

STATE OF WEST VIRGINIA

**PRELIMINARY PERFORMANCE REVIEW
OF THE**

**COMMISSION ON
UNIFORM STATE LAWS**

**The Commission Performs an Essential
Function for the State but Should
Become More Visible and Increase
Public Input**

**The Commission did not Issue an
Annual Report for 1996, But has Since
Filed the Report**

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PE 97-05-76

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August 17, 1997

The Honorable Larry Wiedebusch
State Senate
403 Fern Drive
Glen Dale, West Virginia 26038-1005

The Honorable Vicki Douglas
House of Delegates
Building 1, Room E-213 1900 Kanawha Blvd., East
Charleston, WV 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting this Preliminary Performance Review of the **Commission on Uniform State Laws**, which will be reported to the Joint Committee on Government Operations on Sunday, August 17, 1997. The issues covered herein are "The Commission Performs a Essential Function for the State but Should Become More Visible and Increase Public Input", and "The Commission did not Issue an Annual Report for 1996, but has since filed the Report."

Let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio Jones".

Antonio Jones
Director

AEJ/mhm

TABLE OF CONTENTS

Executive Summary	3
Review Objective, Scope, and Methodology	5
Issue Area 1: The Commission on Uniform State Laws Performs an Essential Function for the State but Should Become More Visible and Increase Public Input.	7
Issue Area 2: The Commission did not File an Annual Report for 1996, But has Since Filed the Report	13
Appendix A: List of Commission Members	15
Appendix B: List of Uniform and Model Acts Proposed by the National Conference of Commissioners on Uniform State Laws	21
Appendix C: Annual Reports	27
Appendix D: Responses to Phone Survey of Attorney Organizations	61
Appendix E: Commission Response	65

LIST OF TABLES

Table 1:	Uniform Laws Passed by the West Virginia Legislature	8
Table 2:	Cost of the Commission	9

Executive Summary

Created under the 1931 *Acts* of the Legislature, the **Commission on Uniform State Laws** works to promote uniformity in state laws. The West Virginia Commission consists of three members who meet with Commissioners from all 50 states including the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands to debate proposed uniform state laws. West Virginia has earned a special prominence on the *National Conference of Commissioners on Uniform State Laws* with the selection of Commissioner John McClaugherty as **Chairman of the Executive Committee** for a two-year term which began August 1, 1997. Following this two year term, Chairman McClaugherty will become **President** of the *National Conference*. This national leadership of a West Virginia Commissioner will likely facilitate **greater visibility** of the work of the West Virginia *Commission on Uniform State Laws*, which the Legislative Auditor recommends. This Preliminary Performance Review presents two issues regarding the Commission:

ISSUE AREA 1: The Commission on Uniform State Laws Performs an Essential Function for the State but Should Become More Visible and Increase Public Input.

The West Virginia Commission is a member of the **National Conference of Commissioners on Uniform State Laws**. By participating in the National Conference, West Virginia is able to impact laws which have an effect on the various states. The cost of the Commission has never exceeded \$20,000 per year and the uncompensated contribution of the Commissioners would far exceed the expenses provided.

The Conference has developed many uniform acts which resulted in uniform laws throughout the United States including the *Uniform Commercial Code*. Although the uniform laws proposed by the Commission are debated by the interim Commission on Interstate Cooperation (COIC), the judiciary committees, and the Legislature as a whole, because of the importance of uniform laws to public policy in West Virginia the Commission should increase public visibility and input prior to its National meeting.

The Commission has obtained input on specific proposals in many instances (e.g. input regarding revisions to Articles 1, 2A and 9 of the *Uniform Commercial Code* from a representative of Mountain State Justice). Given the impact of the work of the Commission on the people of West Virginia, it should become more visible, soliciting input from a wide variety of interested parties and expanding its annual report to include information on acts under consideration by the National Conference and acts recommended to the Commission On Interstate Cooperation.

The primary task of the Commission is to discern the “desirability” and “practicability” of proposed uniform state laws as set forth in §29-1A-4. This alone is compelling evidence for a more visible commission and widespread input. Some organizations of attorneys in the state were not even aware of the work of the Commission. The general public, especially affected parties, are important to the work of the Commission. The task of increasing public input may be done by public notices, continued utilization of the Internet, The State Bar, contacts with such

organizations as the West Virginia Trial Lawyers Association, The Mountain State Bar, The Defense Trial Counsel, The West Virginia Bar Association and by expanding the annual report to include information on acts under consideration.

Issue Area 2: The Commission did not Issue an Annual Report for 1996, But has Since filed the Report.

In order for the Commission to meet the requirements of §29-1A-4 an annual report must be filed each year. The Legislative Auditor could find no record of this report for 1996. The Commission has a record of filing these reports for more than seventeen years; this oversight has been corrected.

Review Objective, Scope and Methodology

This review of the Commission on Uniform State Laws was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10, Section 11 of the West Virginia Code, as amended. Preliminary performance reviews are intended to assist the Joint Committee on Government Operations in making one of five recommendations. These recommendations include:

- The department, agency or board be terminated as scheduled;
- The department, agency or board be continued and reestablished;
- The department, agency or board be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or fact or any other deficiencies;
- A performance audit be performed on a department, agency or board on which a preliminary review has been completed; or
- The department, agency or board be continued for a period of time not to exceed one year for the purpose of completing a full performance audit.

A preliminary performance review as defined in Chapter 4, Article 10, Section 3 of the West Virginia Code, as amended, is to determine the goals and objectives of a department, agency, or board and to determine the extent to which the plan of a department, agency or board has met or is meeting those goals and objectives. The criteria for a preliminary performance review set forth in Chapter 4, Article 10, Section 11 of the West Virginia Code, as amended, enable the determination of the following:

- If the department, board or agency was created to solve a problem or provide a service;
- If the problem has been solved or the service has been provided;
- The extent to which past board or agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective;
- The extent to which there would be significant and discernible adverse effects on the public health, safety or welfare if the board or agency were abolished; and
- Whether or not the board or agency operates in a sound fiscal manner.

The time period covered by the preliminary review includes the years 1992 through 1996. Information about the Commission was obtained through: interviews and telephone interviews review of relevant statutes in the *West Virginia Code*; review of relevant legislative rules; and review of information provided by the Commission.

ISSUE AREA 1: The Commission on Uniform State Laws Performs an Essential Function for the State but Should Become More Visible and Increase Public Input.

Each year West Virginia's three commissioners attend an annual meeting of the National Conference of Commissioners on Uniform State Laws where commissioners from all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands meet to draft uniform laws for proposal to their respective legislatures. During the legislative interim the Commission reports to West Virginia's Commission on Interstate Cooperation (COIC). Recommendations are made to the COIC which votes on what uniform acts will be reported as bills during the legislative session. According to meeting minutes from the Commission on Uniform State Laws annual meeting, in 1996 West Virginia's Commission was "second only to the state of Delaware in the largest number of uniform acts passed during the Legislative session". It should be noted that all acts recommended by the Commission on Uniform State Laws to the COIC must first be passed by the Legislature, and are subject to amendments which may affect the uniformity.

National Commission

The National Conference is composed of the Commissioners on Uniform State Laws from all states and jurisdictions mentioned above. A small staff is maintained at the Conference headquarters in Chicago to serve the organization's administrative needs.

According to the Conference's 1996-97 Reference Book it is "one of the oldest of state organizations designed to encourage interstate cooperation, was organized in 1892 to promote uniformity by voluntary action of each state government. Since its organization, the Conference has drafted more than two hundred uniform and model acts on numerous subjects and in various fields of law, many of which have been widely enacted." West Virginia's Commission endorses only the enactment of uniform acts and not model acts.

The Conference summarizes its underlying basis as it relates to interstate economic and social activities:

- ▶ States are more interdependent socially and economically, e.g. tourism and other commerce.
- ▶ One commercial transaction may cross state lines many times and involve numerous citizens.
- ▶ Reduce the deterrent to the free flow of goods, credit, services, and persons among the States.

"The Conference seeks to alleviate these problems in areas of law traditionally left to the states, thus preserving the federal system."

Below is a listing of the 44 uniform acts drafted by the National Conference and passed by the West Virginia Legislature. Of these, 15 have been passed or amended within the last 7

years. (See Appendix B for a complete listing of acts drafted by the Conference)

Table One
Uniform Laws Passed by West Virginia Legislature

Alcoholism and Intoxication Treatment (1971)	Interstate Compromise of Death Taxes (1943)
Attendance of Out of State Witnesses (1931) (1936)	Limited Liability Company (1995)
Certification of Questions of Law (1995)	Limited Partnership (1976) (1983) (1985)
Child Custody Jurisdiction (1968)	Management of Institutional Funds (1972)
Commercial Code (1951) (1957) (1962) (1966)	Partnership (1992) (1993) (1994) (1996)
Commercial Code -Article 2A (1987) (1990)	Photographic Copies as Evidence (1949)
Commercial Code -Article 3 (1990) (1991)	Principal and Income (1931) (1962)
Commercial Code - Article 4 (1990)	Intestacy, Wills and Donative Transfers (1991) (1993) UPC, Article I I (1990) (1993)
Commercial Code -Article 4A (1989)	Testamentary Additions to Trusts (1960) (1961) UPC, Article I I, 2-511 (1969) (1991)
Commercial Code - Article 5 (1995)	Simultaneous Death (1940) (1953) (1991) (1993) UPC Article I I , 2-702 (1969) (1991) (1993)
Commercial Code - Article 6 (1989)	Disclaimer of Property Interests (1973) (1978) UPC , Article I I , 2-801 (1990)
Commercial Code -Article 8 (1977) (1994)	Statutory Rule Against Perpetuities (1986) (1990) UPC , Article I I , Part 9 (1990)
Commercial Code - Article 9 (1972)	Durable Power of Attorney (1979) (1987) UPC, Article V , Part 5 (1979) (1987)
Common Interest Ownership (1982) (1994)	TOD Security Registration (1989) UPC , Article V I, Part 3 (1989)
Common Trust Fund (1938) (1952)	Prudent Investor (1994)
Controlled Substances (1970) (1973)	Reciprocal Enforcement of Support (1950) (1958) (1968)
Declaratory Judgements (1922)	Simplification of Fiduciary Security Transfers (1958)
Determination of Death (1978) (1980)	Trade Secrets (1979) (1985)
Enforcement of Foreign Judgements (1948) (1964)	Unincorporated Nonprofit Association (1992)
Federal Lien Registration (1978) (1982)	Facsimile Signatures of Public Officials (1958)
Fraudulent Transfer (1984)	Veterans ' Guardianship (1928) (1942)
Interstate Arbitration of Death Taxes (1943)	

*source: National Conference on Uniform State Laws 1996-97 Reference Book

Benefits of the Commission on Uniform State Laws

By participating in the National Conference of Commissioners on Uniform State Laws, West Virginia has an opportunity to influence the development of laws in other states. According

to the Reference Book, the Conference members and staff “study and review the law of the states to determine which areas of law should be uniform.”

Funding for the Commission is minimal and divided into two categories, the first being the dues the state pays to the National Conference; second are expenses incurred by the Commissioners during their travel for the Commission. As detailed in Table Two, funding the Commission during the review period has not exceeded \$20,000 per year. Commissioners receive no compensation other than the reimbursement for expenses and the uncompensated contribution of the Commissioners would far exceed the expenses provided.

**Table Two
Cost of the Commission**

Year	Conference Dues	Expenses	Total
FY 92	\$9,600	\$7,310	\$16,910
FY 93	\$10,100	\$8,497	\$18,597
FY 94	\$10,700	\$6,173	\$16,873
FY 95	\$11,300	\$6,478	\$17,778
FY 96	\$11,900	\$7,075	\$18,975
FY 97	\$11,794	\$8,205	\$20,000

In summary, a prime example of the need for uniform laws is interstate commerce. The National Conference began drafting the Uniform Commercial Code in the 1940's. It took 10 years to complete and another 14 years to pass throughout the country. The Uniform Commercial Code is continuously under revision and has a standing committee of the National Conference devoted solely to its revision. In addition, uniform laws such as the Uniform Interstate Family Support Act, complement many federal laws and are sometimes required by the federal government for states to receive certain federal funds.

The Commission Process and Public Input

During the annual meeting of the National Conference of Commissioners on Uniform State Laws, consideration is given to what uniform laws are needed by the states. The Conference votes to decide what uniform acts to develop and then assigns individual committees the task of drafting the acts. When brought before the Conference as a whole, the acts are debated line by line. Completing this drafting and debating process takes at least two years. After completing the drafting process, the Conference votes whether to “promulgate the draft as a Uniform Act.” If passed, individual Commissions may take the uniform act to their home states and recommend

passage as a Uniform Law. West Virginia's Commission reports to the Commission on Interstate Cooperation and recommends uniform acts for passage by the Legislature. The Interstate Cooperation Commission then votes on whether to send the recommended acts to the Legislature as bills. If a uniform act is written as a bill, the intent is to have as few amendments as possible in order to preserve the original intent of the legislation.

The Legislative Auditor has noted that the West Virginia Code does not contain a process whereby the Legislature and West Virginia's public are 1) informed by the Commission of what draft acts the National Conference intends to consider for passage as uniform acts, and 2) afforded the opportunity for input prior to the drafting of the uniform acts.

According to the State's Commission and the National Conference of Commissioners on Uniform State Laws, many opportunities are given for public and legislative input into the process of drafting uniform acts. Both indicate that legislators and interested parties are contacted, all national meetings are open to the public¹ and draft acts are accessible on the INTERNET.² The State's Commission stated in a letter to the Legislative Auditor that:

“Regular pre and post-annual meeting releases are forwarded to the press, other media and the West Virginia State Bar. These releases include information about final and ongoing projects. From time to time, press releases on uniform and model acts are distributed to various state agencies and members of the Legislature..... We also report annually on uniform law activities to the American Bar Association which disseminates the information to all of its substantive sections and committees, and that information is disseminated widely in the legal community. (Emphasis added)

The Commission also stated that members of the Commission met with representatives of the American Association of Retired Persons in West Virginia about probate recommendations. In addition, a Charleston lawyer with Mountain State Justice has been working with the Commission and attending meetings of the National Conference as an official observer. Meeting minutes also indicate that arrangements were made during previous years for staff of the National Conference to meet with management of state agencies such as the Department of Health and Human Resources in 1994.

Despite these efforts, a Legislative Auditor's survey of five major attorney organizations in the state indicates that only two have been contacted by the Commission regarding draft acts the National Conference was considering. (See appendix D) Two presidents of these organizations are familiar with the State Commission and National Conference, one only generally familiar and two were totally unfamiliar with the West Virginia Commission or the National Conference. Some of the comments from these organizations may be paraphrased as follows:

Our organization has been asked to respond to rules proposed by the Supreme

¹ In a meeting on August 5, 1997, Legislative Auditors were informed that over two-hundred observers attended the just completed meeting of the National Conference of Commissioners

² The INTERNET address is <http://www.law.upenn.edu/library/ulc/ulc.htm>

Court, Federal Court rules, and WV State Bar policies and positions, but has never been asked for input or comment from the Commission on Uniform State Laws.

An attempt should be made to educate and enlighten the public as to what this Commission has been empowered to do as well as the parameters of its authority and mission.

The uniform laws proposed by the Commission are debated by the Commission on Interstate Cooperation, the Judiciary Committees, and the Legislature as a whole. However, due to the importance of the Commission to public policy in West Virginia it should increase public input prior to its National meeting. The Commission has obtained input on specific proposals in many instances (e.g. input regarding revisions to Articles 1, 2A and 9 of the Uniform Commercial Code from a Representative of Mountain State Justice). However, the visibility of the Commission and subsequent input from affected parties of proposed laws, would enhance its work, particularly the “desirability and practicability” of uniform laws as set forth in its charge (§29-1A-4). This may be done by public notices, continued utilization of the Internet, increased input from the State Bar, formal contacts with such organizations as the West Virginia Trial Lawyers Association, The Mountain State Bar, the Defense Trial Counsel of West Virginia, The West Virginia Bar Association and by expanding the annual report to include information on acts under consideration. In addition, changes such as publishing a phone number and address in the state directory, press releases in the Legislative newsletter and even Commission stationary for communication with interested parties and other official business, would help to increase the visibility and perhaps public input.

Recommendation:

The Commission on Uniform State Laws should be continued but efforts increased to become more visible to the general public and solicit input from the various affected entities in the state and the general public.

ISSUE AREA 2: The Commission did not Issue an Annual Report for 1996 But has Since Filed the Report.

In order for the Commission to meet the requirements of §29-1A-4, an annual report must be filed each year. Upon submission to the Legislature, this report is printed in both the House and Senate Journals and stands as a record of the bills proposed by the Commission for that legislative year. (See appendix C for copies of annual reports for 1993-1995) However, the Legislative Auditor found no record of this report being submitted for 1996. Upon discovering the report was not filed, the Commission's Legislative Chairman worked with Legislative Services staff and filed a report during the 1997 Legislative Session detailing what occurred in the 1996 Session thus ensuring that a record exists in the Journal. The current Commission has a record of filing these reports for more than seventeen years; this oversight has been corrected.

Recommendation: That the Commission comply with the code and file an annual report as required.

Appendix A
List of Commission Members

Appendix A
Commission Members

<u>Members</u>	<u>City</u>	<u>Profession</u>
Richard Ford (Chairman)	Lewisburg	Attorney
John McClaugherty (Legislative Chairman)	Charleston	Attorney
Fred Stamp	Wheeling	Federal Judge

Appendix B
List of Uniform and Model Acts Proposed
by the National Conference of Uniform State Laws

<u>Uniform Acts Considered Nationwide</u>
Adoption (1994)
Alcoholism and Intoxication Treatment (1971)
Anatomical Gift (1968)
Anatomical Gift (1987)
Arbitration (1956)
Attendance of Out of State Witnesses (1931) (1936)
Certification of Questions of Law (1967) (1990)
Certification of Questions of Law (1995)
Child Custody Jurisdiction (1968)
Commercial Code (1951) (1957) (1962) (1966)
Commercial Code -Article 2A (1987) (1990)
Commercial Code -Article 3 (1990) (1991)
Commercial Code - Article 4 (1990)
Commercial Code -Article 4A (1989)
Commercial Code - Article 5 (1995)
Commercial Code - Article 6 (1989)
Commercial Code -Article 8 (1977) (1994)
Commercial Code - Article 9 (1972)
Common Interest Ownership (1982) (1994)
Common Trust Fund (1938) (1952)
Comparative Fault (1977) (1979)
Condominium (1977) (1980)
Conflict of Laws - Limitations (1982)
Conservation Easement (1981)
Construction Lien (1987)
Controlled Substances (1970) (1973)
Controlled Substances (1990) (1994)
Correction or Clarification of Defamation (1993)
Criminal Procedure, Rules of (1974) (1987)
Custodial Trust (1987)
Deceptive Trade Practices (1964) (1966)
Declaratory Judgements (1922)
Determination of Death (1978) (1980)
Disclaimer of Transfers by Will, Intestacy or Appointment (1973) (1978)
Disclaimer of Transfers Under Nontestamentary Instruments (1973) (1978)
Disposition of Community Property Rights at Death (1971)
Division of Income for Tax Purposes (1957)
Dormant Mineral Interests (1986)
Enforcement of Foreign Judgments (1948) (1964)
Evidence, Rules of (1953) (1974) (1986) (1988)
Federal Lien Registration (1978) (1982)

Uniform Acts Considered Nationwide
Fiduciaries (1922)
Foreign Money Claims (1989)
Foreign Money Judgments Recognition (1962)
Franchise and Business Opportunities (1987)
Fraudulent Transfer (1984)
Health -Care Decisions (1993)
Health - Care Information (1985)
Interstate Arbitration of Death Taxes (1943)
Interstate Compromise of Death Taxes (1943)
Interstate Family Support (1992) (1996)
Land Security Interest (1985)
Limited Liability Company (1995)
Limited Partnership (1976) (1983) (1985)
Management of Institutional Funds (1972)
Marketable Title (1990)
Notarial Acts (1982)
Parentage (1973)
Partnership (1914)
Partnership (1992) (1993) (1994) (1996)
Periodic Payment of Judgments (1990)
Photographic Copies as Evidence (1949)
Planned Community (1980)
Premarital Agreement (1983)
Pretrial Detention (1989)
Principal and Income (1931) (1962)
Probate Code (1969) (1975) (1982) (1987) (1989) (1990) (1991)
Intestacy, Wills and Donative Transfers (1991) (1993) UPC, Article I I (1990) (1993)
Testamentary Additions to Trusts (1960) (1961) UPC, Article I I, 2-511 (1969) (1991)
Simultaneous Death (1940) (1953) (1991) (1993) UPC Article I I , 2-702 (1969) (1991) (1993)
Disclaimer of Property Interests (1973) (1978) UPC , Article I I , 2-801 (1990)
Statutory Rule Against Perpetuities (1986) (1990) UPC , Article I I , Part 9 (1990)
International Wills (1977) UPC , Article I I , Part 10 (1977)
Succession Without Administration (1983) UPC , Article I I I , Part 3 (1983)
Trustees' Powers (1964) UPC , Article I I I , 3-715 (1969)
Estate Tax Apportionment (1958) (1964) (1982) UPC , Article I I I , 3-916 (1969) (1982)
Guardianship and Protective Proceedings (1982) (1987) UPC , Article V , Parts 1-4 (1969) (1982) (1987)
Durable Power of Attorney (1979) (1987) UPC, Article V , Part 5 (1979) (1987)
Non-probate Transfers on Death (1989) UPC , Article V I , Parts 1-3 (1989)
UPC , Article VI , Part 2 (1969) , Part 1 (1989)
Multiple - Person Accounts (1989) UPC , Article V I , Part 1 (1969) , Part 2 (1989)
TOD Security Registration (1989) UPC , Article V I, Part 3 (1989)
Prudent Investor (1994)

Uniform Acts Considered Nationwide
Putative and Unknown Fathers (1988)
Reciprocal Enforcement of Support (1950) (1958) (1968)
Residential Landlord and Tenant (1972)
Rights of the Terminally ill
Securities (1985) (1988)
Simplification of Fiduciary Security Transfers (1958)
Status of Children of Assisted Conception
Statute and Rule Construction (1995)
Statutory Form Power of Attorney (1988)
Trade Secrets (1979) (1985)
Transfer of Litigation (1991)
Transfers to Minors (1983) (1986)
Unclaimed Property (1981) (1995)
Unincorporated Nonprofit Association (1992)
Victims of Crime (1992)
Model Acts
Anti- Discrimination (1966)
Audio-Visual Deposition (1978)
Class Actions (1976) (1987)
Consumer Credit Code (1968) (1974)
Consumer Sales Practices (1970) (1971)
Drug Dependence Treatment and Rehabilitation (1973)
Eminent Domain Code (1974)
Employment Termination (1991)
Exemptions (1976) (1979)
Extradition and Rendition (1980)
Health - Care Consent (1982)
Insanity Defense and Post - Trial Disposition (1984)
Land Sales Practices (1966)
Mandatory Disposition of Detainer (1958)
Marital Property (1983)
Marriage and Divorce (1970) (1973)
Minor Student Capacity to Borrow (1969)
Motor Vehicle Accident Reparations (1972)
Post - Conviction Procedure (1980)
Punitive Damages (1996)
Real Estate Cooperative (1981)
Real Estate Time - Share (1980) (1982)
Sentencing and Corrections (1978)
State Administrative Procedure (1981)
Supervision of Trustees for Charitable Purposes (1954)
Surface Use and Mineral Development Accommodation (1990)

Survival and Death (1977)
Transboundary Pollution Reciprocal Access (1982)
Water Use (1958)
Other Acts
Act to Provide for the Appointment of Commissioners (1944)
Contribution Among Tortfeasors (1939) (1955)
Criminal History Records (1986)
Cy - Pres (1944)
Duties to Disabled Persons (1972)
Facsimile Signatures of Public Officials (1958)
Information Practices Code (1980)
Joint Obligations (1925)
Land Transactions (1975) (1977) (1983)
Metric System Procedure (1979)
Public Assembly (1972)
Simplification of Land Transfers (1976) (1977) (1983) (1990)
Single Publication (1952)
Vendor and Purchaser Risk (1935)
Veterans ' Guardianship (1928) (1942)
Written Obligations (1925)

Appendix C
Annual Reports

WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS
REPORT TO THE
WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

The West Virginia Commissioners on Uniform State Laws submit this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code §29-1A-4. The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its 105th annual meeting in 1996. At the meeting the following three Acts were recommended for enactment by the states. These Acts are summarized as follows:

Model Punitive Damages Act

This act requires proof of either malicious intent or conscious and flagrant disregard of others by clear and convincing evidence before punitive damages (damages meant to punish) can be awarded in any personal injury action. The amount of punitive damages that may be awarded in any case is determined by an explicit list of factors, including the defendant's financial condition and any adverse effect of the award on innocent persons. If more than one cause of action may be based upon the same conduct, there are limitations upon multiple awards of punitive damages. This Act is a model act, which means that states are encouraged to use it as a guide for individual legislation rather than as a mandate for uniformity between the states.

**Limited Liability Partnership Amendments
to the Uniform Partnership Act:
Uniform Partnership Act (1996)**

In 1996, the Uniform Partnership Act, officially revised in 1994, has been amended to include registered limited liability partnerships. The amendments permit any partnership to register as a limited liability partnership. In a limited liability partnership, all partners have a full liability shield for the obligations of the partnership, however incurred. Only the assets of the partnership may be taken to meet partnership obligations. Any partner, however, remains liable for any obligations personally incurred. A limited liability partnership must identify itself as such to obtain limitation of partners' liability in any transactions with third parties. For all other purposes and outcomes, including liability of partners to each other, a registered limited liability partnership remains exactly the same as an ordinary partnership under the Uniform Partnership Act.

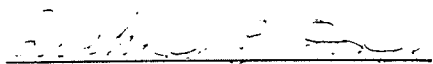
**Uniform Interstate Family Support Act Amendments:
Uniform Interstate Family Support Act (1996)**

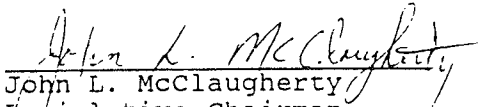
The Uniform Interstate Family Support Act was officially promulgated in 1992. These amendments are clarification of provisions of the original Act, necessitated by experience with the Act in a number of states. The principal clarification regards choice of law rules applying to specific incidents of income withholding orders sent interstate directly to obligors' employers.

WV COMMISSION ON UNIFORM STATE LAWS
REPORT TO THE LEGISLATURE
April 8, 1997

An employer of an obligor will use the law of an obligor's work state to determine processing fees that may be charged, limitations upon garnishment of income, and priorities in paying multiple support obligations. The amendments clarify what the contents of an effective income withholding order are so that employers may have better guidelines for payment of orders, and there is explicit immunity for employers who in good faith pay as mandated by the Act. Other amendments clarify modification rules when all parties subject to an order move from an issuing state to another state. Other amendments clarify the relationship of the Uniform Act to requirements of reciprocity necessary for international enforcement of support orders.

Respectfully submitted this 8th day of April, 1996,


Richard E. Ford
Chairman


John L. McClagherty
Legislative Chairman

C-2

**WEST VIRGINIA COMMISSION ON UNIFORM STATE
LAWS**

REPORT TO THE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

The West Virginia Commissioners on Uniform State Laws submit this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code §29-1A-4. The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its 103rd annual meeting July 29, 1994, through August 5, 1994. At the meeting the following six Acts were recommended for enactment by the states. These Acts are summarized as follows:

UNIFORM ADOPTION (1994)

The Uniform Adoption Act (1994) provides comprehensive procedures for the adoption of children. An adoption proceeding ends an existing parent and child relationship and creates a completely new one, which generally continues (except for step-parent adoptions) as if the original parent and child relationship had never existed. Included procedures are those for obtaining consents of birth parents to place children for adoption, directly, and for obtaining the relinquishment of the custody of a child for an agency placement for adoption. There is a procedure for pre-placement evaluation of any prospective adoptive parents. The adoption proceeding includes proceedings to identify unknown fathers and to terminate a parent and child relationship for a parent who has not consented to adoption or to a relinquishment for adoption. A termination may occur if there is clear and convincing evidence that not terminating a relationship will be detrimental to a child. Once an adoption has concluded, it is not reviewable for any reason after six months. Records of an adoption are sealed and regarded as confidential for ninety-nine years. However, there is a procedure for releasing nonidentifying information, and a procedure for releasing identifying information if a court finds good cause to do so, after balancing all of the interests of the parties protected by the confidentiality requirement. Protected parties have a registry in which they may choose to waive the confidentiality of their own

identities. Parties to an adoption may choose initially to have identities revealed. There are separate procedures for step-parent adoptions and adult adoptions.

**REVISED UNIFORM COMMERCIAL CODE ARTICLE 8 -
INVESTMENT SECURITIES - WITH CONFORMING
AMENDMENTS TO ARTICLES 1, 5, 9 AND 10**

The 1994 revision to Article 8 of the Uniform Commercial Code introduces a new concept of "security entitlement" as a property interest in "security accounts," recognizing the fact that most investment securities are kept in securities accounts in what is called the indirect holding system for securities. That system is characterized by central depositories for the certificates representing investment securities in which securities intermediaries hold positions in their own names or the names of nominees. In turn, investors have interests in securities represented in accounts with the same securities intermediaries. A security entitlement is a property right that an investor has in a security account with an intermediary, and that an intermediary has in an account with a depository. That property right guarantees ownership rights even though direct ownership is not registered with the issuers of these same investment securities. One of the major impacts of these revisions is upon attachment and perfection of security interests in investment securities. A security interest may be taken in a security entitlement, or in the entire financial assets held in a securities account, or in the even broader category of investment property that includes commodities contracts. Commodities contracts are not securities under Article 8. The security interest may be taken by filing a financing statement or by creditor control over the specific securities. Control is obtained by giving the secured creditor power over transactions concerning the investment property to which the security interest has attached.

**1994 AMENDMENTS, UNIFORM COMMON INTEREST
OWNERSHIP ACT**

The Uniform Common Interest Ownership Act contains provisions for the formation, management, and termination of any common interest community, including a condominium, a planned community, or a real estate cooperative. It also includes significant consumer protection provisions effective at the time of sale of any unit in a common interest community. These amendments are designed to make the original act more effective

for all participants in common interest communities. Included in these amendments are a broader exclusion of nonresidential common interest communities, with more flexible opportunity to make the Act applicable, if desired; better provisions for dealing with use and occupancy restrictions; clearer statement of the fiduciary responsibilities of elected executive board members and officers of common interest communities; clarification of the liability of unit owners in condominiums; and inclusion of provisions authorizing alternate dispute resolution.

AMENDMENTS TO UNIFORM CONTROLLED SUBSTANCES ACT, ARTICLE 4 - OFFENSES AND PENALTIES - AND ARTICLE 5 - CIVIL FORFEITURE

These amendments contain the provisions for criminal and civil forfeiture of assets associated with illegal transactions in narcotic and dangerous substances and the proceeds of such illegal transactions. A criminal forfeiture procedure takes place in the criminal court and as part of the criminal prosecution. It is not substantively different from a civil forfeiture action, including the burden of proof of a preponderance of the evidence. Civil forfeiture is a legal action separate and apart from any criminal action, and is available even though there is no criminal prosecution. The procedure includes seizure and lien procedures. The state has the option to proceed either with an administrative proceeding or a judicial proceeding for forfeiture. The defendant has the option of requesting a judicial proceeding if an administrative proceeding is first initiated. The burden of proof in the proceeding is mainly preponderance of the evidence. The prosecution must establish that property should be forfeited. The defendant has the burden of establishing most exemptions and other affirmative defenses. The exemption provisions protect innocent owners, and are available to owners, generally, who do not participate in or know of illegal activities. Grossly disproportionate forfeitures are not permitted. Proceeds and property are the state's following a successful forfeiture action. Proceeds go to the general fund of the state.

UNIFORM LIMITED LIABILITY COMPANY ACT

A limited liability company under the Uniform Act is a business organization that is formed by filing Articles of Organization, that commences business as either a member-managed company or a manager-managed company, that limits either for

a term or "at will," and that dissolves either at the end of a term or upon the dissociation of a member, unless a majority in interest of members vote to continue the business or unless the company buys out a dissociating member, as provided. A limited liability company is principally controlled by its operating agreement. The agreement may waive or vary all provisions of the Act, except for a few provisions governing fiduciary obligations and rights of members. There are no limitations on the types of contributions that members may be permitted to provide to the capital of the company. Member distributions are equal, unless the agreement otherwise provides. Included are provisions for conversion of partnerships and limited partnerships to limited liability company and mergers of limited liability companies with other business organizations. Rules governing foreign limited liability companies are provided. Derivative actions by members on behalf of a company are provided for.

UNIFORM PRUDENT INVESTOR ACT

This act removes much of the common law restriction upon the investment authority of trustees of trusts and like fiduciaries. It allows such fiduciaries to utilize modern portfolio theory to guide investment decisions. A fiduciary's performance is measured on the performance of the whole portfolio, not upon the performance of each investment, singly. The Act allows the fiduciary to delegate investment decisions to qualified and supervised agents. It requires diversification of a portfolio, unless there is a very good reason not to diversify. It requires sophisticated risk-return analysis to guide investment decisions. In return, there are virtually no restrictions upon the types of investments that the fiduciary may make, provided that he or she has made the proper risk/return analysis as any prudent investor should do.

Respectfully submitted this 7th day of March, 1995.

RICHARD E. FORD

Chairman

JOHN L. McCLAUGHERTY

Legislative Chairman

FREDERICK P. STAMP, JR.

Secretary

Messages from the Senate

WEST VIRGINIA ON UNIFORM STATE LAWS
REPORT TO THE
WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

The West Virginia Commissioners on Uniform State Laws submit this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code §29-1A-4. The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its 102nd annual meeting July 30, 1993, through August 6, 1993. At the meeting the following four Acts were recommended for enactment by the states. These Acts are summarized as follows:

UNIFORM CORRECTIONS OR CLARIFICATION OF DEFAMATION ACT

This Act creates significant incentives for parties involved in a defamation action to explore a correction or clarification as an alternative to pursuing a law suit. The Act applies to all defamations, whether public or private media or non-media, thus establishing a simplified structure for the resolution of all disputes. Moreover, the Act will provide a uniform set of requirements that will assure the national media a consistent and meaningful opportunity to correct or clarify. The options created by the Act provide an opportunity for the plaintiff who believes he or she is defamed to secure quick and complete vindication of his or her reputation. The Act provides publishers with a quick and cost-effective means of correcting or clarifying alleged mistakes and avoiding costly litigation. In this way, both reputational interests and rights of free expression are advanced.

UNIFORM STATUTE AND RULE CONSTRUCTION ACT

This Act assists drafters in preparing legislation and rules, government officials and lawyers in applying them, and courts and administrative agencies in construing them. It will significantly reduce the need for the boiler plate language commonly used in bill and rule drafting and provide common definitions of certain words often used in statutes and rules. The Act will aid in the drafting of proposed uniform or model legislation and it will lead to a greater uniformity of interpretation of state legislation. It will aid in the formulation of interstate transactions that are affected by statutes and rules in several states. It will assist the NCCUSL in assuring a uniform implementation of the more than 130 Uniform Acts that are currently recommended for adoption. This Act will also encourage the development of a body of law as to construction of statutes and rules that will be more uniform than

the present law of statutory construction. The Act inform courts of a legislature's exceptions as to how its product should be construed. Inasmuch as the court's aim in construing statutes is to carry out a statute's intent, this Act assists the courts in performing that function of construing statutes; it is merely an aid to the courts in performing that function. The existence and use of statutory construction acts for over a century without successful challenge further demonstrates that these acts do not violate the fundamental constitutional principle of separation of powers.

UNIFORM HEALTH-CARE DECISIONS ACT

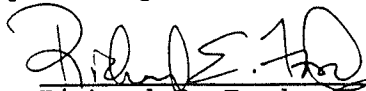
This Act acknowledges the right of a competent individual to decide all aspects of his or her own health care in all circumstances, including the right to decline health care or to direct that health care be discontinued, even if death ensues. An individual's instructions may extend to any and all health-care decisions that might arise and, unless limited by the principal, an agent has authority to make all health-care decisions which the individual could have made. The Act recognizes and validates an individual's authority to define the scope of an instruction or agency as broadly or as narrowly as the individual chooses. The Act is comprehensive and will enable an enacting jurisdiction to replace its existing legislation on the subject with a single statute. The Act authorizes health-care decisions to be made by an agent who is designated to decide when an individual cannot or does not wish to; by a designated surrogate, family member, or close friend when an individual is unable to act and no guardian or agent has been appointed or is reasonably available; or by a court having jurisdiction as decision maker of last resort. The Act is designed to simplify and facilitate the making of advance health-care directives. An instruction may be either written or oral. A power of attorney for health care, while it must be in writing, need not be witnessed or acknowledged. In addition, an optional form for the making of a directive is provided. The Act seeks to ensure to the extent possible that decisions about an individual's health care will be governed by the individual's own desires concerning the issues to be resolved. The Act requires an agent or surrogate authorized to make health-care decisions for an individual to make those decisions in accordance with the instructions and other wishes of the individual to the extent known. Otherwise, the agent or surrogate must make those decisions in accordance with the best interest of the individual but in light of the individual's personal values known to the agent or surrogate. Furthermore, the Act requires a guardian to comply with a ward's previously given instructions and prohibits a guardian from revoking the ward's advance health-care directive without express court approval. The Act addresses compliance by health-care providers and institutions. A health-care provider

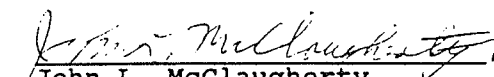
or institution must comply with an instruction of the patient and with a reasonable interpretation of that instruction or other health-care decision made by a person then authorized to make health-care decisions of the patient. The obligation to comply is not absolute, however. A health-care provider or institution may decline to honor an instruction or decision for reasons of conscience or if the instruction or decision applicable health-care standards. The Act provides a procedure for the resolution of disputes. While the Act is in general to be effectuated without litigation, situations will arise where resort to the courts may be necessary. For that reason, the Act authorizes the court to enjoin or direct a health-care decision or order other equitable relief and specifies who is entitled to bring a petition. The Health-Care Decisions Act supersedes the Commissioners' Model Health-Care Consent Act (1982), the Uniform Rights of the Terminally III Act (1985), and the Uniform Rights of the Terminally III Act (1989). A state enacting the Health-Care Decisions Act which has one of these other acts in force should repeal it upon enactment.


UNIFORM PARTNERSHIP ACT

This Act is the first revision of original Act 1914, the Act improves the tasks of governing the creation of a partnership, establishing what the nature of the business organization is, and providing rules respecting the rights and obligations of partners and other parties that do business with the partnership and the partners. The Act provides rules that govern the dissolution of a partnership when the appropriate time comes to dissolve it. The Act adds rules dealing with the concepts of merger and conversion.

Respectfully submitted this 9th day of March, 1994.


Richard E. Ford, Chairman


John L. McLaugherty, Legislative Chairman


Frederick P. Stamp, Jr., Secretary

West Virginia Commission on Uniform State Laws, which was read by the Clerk as follows:

**WEST VIRGINIA COMMISSION ON UNIFORM
STATE LAWS REPORT TO THE
WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1993**

The West Virginia Commissioners on Uniform State Laws submit this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code §29-1A-4. The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its 101st annual meeting July 30, 1992, through August 6, 1992. At the meeting the following four Acts were recommended for enactment by the states. These Acts are summarized as follows:

UNIFORM INTERSTATE FAMILY SUPPORT ACT

This Act replaces the Uniform Reciprocal Enforcement of Support Act. It is designed to improve the interstate establishment and enforcement of spousal and child support awards, and to eliminate the possibility of multiple exercises of jurisdiction over support awards with attendant multiple, conflicting support awards from more than one state. Jurisdiction to modify an award is meant to be held by one and only one state at a time. This is accomplished by providing comprehensive long-arm provisions so that a state can take jurisdiction over a party to a child or spousal support dispute, who is outside the state, but who has a significant connection with the state and the dispute. A state that has taken jurisdiction, and which is the state of residence for any party, retains continuing exclusive jurisdiction as long as residency of a party continues. Continuing exclusive jurisdiction prevents other states from establishing a competing award or modifying the existing award. If simultaneous proceedings are initiated in more than one state with a basis for taking jurisdiction, the state that is the home state of the child takes priority over the other states in adjudicating the dispute and establishing an award. If a state initiates an enforcement action that is transmitted to another state, there are limitations upon the modification jurisdiction of the state that is the responding state. States have the capacity to bring and to transport actions pertaining to establishing or modifying

support awards, including proceedings for initially determining parentage. This comprehensive Act will improve the course of establishing and enforcing child and spousal support awards in every state.

UNIFORM PARTNERSHIP ACT (1992)

This Act revised the Uniform Partnership Act of 1914. The 1992 Act establishes a partnership as a separate legal entity, and not merely as an aggregation of partners. It recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. It permits the filing of statements of authority that have the effect of affirming the authority of designated partners to do business on behalf of the partnership, and to impose limitations upon the authority of certain partners to conduct business on behalf of the partnership. The 1992 Act explicitly addresses the fiduciary responsibilities of partners to each other, providing for express obligations of loyalty, due care, and good faith. Partnership property is held in the partnership name, and is not co-owned by the partners, individually. Partners own their partnership interest, but not specific property. Every dissociation of a partner with the partnership does not result in dissolution of the partnership and a winding-up of its affairs. Only dissociation with express intent of so doing will cause dissolution. There are provisions in the 1992 Act for conversion of a partnership to a limited partnership, and vice versa, and for merger of a partnership with other partnerships or limited partnerships. A partnership remains an association of one or more persons to do business for profit, and partners remain equally liable for the debts of the partnership.

UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

This Act allows unincorporated nonprofit associations to receive, hold and transfer real and personal property in the name of the association. It provides limitation of liability of members and functionaries of such associations from contract and tort liability of the association, while permitting the association to incur liabilities in its own name. A nonprofit association may file a statement of authority for transferring real property on the property records. The statement may be

relied upon by third parties involved in real estate transactions with the association. An association is permitted to designate an agent for service of process. These rules are applied to such associations without the obligation to create any sort of corporation.

UNIFORM VICTIMS OF CRIME ACT

This Act provides rights for victims of crime to certain protections in the criminal justice system, for information about criminal cases resulting from the crimes of which they are victims, and to appear in proceedings regarding the sentencing or other disposition of those convicted of the crimes of which they are victims. The Act further establishes a system of compensation for those personally injured as a result of criminal activity; with maximum compensation of \$25,000.00. The compensation system would take advantage of federal funding for such programs at the state level. This Act, also, provides a criminal remedy of monetary restitution for a victim's losses as part of the sentencing of the criminal defendant. Restitution is separate and apart from any civil remedy that a victim may have against the same criminal defendant.

Respectfully submitted this 31st day of March, 1993.

RICHARD E. FORD
Chairman

JOHN L. McCLAUGHERTY
Legislative Chairman

FREDERICK P. STAMP, JR.
Secretary

EARL M. VICKERS
Associate Member NCCUSL

Resolutions Introduced

Delegates Whitman, Ellis, Dempsey and Hendricks offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 28—"Authorizing the Governor to increase the

presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(S. B. 88), Exempting rural primary care hospitals from certificate of need for preexisting beds,

(Com. Sub. for S. B. 297), Renaming department of public safety; changing agency transfer references to certain agencies and boards,

(Com. Sub. for S. B. 458), Prohibiting discrimination against employees for use of tobacco products during nonworking hours,

(S. B. 492), Prohibiting banks not licensed in state from being chartered,

And,

(S. B. 524), Requiring continuing education and increasing license renewal fee for dentists and dental hygienists.

Messages from the Executive

Mr. Speaker, Mr. Chambers, presented communications from his Excellency, the Governor, advising that on March 5, 1992, he approved Com. Sub. for S. B. 384, Com. Sub. for H. B. 4023, Com. Sub. for H. B. 4050, H. B. 4069, H. B. 4094 and H. B. 4506.

Mr. Speaker, Mr. Chambers, presented a report from the West Virginia Commission on Uniform State Laws, which was read by the Clerk as follows:

WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION, 1992

The West Virginia Commissioners on Uniform State Laws submit this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code §29-1A-4. The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its 100th annual meeting August 2 through August 9, 1991. At the meeting, four amended,

revised and new Acts and one model Act were recommended for enactment by the states. These Acts are summarized as follows:

Uniform Law Commissioners' Model Employment Termination Act

An employee may not be discharged under this Act except for "good cause." Good cause may be improper or inadequate performance on the part of the employee. Good cause may also be the economic goals and needs of the enterprise in which the employee works. An employee may file an action against an employer, alleging that a dismissal is not for good cause. The remedy for dismissing an employee without good cause is reinstatement, backpay, lost benefits, or, in the alternative, a lump-sum severance payment. There are no compensatory, intangible, or punitive damages allowed otherwise. The action that the employee files is for arbitration of the allegation. The arbitration award may be reviewed in a court of law only for abuse of discretion or office of the arbitrators. The Act applies to all employers who employ five or more employees. An employee must be employed at least one year prior to the dismissal to have the benefit of this Act. The right to "good cause" dismissal may be waived or modified by specific contract, although full waiver requires agreement by the employer to substantial severance pay. Nothing in the Act displaces rights and obligations under any collective bargaining agreement or the rights of state and federal employees under civil service or other law.

Uniform Act on Intestacy, Wills, and Donative Transfers

The Uniform Probate Code was promulgated originally in 1969. The Uniform Law Commissioners provided the first revision of Article II in 1990. Revised Article II has been incorporated in a separate, free-standing Uniform Act, the Uniform Act on Intestacy, Wills, and Donative Transfers, in 1991. Included is improved protection for surviving spouses in intestate succession. The elective share provisions are realigned to meet principles of marital property. Antilapse provisions are provided for both devises under wills and nonprobate transfers. Rules of construction for wills and nonprobate transfers are aligned and made as parallel as possible in one comprehensive Uniform Act.

Uniform Simultaneous Death Act (1991)

A revision of an Act originally promulgated in 1940 and incorporated into the Uniform Probate Code Article II and the Uniform Act on Intestacy, Wills, and Donative Transfers, this Act provides that any persons who die within 120 hours of each other, by law, predecease each other. This rule keeps the property of one deceased person from passing through the estate of another deceased person before passing to those who survive both.

Uniform Testamentary Additions to Trusts Act (1991)

This Act is a revision of an Act originally promulgated in 1960. The text of the 1991 Act is also incorporated into the Uniform Probate Code Article II and the Uniform Act on Intestacy, Wills, and Donative Transfers. This Act authorizes a provision in a will that transfers property at death to a trust. This type of provision is commonly called a "pour-over" provision and the trust is called a "pour-over" trust. Such trusts are commonly used in estate planning, and such provisions are not thought to be permitted without statutory authorization. The 1991 version improves the flexibility of such provisions and guarantees that such provisions are valid for trusts that are not funded until funded by the actual pour-over.

Uniform Transfer of Litigation Act

This Act permits courts of an adopting state to transfer litigation to the courts of another state or to the federal courts, and to accept litigation similarly transferred to it from a court in another state or a federal court. Both transfer of litigation to another jurisdiction and acceptance of litigation from another jurisdiction are matters of discretion for the court. No court is either forced to transfer or to accept transfer under this Act. There are appropriate procedural provisions to accomplish the exercise of these authorities.

The West Virginia Commission on Uniform State Laws recommends the following Acts for passage by the 1992 Regular Session of the West Virginia Legislature: Uniform Commercial Code Article 2A - Leases (1990); Uniform Commercial Code Revised Article 3 - Negotiable Instruments (1990); Uniform Commercial Code Article 4 - Bank Deposits

and Collections (1990); Uniform Controlled Substances Act (1990); Uniform Statutory Rule Against Perpetuities Act (1986); Uniform Premarital Agreement Act (1983); Uniform Transfer of Litigation Act; Uniform Simultaneous Death Act (1991); Uniform Commercial Code repeal of Article 6, Bulk Sales; and Uniform Testamentary Additions to Trusts Act (1991).

West Virginia Enactment Record

The following is a compilation of uniform acts enacted in West Virginia or proposed by the NCCUSL. This compilation updates the last compilation that was included in the annual report to the Regular Session, 1987. Parts I and II represent those acts which have been officially proposed by the NCCUSL as "uniform acts" and are still considered as viable by that organization. West Virginia has statutes on the substantive areas covered by a number of the Uniform Acts listed in Part II.

Part III includes both acts proposed by the NCCUSL and adopted in West Virginia but which are not deemed "uniform" acts by the NCCUSL because of the nature of the subject matters and/or the relatively low need for uniformity, and uniform acts recommended by entities other than the NCCUSL. The compilation is accurate as of the beginning of the 1992 Regular Session of the Legislature.

I. UNIFORM ACTS ADOPTED IN WEST VIRGINIA (WITH YEAR OF INITIAL ADOPTION):

- Uniform Veterans' Guardianship Act (1929)
- *Uniform Attendance of Out of State Witness Act (1931)
- Uniform Criminal Extradition Act (1937)
- Uniform Declaratory Judgments Act (1941)
- Uniform Common Trust Fund Act (1945)
- *Uniform Limited Partnership Act (1953)
- Uniform Partnership Act (1953)
- Uniform Principal and Income Act (1953)
- *Uniform Reciprocal Enforcement of Support Act (1953)

- Uniform Simultaneous Death Act (1953)
- *Uniform Gifts to Minors Act (1957)
- Uniform Transfer to Minors Act (1957)
- Uniform Interstate Arbitration of Death Taxes Act (1959)
- Uniform Interstate Compromise of Death Taxes Act (1959)
- Uniform Photographic Copies as Evidence Act (1959)
- Uniform Simplification of Fiduciary Security Transfers Act (1961)
- Uniform Testamentary Additions to Trusts Act (1961)
- *Uniform Commercial Code (1963)
- Uniform Facsimile Signatures of Public Officials Act (1965)
- Uniform Disposition of Unclaimed Property Act (1966)
- Uniform Anatomical Gift Act (1970)
- Uniform Controlled Substances Act (1971)
- Uniform Recognition of Acknowledgments Act (1971)
- Uniform Commercial Code -Article 9 (Secured Transactions) (1974)
- *Uniform Securities Act (1974)
- Uniform Certification of Questions of Law Act (1976)
- *Uniform Commercial Code—Article 8 (Investment Securities) (1979)
- Uniform Management of Institutional Funds Act (1979)
- Uniform Condominium Act (1980)
- Uniform Brain Death Act (1980)
- Uniform Child Custody Jurisdiction Act (1981)
- *Uniform Disclaimer of Property Interests Act (1982)
- Uniform Common Interest Ownership Act (1986)
- Uniform Durable Power of Attorney Act (1986)
- Uniform Fraudulent Transfers Act (1986)

Uniform Trade Secrets Act (1986)

*Uniform Determination of Death Act (1989)

Uniform Enforcement of Foreign Judgments Act (1989)

*Uniform Federal Lien Registration Act (1989)

Uniform Premarital Agreement Act (1989)

Uniform Commercial Code -Article 4A (Funds Transfers)
(1990)

*West Virginia adopted subsequent amended version
proposed by the NCCUSL.

**II. UNIFORM ACTS NOT ADOPTED IN
WEST VIRGINIA (WITH YEAR OF INITIAL
APPROVAL OR LAST AMENDMENT
BY THE NCCUSL):**

Uniform Administrative Procedures Act (1981)

Uniform Alcoholism and Intoxication Treatment Act (1971)

Uniform Arbitration Act (1956)

Uniform Commercial Code—Article 2A (Leases of Personal
Property) (1990)

Uniform Commercial Code—Article 3 Amendments (1991)

Uniform Commercial Code—Article 6 Amendments (1989)

Uniform Comparative Fault Act (1979)

Uniform Conflict of Laws-Limitations Act (1982)

Uniform Conservation Easement Act (1981)

Uniform Construction Lien Act (1987)

Uniform Consumer Credit Code Act (1974)

Uniform Crime Victims Reparations Act (1973)

Uniform Criminal History Records Act (1986)

Uniform Criminal Procedure (Rules of) Act (1987)

Uniform Custodial Trust Act (1987)

Uniform Deceptive Trade Practices Act (1966)

Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978)

Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978)

Uniform Disposition of Community Property Rights at Death Act (1971)

Uniform Division of Income for Tax Purposes Act (1957)

Uniform Dormant Mineral Interests Act (1986)

Uniform Evidence (Rules of) Act (1988)

Uniform Exemptions Act (1979)

Uniform Extradition and Rendition Act (1980)

Uniform Fiduciaries Act (1922)

Uniform Foreign Money Judgments Recognition Act (1962)

Uniform Foreign Money Claims Act (1989)

Uniform Franchise and Business Opportunities Act (1987)

Uniform Fraudulent Conveyance Act (1918)

Uniform Guardianship and Protective Proceedings Act (1987)

Uniform Health Care Information Act (1985)

Uniform Information Practices Code (1980)

Uniform International Wills Act (1977)

Uniform Jury Selection and Service Act (1971)

Uniform Land Security Interest Act (1985)

Uniform Mandatory Disposition of Detainers Act (1958)

Uniform Marital Property Act (1983)

Uniform Marketable Title Act (1990)

Uniform Marriage and Divorce Act (1973)

Uniform Multiple-Person Accounts Act (1989)

Uniform Nonprobate Transfers on Death Act (1989)

Uniform Notarial Acts (1982)
Uniform Parentage Act (1973)
Uniform Periodic Payment of Judgments Act (1990)
Uniform Planned Community Act (1980)
Uniform Post Conviction Procedure Act (1980)
Uniform Pretrial Detention Act (1989)
Uniform Probate Code (1990)
Uniform Putative and Unknown Fathers Act (1988)
Uniform Residential Landlord and Tenant Act (1972)
Uniform Rights of the Terminally Ill Act (1989)
Uniform Securities Act (1988)
Uniform Simplification of Land Transfers Act (1990)
Uniform State Antitrust Act (1979)
Uniform Status of Children of Assisted Conception Act
(1988)
Uniform Status of Convicted Persons Act (1964)
Uniform Statutory Form Power of Attorney (1988)
Uniform Statutory Rule Against Perpetuities (1990)
Uniform Statutory Will Act (1984)
Uniform Succession Without Administration Act (1983)
Uniform Supervision of Trustees for Charitable Purposes
Act (1954)
Uniform Transfers on Death Security Registration Act
(1989)
Uniform Transboundary Pollution Reciprocal Access Act
(1982)
Uniform Trustees Powers Act (1964)
Uniform Unclaimed Property Act (1981)

**III. OTHER ACTS ADOPTED IN WEST VIRGINIA
(WITH YEAR OF INITIAL ADOPTION)
BUT WHICH ARE NOT OFFICIAL
NCCUSL UNIFORM ACTS:**

Uniform Insurers Liquidation Act (1957)

Post-Mortem Examinations Act (1963)

State Administrative Procedures Act (1964)

Uniform Notary Public Act (1984)

Respectfully submitted this 5th day of March, 1992.

RICHARD E. FORD,
Chairman

JOHN L. McCLAUGHERTY,
Legislative Chairman

FREDERICK P. STAMP, JR.,
Secretary

EARL M. VICKERS,
Associate Member NCCUSL

Resolutions Introduced

Delegate Lane offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R 57—"Creating a special joint interim commission to conduct a comprehensive study of the workers' compensation system of this State."

WHEREAS, Employees complain that the West Virginia workers' compensation system is often not responsive to the needs of injured workers; and

WHEREAS, There is a very substantial actuarial deficit in the Workers' Compensation Fund, and the actuarial deficit continues to grow and is estimated at this time to be between eight hundred million and one billion dollars; and

WHEREAS, If the rate of awards for life granted during the first six months of the current fiscal year continues for the last six months, nearly nine hundred new permanent total disability or life awards will be granted in the current fiscal

increase for the Alcohol Beverage Control Commissioner, etc.

Whereupon,

The Speaker appointed on the part of the House of Delegates the following:

Delegates Houvouras, Cerra and Faircloth.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Messages from the Executive

Mr. Speaker, Mr. Chambers, presented a communication from His Excellency, the Governor, advising that on March 8, 1991, he approved Com. Sub. for H. B. 2207.

Mr. Speaker, Mr. Chambers, presented a report from the West Virginia Commission on Uniform State Laws, which was read by the Clerk as follows:

WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION, 1991

The West Virginia Commissioners on Uniform State Laws submit this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code §29-1A-4. The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its 99th annual meeting July 13 through July 20, 1990. At the meeting seven amended, revised and new Acts and one model Act were recommended for enactment by the states. These Acts are summarized as follows:

UNIFORM COMMERCIAL CODE AMENDMENTS TO ARTICLE 2A — LEASING (1990)

Amendments were adopted in 1990 for the leasing article of the Uniform Commercial Code. For the most part the amendments are for the purposes of clarifying existing Uniform Commercial Code Article 2A provisions or adjusting existing provisions in relatively minor ways. There are three

substantive issues addressed. The term "finance lease" is changed to allow leases to qualify with notice to lessees of the character of the purchase agreement between supplier and lessor or notification as to where information of that nature can be obtained, as well as tendering a copy of the purchase contract to the lessee, itself. Although parties to a lease contract may agree to restrict the right to assign interests in the contract, assignments are ineffective against those who hold secured interests in the rents derived from such contracts. Amendments permit rescision of the lease contract only if the breaches are material enough to call for rescision, while retaining the right to damages.

UNIFORM COMMERCIAL CODE REVISED
ARTICLE 3 — NEGOTIABLE INSTRUMENTS

In 1990, the Uniform Law Commissioners revised Article 3 of the Uniform Commercial Code for the first time since the Uniform Commercial Code was promulgated in 1951. The basic concepts of negotiable instruments are retained. The revisions take care of problems that have accumulated, as evidenced in the case law, since the original Article 3 was unveiled. The scope of the article contracts, slightly. Original Article 3 applies to certain instruments that are not negotiable. The revision applies the Article only to fully negotiable instruments, except bank checks. Bank checks are subject to revised Article 3, even though they may not be negotiable. The revision relieves the problem of negotiability for adjustable rate instruments. They become fully negotiable under the revisions. The revised Act has contribution rules for liable multiple parties to a negotiable instrument, something original Article 3 lacked. A statute of limitations provision is included in revised Article 3, again an omission in the original. These are examples of the improvements that the revisions provide for the essentials of negotiable instrument law.

UNIFORM COMMERCIAL CODE
CONFORMING AND MISCELLANEOUS
AMENDMENTS TO ARTICLE 4—
BANK DEPOSITS AND COLLECTIONS (1990)

Article 4 is a companion to Article 3 of the Uniform Commercial Code. In 1990, it has been amended to assure it

continues to complement the revisions to Article 3. Included in the amendments are provisions for truncation agreements between banks, a statute of limitations provision, and warranties pertaining to correct encoding of information and for retention of items in the event they are subject to a truncation agreement. It becomes possible for financial institutions to offer accounts with statements that do not include the customer's actual canceled checks. However, the institution must keep checks for seven years so that they are available to customers on demand.

UNIFORM CONTROLLED SUBSTANCES ACT (1990)

The Uniform Controlled Substances Act, promulgated originally in 1971, is the primary law pertaining to narcotic drugs at the state level in the United States. In 1990, the Uniform Law Commissioners have prepared the first revision of this Act. Included in these revisions are a completely updated schedule of narcotic drugs, emergency scheduling provisions for newly identified analogues to existing controlled substances, special penalties for trafficking in analogues, complete penalty provisions, including penalties for trafficking in the vicinity of schools, and new provisions for monitoring and stemming diversion of legal controlled substances into the illegal market.

UNIFORM MARKETABLE TITLE ACT

This Act, derived from Article 3 of the Uniform Simplification of Land Transfers Act, extinguishes interests in land that are not found in the root of title, dated back 30 years from the time that interests must be determined. These are ancient, unasserted interests that have the effect of clouding title and restricting marketability. Exceptions include interests that are easily found by reasonable inspection, including interests of those actually occupying land, and interests of the federal government. Even interests that precede the 30-year period may be preserved by recordation every 30 years.

UNIFORM PERIODIC PAYMENT OF JUDGMENTS ACT

Under this Act, judgments for future damages in tort actions involving bodily injury may be established in periodic payment form rather than lump-sum form. Either party to an

action may petition for a periodic payment award, if the damages are likely to exceed \$100,000. Explicit procedures for establishing the judgment, including inflation adjustment factors, are contained in the Act. A list of qualified insurers, who are able to fund periodic payment awards, must be kept in the state. Attorney's fees are to be paid, initially, out of future noneconomic damages.

UNIFORM PROBATE CODE ARTICLE II —
INTESTACY, WILLS, AND DONATIVE TRANSFERS

The Uniform Probate Code was promulgated originally in 1969. The Uniform Law Commissioners have provided the first revision of Article II in 1990. Included are improved protection for surviving spouses in intestate succession. The elective share provisions are realigned to meet principles of marital property. Antilapse provisions are provided for both devises under wills and nonprobate transfers. The Uniform Statutory Rule against Perpetuities is incorporated in the Uniform Probate Code.

UNIFORM LAW COMMISSIONERS' MODEL
SURFACE USE AND MINERAL DEVELOPMENT
ACCOMMODATION ACT

This new Act requires owners of mineral interests in land to seek accommodation agreements with owners of surface interests in order to avoid liability for damage to surface interests. It also permits surface owners to seek protection for surface uses and improvements by notifying owners of mineral interests. If there are objections in either case, there are provisions for resolution in court. There are also damage provisions when there is liability for injury to surface interests.

The West Virginia Commissioners on Uniform State Laws and the West Virginia Commission on Interstate Cooperation recommend the following Acts for passage by the 1991 Regular Session of the West Virginia Legislature: Uniform Commercial Code Article 2A — Leases (1990); Uniform Commercial Code Revised Article 3 — Negotiable Instruments (1990); Uniform Commercial Code Article 4 — Bank Deposits and Collections (1990); Uniform Controlled Substances Act (1990); Uniform Statutory Rule Against Perpetuities Act

(1986); and Uniform Premarital Agreement Act (1983).

During the Legislature's 1990 Regular Session, the Legislature enacted the NCCUSL Uniform Commercial Code Article 4A — Funds Transfer Act and an Act providing that any person who serves as a member of the West Virginia Commission on Uniform State Laws for 20 years and is appointed as a life member of the National Conference of Commissioners on Uniform State Laws shall remain an additional member of the West Virginia Commission.

Respectfully submitted this 7th day of March, 1991.

RICHARD E. FORD,
Chairman

JOHN L. McCLAUGHERTY,
Legislative Chairman

FREDERICK P. STAMP, JR.,
Secretary

EARL M. VICKERS,
Associate Member NCCUSL

Mr. Speaker, Mr. Chambers, presented the report from the Joint Committee on Government and Finance, which was read by the Clerk as follows:

**Joint Committee on Government and Finance
West Virginia Legislature
State Capitol
Charleston, West Virginia**

March 8, 1991

West Virginia Legislature
Charleston, West Virginia

Ladies and Gentlemen:

Your Joint Committee on Government and Finance submits this report on studies it has authorized to be made between the 1990 and 1991 regular sessions of the Legislature.

A. The following studies were made by subcommittees of the Joint Committee:

1. *Area Health Education Centers*. The Joint Committee

C-1

Eng. House Bill No. 4356, Authorizing the Mercer County Commission to establish a Tourist Train Authority.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Jae Spears,
Chairperson.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Chafin, the Senate adjourned until tomorrow, Wednesday, February 14, 1990, at 11 a.m.

WEDNESDAY, FEBRUARY 14, 1990

The Senate met at 11 a.m.

(Senator Burdette, Mr. President, in the Chair.)

Prayer was offered by Reverend Judith M. Smith-Valley, Unitarian Universalist Fellowship of Kanawha Valley, Charleston, West Virginia.

Pending the reading of the Journal of Tuesday, February 13, 1990,

On motion of Senator Heck, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

Senator Burdette (Mr. President) presented the following communication, comprising the annual report of the West Virginia Commission on Uniform State Laws, which was received:

WEST VIRGINIA COMMISSION ON
UNIFORM STATE LAWS
REPORT TO THE
WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

The West Virginia Commissioners on Uniform State

Laws submit this annual report to the West Virginia Legislature. The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its 98th annual meeting July 28 through August 4, 1989. At the meeting four new Acts and amendments to three Acts were recommended for enactment by the states:

The Uniform Pretrial Detention Act; the Uniform Rights of the Terminally Ill Act; the Revised Uniform Commercial Code Article 3 - Negotiable Instruments; the Uniform Commercial Code Article 4A - Funds Transfers; the Amendments to the Uniform Probate Code Article VI, the Uniform Nonprobate Transfers at Death Act and the Uniform TOD Security Registration Act; and the Uniform Foreign - Money Claims Act.

The Acts are summarized as follows:

UNIFORM PRETRIAL DETENTION ACT

This Act permits a defendant charged with a violently committed felony to be confined without bail while waiting for trial. In order for the prosecution to have such a defendant detained, it must move for pretrial detention, and prove certain specific elements pertaining to the likelihood of a successful prosecution, the objective dangerousness to others if the defendant is released, and the lack of an appropriate release program for the defendant. The defendant has a right to counsel and a full hearing. An adverse decision may be reopened upon petition. If detention is ordered, the time confined will be deducted from any sentence imposed.

UNIFORM RIGHTS OF THE TERMINALLY ILL ACT (1989)

This Act provides alternative means for a competent adult to provide instructions to a physician regarding withdrawal of life-sustaining treatment when the individual is suffering the last stages of a terminal illness and is no longer capable of communicating with the physician. The first alternative is a declaration that treatment be withdrawn. Such declarations are commonly known as "living wills." The other alternative is a declaration

appointing another person to make such decisions as a surrogate or attorney-in-fact. These are fully enforceable declarations. The Act, also, provides for family members to consent to the withdrawal of life-sustaining treatment in such a situation in the event an individual has not executed such a declaration. Family members are able to consent in a specific order of priority.

REVISED UNIFORM COMMERCIAL CODE ARTICLE 3 - NEGOTIABLE INSTRUMENTS

The law pertaining to drafts, checks, and notes, and the rules for negotiation of these instruments have been contained in Uniform Commercial Code Article 3 since 1951. It carried forward the earlier Negotiable Instruments Law, promulgated in 1896. These instruments for payment of money or creation of debt are distinguished by the ability to transfer them freely from person to person. They always contain an unconditional promise to pay money and are of two forms, order or bearer instruments. They are negotiated by delivery from one holder to another, and in the case of order instruments, by appropriate endorsement. To encourage free transfer of such instruments and to make sure of an unimpeded market, Article 3 establishes the "holder in due course," who is any holder or possessor of the instrument, receiving it for value in good faith and without knowledge of any defects in it. The holder in due course may obtain payment of the instrument when due, even when it is defective. Revised Article 3 continues these principles in an updated form. The revisions do not change the general character of negotiable instruments, but solve problems that have inevitably arisen in the 38 years since Article 3 was promulgated. For example, under revised Article 3, negotiability is assumed for an instrument, unless there is language on the face of the instrument making it non-negotiable. This contrasts with the original formal and mechanical rules for establishing the character of the instrument. These rules were punitive for any person who made a simple mistake in the drafting of a negotiable instrument. The new Article 3 modernizes the law, hopefully for the next 40 years.

UNIFORM COMMERCIAL CODE ARTICLE 4A -
FUNDS TRANSFER

Article 4A is an entirely new article for the Uniform Commercial Code. It governs transfers of large sums of money between commercial entities, generally by electronic means through the banking system. Consumer transactions are excluded from Article 4A and are subject to federal law under the Electronic Funds Transfer Act of 1978. There are two systems, nationally, that most banks use for large transfers, the Federal Reserve network (Fedwire) and the Clearing House Interbank Payments System (CHIPS). The rules of such networks supersede the rules in Article 4A. Article 4A, otherwise, establishes basic rules governing the payment of large sums of money. Payment begins with payment orders initiated by entities to banks with which these entities have contracts for processing such orders. Successive payment orders are sent from bank to bank until the final one reaches the bank designated to receive the payment on behalf of the entity that is to be paid. When the funds are finally available to the entity at the final receiving bank, the transfer is complete. The banks then settle their accounts by crediting or debiting appropriate accounts. Article 4A is particularly important for establishing which entity or bank is liable in the event something goes wrong with the ordered payment. Generally, the liability falls to the entity responsible for the error. Banks may mitigate liability by establishing commercially reasonable security systems for the benefit of their customers. Article 4A applies mostly to large corporate transfers of money for which electronic transfers are the most efficient.

REVISED UNIFORM PROBATE CODE ARTICLE VI
UNIFORM NONPROBATE TRANSFERS AT DEATH ACT
UNIFORM TOD (TRANSFER-ON-DEATH)
SECURITY REGISTRATION ACT

Article VI of the Uniform Probate Code provides for multiple-party deposit accounts and pay-on-death (POD) clauses applying to such accounts. Multiple-party deposit accounts are accounts owned by more than one person.

They may or may not be owned with right of survivorship between owners. Under Article VI, deposit accounts may be established with POD provisions, which allows the money in the account to be paid to a named beneficiary when the last owner of an account dies. A POD provision is nontestamentary and the money passes to the beneficiary without probate. Revised Article VI updates the law on multiple-party accounts and makes them easier to use. It also adds to the existing multiple-party account provisions, new provisions allowing transfer-on-death (TOD) provisions for investment securities. Stocks, bonds, security accounts, and the like, may contain provisions that permit them to be transferred on the death of the owner to a named beneficiary. Such provisions are nontestamentary and the securities pass to the beneficiary without probate. Revised Article VI, also, is offered as two separate free-standing uniform acts, the Uniform Nonprobate Transfers at Death Act and the Uniform TOD Security Registration Act. Multiple-party deposit accounts and POD provisions are in the first of these two acts, and TOD provisions for investment securities are the subject of the latter.

UNIFORM FOREIGN - MONEY CLAIMS ACT

In the United States, judgments are stated and paid in dollars, notwithstanding the fact that in litigation, arbitration, and other actions pertaining to the allocation of money, a foreign currency may be the better alternative for the establishment of damages or of allocated shares in a fund of money. This Act dissolves the old limitations on acceptance of foreign currency. A litigant can petition to have a lawsuit valued in a foreign currency. If the foreign currency is deemed to be the one most related to the transaction or the legal loss that is the basis of the action, the court may use the foreign currency to establish damages. Foreign currency can also be used to value an arbitration award, and to value what are called in this Act, "distribution proceedings." Because it may be necessary to obtain actual payment of a judgment in dollars, the Act allows conversion from the foreign currency into dollar value at the date the judgment is paid. This date reduces the risk of currency fluctuation for successful litigants.

The West Virginia Commissioners on Uniform State Laws and the Commission on Interstate Cooperation recommend the following Acts for passage by the 1990 Regular Session of the West Virginia Legislature: Life Membership on the Commission on Uniform State Laws; the Uniform Statutory Rule Against Perpetuities; the Uniform Premarital Agreement Act; the Uniform Leases on Personal Property and the Uniform Funds Transfer Act.

The following NCCUSL uniform acts were enacted during the Legislature's 1989 Regular Session: The Uniform Determination of Death Act; the Uniform Federal Lien Registration Act and the Uniform Enforcement of Foreign Judgments Act.

Respectfully submitted this 13th day of February, 1990.

Richard E. Ford,
Chairman,
John L. McClaugherty,
Legislative Chairman,
Frederick P. Stamp, Jr.,
Secretary,
Earl M. Vickers,
Associate Member,
NCCUSL.

The Senate next proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill No. 279, Prohibiting recovery attempts for overpayments from consolidated fund to local government.

On motion of Senator Chafin, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

Appendix D
Responses to Phone Survey of Attorney Organizations

Appendix D
Responses to Phone Survey of Major Attorney Organizations

<u>Organization</u>	<u>President</u>	<u>Question 1</u>	<u>Question 2</u>
Defense Trial Counsel of West Virginia	Stephen R. Crislip	Yes	No
West Virginia Trial Lawyers Association	James C. Peterson	No	No
Mountain State Bar	Cheryl Henderson	No	No
WV State Bar Association	Prof. Forest J. Bowman	Yes	Yes
West Virginia State Bar	D.C. Offutt Jr.	Yes	Yes

Questions

1. Are you familiar with the West Virginia Commission on Uniform State Laws or the National Conference on Uniform State Laws ?
2. Have you or your organization ever been asked for input regarding draft legislation being considered by the National Conference?

Appendix E
Commission Response

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DATE: 8/11/97

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FOR IMMEDIATE DELIVERY TO: Dr. Antonio Jones

FROM: John McClaugherty

SPECIAL INFORMATION: _____

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

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FOR CONFIRMATION OR PROBLEMS, CALL: (304) 340-1359 (W/C/FBL)

APPENDIX E

COMMISSION RESPONSE

The Performance Review of the Commission on Uniform State Laws has been reviewed, and the Commission agrees with the recommendation that its Annual Report be expanded so that a review of the report will outline the various projects under consideration by the National Conference. A copy of the report will be forwarded to each of the bar organizations in the state. The Commission would welcome being listed with a phone number in the State Directory and would appreciate being included in press releases and the legislative newspaper and having Commission stationery.

With respect to the Annual Report, the Commission apologizes for the failure to file the report in 1996. The report had always been prepared by the Advisory Member of the Commission, the Honorable Earl M. Vickers. After Mr. Vickers retired, the function was undertaken by another member of the staff of Legislative Services, and, through inadvertence, the report was simply not prepared for 1996. As soon as the Commission learned of that failure, the report was prepared and filed. Commissioner McClaugherty will prepare the Annual Report in the future.

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