

REPORT OF THE

**COMMISSIONERS
FOR THE PROMOTION OF
UNIFORMITY OF LEGISLATION**

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



REPORT DOCUMENT NO. 568

**COMMONWEALTH OF VIRGINIA
RICHMOND
2020**

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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
Commissioners for the Promotion of Uniformity of
Legislation
to
The Governor and the General Assembly of Virginia
Richmond, Virginia**

January 1, 2020 – December 31, 2020

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 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 advisers 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 ongoing 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 adviser 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 million and \$2 million per project.

The average revision of an article of the Uniform Commercial Code (UCC) 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 costs 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 advisers and observers in a ratio of two or three to one commissioner. These advisers 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, for 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 \$3,089,000 in fiscal year 2021. The smallest state contribution is \$20,300 and the largest is \$178,850. Virginia's dues for FY 2020 were \$63,600. The annual budget of the ULC for FY 2021 is \$3,556,227. For fiscal year 2021, the ULC is expecting significant changes in both revenue and expenses due to the pandemic. Typically, however, approximately 45 percent of the ULC's budget is used to identify and draft acts, including holding the annual meeting where the acts are presented to the commissioner body for approval. Another 20 percent is spent assisting state legislatures with bill enactment and public education of uniform and model acts. 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 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.

Grants from foundations, including the Uniform Law Foundation, and the federal government are occasionally sought for specific educational and drafting efforts. All money received from any source is accepted with the understanding that the Commission's drafting work is completely autonomous. No source may dictate the contents of any act because of a financial contribution. By seeking grants for specific projects, the Commission expands the value of every state dollar invested in its work.

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 the 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.

Advisers and participating observers are solicited to assist the drafting committee. The American Bar Association appoints official advisers 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. Advisers 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 the ULC.

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. The Code of Virginia also provides that the Director of the Division of Legislative Services is a member. Amigo R. Wade, Acting Director of the Division of Legislative Services, became a member in 2020.

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 "E.M." Miller, Jr., of Richmond; and Carlyle C. Ring, Jr., of Alexandria. Mary P. Devine, of Manakin-Sabot, was appointed as a life member during the 2019 Annual Meeting.

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. Emma E. Buck, senior attorney with the Division of Legislative Services, is an associate member.

ACTIVITIES OF THE 2020 SESSION OF THE VIRGINIA GENERAL ASSEMBLY

The following actions regarding uniform laws were taken by the 2020 Session of the Virginia General Assembly.

Uniform Law-Related Bills Passed By the 2020 Session of the General Assembly and Signed By the Governor of Virginia

Revised Uniform Athlete Agents Act

HB 832; Delegate Sullivan. Department of Professional and Occupational Regulation; registration of athlete agents; penalty; civil penalty. Creates a registration requirement for athlete agents administered by the Director of the Department of Professional and Occupational Regulation, sets out the requirements for registration and conduct of athlete agents, and provides for administrative, civil, and criminal penalties.

Uniform Directed Trust Act

HB 1380; Delegate Leftwich. Uniform Directed Trust Act. Codifies the Uniform Directed Trust Act, which expressly validates terms of a trust that provide for a trust director, a term that is defined in the Act, and prescribes a set of rules for directed trusts, including allocation of fiduciary duties.

Uniform Partition of Heirs Property Act

HB 1605; Delegate Hope and SB 553; Senator Ruff. Partition of property. Incorporates major provisions of the Uniform Partition of Heirs Property Act. The bill provides that in partition actions the court shall order an appraisal to determine fair market value of the property, unless the parties have agreed to the value of the property or to another valuation method. The bill also provides factors to be considered by the court when making an allotment of the property when there is a dispute among the parties. The bill further provides that if the court orders a sale of property in a partition action, the sale shall be conducted on the open market, unless the court finds that a sale by sealed bids or at auction would be more economically advantageous to the parties as a group. The bill outlines the procedure for such open-market sale.

Uniform Law-Related Bills Introduced and Not Passed

Uniform Collaborative Law Act

HB 291; Delegate Sullivan. Uniform Collaborative Law Act. Creates the Uniform Collaborative Law Act, which provides a framework for the practice of collaborative law, a process entered into voluntarily by clients for the express purpose of reaching a settlement in a family or domestic relations law matter, including (i) marriage, divorce, dissolution, annulment, and property distribution; (ii) child custody, visitation, and parenting time; (iii) alimony, spousal support, maintenance, and child support; (iv) adoption; (v) parentage; and (vi) negotiation or enforcement of premarital, marital, and separation agreements. The Act governs disclosure of information, privilege against disclosure of communications, and scope of representation by the attorneys in the proceeding.

REPORT OF PROCEEDINGS OF THE 2020 ANNUAL MEETING

For the first time, the 2020 annual meeting of the Conference was held virtually over multiple sessions in July through September.

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

- *Uniform Easement Relocation Act*
- *Uniform Pretrial Release and Detention Act*
- *Uniform Public Expression Protection Act*

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

- *Economic Rights of Unmarried Cohabitants Act*
- *Disposition of Community Property Rights at Death Act*
- *Collection and Use of Personally Identifiable Data Act*
- *Common Interest Ownership Act*
- *Unregulated Transfers of Adopted Children Act*

2020 ADOPTIONS BY CONFERENCE

SUMMARIES

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

Uniform Easement Relocation Act

In many but not all states, the owner of the burdened property and the holder of an easement must consent to relocate the easement, such as the legal right to use a driveway that runs from a public road across one property to access another. When the owner of the burdened property asks to relocate an easement to allow further development, an easement holder in a state that follows the mutual consent rule can withhold consent to prevent the development or demand a ransom payment before agreeing to the change. The Uniform Easement Relocation Act allows the burdened estate owner to obtain a court order to relocate an easement if the relocation does not materially impair the utility of the easement to the easement holder or the physical condition, use, or value of the benefited property. The burdened property owner must file a civil action, give other potentially affected real-property interest owners notice, and bear all the costs of relocation. These conditions build on the rule contained in the Restatement (Third) of Property: Servitudes, whose approach to easement relocation has been fully or partially adopted in a number of states. The Uniform Easement Relocation Act excludes conservation easements and public-utility easements from its scope and contains a number of additional safeguards, not found in the Restatement, to protect the easement holder's interest in the use and enjoyment of the easement during and after the relocation.

Uniform Pretrial Release and Detention Act

The Uniform Pretrial Release and Detention Act responds to the need for a comprehensive and balanced statute to guide courts in making pretrial release and detention decisions for the millions of people charged with crimes each year in state court. The Act provides a comprehensive procedural framework for release and detention determinations. Provisions of the Act address many issues, including: (i) the use of citations in lieu of arrest for minor offenses; (ii) a time limit on when a hearing must be conducted for an individual who is arrested; (iii) appointment of counsel; (iv) a pretrial risk determination by a court to individualize release or detention; (v) review of a defendant's financial condition so that inability to pay a fee does not lead to detention; and (vi) an obligation on the court to consider restrictive conditional release as an alternative to detention.

Uniform Public Expression Protection Act

The purpose of the Uniform Public Expression Protection Act is to provide a remedy for defendants involved in lawsuits called Strategic Lawsuits Against Public Participation, or SLAPPs. SLAPPs are abusive civil lawsuits that may be brought against individuals, entities, or government officials. The topics of these lawsuits range from education and zoning to politics and the environment. Though the claim of the lawsuit may be defamation, tortious interference with business expectations, invasion of privacy, or something else, the real goal of a SLAPP lawsuit is to entangle the defendant in expensive litigation that stifles the defendant's ability to engage in constitutionally protected activities. The Uniform Public Expression Protection Act creates a clear process through which SLAPPs can be challenged and their merits fairly evaluated in an expedited manner. The Act protects individuals' rights to petition and speak freely on issues of public interest while at the same time protecting the rights of people and entities to file meritorious lawsuits for real injuries.

NEW DRAFTING PROJECTS

At the 2020 annual meeting, the ULC Executive Committee authorized the appointment of one new drafting committee and one new study committee. The committees are:

Drafting Committee

Drafting Committee on Telehealth. This committee will draft a uniform or model act addressing a variety of legal issues related to telehealth services. Issues to be considered include the definition of "telehealth," formation of the doctor-patient relationship via telehealth, creation of a registry for out-of-state physicians, insurance coverage and payment parity, and administrative barriers to entity formation. This project was proposed by the Study Committee on Telehealth.

Study Committee

Study Committee on Recurring Service Charges. This committee will study the need for and feasibility of a uniform or model act addressing issues related to recurring service charges in consumer transactions. In particular, the committee will consider whether a legal framework should be developed to address situations in which a consumer enters into a subscription or other agreement resulting in recurring charges but then finds it difficult or impossible to cancel the service (such as if the initial transaction is entered into online while cancellations can only occur through other means). The committee will consider

possible legislative responses, such as a recent California law requiring that any recurring services that can be subscribed to online must also permit online cancellation.

**REQUEST FOR TOPICS APPROPRIATE
FOR CONSIDERATION AS UNIFORM OR MODEL 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.

Amigo R. Wade