

HOUSE . . . . . No. 122

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**The Commonwealth of Massachusetts**

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COMMISSION ON UNIFORM STATE LAWS, November 1, 1961.

HON. KEVIN H. WHITE, *Secretary of the Commonwealth, State House, Boston, Massachusetts.*

DEAR MR. SECRETARY:— Enclosed herewith please find Report of the Commission on Uniform State Laws and accompanying proposed legislation. It is our understanding that under General Laws, chapter 30, section 33, this Report and proposed legislation should be filed with you on or before the first Wednesday of November, namely, today. The Report and the proposed legislation have been submitted to the Counsel to the Senate, and suggestions made by him are included in the Report.

Sincerely yours,

ROBERT BRAUCHER,  
*Commissioner.*

## RECOMMENDATIONS.

## REPORT OF THE COMMISSION ON UNIFORM STATE LAWS.

*Attendance at National Conference.* — During the past year the members of the Commission have continued to perform the duties laid upon them by section 27 of chapter six of the General Laws by attending the annual meeting of the National Conference of Commissioners on Uniform State Laws and performing the duties assigned to them by that Conference. At its annual meeting in 1960, at which 47 States and other jurisdictions were represented, the Conference approved three new uniform acts, a model act, and amendments to one uniform act and one model act.

*Legislation enacted.* — As in previous years, the Commission continued to take responsibility for reviewing proposals for amendment to the Uniform Commercial Code, chapter 106 of the General Laws, originally enacted by chapter 765 of the acts of 1957, and amended by chapter 542 of the acts of 1958, chapter 580 of the acts of 1959, and chapters 273 and 379 of the acts of 1960. The amount of filing fees to be charged in registries of deeds was changed by chapter 131 of the acts of 1961. House, No. 1344 of 1961, filed by the Attorney General, proposed an amendment to the Code, but was subsequently revised and enacted as chapter 595 of the acts of 1961, inserting a new section 12C in chapter 255 of the General Laws, outside of the Code.

In its 1960 Report the Commission recommended three bills, which were printed as House, Nos. 132, 133 and 134 of 1961. House, No. 132, the Uniform Testamentary Additions to Trusts Act, was withdrawn for reasons stated below. The other two bills, embodying uniform amendments to the Uniform Simultaneous Death Act and the Uniform Acknowledgment Act, were enacted as chapter 253 of the acts of 1961, amending chapter 190A of the General Laws, and chapter 207 of the acts of 1961, amending chapter 222 of the General Laws.

*Uniform Election Laws.* — Acting on a bill filed on the petition of the Legislative Committee of the Massachusetts City Clerks' Committee, the General Court, by chapter 80 of the Resolves of 1961, directed the Commission to study the laws of the several States prescribing residence qualifications for voting for presidential elec-

tors for the purpose of determining what changes in such laws would be required to enable every adult citizen to qualify for such voting and to include the results of the study in this report. The National Conference had initiated such a study early in 1961, and the Massachusetts Commissioners have submitted the Massachusetts Resolve to the responsible committee of the Conference, together with a copy of chapter 582 of the acts of 1961, relating to the same subject. The Commission will report further on this subject after the 1962 Annual Meeting of the Conference.

*The Uniform Commercial Code in Other States.* — The Commissioners have continued to render assistance to groups in other States who were preparing for enactment of the Uniform Commercial Code or for operation under it. In addition to the six States which had previously enacted the Code — Pennsylvania, Massachusetts, Kentucky, Connecticut, New Hampshire and Rhode Island — the following States enacted it at their 1961 legislative sessions: Arkansas, Illinois, New Mexico, Ohio, Oklahoma, Oregon and Wyoming. It is still pending in New Jersey, and plans are going forward for legislative action in 1962 in the few States which have legislative sessions in even-numbered years.

*Review of Uniform Acts not enacted in Massachusetts.* — There are now some 45 uniform acts promulgated by the National Conference and presently recommended for adoption by all jurisdictions as uniform acts but not enacted in Massachusetts. Last year the Commission reported that it was reviewing those acts and that it had decided not to recommend for enactment any of the seventeen promulgated before 1951. The Commission has enlisted the aid of the Massachusetts and Boston Bar Associations in its continuing study of the acts promulgated more recently, and will report the results of that study from time to time.

*Recommendations.* — At the present time the Commission recommends the enactment of one uniform act. The recommendation is discussed below, and a draft of a bill embodying the legislation recommended accompanies this report as Appendix A.

#### UNIFORM TESTAMENTARY ADDITIONS TO TRUST ACT (APPENDIX A).

This act, promulgated in 1960 with the approval of the American Bar Association, deals with what is commonly known as the problem of the "pour-over trust." Many wills leave property to a trust already in existence. The trust may be very long and involved,

but the will is kept simple, since the terms of the trust are not repeated. The validity of such disposition has long been established in Massachusetts, but in many States there is doubt as to the validity of pour-over provisions in the will unless the trust instrument is witnessed and executed as a will. The act was enacted in nine States at 1961 legislative sessions, and at least fifteen other States have enacted legislation of a similar character.

The 1960 report of the Commission, dated November 2, 1960, printed as House, No. 131 of 1961, recommended that the act be enacted to clear up an ambiguity in the prior Massachusetts law as to the effect of an amendment to the trust instrument. Thereafter, on November 9, 1960, the Supreme Judicial Court decided *Second Bank-State Street Trust Co. v. Pinion*, 1960 Mass. Adv. 1121, 170 N. E. 2d 350. The *Pinion* case made it clear that, if the trust includes a substantial amount of property and hence has "independent significance" before the will takes effect, the will can effectively add property to the trust, and that amendments to the trust made after the execution of the will are effective with respect to the property added to the trust by the will. Thus the decision accomplished one of the major objectives of the act.

After consulting with specialists, therefore, the Commission informed the Committee on Legal Affairs of the General Court that the ambiguity in the prior law had been cleared up by the *Pinion* decision and that "accordingly the proposed legislation has become unnecessary." The bill was then referred to the next annual session.

Further study reveals that problems remain. It is not clear when the "independent significance" doctrine will be applied; in some cases it may be held that the trust instrument is "incorporated by reference" into the will, and that subsequent amendments to the trust are ineffective. In particular, there is great uncertainty as to the legal result when the trust instrument is executed before the will but no property or only a small amount of property is given to the trustee. In such cases the effect of an amendment to the trust after the execution of the will is in doubt. A second question relates to amendments to the trust made after the will takes effect, as where the surviving spouse is given the power to change the trust which is necessary to qualify for a marital deduction under the federal estate tax laws.

The proposed act answers these questions, and its enactment is desirable to that end. But Professor A. J. Casner of the Harvard Law School, a leading authority in the field, has suggested a modi-

fication of the third sentence of the first paragraph of the act. As promulgated, that sentence provides for a new and unfamiliar clause to be inserted in wills. Professor Casner suggests that some draftsmen might omit the clause, with such unintended results as failure to qualify for the marital deduction. In addition Professor Casner recommends a change in the saving clause (in section 2 of the bill) to give effect to the intentions of testators dying after the act takes effect, even though the will was executed before the act takes effect. The Commission adopts both of Professor Casner's recommendations.

The Commission therefore recommends that the Uniform Testamentary Additions to Trusts Act, in the form shown in Appendix A, be added to the General Laws as section 3B of chapter 203. The change in the first paragraph of the uniform act affects only the final clause of the third sentence of the first paragraph, and is shown below. Language *italicized* is new language inserted at Professor Casner's suggestion; language in [square brackets] is language deleted from the uniform act as promulgated:

"including any amendments thereto made before *or after* the death of the testator [(regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator]."

The saving clause (section 2 of the bill) is changed as follows:

This act shall take effect on December thirty-first, nineteen hundred and sixty-two, and shall have no effect upon any devise or bequest made by a *testator who dies* prior to said effective date.

ROBERT BRAUCHER,  
WALTER D. MALCOLM,  
EDWARD L. SCHWARTZ,  
*Commissioners on Uniform State Laws.*

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Recommendation of the Commission on Uniform State Laws (House, No. 122).  
Legal Affairs.

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A P P E N D I X A .

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Sixty-Two.

AN ACT MAKING UNIFORM THE LAWS RELATIVE TO TESTAMENTARY  
ADDITIONS TO TRUSTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 203 of the General Laws is hereby  
2 amended by inserting after section 3A thereof the following  
3 new section:—

4 *Section 3B.* A devise or bequest, the validity of which is de-  
5 terminable by the law of this state, may be made by a will to  
6 the trustee or trustees of a trust established or to be established  
7 by the testator or by the testator and some other person or per-  
8 sons or by some other person or persons (including a funded or  
9 unfunded life insurance trust, although the trustor has reserved  
10 any or all rights of ownership of the insurance contracts) if the  
11 trust is identified in the testator's will and its terms are set  
12 forth in a written instrument (other than a will) executed before  
13 or concurrently with the execution of the testator's will or in  
14 the valid last will of a person who has predeceased the testator  
15 (regardless of the existence, size or character of the corpus of  
16 the trust). The devise or bequest shall not be invalid because  
17 the trust is amendable or revocable, or both, or because the  
18 trust was amended after the execution of the will or after the  
19 death of the testator. Unless the testator's will provides other-  
20 wise, the property so devised or bequeathed (a) shall not be  
21 deemed to be held under a testamentary trust of the testator but  
22 shall become a part of the trust to which it is given and (b) shall  
23 be administered and disposed of in accordance with the pro-

24 visions of the instrument or will setting forth the terms of the  
25 trust, including any amendments thereto made before or after  
26 the death of the testator. A revocation or termination of the  
27 trust before the death of the testator shall cause the devise or  
28 bequest to lapse.

29 This section shall be so construed as to effectuate its general  
30 purpose to make uniform the law of those states which enact it  
31 and may be cited as the Uniform Testamentary Additions to  
32 Trusts Act.

1 SECTION 2. This act shall take effect on December thirty-  
2 first, nineteen hundred and sixty-two, and shall have no effect  
3 upon any devise or bequest made by a testator who dies prior  
4 to said effective date.

