

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/**

**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, 2017 - December 31, 2017

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 on an on-going and as-needed basis. 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 \$2,848,150 in fiscal year 2018. The smallest state contribution is \$18,850 and the largest is \$165,300. Virginia's dues for FY 2018 are \$58,850. The annual budget of the ULC for FY 2018 is \$3,748,878. Of this amount, \$838,419 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 \$217,665. In addition, \$648,201 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$466,304 is spent on the annual meeting. Public education for uniform and model acts costs about \$120,522 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.

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 Kneeder, of Charlottesville, Esson McKenzie Miller, Jr., of Richmond, and Carlyle C. Ring, Jr., of Alexandria. Brockenbrough Lamb, Jr., of Richmond, who passed away last 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, Director of the Division of Legislative Services, became a member in 2016. 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; Member, Study Committee on Data Breach Notification; and Member, Standing Committee on Membership and Attendance.

Ellen F. Dyke — Member, Drafting Committee on Commercial Real Estate Receiverships Act; and Member, Drafting Committee on Tort Law Relating to Drones.

Thomas Edmonds — Member, Committee on Liaison with the American Bar Association Member, Drafting Committee on Commercial Real Estate Receiverships Act; Member, Study Committee on Economic Rights of Unmarried Cohabitants; and Study Committee on Installment Land Contracts.

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 Member, Drafting Committee on Criminal Records Accuracy Act.

Esson McKenzie Miller, Jr. — Chair, Standby Committee on Uniform Certificate of Title for Vessels Act.

Christopher R. Nolen — Member, Study Committee on Bad Faith Patent Demand Letters; and Member, Study Committee on Data Breach Notification.

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 2017 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in Report Document No. 535, 2017, covering the period January 1, 2016, through

December 31, 2016, and other initiatives, the following actions regarding uniform laws were taken by the 2017 Virginia General Assembly.

**Uniform Law-Related Bills Passed by the
2017 General Assembly Session and Signed by the Governor**

Uniform Fiduciary Access to Digital Assets Act

S.B. 903; Senator Obenshain and H.B. 1608; Delegate Leftwich. Uniform Fiduciary Access to Digital Assets Act. Creates the Uniform Fiduciary Access to Digital Assets Act. The bill allows fiduciaries to manage digital property such as computer files, web domains, and virtual currency, and restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented to such access in a will, trust, power of attorney, or other record. The bill repeals the Privacy Expectation Afterlife and Choices Act, which was enacted in 2015.

Uniform Trust Decanting Act

S.B. 913; Senator Edwards. Uniform Trust Decanting Act; creation. Codifies the Uniform Trust Decanting Act, which governs a trustee's ability to distribute assets from one trust into a second trust.

**REPORT OF PROCEEDINGS OF THE 2017
ANNUAL MEETING**

The 2017 annual meeting of the Conference was held July 14 - July 20, in San Diego, California. Commissioners Buck, Devine, Dyke, Kneedler, Miller, Nolen, and Ring attended.

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

- *Uniform Regulation of Virtual Currency Businesses Act*
- *Uniform Directed Trust Act*
- *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act*
- *Uniform Parentage Act (2017)*
- *Uniform Protected Series Act*
- *Uniform Veterans Treatment Court 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:

- *Non-Parental Rights to Child Custody and Visitation Act*
- *Criminal Records Accuracy Act*
- *Uniform Fiduciary Principal and Income Act*
- *Amendments to Uniform Commercial Code Articles 1, 3, and 9*
- *Civil Remedies for Unauthorized Disclosure of Intimate Images Act.*

2017 ADOPTIONS BY CONFERENCE

SUMMARIES

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

Uniform Directed Trust Act

The Uniform Directed Trust Act (UDTA) addresses the rise of directed trusts. In a directed trust, a person other than a trustee has a power over some aspect of the trust's administration. Such a person may be called a "trust protector," "trust adviser," or in the terminology of the UDTA, a "trust director." The division of authority between a trust director and a trustee raises difficult questions about how to divide fiduciary power and duty. The Uniform Directed Trust Act provides clear, functional rules that allow a settlor to freely structure a directed trust while preserving key fiduciary safeguards for beneficiaries. The UDTA also provides sensible default rules for a variety of matters that might be overlooked in the drafting of a directed trust, including information sharing among trustees and trust directors, the procedures for accepting appointment as a trust director, the distinction between a power of direction and a nonfiduciary power of appointment, and many other matters.

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is an updated version of the Uniform Guardianship and

Protective Proceedings Act, originally promulgated in 1969 as part of the Uniform Probate Code, and revised in 1982 and 1997. This new version is a comprehensive and modern guardianship statute that better protects the individual rights of both minors and adults subject to a guardianship or conservatorship order. The Act promotes person-centered planning to incorporate an individual's preferences and values into a guardianship order, and requires courts to order the least-restrictive means necessary for protection of persons who are unable to fully care for themselves. The act includes a set of optional forms to help courts implement its provisions effectively.

Uniform Parentage Act (2017)

The Uniform Parentage Act (2017) is a revision of the Uniform Parentage Act (UPA) of 2000, which has been adopted in 11 states. The UPA covered several topics, including: the parent-child relationship; voluntary acknowledgments of paternity; registry of paternity; genetic testing; proceedings to adjudicate parentage of children of assisted reproduction. As a result of the Supreme Court decision in *Obergefell v. Hodges*, as well as other developments in the states, a revision to the Act became necessary. The revised Act addresses issues related to same-sex couples, surrogacy, the right of a child to genetic information, de facto parentage, and parentage of children conceived through sexual assault.

Uniform Protected Series Act

The Uniform Protected Series Act provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both "horizontal" liability shields, as well as the standard "vertical" liability shield. All modern business entities provide the traditional, "vertical" shield – protecting the entity's owners (and their respective assets) from automatic, vicarious liability for the entity's debts. A "series" limited liability company provides "horizontal" shields – protecting each protected series (and its assets) from automatic, vicarious liability for the debts of the company and for the debts of any other protected series of the company. A horizontal shield likewise protects the series limited liability company (and its assets) from creditors of any protected series of the company. The Act integrates into any existing LLC Act, whether it is the Uniform Limited Liability Company Act or not.

Uniform Regulation of Virtual-Currency Businesses Act

The Uniform Regulation of Virtual-Currency Businesses Act (URVCBA) creates a statutory framework for regulating virtual currency business activity,

which includes businesses engaged in the exchange of virtual currencies for cash, bank deposits, or other virtual currencies; the transfers of virtual currency between customers; and certain custodial or fiduciary services. Under the Act, “virtual currency” is a digital representation of value that is used as a medium of exchange, unit of account, or store of value and is not legal tender. This technology-neutral definition covers as many types of virtual currency as possible. The URVCBA’s unique, three-tiered structure clarifies whether an individual or company engaging in virtual currency business activity is (1) exempt from the act; (2) must register; or (3) must obtain a license. The URVCBA also contains numerous consumer protections.

Model Veterans Treatment Court Act and Rules

Veterans’ courts have been created in many judicial districts around the United States to ensure that veterans in the criminal justice system receive the treatment and support necessary to rehabilitate them into being productive members of society. Very few states have legislation on veterans’ courts, but many local judicial districts have effectively created veterans’ courts by rule or practice. The Model Veterans Treatment Court Act provides guidelines for the establishment of veterans’ courts while permitting substantial local discretion necessary to accommodate circumstances in different communities. Some of the issues that the model act and rules address include: what subset of veterans are entitled to diversion into a veterans’ court; for what type of offenses is diversion into a veterans’ court appropriate; what rights should victims have to participate in proceedings in veterans’ courts; and how, in general, should veterans’ courts be organized and operated. The Act provides that participation in the veterans’ treatment program requires approval of the prosecutor, but expressly reserves to the court all power regarding punishment including probation, conditions of probation, and consequences of violation of terms of participation in the treatment program. This Act can also be implemented as a set of court rules.

NEW DRAFTING PROJECTS

At the 2017 Annual Meeting, the ULC Executive Committee authorized the appointment of four new drafting committees and three new study committees. The committees are:

Drafting Committees

Drafting Committee on UCC Article 8 Companion Act to the Uniform Regulation of Virtual Currency Businesses Act. This committee will draft a

UCC Article 8 related statute as a companion act to the Uniform Regulation of Virtual Currency Businesses Act based on the current Section 502 of the Act.

Drafting Committee to Amend the Revised Uniform Law on Notarial Acts. This committee will draft amendments to the Revised Uniform Law on Notarial Acts to authorize remote notarization without geographic limits on the location of the signer and to address interstate recognition of notarial acts.

Drafting Committee to Regulate the Management of Funds Raised Through Crowdfunding Efforts. This committee will draft a uniform or model act to regulate the management of funds raised through crowdfunding efforts to require transparency, and to provide civil sanctions and remedies for non-compliance.

Drafting Committee on Anti-SLAPP (Strategic Lawsuit Against Public Participation) Legislation. This committee will draft an Anti-SLAPP Act. The drafting committee will address the breadth of the act; limitations, if any, to be imposed after a motion to strike is made; the standard of review relating to the motion to strike; appeal rights from the grant or denial of a motion to strike; and whether the court should award attorney's fees and costs.

Study Committees

Study Committee on Garnishment of Wages in Bank Accounts. This committee will study the need for and feasibility of state legislation specifically on garnishment of wages in bank accounts or more generally on exemption of asset classes from claims of creditors.

Study Committee on Adverse Possession. This committee will study the need for and feasibility of state legislation on modifications to the law of adverse possession in light of modern technology affecting boundary disputes, changing public perceptions, and recent developments in the law.

Study Committee on Data Breach Notification. This committee will study the need for and feasibility of state legislation on data breach notification. The committee will consider the personal information that should be protected and the methods and manner of notice.

**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,

H. Lane Kneedler, Chairman
Emma E. Buck
Mary P. Devine
Ellen F. Dyke
Thomas Edmonds
E. M. Miller, Jr.
Christopher R. Nolen
Carlyle C. Ring, Jr.
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