

REPORT OF THE

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

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

January 1, 2021 - December 31, 2021

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 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 costs much more than the actual budget of the ULC and represents much larger contributions—in terms of time and expertise—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, 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 2022. The smallest state contribution is \$20,300 and the largest is \$178,850. Virginia's dues for FY 2022 are \$63,600. The annual budget of the ULC for FY 2022 is \$4,416,000. For fiscal year 2022, the ULC is expecting significant changes in both revenue and expenses due to the pandemic. Typically, however, approximately 45% 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% is spent assisting state legislatures with bill enactment and public education regarding Uniform and Model Acts. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

OTHER FINANCIAL CONTRIBUTORS

Grants from foundations, including the Uniform Law Foundation, 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.

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 of the services are donated, thereby eliminating what would otherwise be 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, and the uniform law process is not complete without it. Value contributed returns value, and everyone in every state benefits.

THE VIRGINIA COMMISSIONERS

The Governor is authorized to appoint three members, each to serve a four-year term (§ 30-196, Code of Virginia). David H. Hallock, Jr., of Richmond, 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, the current 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 Miller, Jr., of Richmond, and Mary P. Devine, of Manakin-Sabot.

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.

Commissioner Carlyle "Connie" Ring, Jr., of Alexandria, passed away on August 19, 2021, at the age of 90. Connie was appointed to the Uniform Law Commission in 1970. He became a life member in 1988 and was a member of the Conference for over 50 years. Connie served as president of the ULC from 1983 to 1985 after chairing the Executive and Scope and Program Committees. He was very active in the ULC and dedicated much of his service to the Uniform Commercial Code. Connie chaired the UCC Committee for over 25 years and

was a long-time member of the Permanent Editorial Board for the Uniform Commercial Code, becoming an emeritus member in 2019. He also chaired various drafting committees and his passion and expertise will be missed.

ACTIVITIES OF THE 2021 SESSION OF THE VIRGINIA GENERAL ASSEMBLY

The following actions regarding uniform laws were taken by the 2021 Session of the Virginia General Assembly.

Uniform Law-Related Bills Passed By the 2021 Session of the General Assembly and Signed By the Governor of Virginia

Uniform Collaborative Law Act

H.B. 1852
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.

HB 1852 passed the House of Delegates unanimously and the Senate of Virginia by a vote of 34-2.

Uniform Law-Related Bills Introduced But Not Passed

Uniform Electronic Wills Act

S.B. 1435 H.B. 1856
Senator Hanger Delegate Sullivan

Electronic execution of estate planning documents; Uniform Electronic Wills Act. Permits trusts, advance medical directives, and refusals to make anatomical gifts to be signed and notarized, as appropriate, by electronic means. The bill also codifies the Uniform Electronic Wills Act, which permits a testator to execute a will by electronic means. The Act requires that the will be signed by two witnesses who are in the physical or electronic presence of the testator and acknowledged by the testator and attesting witnesses in the physical or electronic presence of a notary public.

H.B. 1856 passed the House of Delegates by a vote of 99-0 and was passed by indefinitely in the Senate Committee on the Judiciary by a vote of 12-0. S.B. 1435 was passed by indefinitely in the Senate Committee on the Judiciary by a vote of 15-0.

REPORT OF PROCEEDINGS OF THE 2021 ANNUAL MEETING

The 2021 annual meeting of the Conference was held in a hybrid in-person and virtual format.

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

- *Uniform Cohabitants' Economic Remedies Act*
- *Uniform College Athlete Name, Image, or Likeness Act*
- *Uniform Community Property Disposition at Death Act*
- *Uniform Personal Data Protection Act*
- *Uniform Restrictive Employment Agreement Act*
- *Uniform Unregulated Child Custody Transfer Act*
- *Amendments to the Uniform Common Interest Ownership 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:

- *Commercial Code and Emerging Technologies Act*

- *Telehealth Act*
- *Alcohol Direct-Shipping Compliance Act*
- *Public Meetings During Emergencies Act*

2021 ADOPTIONS BY CONFERENCE

SUMMARIES

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

Uniform Cohabitants' Economic Remedies Act

The rate of nonmarital cohabitation within the U.S. is increasing rapidly. Today, states have no consistent approach for addressing whether and how cohabitants can enforce contract and equitable claims against each other when the relationship ends. The Uniform Cohabitants' Economic Remedies Act does not create any special status for cohabitants. In most instances, the Act defers to other state law governing contracts and claims between individuals. The Act enables cohabitants to exercise the usual rights of individual citizens of a state to contract and to successfully maintain contract and equitable claims against others in appropriate circumstances. The Act affirms the capacity of each cohabitant to contract with the other and to maintain claims with respect to "contributions to the relationship" without regard to any intimate relationship that exists between them and without subjecting them to hurdles that would not be imposed on litigants of similar claims. The Act ensures that the nature of the relationship of the parties is not a bar to a successful claim.

Uniform College Athlete Name, Image, or Likeness Act

Until recently, college athletes have not been allowed to receive compensation for the use of their name, image, or likeness (NIL) while still maintaining athletic eligibility. The Uniform College Athlete Name, Image, or Likeness Act allows college athletes to earn compensation for the use of their NIL while also providing reasonable protections to educational institutions, athletic associations, and conferences. The Act will provide a clear and uniform framework for states to enact that allows college athletes to earn compensation for the use of their NIL while maintaining a level playing field across state lines.

Uniform Community Property Disposition at Death Act

Community property acquired by a married couple retains its character as community property even when the couple relocates to reside in a non-community property state. This result creates potential distribution problems at the death of the first spouse but also creates potential estate planning

opportunities. However, the probate court in a non-community property state may not recognize the status of community property in a decedent's estate. The Uniform Community Property Disposition at Death Act provides clear default rules to ensure the proper disposition of community property in any state. It is recommended for adoption by all non-community property states.

Uniform Personal Data Protection Act

The Uniform Personal Data Protection Act applies fair information practices to the collection and use of personal data from consumers by business enterprises. The Act provides a reasonable level of consumer protection without incurring the compliance and regulatory costs associated with some existing state regimes. The Act recognizes that the collection and use of personal data are important features of our modern economy but raise significant issues of privacy and control. The Act outlines compatible, incompatible, and prohibited data practices and provides an enforcement mechanism to ensure compliance with the Act.

Uniform Restrictive Employment Agreement Act

The Uniform Restrictive Employment Agreement Act regulates restrictive employment agreements, which are agreements that prohibit or limit an employee or other worker from working after the work relationship ends. Uniformity in this area of the law benefits both employers and employees by enhancing clarity and predictability in our increasingly mobile society. The Act addresses the enforceability of these agreements, notice and other procedural requirements, choice of law issues, and remedies. The Act does not say anything about an agreement monitoring what a worker can or cannot do while employed.

Uniform Unregulated Child Custody Transfer Act

In some cases, parents find that, after the birth or adoption of their child, they experience considerable difficulty or even inability in caring for or effectively managing the child's behavior, which sometimes leads to families transferring a child to another person outside of the courts and the child welfare system. Without specific regulations directed at these types of unregulated transfers, a transfer of custody might go unnoticed within the child welfare system. The Act addresses the transfer of children in these types of cases.

Amendments to the Uniform Common Interest Ownership Act

The Uniform Common Interest Ownership Act governs the formation, management, and termination of common interest communities, including condominiums, homeowner associations, and real estate cooperatives. The 2021 amendments to the Act update it to address recent legal and technological developments.

**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
David D. Hallock, Jr.
E. M. Miller, Jr.
Christopher R. Nolen
Amigo R. Wade