

STATE OF HAWAII
Department of the Attorney General



**2005 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION**

**SUBMITTED TO
THE TWENTY-THIRD STATE LEGISLATURE
Regular Session of 2006**

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2005 REPORT OF THE

COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-THIRD
LEGISLATURE:

The Hawaii Commission to Promote Uniform Legislation, the members of which are Hawaii's representatives to the National Conference of Commissioners on Uniform State Laws, respectfully submits this 2005 Report.

I. HISTORY OF THE NATIONAL CONFERENCE OF
COMMISSIONERS ON UNIFORM STATE LAWS (NCCUSL)

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of commissioners "to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states." In that same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August 1892, the first National Conference of Commissioners on Uniform State Laws (commonly referred to as the "NCCUSL" or the "Uniform Law Commissioners") convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state

was participating in the NCCUSL. As it has developed, the NCCUSL is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

II. OPERATION OF THE NCCUSL

A. Financial Support of the NCCUSL.

The NCCUSL, as a state service organization, depends upon state appropriations for its continued operation. All states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the NCCUSL. In addition, each state commission requests an amount to cover its travel to the NCCUSL annual meeting.

The NCCUSL is a unique institution created to consider state law and to determine in which areas of the law uniformity is important. The work of the NCCUSL has been a valuable addition over time to the improvement of state law in a great many subject areas. Included in that work have been acts such as the Uniform Commercial Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Interstate Family Support Act, the Uniform Controlled Substances Act, the Uniform Anatomical Gift Act, the Uniform Unclaimed Property Act, the Uniform Probate Code, and the Model State Administrative Procedure Act, acts which have been adopted uniformly by nearly all the states or which have been heavily utilized by most state legislatures. Even with acts that have not been uniformly adopted, the texts consistently contribute to the improvement of the law and have served as valuable references for the legislatures in their effort to improve the quality of state law.

The procedures of the NCCUSL ensure meticulous consideration of each uniform or model act. The NCCUSL spends a minimum of two years on each draft. Sometimes, the drafting work extends much longer. The drafting work for such large-scale acts as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Land Transactions Act took nearly a decade to complete. No single state has the resources necessary to duplicate this meticulous, careful non-partisan effort. Working together with pooled resources through the NCCUSL, the states can produce and have produced the impressive body of state laws called the Uniform State Laws. Without the NCCUSL, nothing like the existing body of uniform state laws would ever be available to the states.

The NCCUSL also permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. He or she receives compensation only for actual expenses incurred. The NCCUSL estimates that each commissioner devotes approximately 200 hours a year to NCCUSL work, including work on various drafting committees and attendance at the annual meeting. These are hours mainly spent in research and drafting work -- solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts averages about \$6,000,000 per year, at a conservative estimate. The total requested contribution of all the states to the operation of the NCCUSL is \$1,769,800 in fiscal year 2005-2006. The smallest state contribution is \$12,600 and the largest is \$129,700. Hawaii's contribution is \$18,900, which represents an extraordinarily good, cost-effective investment for the citizens of Hawaii. Even a modest use of the work product of the NCCUSL guarantees any state a substantial return on each dollar invested. The State of Hawaii has had one hundred seventeen enactments of uniform acts, amendments to uniform acts, and revised uniform acts. For every dollar invested by each state, it has received very

substantial and valuable services.

The annual budget of the NCCUSL comes to \$2,032,076 for the current fiscal year (July 1 to June 30). Of this amount, \$485,438 goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and editing and personnel costs. About \$373,189 is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$212,564 is spent on the annual meeting. Public education for uniform and model acts costs about \$191,150 and includes contractual services, materials costs, and travel expenses. The remainder of the budget pays general administrative costs.

The American Bar Association makes a yearly contribution to the NCCUSL. For fiscal year 2005-2006, it has contributed \$56,250. The NCCUSL also seeks grants from the federal government and from foundations for specific drafting efforts. The last federal grant was a grant of \$60,000 to fund the drafting effort for the Uniform Environmental Covenants Act.

The Uniform Commercial Code (UCC) is a joint venture between the NCCUSL and the American Law Institute (ALI). The ALI holds the Falk Foundation funds that are allocated to work on the UCC. The original Falk Foundation grant came in the late 1940s for the original development of the UCC. Proceeds from copyright licensing of UCC materials provide revenue to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of NCCUSL and ALI costs is paid from Falk Foundation income.

The NCCUSL will not take money from any source except on the understanding that its drafting work is autonomous. No source may dictate

the contents of any uniform act because of a financial contribution.

By seeking grants for specific drafting projects, the NCCUSL expands the value of every state dollar invested in its work. The states, therefore, are assured of a maximized return for their contributions.

The NCCUSL works efficiently for all the states because individual lawyers are willing to donate time to the uniform law movement, and because it is a genuine cooperative effort of all the states. The NCCUSL seemed like a very good idea to its founders in 1892. They saw nearly insoluble problems resulting from the rapid growth of the United States against confusing patterns of inadequate state law. They were deeply concerned about the evils of centralized government, fearing the unchecked growth of the federal government.

The NCCUSL continues to be a very good idea. The states have chosen to maintain the NCCUSL because it has been useful to their citizens and because it strengthens the states in the federal system of government. Different law in different states continues to be a problem. Either the states solve the problem, or the issues are removed to Congress. Without a state-sponsored, national institution like the NCCUSL, more and more legislative activity would shift from the state capitols to Capitol Hill in Washington, D.C.

B. Creation of Uniform and Model Acts.

The procedures for preparing an act are the result of long experience with the creation of legislation. The NCCUSL maintains a standing committee called the Scope and Program Committee that considers new subject areas of state law for potential uniform or model acts. That committee studies suggestions from many sources, including the organized bar, state government, and private persons. If a subject area cannot be adequately studied by the Scope and Program Committee, it is likely to be

given to a special study committee. Study committees report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the NCCUSL Executive Committee, and to the entire NCCUSL for approval or disapproval, however the case may be.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged, although a few committees work without professional assistance.

Advisors and participating observers are solicited to assist every drafting committee. The American Bar Association appoints official advisors for every committee. Participating observers may come from state government, from organizations with interests and expertise in a subject, and from the ranks of recognized experts in a subject. Advisors and participating observers are invited to work with drafting committees and to contribute comments. They do not make decisions with respect to the final contents of an act. Only the NCCUSL members who compose the drafting committee may do this.

A committee meets according to the needs of the project. A meeting ordinarily begins on Friday morning and finishes by Sunday noon, so as to conflict the least with ordinary working hours. A short act may require one or two committee meetings. Major acts may require a meeting per month for a considerable period of time -- several years, in some instances. A given committee may produce a number of successive drafts, as an act evolves.

At each annual meeting during its working life, each drafting committee must present its work to the whole body of the NCCUSL. The most current draft is read and debated. The entire text of each working draft is actually read aloud -- a reading of a proposed uniform law is not by title

only, but is considered section by section either by section title or word for word -- and debated during proceedings of the committee of the whole. This scrutiny continues from annual meeting to annual meeting until a final draft satisfies the whole body of the commissioners. No act is promulgated without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting and a final reading at a subsequent annual meeting. As noted previously, there is often more than one interim reading and a drafting process that exceeds two years in duration. A draft becomes an official act by a majority vote of the states (one vote to each state). The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

The cost of this process to the states is in travel expenses, paper and publication costs, and meeting costs. Nearly all the services are donated, thereby eliminating the single greatest cost factor. For the states, with their necessary cost consciousness, the system has extraordinary value.

C. Administration of the NCCUSL.

The governing body of the NCCUSL is the NCCUSL Executive Committee, which is composed of the officers, certain ex officio members, and members appointed by the President of the NCCUSL. Certain activities are conducted by standing committees. As mentioned above, the Committee on Scope and Program considers all new subject areas for possible uniform acts. The Legislative Committee superintends the relationships of the NCCUSL to the state legislatures.

A small staff located in Chicago operates the national office of the NCCUSL. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the NCCUSL.

The NCCUSL has consciously limited its staff to prevent accrual of needless administrative costs. The full-time staff numbers only nine people. Included in that number are the Legislative Director and Legal Counsel, the Deputy Legislative Director and Legal Counsel, the Legislative Counsel, the Chief Administrative Officer, and the Communications Officer, who are the only executive staff. The Executive Director's position is part-time, and is traditionally occupied by someone from the law school community. In addition, the NCCUSL contracts for professional services to aid in the drafting effort. These professional reporters, so-called, are engaged at very modest honoraria to work with drafting committees on specific acts. Most often they are law professors with specific expertise in the area of law addressed in the act they draft. The NCCUSL also contracts with professional, independent contractors for part of its public information and educational materials.

The NCCUSL maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the NCCUSL. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an on-going basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

III. ACTIVITIES OF THE HAWAII COMMISSIONERS

A. Membership of the Hawaii Commission to Promote Uniform Legislation.

The Hawaii Commission to Promote Uniform Legislation was originally created by law in 1911. The Commission is placed within the State Department of the Attorney General and, pursuant to section 26-7, Hawaii Revised Statutes, is advisory to the Attorney General and to the Legislature

on matters relating to the promotion of uniform legislation. Pursuant to sections 3-1 and 26-7, Hawaii Revised Statutes, the Commission consists of five members, who are appointed by the Governor, with the advice and consent of the Senate, for staggered terms of four years and until their successors are appointed and qualified. The NCCUSL Constitution requires that each commissioner be a lawyer. A deputy attorney general, assigned by the Attorney General to coordinate the review and preparation of legislative bills, sits with the Commission to provide technical assistance, as necessary, and is recognized as an associate member of Hawaii's delegation to the NCCUSL.

Hawaii's participation, both in terms of appointing uniform law commissioners and contributing funds, is essential. Hawaii benefits from the excellent body of law created for its consideration. The NCCUSL, and all the states, benefit from having Hawaii's direct contribution to the work of the NCCUSL. Hawaii's ideas and experience influence the whole, and the uniform law process is not complete without them. Value contributed returns value, and everybody in every state benefits.

The members of the Hawaii Commission during 2004-2005 were as follows:

- (1) Lani Liu Ewart;
- (2) Elizabeth Kent;
- (3) Hiroshi Sakai;
- (4) Ken H. Takayama; and
- (5) Robert S. Toyofuku

The members of the Hawaii Commission for 2005-2006 are as follows:

- (1) Lani Liu Ewart;
- (2) Peter J. Hamasaki;

- (3) Elizabeth Kent;
- (4) Kevin P. H. Sumida; and
- (5) Ken H. Takayama

Commissioners Sakai and Toyofuku were succeeded by Commissioners Hamasaki and Sumida in May 2005. However, former commissioners Sakai and Toyofuku are NCCUSL Life Members who continue to participate in NCCUSL activities. Upon recommendation of the NCCUSL Executive Committee and by the affirmative vote of two-thirds of the commissioners present at an annual meeting, they were elected as NCCUSL Life Members with the privilege to participate in NCCUSL activities. In addition, a former member of the Commission, John A. Chanin, who now resides in Virginia, is also recognized as a Life Member of the NCCUSL from Hawaii and continues to participate at his own expense in the activities of the NCCUSL. Deputy Attorney General Maurice S. Kato of the Legislative Division has been assigned by the Attorney General to provide staff support for the commissioners and is recognized as an Associate Member of the NCCUSL.

B. NCCUSL Committee Assignments.

The NCCUSL President appoints committees to investigate, study, and, if desirable, draft and review proposed uniform and model acts on subjects designated by the Executive Committee. Committee appointments are selectively made -- not all members of the NCCUSL have the privilege of serving on a committee. The commissioners are assigned committees and contribute to the work relating to various uniform act committees as follows:

LANI LIU EWART

In order to provide liaison between the several special committees and the NCCUSL's Executive Committee, the work of the NCCUSL is

divided into six divisions with special committees assigned to the divisions. One of the six divisions, Division F, was chaired by Commissioner Lani Liu Ewart in 2004-2005, for which she was assigned Standby Committees to Revise Uniform Commercial Code, Article 2, Sales, and Article 2A, Leases, on Uniform Environmental Covenants Act, to Prepare Amendments to Uniform Interstate Family Support Act, on Uniform Real Property Electronic Recording Act, on Uniform Residential Mortgage Satisfaction Act and to Revise Uniform Securities Act; the Study Committees to Revise Uniform Conflicts of Laws-Limitations Act and on Internet Private Law; Drafting Committees on Uniform Assignment of Rents Act and to Prepare Amendments to Uniform Common Interest Ownership Act; Special Committee to Enhance Payment of State Dues and Expenses of Commissioners; Joint Editorial Board for Uniform Real Property Acts; and the Committee on Liaison with the American Bar Association.

For 2005-2006, she will continue to chair Division F. As the chair of Division F, she is an ex officio member of the following committees:

Standby Committees:

- Uniform Assignment of Rents Act
- to Revise Uniform Commercial Code Article 2, Sales, and Article 2A, Leases
- to Consider Adding Divisions to Model Entity Transactions Act
- on Uniform Environmental Covenants Act
- to Prepare Amendments to Uniform Interstate Family Support Act
- on Uniform Real Property Electronic Recording Act
- on Uniform Residential Mortgage Satisfaction Act
- on Uniform Securities Act.

Study Committees:

- on Bank Deposits Act
- on Internet Private Law
- on Omnibus Business Organization Code

Drafting Committees:

- on Registered Agents and Annual Filing Requirements

-- on Uniform Statutory Trust Act

Other Committees:

- Committee on Liaison with American Indian Tribes and Nations
- Joint Editorial Board for Uniform Real Property Acts

Commissioner Ewart attended four committee meetings in 2005: (1) Drafting Committee to Prepare Amendments to Uniform Common Interest Ownership Act, from March 4-6, 2005, in Chicago, Illinois; (2) Drafting Committee on Uniform Assignment of Rents Act, from April 14-17, 2005, in Philadelphia, Pennsylvania; (3) Committee on Liaison with American Indian Tribes and Nations, from October 27-30, 2005, in Mesa, Arizona; and (4) Drafting Committee on Uniform Statutory Trust Act, on December 1-4, 2005, in Baltimore, Maryland.

Commissioner Ewart participated in numerous conference calls and e-mail relating to the work on the following committees: Uniform Environmental Covenants Act, Uniform Assignment of Rents Act, Internet Private Law, Bank Deposits Act, Liaison with the American Bar Association and Joint Editorial Board for Uniform Real Property Acts. She responded to questions relating to existing uniform laws and proposed uniform acts, including the Uniform Trust Act, Uniform Real Property Electronic Recording Act, and the Uniform Commercial Code. She also spent time in the preparation of division chair reports to the NCCUSL Executive Committee.

PETER J. HAMASAKI

Commissioner Peter J. Hamasaki was appointed as a commissioner on May 19, 2005. For 2005-2006, he served on and will continue to serve on the Drafting Committee on Registered Agents and Annual Filing Requirements Act. Commissioner Hamasaki attended one meeting of the Drafting Committee on Registered Agents and Annual Filing Requirements Act on November 4-5, 2005, in Chicago, Illinois.

ELIZABETH KENT

In 2004-2005, Commissioner Elizabeth Kent served as a member of the Standby Committee on Uniform Mediation Act and a member of the Study Committee on E-Government.

For 2005-2006, Commissioner Kent will continue to be a member of the Standby Committee on Uniform Mediation Act and will serve as a member of the Study Committee on Collaborative Law.

Commissioner Kent authored an article for the November Hawaii State Bar Association Journal on the Revised Uniform Arbitration Act and an article for the December Journal on the Uniform Mediation Act, entitled "Privacy and Confidentiality in Mediation." In addition, she participated in a meeting in January 2005, on the Revised Uniform Arbitration Act and participated in six informational meetings in November 2005 on the Uniform Mediation Act.

KEVIN P. H. SUMIDA

Commissioner Kevin P. H. Sumida was appointed as a commissioner on May 19, 2005. In 2005-2006, he served on the Uniform Agricultural and Agricultural Related Cooperatives Act and will continue to serve on that committee, which is now named the Drafting Committee on Uniform Cooperative Association Act. Commissioner Sumida attended one meeting on the Drafting Committee on Uniform Cooperative Association Act on October 21-23, 2005, in Chicago, Illinois. Commissioner Sumida has provided input into several acts in the drafting stage based upon information obtained at the annual meeting, including a contribution to the Drafting Committee on Uniform Power of Attorney Act.

KEN H. TAKAYAMA

For 2004-2005, Commissioner Ken H. Takayama served as Hawaii's liaison member of the Legislative Committee. He also served as a member of three special committees, the Committee of Legislative Counsel, the Study Committee on Misuse of Genetic Information, and the Standby Committee to Prepare Amendments to the Uniform Money Services Act.

For 2005-2006, he will serve as a member on the Drafting Committee on Misuse of Genetic Information in Employment and Insurance, the Study Committee on Qualifications of Medical Examiners, and the Standby Committee to Prepare Amendments on the Money Services Act. He will also continue to serve as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Counsel.

In 2005, Commissioner Takayama participated in three conference calls as a member of the Study Committee on Qualifications of Medical Examiners.

ROBERT S. TOYOFUKU

The Legislative Committee was created as a standing committee to encourage the development of legislative programs in each state to accomplish the introduction and passage of bills to enact uniform and model acts of the NCCUSL. The activities of the Legislative Committee are directed by the Chair and the Legislative Council. Each state and the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands are represented by a commissioner designated as the liaison member for that jurisdiction who is responsible for the legislative program in that commissioner's home jurisdiction. The represented jurisdictions are grouped into ten regions. A member of the Legislative Council is assigned to each region, with the responsibility to oversee the legislative activities in the states in the assigned region.

For 2004-2005, Commissioner Robert S. Toyofuku served as a council member of the Legislative Committee and will continue to serve as such during 2005-2006. He is the Legislative Committee council member who oversees the legislative activities in the states in the Western Region (Alaska, California, Hawaii, Nevada, Oregon, and Washington). He also served as a member of the Study Committee on Interstate Depositions.

On November 4-6, 2005, NCCUSL Life Member Toyofuku attended a meeting of the Legislative Committee in Chicago, Illinois.

NCCUSL Life Member Toyofuku spent time meeting with opponents of the Revised Uniform Arbitration Act and set up a meeting with bar association members to meet Vermont Commissioner Richard Cassidy on the Revised Uniform Arbitration Act. He also met with State of Hawaii department heads to discuss various other uniform acts.

HIROSHI SAKAI

During 2004-2005, Commissioner Hiroshi Sakai served as a member of four committees of the NCCUSL, the Drafting Committee on Uniform Agricultural and Agricultural Related Cooperatives Act, the Drafting Committee on Uniform Consumer Debt Counseling Act, the Standby Committee on Uniform Environmental Covenants Act, and the Drafting Committee to Prepare Amendments to Uniform Common Interest Ownership Act.

For 2005-2006, NCCUSL Life Member Sakai continues to serve on the Drafting Committee on Cooperative Association Act (formerly Drafting Committee on Uniform Agricultural and Agricultural Related Cooperatives Act, the Drafting Committee to Prepare Amendments to Uniform Common Interest Ownership Act, Standby Committee on Uniform Debt-Management

Services Act (formerly Drafting Committee on Uniform Consumer Debt Counseling Act), Standby Committee on Uniform Environmental Covenants Act (formerly Drafting Committee on Uniform Environmental Covenants Act).

Commissioner Sakai attended five meetings in 2005: (1) Drafting Committee on Consumer Debt Counseling Act on January 21-23, 2005, in Chicago, Illinois; (2) Meeting of Drafting committee on March 4-6, 2005, in Chicago, Illinois; (3) Meeting of Drafting Committee on April 9-10, 2005, in Chicago, Illinois; (4) Meeting of Drafting Committee on Agricultural and Agricultural Related Cooperatives on April 15-27, 2005, at Philadelphia, Pennsylvania; and (5) Drafting Committee on Amendments to Uniform Common Interest Ownership Act on October 28-30, 2005, at Mesa, Arizona.

Life Member Sakai also met with Laurence Lau, Deputy Director of Health for Environmental Health Administration, State of Hawaii, and Davis Bernstein, VRP & Brownfields Program Manager, Hazard Evaluation and Emergency Response Office, Hawaii Department of Health, to review material presented by the staff, to answer questions, to help make changes to the draft bill relative to local statutes, to present to the Hawaii State Legislature during the regular session of 2006, and arranged to get information from the national headquarters and from the NCCUSL Chairman for the Drafting Committee on Uniform Environmental Covenants Act, William R. Breetz, Jr., of Connecticut, and Michael R. Kerr, NCCUSL Deputy Executive Director.

C. Meetings Attended.

The commissioners attended the meetings of their respective NCCUSL committees (as listed in the previous section), which are scheduled by the committee chairs as needed and which are usually held on the mainland. In addition, the NCCUSL met in its 114th year in Pittsburgh,

Pennsylvania, from July 22-29, 2005.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and former Hawaii Commission members and NCCUSL Life Members Sakai, Toyofuku, and Chanin attended the 2005 annual meeting. During the sessions of the annual meeting of the NCCUSL, the commissioners who are members of committees meet separately with their committees and, if scheduled, appear with their committees on the dais in the main meeting room during the reading of draft uniform acts.



Elizabeth Kent, Robert S. Toyofuku, Ken Takayama, Lani Liu Ewart, Peter Hamasaki, and Kevin Sumida are photographed during a break in the annual meeting at a rare moment when the commissioners were together at the Hawaii delegation's table at the same time.

Commissioners who attend an NCCUSL annual meeting for the first time are introduced to the commissioners from the other states. Commissioner Ewart introduced Commissioner Hamasaki and Commissioner Takayama introduced Commissioner Sumida.



After consideration of the latest drafts, the NCCUSL adopted four new uniform acts and one model act: the Uniform Debt-Management Services Act, the Uniform Certificate of Title Act, the Uniform Assignment of Rents Act, the Uniform Foreign Country Money Judgments Recognition Act, and the Model Entity Transactions Act.

Further information on the NCCUSL and copies of the approved final drafts of the uniform acts can be found at its website, <http://www.nccusl.org/Update/>.

D. Legislative Appearances by the Hawaii Commissioners.

In addition to serving as the NCCUSL Legislative Council member for the Western Region, Commissioner Toyofuku served in 2004-2005 as the Commission's liaison to the Hawaii State Legislature. The Commission to Promote Uniform Legislation is advisory to the State Legislature, as well as to the Attorney General, and stands ready to assist the Legislature in providing information on any uniform act that the Legislature may be considering for enactment. Consequently, the Hawaii commissioners, upon notification by Commissioner Toyofuku of scheduled public hearings and as assigned by Chairman Ewart, have testified before the committees of the Legislature when public hearings have been held on bills to enact uniform laws.

During the regular session of 2005, Commissioner Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Securities Act and the Uniform Environmental Covenants Act and a resolution for a sunrise review of the Uniform Athlete Agents Act. He spent time at the Legislature meeting with various legislators regarding NCCUSL related bills. He also prepared testimony and testified on before various Senate and House Committees.

Commissioners Ewart, Kent, Takayama, and Sakai also spent time attending meetings, making telephone calls, reviewing material and preparing supporting testimony and making various appearances on behalf of the Commission at the Legislature. During a meeting held on November 28, 2005, the Commission, by motion unanimously carried, specifically

authorized Life Members Sakai and Toyofuku to represent the Commission before the Legislature.

IV. UNIFORM ACTS ENACTED IN HAWAII

The State of Hawaii has supported the NCCUSL not only by sending a delegation of commissioners to the NCCUSL but also by enacting the uniform acts adopted by the NCCUSL. However, as with other statutes, the process of review and amendment of uniform acts is an ongoing, never-ending process that responds to changing circumstances and needs of our society.

A. Uniform Acts Introduced for Enactment in 2005.

During the regular session of 2005, bills were introduced to enact the following uniform acts: (1) Uniform Securities Act; and (2) the Uniform Environmental Covenants Act. In addition, a resolution was introduced for a sunrise review of the Uniform Athlete Agents Act. Of these, none passed.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the sixty-two original, amended, or revised uniform acts enacted in Hawaii, either as a whole, in a substantially similar version, or in a modified version. The table also lists the references to the Hawaii Revised Statutes where the uniform acts or their similar or modified versions may be found. Some of the listed uniform acts, such as the Uniform Criminal Extradition Act, have been superseded by other uniform acts adopted by the National Conference after enactment in Hawaii. A review of the superseding uniform acts should be done on an ongoing basis for the eventual updating of the Hawaii Revised Statutes by enactment of the superseding uniform acts.

V. A SUMMARY OF NEW UNIFORM ACTS

During the 2005 annual meeting, the NCCUSL considered and adopted four new or amended uniform acts and one model act. These acts are briefly described below, based on summaries prepared by John M. McCabe, Esq., Legislative Director and Legal Counsel of the NCCUSL.

A. Uniform Assignment of Rents Act (UARA).

Real estate law generally does not provide a consistent creditor's right to rents when a debtor on a real estate loan on property with tenants then defaults on payment. Creditors normally take an assignment of rents upon default as part of the credit transaction, but enforceability of such assignments and their priority over other creditors is often in doubt. The Uniform Assignment of Rents Act seeks to remedy this problem by establishing a comprehensive statutory model for the creation, perfection, and enforcement of a security interest in rents. An assignment of rents creates a security interest in the rents that may be perfected by a filing in the appropriate real estate records. Perfection establishes priority in collection of the rents over competing creditors. Tenants may be required, upon specified notice, to pay rents directly to the assignee as a means of enforcement of the security interest. A receiver may be appointed in the event the assignee can show that direct enforcement is insecure.

B. Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA).

This act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Recognition in an American state court is a step towards enforcement of the judgment against assets of the judgment

debtor. This revision continues the basic policies and language of the 1962 Act; the main purpose of this modest revision is to correct and clarify gaps in the 1962 Act revealed in the case law. For example, the 2005 Act provides that a petitioner for recognition has the burden of proving that the judgment is entitled to recognition under the standards of the act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. Burdens of proof were not addressed in the 1962 Act. The 2005 Act has statutes of limitation provisions not found in the 1962 Act at all. The result is a more comprehensive act and better response to the conditions of international trade.

C. Uniform Debt-Management Services Act (UDMSA).

The consumer debt management industry has taken many forms over the time since its development in the 1950s. The industry has had a checkered past, with frequent accusations of abuse. The interest in debt counseling and management, however, has been dramatically escalated by the bankruptcy reform legislation passed by Congress in 2005. It mandates counseling by a private agency before an individual may enter into bankruptcy. The Uniform Debt-Management Services Act regulates debt-management companies by requiring them to register with the state. To obtain a certificate of registration, a provider must supply information about itself, must obtain insurance against employee dishonesty, and must post a surety bond to safeguard any money that it receives from individuals for payment of creditors. The act also regulates interaction with consumers, including steps to be taken before entering an agreement with an individual, the content of an agreement (including limitations on the fees that may be charged), and provisions concerning the performance and termination of agreements. Finally, the act provides for enforcement both by a public authority and by private individuals, including rule-making power on the part

of the administrator and recovery of minimum, actual, and, in appropriate cases, punitive damages in private enforcement actions.

D. Uniform Certificate of Title Act (UCOTA).

Ownership of motor vehicles is dependent upon registration of motor vehicle titles in every state. Not only ownership rights, but the rights of secured creditors are dependent upon these registrations. A secured creditor with a security interest in a motor vehicle perfects that interest in the title registration records. Though the buying, selling, financing, and owning of motor vehicles is clearly interstate in scope, the law providing for registration of certificates of title for motor vehicles is not uniform from state to state. The Uniform Certificate of Title Act is intended to promote uniformity of certificate of title law. This is significant now because the law of secured transactions, under which motor vehicles are financed, is uniform. The uniform act provides basic procedures for registering certificates of title for motor vehicles. It is designed to incorporate electronic registrations of title. It is also designed to incorporate electronic title searches for motor vehicles. While this Act does not cover watercraft or premanufactured homes, nor does it attempt to harmonize state “lemon laws” or title branding systems, it is intended to enable state coordination with federal initiatives to prevent title and odometer fraud. By providing for improved administrative rules and remedies governing title issues, creating better and more consistent data flows and information, and providing increased uniformity in the law, the act will make certificates of title more meaningful and useful for all parties. The resulting increased integrity of the title system will benefit all involved.

E. Model Entity Transactions Act (META).

The Model Entity Transactions Act provides procedures for mergers, conversions, interest exchanges, divisions, and domestications of business and nonprofit entities, including partnerships, limited partnerships, limited liability companies and corporations. Cross entity transactions of these kinds are made more universally possible. The objective is to accomplish such a transaction with appropriate approvals without having to dissolve an entity and without extinguishing any obligations owed by preceding entities in the process. This is a model act because it must be tailored in each enacting state to tie existing entity statutes together. It was initially completed in 2004. Division of entities was added in 2005.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2006

The Hawaii Commission to Promote Uniform Legislation annually selects uniform acts that have not yet been enacted in Hawaii and recommends the enactment of those selected uniform acts. However, the Commission's selection is based in part on practical and logistical considerations and the number of uniform acts recommended for enactment in any legislative session is not intended to imply that other uniform acts should not be considered. The Commission stands ready to provide information and support on any uniform act that the Legislature may have before it for consideration.

For the regular session of 2006, the Commission recommends enactment of the Uniform Athlete Agents Act (pending waiver of the Auditor's sunrise review) and the Uniform Environmental Covenants Act. These acts are summarized below:

A. Uniform Athlete Agents Act.

The Uniform Athlete Agents Act (UAAA) provides for the uniform registration, certification, and background check of sports agents seeking to represent student athletes who are or may be eligible to participate in intercollegiate sports, imposes specified contract terms on these agreements to the benefit of student athletes, and provides educational institutions with a right to notice along with a civil cause of action for damages resulting from a breach of specified duties.

B. Uniform Environmental Covenants Act.

This new uniform act approved in 2003 creates an interest in real estate called an "environmental covenant" that assures a plan of rehabilitation for contaminated real property (brownfields) and control of use that may be separately conveyed to and enforced by a relevant third person called a holder. An underlying plan between state or federal government and landowner for "remediation" of the property must be in place for an environmental covenant to be created and conveyed. The ultimate objective of this act is to allow contaminated property to be returned to those uses consistent with prescribed clean-up, essentially making them marketable. The act provides for the creating of such a covenant, its termination when appropriate, priority over other real estate interests and enforcement over the time the covenant is in place. An environmental covenant is perpetual unless a specific term is prescribed in the instrument creating it. The interest will be recorded in the real estate records.

VII. CONCLUSION

The Hawaii Commission to Promote Uniform Legislation offers its assistance in obtaining information or advice regarding the uniform acts recommended for consideration, or any other uniform act adopted by the

NCCUSL. The Commission wishes to express its appreciation for the interest in and support of the Commission's efforts to promote uniform legislation that have been received from the Governor, the Attorney General, and the Legislature.

Respectfully submitted,

COMMISSION TO PROMOTE UNIFORM
LEGISLATION

By: Lani L. Ewart
LANI L. EWART
Chairman

TABLE OF
UNIFORM ACTS ENACTED IN HAWAII

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
1. Uniform Anatomical Gift Act (1968)(1987)	Part I, Chapter 327
2. Uniform Arbitration Act (1956)(2000)	Chapter 658A
3. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
4. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
5. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
6. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
7. Uniform Commercial Code Article 1 – General Provisions (2001)	Article 1, Chapter 490
8. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
9. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
10. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490
11. Uniform Commercial Code Article 4A -- Funds Transfer (1989)	Article 4A, Chapter 490
12. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
13. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)
14. Uniform Commercial Code Article 7 -- Documents of Title (2003)	Article 7, Chapter 490
15. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)	Article 8, Chapter 490
16. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999)	Article 9, Chapter 490
17. Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
18. Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
19. Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
20. Uniform Custodial Trust Act (1987)	Chapter 554B
21. Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
22. Uniform Determination of Death Act (1978)(1980)	§ 327C-1 (Substantially similar definition)
23. Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
24. Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510
25. Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
26. Uniform Durable Power of Attorney	Chapter 551D

	Act (1979)(1987)	
27.	Uniform Electronic Transactions Act (1999)	Chapter 489E
28.	Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
29.	Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
30.	Uniform Fiduciaries Act (1922)	Chapter 556
31.	Uniform Foreign-Money Claims (1989)	Chapter 658B
32.	Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
33.	Uniform Fraudulent Transfer Act (1984)	Chapter 651C
34.	Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
35.	Uniform Health-Care Decisions Act (Modified)	Chapter 327E
36.	Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
37.	Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B
38.	Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
39. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
40. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
41. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
42. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
43. Uniform Parentage Act (1973)	Chapter 584
44. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
45. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
46. Uniform Premarital Agreement Act (1983)	Chapter 572D
47. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
48. Uniform Probate Code (1969)(1975)(1982)(1987)(1989) (1990)(1991)(1998)	Chapter 560
49. Uniform Prudent Investor Act (1994)	Chapter 554C
50. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
51. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
52. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
53. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
54. Uniform Status of Convicted Persons Act (1964)	Chapter 831
55. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525
56. Uniform Testamentary Additions to Trusts Act (1960)(1961) (Uniform Probate Code § 2-511 (1991))	§ 560:2-511
57. Uniform Trade Secrets Act (1979)(1985)	Chapter 482B
58. Uniform Transfer-on-Death (TOD) Security Registration Act (1998)	Chapter 539
59. Uniform Transfers to Minors Act (1983)(1986)	Chapter 553A
60. Uniform Trustees' Powers Act (1964)	Chapter 554A
61. Uniform Unclaimed Property Act (1981)	Part I, Chapter 523A
62. Uniform Unincorporated Nonprofit Association Act (1992)(1996)	Chapter 429