

REPORT OF THE

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

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



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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
THE VIRGINIA COMMISSIONERS	6
ACTIVITIES OF 2022 SESSION OF VIRGINIA GENERAL ASSEMBLY	7
REPORT OF PROCEEDINGS OF THE 2022 ANNUAL MEETING	7
2022 ADOPTIONS BY CONFERENCE	8
SUMMARIES	8
Uniform Alcohol Direct-Shipping Compliance Act.....	8
Uniform Electronic Estate Planning Documents Act.....	8
Model Public Meetings During Emergencies Act.....	9
Uniform Telehealth Act	9
Uniform Commercial Code and Emerging Technologies.....	9
REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS	10

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, 2022 – December 31, 2022

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 2023. The smallest state contribution is \$20,300 and the largest is \$178,850. Virginia's dues for FY 2023 are \$63,600. The annual budget of the ULC comes to \$ 5,067,823 for the current 2023 fiscal year (July 1, 2022, to June 30, 2023). Approximately 40% of this budget will be used to study and draft acts, including holding the annual meeting where the acts are presented to the commissioner body for approval. Another 30% 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 ULC 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 ULC'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 ULC 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.

ACTIVITIES OF THE 2022 SESSION OF THE VIRGINIA GENERAL ASSEMBLY

The following actions regarding uniform laws were taken by the 2022 Session of the Virginia General Assembly.

H.B. 370 **Delegate Sullivan**

Uniform Fiduciary Income and Principal Act. Codifies the Uniform Fiduciary Income and Principal Act, which replaces the prior uniform act to reflect modern trust investment practices in the allocation of principal and income. The bill provides procedures for trustees administering estates and gives them additional flexibility to administer discretionary trusts to ensure that the intention of the creator of the trust is accomplished. The bill includes provisions for converting a traditional trust into a “unitrust” to allow for total-return investing.

H.B. 370 passed the House and Senate unanimously and was signed by Governor Youngkin on April 11, 2022.

REPORT OF PROCEEDINGS OF THE 2022 ANNUAL MEETING

The 2022 annual meeting of the Conference was held in person in Philadelphia, Pennsylvania.

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

- *Uniform Alcohol Direct Shipping Compliance Act*
- *Uniform Electronic Estate Planning Documents Act*
- *Model Public Meetings During Emergencies Act*
- *Uniform Telehealth Act*
- *Uniform Commercial Code and Emerging Technologies Amendments*

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:

- *Special Deposits Act*
- *Updates to the Uniform Unincorporated Organizations Act*

- *Debt Collection Default Judgments Act*
- *Mortgage Modifications Act*
- *Public-Health-Emergency Authority Act*
- *Restrictive Covenants in Deeds Act*
- *Updates to the Uniform Health-Care Decisions Act*
- *Tenancy in Common Ownership Default Rules Act*

2022 ADOPTIONS BY CONFERENCE

SUMMARIES

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

UNIFORM ALCOHOL DIRECT-SHIPPING COMPLIANCE ACT

The Uniform Alcohol Direct-Shipping Compliance Act enhances an enacting state's capability to detect and stop unlawful direct-to-consumer ("DTC") shipments of alcoholic beverages to the state's residents. The Act integrates with existing state law as to whether DTC shipping is allowed, and for which types of alcoholic beverages. The Act does not create new or additional authorization burdens to ship alcoholic beverages directly to a consumer. Instead, the Act creates new tools for state regulators to use to ensure that existing state laws regarding DTC shipping are obeyed. For instance, the Act provides state regulators a mechanism for distinguishing between DTC shipments originating from shippers licensed under the state's existing law and DTC shipments originating from non-licensed shippers.

UNIFORM ELECTRONIC ESTATE PLANNING DOCUMENTS ACT

The Uniform Electronic Estate Planning Documents Act will fill a gap in the law regarding the execution of certain estate planning documents, including trusts and powers of attorney. The Uniform Electronic Transactions Act (UETA) authorizes the electronic execution of bilateral contracts if the parties to a transaction agree. The Uniform Electronic Wills Act (UEWA) authorizes the testator of a will and witnesses to execute a will in electronic form. However, trusts, powers of attorney, and some other types of estate planning documents fall into a legal grey area where the law governing electronic execution is ambiguous. The Uniform Electronic Estate Planning Documents Act clarifies that these documents may also be executed in electronic form. The new act was drafted to complement the UEWA and could be adopted by a state simultaneously with that act to comprehensively authorize the electronic execution of wills, trusts, powers of attorney, and several other types of common estate planning documents.

MODEL PUBLIC MEETINGS DURING EMERGENCIES ACT

The COVID-19 pandemic has highlighted the need for public bodies to meet when disasters and other emergencies make in-person meetings of public bodies either impossible or inadvisable. The Model Public Meetings During Emergencies Act is intended to provide a process to ensure that important public meetings can go forward when these events occur without compromising public access to meetings. The Act builds on existing state laws authorizing the declaration of emergencies and subjecting public meetings to various procedural and public access requirements. This Act is intended to work in harmony with those laws, particularly laws relating to open meetings and other laws providing for public comment on and participation in the deliberations of public bodies.

UNIFORM TELEHEALTH ACT

In recent years, improvements in telecommunication technologies have transformed the delivery of health care. The arrival of the COVID-19 pandemic greatly expanded patient demand for telehealth services. To meet patient needs, many states chose to modify licensure and other requirements that served as barriers to the delivery of telehealth services. Today, many states are re-examining laws related to telehealth, often with an eye toward expanding access to care while maintaining protections for patients. The Uniform Telehealth Act has two broad goals. The first is to make clear that, as a general matter, health care services may be provided through telehealth, if doing so is consistent with applicable professional practice standards and the practitioner's scope of practice, as defined by the state in which the patient is located. The second goal is to establish a registration system for practitioners who hold licenses in other states. This Act permits a registered practitioner to provide telehealth services to patients located in the state adopting the Act.

UNIFORM COMMERCIAL CODE AND EMERGING TECHNOLOGIES

The 2022 Amendments to the Uniform Commercial Code (UCC) update and modernize the UCC to address emerging technologies. A new UCC Article 12 on Controllable Electronic Records governs transactions involving new types of digital assets (such as virtual currencies, electronic money, and nonfungible tokens), and corresponding changes to UCC Article 9 address security interests in digital assets. The 2022 amendments also update terminology to account for digital records, electronic signatures, and distributed ledger technology; provide rules for electronic negotiable instruments; and clarify the rules for UCC applicability to hybrid transactions involving both goods and services.

**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,

Christopher R. Nolen, Chairman
Emma E. Buck
Mary P. Devine
Ellen F. Dyke
Thomas Edmonds
David D. Hallock, Jr.
H. Lane Kneedler
E. M. Miller, Jr.
Amigo R. Wade