

REPORT OF THE

**VIRGINIA COMMISSIONERS
TO THE UNIFORM LAW COMMISSION**

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



REPORT DOCUMENT NO. 113

**COMMONWEALTH OF VIRGINIA
RICHMOND
2019**

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
REPORT OF PROCEEDINGS OF THE 2018 ANNUAL MEETING	7
2018 ADOPTIONS BY CONFERENCE	8
SUMMARIES	8
Uniform Civil Remedies for Unauthorized.....	8
Disclosure of Intimate Images Act	
Uniform Criminal Records Accuracy Act	9
Uniform Fiduciary Income and Principal Act.....	9
Revised Uniform Law on Notarial Acts (2018)	9
Uniform Nonparent	10
Custody and Visitation Act (2018)	
Uniform Supplemental	10
Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (2018)	
NEW DRAFTING PROJECTS	10
REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS	11

**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
Uniform Law Commission
to
The Governor and the General Assembly of Virginia
Richmond, Virginia**

January 1, 2018 - December 31, 2018

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, more commonly 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 \$2,937,350 in fiscal year 2019. The smallest state contribution is \$19,400 and the largest is \$170,250. Virginia's dues for FY 2019 are \$60,600. The annual budget of the ULC for FY 2019 is \$3,936,308. Of this amount, \$931,092 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 \$294,944. In addition, \$702,899 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$460,797 is spent on the annual meeting. Public education for uniform and model acts costs about \$120,669 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 Kneedler, of Charlottesville, Esson McKenzie Miller, Jr., of Richmond, and Carlyle C. Ring, Jr., of Alexandria. During the 2018 Annual Meeting, Mary P. Devine, a gubernatorial appointee, was appointed as a life member.

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 since 2017.

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

Mary P. Devine — Co-Chair, Drafting Committee on Economic Rights of Unmarried Cohabitants. Member, Drafting Committee on Non-Parental Rights to Child Custody and Visitation Act; Member, Study Committee on Data Breach Notification; Member, Standing Committee on Membership and Attendance; and Member, Criminal Justice Reform Monitoring Committee.

Ellen F. Dyke —Chair, Relocation of Non-Utility Easements Committee; and Member, Drafting Committee on Tort Law Relating to Drones.

Thomas Edmonds —Drafting Committee on Commercial Real Estate Receiverships Act; and Member, Study Committee on Economic Rights of Unmarried Cohabitants.

H. Lane Kneedler — Member, Legislative Council (Atlantic Region); Member, Drafting Committee on Criminal Records Accuracy Act; Member, Criminal Justice Reform Committee; Council Member, Legislative Committee; Member, Standby Committee on Model State Administrative Procedure Act; Member, and Committee on State and Federal Relations and Liaisons with Other Organizations.

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

Christopher R. Nolen — Member, Data Breach Notification Committee; Member, Online Privacy Protection Committee.

Emma E. Buck — Member, Legislative Committee; Member, Online Privacy Protection Committee.

REPORT OF PROCEEDINGS OF THE 2018 ANNUAL MEETING

The 2018 annual meeting of the Conference was held July 20 - July 26, in Louisville, Kentucky. Commissioners Buck, Devine, Dyke, Edmonds, Kneedler, Miller, Nolen, Ring, and Vucci attended.

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

- *Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act*
- *Uniform Criminal Records Accuracy Act*
- *Uniform Fiduciary Income and Principal Act*
- *Revised Uniform Law on Notarial Acts (2018)*
- *Uniform Nonparent Custody and Visitation Act (2018)*
- *Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (2018)*

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:

- *Electronic Wills Act*
- *Highly Automated Vehicles Act*
- *Registration of Foreign Judgements to Harmonize the Law of Canada and the United States Act*
- *Tort Law Relating to Drones Act*

2018 ADOPTIONS BY CONFERENCE

SUMMARIES

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

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act

The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act addresses an increasingly common form of abuse that causes immediate, and in many cases, irreversible harm. The act creates a cause of action for unauthorized disclosure of private, intimate images. The act also outlines procedures enabling victims to protect their identity in court proceedings. In addition, the act provides various remedies for victims, including actual damages, statutory damages, punitive damages, and attorney's fees.

Uniform Criminal Records Accuracy Act

The Uniform Criminal Records Accuracy Act is designed to improve the accuracy of criminal history records, commonly called a RAP sheet, that are frequently used in determining the eligibility of a person for employment, housing, credit, and licensing, in addition to law enforcement purposes. The Act imposes duties on governmental law enforcement agencies and courts that collect, store and use criminal history records, to ensure the accuracy of the information contained in the rap sheet. The Act provides individuals the right to see and correct errors in their RAP sheet. Through use of a mistaken identity prevention registry, the Act also provides a mechanism by which an individual whose name is similar to and confused with a person who is the subject of criminal-history-record information, a means to minimize the possibility of a mistaken arrest or denial of housing, employment, credit, or other opportunities.

Uniform Fiduciary Income and Principal Act

The Uniform Fiduciary Income and Principal Act is an updated version of the Uniform Principal and Income Act, which has been adopted in 47 jurisdictions. The Act provides rules for allocating receipts and disbursements between income and principal accounts of a trust in accordance with the fiduciary duty to treat all beneficiaries loyally and impartially, unless the terms of the trust specify otherwise. This revision includes provisions allowing conversion of a traditional trust with income and principal beneficiaries into a total-return unitrust when all beneficiaries consent.

Revised Uniform Law on Notarial Acts (2018)

The Revised Uniform Law on Notarial Acts (2018) is designed to modernize and clarify the law governing notaries public, their responsibilities and duties, and to provide a stable infrastructure for the performance of notarial acts with respect to electronic records. In particular, the revised act recognizes the ascendance of electronic commerce and transactions in the public and private sectors, and brings the law governing electronic notarial acts on par with laws governing other forms of electronic transactions. The act was amended in 2018 to authorize notaries public to perform notarial acts in the state in which they are commissioned for remotely located individuals using audio-visual communication and identity-proofing technology regardless of where the individual may be located.

Uniform Nonparent Custody and Visitation Act (2018)

The Uniform Nonparent Custody and Visitation Act addresses the rights of third parties other than parents to custody of or visitation with a child. 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. The Act recognizes a right to seek custody or visitation for two categories of individuals: (1) nonparents who have served as consistent caretakers of a child without expectation of compensation, and (2) other nonparents who have a substantial relationship with a child and who demonstrate that denial of custody or visitation would result in harm to the child.

Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (2018)

The Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (the "Supplemental Act") is a follow-up to the Uniform Regulation of Virtual-Currency Businesses Act ("URVCBA"). The URVCBA establishes a regulatory framework for virtual-currency businesses to operate either by license or registration in a state and creates safeguards to protect consumers. As a regulatory act, the URVCBA provides numerous robust user protections based on commercial law principles but does not directly address the commercial law rules for transactions and relationships between virtual-currency businesses and consumers. This Supplemental Act provides the commercial law rules using the time-tested duties and rights of customers of securities intermediaries under the Uniform Commercial Code. The Supplemental Act does this by incorporating Article 8 of the Uniform Commercial Code into the agreement made between a virtual-currency licensee or registrant and users.

NEW DRAFTING PROJECTS

At the 2018 Annual Meeting, the ULC Executive Committee authorized the appointment of new drafting committees and three new study committees. The committees are:

Drafting Committees

- *Economic Rights of Unmarried Cohabitants*
- *Unregulated Transfers of Adopted Children*

Study Committees

- *Revisions to the Uniform Common Interest Ownership Act*
- *Covenants Not to Compete*
- *Online Privacy Protection*
- *Direct to Consumer Sales of Wine, Beer, and Distilled Spirits*

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
Mary P. Devine
Ellen F. Dyke
Thomas Edmonds
E. M. Miller, Jr.
Christopher R. Nolen
Carlyle C. Ring, Jr.
Mark J. Vucci
Emma E. Buck