

STATE OF HAWAII
Department of the Attorney General



**2006 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION**

**SUBMITTED TO
THE TWENTY-FOURTH STATE LEGISLATURE
Regular Session of 2007**

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2006 REPORT OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-FOURTH
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 2006 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 \$1,833,100 in fiscal year 2006-2007. The smallest state contribution is \$16,500 and the largest is \$131,500. Hawaii's contribution is \$19,500, 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 nineteen 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 \$2,446,779 for the current fiscal year (July 1 to June 30). Of this amount, \$413,214 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 \$583,074 is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$286,240 is spent on the annual meeting. Public education for uniform and model acts costs about \$217,529 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 2006-2007, it has contributed \$25,000. 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 thirteen people. Included in that number are the Executive Director, the Chief Administrative Officer, the Legislative Director, the Legal Counsel, three Legislative Counsel, and the Communications Officer, who are the only executive staff. The Executive Director's position was part-time, traditionally occupied by someone from the law school community, but is a full-time position beginning in January 2007. 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 2005-2006 were as follows:

- (1) Lani Liu Ewart;
- (2) Peter Hamasaki;
- (3) Elizabeth Kent;
- (4) Kevin Sumida; and
- (5) Ken H. Takayama

The members of the Hawaii Commission for 2006-2007 will remain the same.

Former commissioners Hiroshi Sakai and Robert S. 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. 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 2005-2006, for which she was assigned:

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

For 2006-2007, 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
- on Uniform Real Property Electronic Recording Act
- to Revise Uniform Securities Act.
- on Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings
- on Uniform Residential Mortgage Satisfaction Act

Study Committees:

- on Bank Deposits Act
- on Notice and Repair of Construction Defects

Drafting Committees:

- on a Uniform Statutory Trust Entity Act
- on a Certification of Unsworn Foreign Declarations Act

Other Committees:

- Committee on Liaison with American Indian Tribes and Nations
- Joint Editorial Board for Uniform Real Property Acts
- Committee to Harmonize North American Law with Regard to the Assignment of Receivables in International Trade Convention

Commissioner Ewart is also a Liaison Member of the Uniform Law Foundation Trustees.

Commissioner Ewart attended three committee meetings in 2006: (1) Study Committee on an Omnibus Business Organizations Code, from January 20-23, 2006, in Austin, Texas; (2) Drafting Committee on Uniform Statutory Trust Act, on April 20-23, 2006, in Detroit, Michigan; and (3) Drafting Committee on Uniform Statutory Trust Entity Act, on December 1-3, 2006, in Chicago, Illinois. She also participated in a meeting by conference call on the Standby Committee on Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings on March 16, 2006.

PETER J. HAMASAKI

For 2005-2006, Commissioner Peter J. Hamasaki served on the Drafting Committee on Registered Agents and Annual Filing Requirements Act.

For 2006-2007, Commissioner Hamasaki will serve on the Standby Committee on Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings.

On March 16, 2006, Commissioner Hamasaki participated in a meeting by conference call on the Standby Committee on Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings.

ELIZABETH KENT

In 2005-2006, Commissioner Kent served as a member of the Standby Committee on Uniform Mediation Act and as a member of the Study Committee on Collaborative Law.

For 2006-2007, Commissioner Kent will serve as a member of the

Drafting Committee on a Collaborative Law Act.

Commissioner Kent also helped plan the forum "What Mediation Users Have to Say About Mediation and What Mediators Should Do About it," sponsored by the University of Hawaii Program for Conflict Resolution and the Mediation Center of the Pacific, Inc.

KEVIN P. H. SUMIDA

In 2005-2006, Commissioner Sumida served on the Drafting Committee on Uniform Cooperative Association Act.

For 2006-2007, he will continue to serve as a member of the Drafting Committee on a Uniform Cooperative Association Act as well as on the Drafting Committee on a Certification of Unsworn Foreign Declarations Act.

Commissioner Sumida attended two meetings of the Drafting Committee on a Uniform Cooperative Association Act on February 3-5, 2006 in Dallas Texas; and on December 1-3, 2006, in Chicago, Illinois.

KEN H. TAKAYAMA

In 2005-2006, Commissioner Takayama served 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 also served as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Counsel.

For 2006-2007, he will continue to serve as a member of the Drafting Committee on a Misuse of Genetic Information in Employment and Insurance Act as well as a Subcommittee of the Drafting Committee on a

Misuse of Genetic Information in Employment and Insurance Act. He will also serve as a member of the following committees: Study Committee on DNA Evidence, Study Committee on the Regulation of Medical Examiners, Committee on Membership and Attendance. 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.

Commissioner Takayama attended two meetings for the Drafting Committee on Misuse of Genetic Information on February 10-11, 2006, in Chicago, Illinois, and on September 8-9, 2006, in Washington, D.C.

Commissioner Takayama also spent time on conference calls and on preparation for meetings of the Study Committee on Regulation of Medical Examiners, the Drafting Committee on Misuse of Genetic Information, and the Study Committee on DNA Evidence.

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 2005-2006, Life Member Robert S. Toyofuku served as a

member of the Legislative Council and will continue to serve as such during 2006-2007. 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 17-19, 2006, NCCUSL Life Member Toyofuku attended a meeting of the Legislative Committee in Chicago, Illinois.

HIROSHI SAKAI

During 2005-2006, NCCUSL Life Member Hiroshi Sakai served 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).

For 2006-2007, Life Member Sakai will continue to serve on the Drafting Committee on a Uniform Cooperative Association Act, the Standby Committee on Uniform Debt-Management Services Act, and the Standby Committee on Uniform Environmental Covenants Act. He will also serve on the Drafting Committee to Amend Uniform Common Interest Ownership Act.

In 2006, Life Member Sakai attended four meetings of the committees as follows: (1) Uniform Cooperative Association Act and (2) the Uniform Common Interest Ownership Act, both on February 3-5, 2006, in Dallas, Texas; (3) the Uniform Common Interest Ownership Act, in October 13-15, 2006, in Chicago, Illinois; and (4) the Uniform Cooperative Association Act, on December 1-3, 2006, in Chicago, Illinois.

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 115th year in Hilton Head, South Carolina, from July 7-14, 2006.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and former Hawaii Commission members and NCCUSL Life Members Sakai and Toyofuku attended the 2006 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.

During the 2006 annual meeting, Life Member Robert Toyofuku served as Chairman of the Committee of the Whole for Consideration of the Uniform Interstate Depositions and Discovery of Documents Act.

After consideration of the latest drafts, the NCCUSL approved seven new uniform acts and one model act: the Uniform Anatomical Gift Act (2006), the Uniform Child Abduction Prevention Act, the Uniform Emergency Volunteer Health Practitioners Act, the Uniform Limited Liability Company Act, the Uniform Power of Attorney Act, the Uniform Prudent Management of Institutional Funds Act, the Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act, and the Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings.

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 2005-2006 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 Takayama 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 2006, Commissioner Takayama and Life Member 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. They spent time at the Legislature meeting with various legislators regarding NCCUSL related bills. They, together with the other commissioners, also prepared testimony and testified before various Senate and House Committees.

Life Member Hiroshi Sakai spent time testifying at the Legislature and responding to questions from the Department of Health on H.B. No. 1706, Relating to the Uniform Environmental Covenants Act.

Life Member Sakai provided written testimony and appeared before various committees on the Uniform Environmental Covenants Act on January 31, 2006, February 9, 2006, and March 16, 2006.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and Life Members Sakai and Toyofuku 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. Life Members Sakai and Toyofuku are specifically authorized by the Commission 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 2006.

During the regular session of 2006, bills were introduced to enact the following uniform acts: (1) Uniform Athlete Agents Act; (2) the Uniform Environmental Covenants Act; and (3) the Uniform Securities Act. In addition, a resolution was introduced for a sunrise review of the Uniform Athlete Agents Act. Of these, the Uniform Environmental Covenants Act was approved by the Governor on July 6, 2006 as Act 279; the Uniform Securities Act was approved by the Governor as Act 229 on June 22, 2006; and the Concurrent Resolution Requesting the Auditor to Analyze the Probable Effects of the Proposed Regulation of Athlete Agents and Assess Whether its Enactment is Consistent with State Policy was adopted by the Legislature.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the sixty-three 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 2006 annual meeting, the NCCUSL considered and adopted seven 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 Anatomical Gift Act (2006).

The Uniform Anatomical Gift Act (2006) (UAGA 2006) revises the earlier 1968 and 1987 Uniform Acts, which are the basis for organ donation throughout the United States. UAGA 2006 is an important update to reflect the current system for allocations of cadaver organs for transplant purposes. It makes it easier to make a document of gift, particularly as provided on drivers' licenses. It creates a power in certain individuals, such as a holder of a health care power of attorney, to authorize an anatomical gift on behalf of an incapacitated person, before death actually occurs. It expands the list of those who may make an anatomical gift after an individual dies, when the individual has not executed a document of gift. It makes it clear that an

anatomical gift that does not specify the donees of organs goes to a recognized transplant organization responsible for allocating organs. It accommodates the use of donor registries upon which a potential donor may put a document of gift for notice purposes. It more clearly provides for a document of refusal if an individual does not want organs donated. There are criminal penalties for misrepresentation of a document of gift for the purposes of selling organs or tissue. The Act attempts to resolve ambiguity and conflict between anatomical gifts and "Do Not Resuscitate" instructions. Without changing the basic concept that an individual may execute a document of gift to donate organs, UAGA 2006 makes the Act more usable than the earlier acts are currently.

B. Uniform Child Abduction Prevention Act.

The Uniform Child Abduction Prevention Act (UCAPA) authorizes a proceeding in a court between contestants in a child custody dispute during which the court considers the probability that a contestant will abduct a child to another state or foreign jurisdiction. Upon a finding that an abduction is highly probable, the court may issue orders as necessary to prevent that abduction. The court hears evidence respecting the risk of abduction, based upon statutorily provided risk factors: previous abductions or attempts to abduct; threats by a contestant respecting abduction; abuse of the child; domestic violence; negligence; or, refusal to obey an existing child-custody order. There are further risk factors if the anticipated abduction is to a foreign country, i.e., the country is not a party to the Hague Convention on International Child Abduction. Standing to bring such a proceeding broadly includes the court itself, a contestant in a child-custody proceeding, a prosecutor or a public attorney. UCAPA relies upon the jurisdictional rules of the Uniform Child Custody Jurisdiction and Enforcement Act.

C. Uniform Emergency Volunteer Health Practitioners Act.

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) provides a state with a procedure for recognizing another state's licenses for healthcare practitioners who volunteer to provide assistance for the duration of an emergency requiring substantial healthcare assistance. UEVHPA was prompted by the difficulties during the 2005 hurricane season on the gulf coast. Many healthcare practitioners (doctors, nurses, veterinarians, for example) from other states volunteered services, but were denied the opportunity or were delayed because they were not initially licensed in the disaster states. Federal provisions for interstate cooperation do not reach to most private practitioners. UEVHPA calls for the creation of a registration system which out-of-state practitioners may use either before or during a disaster. The system may coincide with existing federal/state systems. Upon registration, practitioners are expressly allowed to contribute their professional skills to existing organized disaster efforts. The effect of the act should be to ease the utilization of out-of-state practitioners when a state needs them the most.

D. Uniform Limited Liability Company Act (2006).

The Uniform Limited Liability Company Act (2006) (ULLCA 2006) replaces the Uniform Act of 1996. A limited liability company (LLC) is an entity that shares the limitation of liability characteristic of a corporation with partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. Like a partnership, a limited liability company does not pay federal income tax on its profits. Its distributions of income to members are taxed as their income. This characteristic has made limited liability companies very popular throughout the U.S. Like the 1996 Act, ULLCA 2006 authorizes the filing of a certificate of registration to create an LLC. The terms of the ULLCA 2006, including fiduciary obligations and

contractual obligations, govern the relationships between members and between members and managers, if there are designated managers. Most of the rules, as in the 1996 Act, are default rules. Express provisions of the operating agreement prevail over most statutory rules. These are some of the changes the ULLCA 2006 makes over the 1996 Act: the 2006 Act leaves the designation of a manager-managed LLC to the terms of the agreement rather than the certificate of registration; electronic records and signatures are recognized; the standard of care becomes ordinary care subject to the business judgment rule; there is the ability to certificate member transferable interests for the purpose of free transfer as investment securities; it is possible to eliminate the duty of loyalty or duty of care in an agreement, so long as it is not “manifestly unreasonable”; a member may bring a direct action against the company for misfeasance, not just a derivative action; a company threatened by a derivative action may form a litigation committee to assume the burden of investigating the action and take certain actions on behalf of the company in its best interests.

E. Uniform Power of Attorney Act.

The Uniform Power of Attorney Act (UPAA) replaces the 1969 Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act and provisions on power of attorney in the Uniform Probate Code. Durable powers of attorney have been allowed only since the late 1960s to early 1970s in almost every state. A durable power survives the incapacity of the principal to avoid the need to bring expensive and time-consuming guardianship or conservatorship actions to care for the principal’s assets. The named agent steps in the same way a guardian or conservator would. The 1969 Act was originally enacted in almost every state. But amendments from state to state have eroded uniformity between the states. UPAA requires that certain powers be expressly and specifically

conferred rather than be general powers; this eliminates questions about the agent's authority and are cautionary in intent. UPAA provides a form power of attorney that must be accepted by any third party. There are civil penalties for refusal to accept if the third party has assets of the principal. There are other provisions that protect the principal from a dishonest agent.

F. Uniform Prudent Management of Institutional Funds Act.

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is an update of the Uniform Management of Institutional Funds Act which dates back to 1972. UPMIFA applies to funds held for charitable purposes by nonprofit, charitable institutions. The three principal issues addressed are scope of coverage, investment obligations and expenditure of funds. The earlier Act did not include charitable trusts or necessarily nonprofit corporations. UPMIFA applies its rules to charitable institutions no matter how organized. That is its scope. Investment obligations are governed by prudent investment rules derived from the Uniform Prudent Investor Act. They sharply refine the investment obligations in the 1972 Uniform Act. An express rule for prudent expenditure of appreciation as well as income replaces the older rule in the 1972 Act. Abolished is the concept of historic dollar value as a floor beneath which an endowment cannot be spent. The new rule allows a prudent use of total return expenditure. An optional provision allows a state to flag a total return expenditure of more than 7 percent of total return measured by a three-year average as presumed imprudent. UPMIFA also provides a better, modern rule for exercise of cy pres that is changing an obsolete charitable purpose. Changing a charitable purpose will require notice to the appropriate regulator in a state.

G. Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act.

The Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act (URCANCPA) tries to answer a question that has plagued domestic relations law for a long time: "Who represents a child in a custody or support proceeding?" The courts have traditionally used what is called a guardian ad litem, but that designation is ambiguous, particularly if an attorney is appointed. Courts have been more and more inclined to appoint an attorney for a child, remembering that this attorney does not represent the principal parties to the proceeding. The scope of representation and an attorney's obligations are not well set out in prior law. URCANCPA establishes three categories of representatives: a child's attorney, a best interests attorney and a child's advisor. A child's attorney represents the child purely as a client, taking direction from that client. A best interests attorney represents the child's "best interest" before the court but not subject to the child's directions as a client. The child's advisor is appointed by the court to advise the court on the best course of action with respect to the child, and is wholly court directed. A child's attorney is usually the first appointed and recognized, but has the capacity to relinquish the attorney-client relationship in the event the child's directions and desires raise the issue of its "best interests." The child's attorney can step aside and the court then appoints the "best interests" attorney. A child's advisor may be appointed at any time, but may also be appointed as an alternative to a best interests attorney. URCANCPA does not require a court to appoint any representative for or on behalf of a child. It is in the court's discretion whether to utilize these provisions. URCANCPA provisions reconcile appointments with the standard attorney obligations for representing a client, and should make proceedings in which a child needs representation more certain.

H. Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings.

The Model Registered Agents Act (MRAA) with amendments to other entity acts allows a state to use the same rules in the same place for registering agents mainly for partnerships, limited partnerships, limited liability companies, and corporations. Currently every state has registration requirements for each kind of entity in the specific statute authorizing the entity, i.e., the partnership act has provisions for registering agents representing the partnership. There is no reason to have separate registration requirements, with inevitable differences, in every entity statute. A single statute applying to every kind of entity makes the administration of these statutes much more efficient. Accordingly, MRAA would consolidate registration of agents in one place under one procedure. It would repeal the individual registration provisions from entity act to entity act. The amendments in an appendix provide suggestions for making the repeal amendments from state to state by showing how it would be done in the existing uniform or model entity statutes. Agents are registered primarily to establish a single office for service of process and for taking jurisdiction of the entity in litigation.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2007

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 2007, the Commission recommends enactment of the Uniform Athlete Agents Act and the Uniform Debt-Management Services 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 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.

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

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
26. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
27. Uniform Electronic Transactions Act (1999)	Chapter 489E
28. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
29. Uniform Environmental Covenants Act	Chapter 508C
30. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
31. Uniform Fiduciaries Act (1922)	Chapter 556
32. Uniform Foreign-Money Claims (1989)	Chapter 658B
33. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
34. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
35. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
36. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
37. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
38. Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B
39. 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>
40. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
41. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
42. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
43. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
44. Uniform Parentage Act (1973)	Chapter 584
45. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
46. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
47. Uniform Premarital Agreement Act (1983)	Chapter 572D
48. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
49. Uniform Probate Code (1969)(1975)(1982)(1987)(1989) (1990)(1991)(1998)	Chapter 560
50. Uniform Prudent Investor Act (1994)	Chapter 554C
51. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
52. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833

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