was adopted by the Uniform Law Commission in 2013.

## REPORT OF PROCEEDINGS OF THE 2016 ANNUAL MEETING

The 2016 annual meeting of the Conference was held July 8 - July 14, in Stowe, Vermont. Commissioners Devine, Dyke, Edmonds, French, Miller, Nolen, Ring, and Vucci attended.

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

- *Uniform Employee and Student Online Privacy Protection Act*
- *Uniform Family Law Arbitration Act*
- *Revised Uniform Unclaimed Property Act*
- *Uniform Unsworn Domestic Declarations Act*
- *Uniform Unsworn Declarations Act*
- *Uniform Wage Garnishment Act*
- *Amendment to the Revised Uniform Law on Notarial Acts*

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:

- **Limited Liability Company Protected Series Act**
- **Non-Parental Rights to Child Custody and Visitation Act**
- **Divided Trusteeship Act**
- **Amendments to the Uniform Parentage Act**
- **Revised Uniform Guardianship and Protective Proceedings Act**
- **Regulation of Virtual Currency Businesses Act**
- **Criminal Records Accuracy Act.**

## 2016 ADOPTIONS BY CONFERENCE

### SUMMARIES

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

follows:

### **Uniform Employee and Student Online Privacy Protection Act**

Today, most individuals have online accounts of some type. These include social media accounts, bank accounts, and email accounts, among others. Generally, when someone asks for access to the login information for, or content of, a personal online account, an individual is free to say no. But that is less true in the employment and educational contexts. Indeed, employers and educational institutions now sometimes ask current and/or prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers' access to employees or prospective employees' social media and other online accounts accessed via username and password or other credentials of authentication as well as educational institutions' access to students' or prospective students' similar online accounts.

### **Uniform Family Law Arbitration Act**

States' laws vary when it comes to arbitrating family law matters such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. It is based in part on the Revised Uniform Arbitration Act, though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as: standards for arbitration of child custody and child support; arbitrator qualifications and powers; protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states. It is an overlay statute meant to work together with the state's existing choice-of-law rules and contractual arbitration law.

## **Revised Uniform Unclaimed Property Act**

The ULC first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been promulgated in 1981 and again in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current uniform act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors. The Revised Act provides a comprehensive and extensive set of revisions, including provisions related to: when property is presumed abandoned; which state has custody of property; the recovery of unclaimed property from states by owners; the powers and responsibilities granted to state unclaimed property administrators; and the rights of holders to seek administrative and judicial review of examinations conducted by administrators.

## **Uniform Unsworn Domestic Declarations Act**

The Uniform Unsworn Domestic Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act, which covers unsworn declarations made outside the United States. This new Uniform Act permits the use of unsworn declarations made under penalty of perjury in state courts when the declaration was made inside the U.S. States that have already enacted the Uniform Unsworn Foreign Declarations Act (UUFDA) should enact this act.

## **Uniform Unsworn Declarations Act**

The Uniform Unsworn Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the boundaries of the United States, and the Uniform Domestic Declarations Act (UUDDA), which covers unsworn declarations made inside the U.S. States that have not enacted the Uniform Unsworn Foreign Declarations Act should enact this Act, which essentially combines both the UUFDA and the UUDDA into one comprehensive Act.

## **Uniform Wage Garnishment Act**

Currently, every state has a different wage garnishment law and process. This means that employers who do business across multiple states must know and abide by a different, and often complex, law for each jurisdiction. If employers make processing errors calculating garnishments,

they may face civil penalties. The Uniform Wage Garnishment Act seeks to simplify and clarify wage garnishments for employers, creditors, and consumers by standardizing how the wage garnishment process works and offering plain-language notice and garnishment calculation forms. The UWGA creates a standard system for wage garnishments that is largely removed from the courts, operates efficiently thereby reducing costs, and provides employees with plain-language notification of their rights and obligations as well as providing them with other protections. The UWGA applies only to what is sometimes called a “debt garnishment,” meaning a garnishment by a creditor with a money judgment.

### **Amendment to the Revised Uniform Law on Notarial Acts**

The Amendment to the Revised Uniform Law on Notarial Acts authorizes notaries public to perform notarial acts in the state in which they are commissioned for individuals who are located outside the United States. The amendment is optional for the states. The amendment requires the use of audio- and video-technologies for real-time communication, and requires the notary to record the interaction. It authorizes the commissioning agency to regulate the technologies used. The act of the individual in making the statement or signing the record must not be prohibited in the foreign state in which the individual is physically located. The certificate affixed by the notary to the record must indicate that the notarial act took place while the individual was located in a foreign country.

## **NEW DRAFTING PROJECTS**

At the 2016 Annual Meeting, the ULC Executive Committee authorized the appointment of one new drafting committee and three new study committees. The committees are:

### **Drafting Committees**

**Drafting Committee on Unauthorized Disclosure of Intimate Images.** This drafting committee will create civil remedies relating to the unauthorized disclosure of intimate images. The inherent potential for unauthorized disclosure of intimate images over the internet and other technologies present a problem that may transcend state boundaries. Only nine states have enacted laws that provide a private right of action against the person making the unauthorized posting. The intentional public dissemination of intimate images without the subject’s consent is not clearly a tort in some jurisdictions.

## Study Committees

**Study Committee on Installment Land Contracts.** This study committee will study the need for and feasibility of state legislation on installment land contracts, including the nature of the rights and responsibilities held by a purchaser and a seller under an installment land contract, and the remedies available to the seller following purchaser default. Installment land contracts are effectively a form of mortgage substitute. In economic substance, the installment land contract is functionally comparable to a purchase money mortgage in which the seller provides financing of the purchase price. A uniform or model law on the characterization and enforcement of installment land contracts could provide clarity in an area of law and practice with great practical significance for homebuyers who cannot qualify for institutional mortgage financing.

**Study Committee on an Anti-SLAPP Act.** This study committee will study the need for and feasibility of drafting a uniform or model Anti-SLAPP law. The acronym SLAPP stands for *Strategic Lawsuit Against Public Participation*, meaning a lawsuit of dubious merit brought for the purposes of silencing, intimidating, or retaliating against a defendant who has done nothing more than exercise their lawful rights to free speech and freedom to petition or similar rights. Anti-SLAPP laws seek to protect such rights by allowing such a defendant to make a motion at the outset of the litigation for an expedited review by the Court, with the burden shifted to the plaintiff to show that the lawsuit is meritorious and that the plaintiff will likely prevail at trial.

**Study Committee to Amend the Revised Uniform Law on Notarial Acts.** This study committee will study the need for and feasibility of further amendment to the Revised Uniform Law on Notarial Acts to authorize American notaries to perform notarial acts where the individual appears before the notary by audio, video, or through the use of other technologies.

### 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

Emma E. Buck

Mary P. Devine

Ellen F. Dyke

Thomas Edmonds

Jessica D. French

H. Lane Kneedler

E. M. Miller, Jr.

Christopher R. Nolen

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