

**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/](http://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, 2023 - December 31, 2023**

**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 \$3,243,480 in fiscal year 2024. The smallest state contribution is \$21,315 and the largest is \$187,790. Virginia's dues for FY 2024 are \$66,780. The annual budget of the ULC comes to \$ 5,042,528 for the current 2024 fiscal year (July 1, 2023, to June 30, 2024). 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 preparing an act are the result of long experience with the creation of legislation. The ULC maintains a standing committee called the Scope and Program Committee, which considers new subject areas of state law for potential uniform or model acts. That committee studies suggestions from many sources, including the organized bar, state government, and interested individuals. If the Scope and Program Committee believes that an idea for an act is worthy of consideration, it usually will recommend that a study committee be appointed. Study committees consider the need for and feasibility of drafting and enacting uniform or model legislation in an area and report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the ULC Executive Committee, which makes the final decisions as to whether to study a proposal or undertake a drafting project.

Once a subject receives approval for drafting, a drafting committee is appointed, along with a reporter. Advisors and participating observers are solicited to assist every drafting committee. The American Bar Association appoints official advisors for every drafting committee. Participating observers may come from state government, organizations with interests and expertise in a subject, and from the ranks of recognized experts in a subject. Advisors and participating observers are invited to attend drafting committee meetings and to contribute comments throughout the drafting process. Advisors and observers do not make decisions with respect to the final contents of an act. Only ULC members who compose the drafting committee may participate in any necessary votes.

Most acts require four two-day committee meetings, although some require more. A committee usually produces a number of successive drafts as an act evolves. Each drafting committee must then present its work to the whole body of the Uniform Law Commission at the ULC's annual meeting. The most current draft of each act is read and debated. Acts are generally not promulgated without consideration at two annual meetings, although the drafting process for some acts exceeds two years. A draft becomes an official act by a majority vote of the states. The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

## **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, lead senior attorney with the Division of Legislative Services, is an associate member.



## ACTIVITIES OF THE 2023 SESSION OF THE VIRGINIA GENERAL ASSEMBLY

The following actions regarding ULC acts were taken by the 2023 Session of the Virginia General Assembly.

### **H.B. 1862** **Delegate Sullivan**

**Electors for President and Vice President; binding of electors; vacancies.** Provides that an elector who is selected by the state convention of any political party and who, at the convening of the electors after the election, refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of his oath stating that he would, if elected, cast his ballot for the candidates for President and Vice President nominated by the party that selected the elector, or as the party may direct in the event of the death, withdrawal, or disqualification of the party nominee, is deemed to vacate the office of elector. The bill provides that the other electors present shall immediately fill such vacancy in the same manner as a vacancy due to an elector's death or failure or inability to attend. The bill applies the same provisions to electors who are named in a petition of qualified voters not constituting a political party. The bill contains technical amendments that consolidate into a single chapter the provisions of Title 24.2 relating to presidential electors.

**HB 1862 was passed by indefinitely in House Privileges and Elections Subcommittee #2 (5-Y / 3-N).**

## REPORT OF PROCEEDINGS OF THE 2023 ANNUAL MEETING

The 2023 annual meeting of the Conference was held in Honolulu, Hawaii, from July 21–July 27, 2023.

The following uniform and model acts were approved at the annual meeting:

- **Uniform Consumer Debt Default Judgments Act**
- **Uniform Health-Care Decisions Act**
- **Model Public-Health Emergency Authority Act**
- **Uniform Special Deposits Act**
- **Uniform Unlawful Restrictions in Land Records 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:

- **Tenancy in Common Ownership Default Rules Act**
- **Amendments to the Uniform Unincorporated Organizations Acts**
- **Determination of Death Act**
- **Antitrust Pre-Merger Notification Act**

## **2023 ADOPTIONS BY CONFERENCE**

### **SUMMARIES**

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

#### **Uniform Consumer Debt Default Judgments Act**

Numerous studies report that default judgments are entered in more than half of all debt collection actions. The purpose of this Act is to provide consumer debtors and courts with the information necessary to evaluate debt collection actions. The Act provides consumer debtors with access to information needed to understand claims being asserted against them and identify available defenses; advises consumers of the adverse effects of failing to raise defenses or seek the voluntary settlement of claims; and makes consumers aware of assistance that may be available from legal aid organizations. The Act also seeks to provide a uniform framework in which courts can fairly, efficiently, and promptly evaluate the merits of requests for default judgments while balancing the interests of all parties and the courts.

#### **Uniform Health-Care Decisions Act (2023)**

This Act is intended to supersede the 1993 Uniform Health-Care Decisions Act. This Act enables individuals to appoint agents to make health care decisions for them should they be unable to make those decisions for themselves, provide their health-care professionals and agents with instructions about their values and priorities regarding their health care, and indicate particular medical treatment they do or do not wish to receive. It also authorizes certain people to make health-care decisions for individuals incapable of making their own decisions but who have not appointed agents, thus avoiding the need to appoint a guardian or otherwise involve a court in most situations. In addition, it sets forth the related duties and powers of agents and health-care professionals and provides protection in the form of immunity to both under specified circumstances. This Act shares the goals of the 1993 Act but is revised to reflect changes in how health care is delivered,

increases in non-traditional familial relationships and living arrangements, the proliferation of the use of electronic documents, the growing use of separate advance directives exclusively for mental health care, and other recent developments. The Act also seeks to improve upon the 1993 Act based on decades of experience and knowledge about how people make health-care decisions and about the challenges associated with creating and using advance directives.

#### **Model Public-Health Emergency Authority Act**

This Act is designed to improve the preparedness of states for public-health emergencies. Specifically, the Act clarifies the powers of a governor to declare a public-health emergency and to issue orders in response to that emergency. Simultaneously, the Act establishes measures to promote a governor's accountability to the legislature and to the public at large. The goal of the Act is to empower a governor to act quickly and decisively while also clarifying substantive and procedural limitations to a governor's authority. The Model Act also imposes a sunset provision on every public-health emergency declaration and public-health emergency order, and it requires a governor to make a new record as a condition of renewing a declaration or an order.

#### **Uniform Special Deposits Act**

A special deposit is an account at a bank that holds funds that may be paid upon the occurrence of one or more contingencies. Although such accounts are common, the legal protections afforded to them are uncertain and outdated in the context of modern banking. This Uniform Act minimizes these legal uncertainties by providing clear and executable rules. First, the Act sets forth several elements for when a deposit is considered a "special deposit." Second, the Act specifies that a special deposit is a debt owed to the beneficiary after determination of a stated contingency. Third, the Act clarifies that a special deposit is remote from a depositor's bankruptcy estate unless the depositor has a determined right to the special deposit in its capacity as a beneficiary. Finally, the Act reduces the vulnerability created by the prospect of the bank holding the special deposit exercising a right of set off against the special deposit for a mature debt of the depositor or a beneficiary. The Special Deposits Act gives banks and their customers legal certainty that the expectations of special deposit account users will be respected.

#### **Uniform Unlawful Restrictions in Land Records Act**

This Act allows property owners whose deed contains a discriminatory, prohibited restriction to record an amendment to the land records that effectively removes the restriction. Under the Act, individuals who own property in a common interest community that is subject to a prohibited restriction are empowered to record an amendment to the governing instruments that removes the restriction, either by majority vote of the

members of the association or by sending a request to the governing body. The Act creates a path forward for property owners who want to correct the record on the often painful history of their homes.

**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