

STATE OF HAWAII
Department of the Attorney General



2010 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION

SUBMITTED TO
THE TWENTY-SIXTH STATE LEGISLATURE
Regular Session of 2011

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2010 REPORT OF THE

COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-SIXTH
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 2010 Report.

I. HISTORY OF THE NATIONAL CONFERENCE OF
COMMISSIONERS ON UNIFORM STATE LAWS (NOW
REFERRED TO AS THE UNIFORM LAW COMMISSION)

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 (now commonly referred to as the "Uniform Law Commission" or

"ULC") convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state was participating in the ULC. As it has developed, the ULC 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 ULC

A. Financial Support of the ULC.

The ULC, 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 ULC. In addition, each state commission requests an amount to cover its travel to the ULC annual meeting.

The ULC 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 ULC 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 ULC ensure meticulous consideration of each uniform or model act. The ULC 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 ULC, the states can produce and have produced the impressive body of state laws called the Uniform State Laws. Without the ULC, nothing like the existing body of uniform state laws would ever be available to the states.

The ULC 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 ULC estimates that each commissioner devotes approximately 200 hours a year to ULC 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 comes to literally thousands of hours. The value of this donated time averages over \$10,000,000 annually. The total requested contribution of all the states to the operation of the ULC is \$2,457,500 in fiscal year 2010-2011. The smallest state contribution is \$25,000, and the largest is \$148,600. Hawaii's contribution for fiscal year 2010-2011 is \$29,500, which represents an extraordinarily good, cost-effective investment for the citizens of Hawaii. Even a modest use of the work product of the ULC guarantees

any state a substantial return on each dollar invested. The State of Hawaii has had one hundred twenty-six 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 ULC comes to \$3,058,793 for the current fiscal year (July 1 to June 30). Of this amount, \$596,493 (approximately 19.5%) 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. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is \$126,820 (or 4.2%). About \$668,427.37 (21.8%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$345,125 (11.3%) is spent on the annual meeting. Public education for uniform and model acts costs about \$201,226 (6.6%) and includes contractual services, materials costs, and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

The ULC also receives limited funds from the American Bar Association and the American Law Institute. Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts. All money received from any source is accepted with the understanding that the ULC's drafting work is completely autonomous. No source may dictate the contents of any act because of a financial contribution. By seeking grants for specific projects, the ULC expands the value of every state dollar invested in its work.

The Uniform Commercial Code (UCC) is a joint venture between the ULC 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 ULC and ALI costs is paid from Falk Foundation income.

In addition, the ULC has recently established new royalty agreements with major legal publishers which reprint the ULC's uniform and model acts in their publications.

The ULC 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 ULC 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 ULC continues to be a very good idea. The states have chosen to maintain the ULC 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 ULC, 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 ULC 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 ULC Executive Committee.

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 ULC 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 ULC. 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. Except in extraordinary circumstances, 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 ULC.

The governing body of the ULC is the ULC Executive Committee, which is composed of the officers, certain ex officio members, and members appointed by the President of the ULC. 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 ULC to the state legislatures.

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

The ULC has consciously limited its staff to prevent accrual of needless administrative costs. The full-time staff numbers only thirteen people. In addition, the ULC 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 ULC also contracts with professional, independent contractors for part of its public information and educational materials.

The ULC 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 ULC. 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 ULC 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 ULC.

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 ULC, and all the states, benefit from having Hawaii's direct contribution to the work of the ULC. 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 2009-2010 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 2010-2011 will remain

the same.

Former commissioners Hiroshi Sakai and Robert S. Toyofuku are ULC Life Members who continue to actively participate in ULC activities. Upon recommendation of the ULC Executive Committee and by the affirmative vote of two-thirds of the commissioners present at an annual meeting, they were elected as ULC Life Members with the privilege to participate in ULC 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 ULC.

B. ULC Committee Assignments.

The ULC 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 ULC 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

For 2009-2010, Commissioner Ewart served as a member of the Executive Committee of the ULC, the Drafting Committee on Uniform Statutory Trust Entity Act, and the Drafting Committee on Partition of Tenancy-in-Common Real Property Act (renamed to the Partition of Heirs Property Act).

For 2010-2011, Commissioner Ewart will continue to serve on the Executive Committee, the Standby Committee on Partition of Heirs Property Act, and the Standby Committee on Uniform Statutory Trust Entity Act.

In 2009-2010, Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2010-2011 .

Commissioner Ewart attended three committee meetings in 2010: Executive Committee meeting in Tucson, Arizona, from January 7-11, 2010; meeting of the Drafting Committee on Uniform Partition of Heirs Property Act, in New Orleans, Louisiana, on March 25-28, 2010; and met with the Executive Committee prior to the annual meeting, on July 7, 2010, in Chicago, Illinois.

Commissioner Ewart participated in committee conference calls on the Uniform Partition of Heirs Property Act. She also had telephone conferences and e-mail communications with organizations interested in the Uniform Adult Guardianship Act and Uniform Real Property Transfer on Death Act. She also had numerous telephone conferences, conference calls, and e-mail communication with the Executive Committee with regard to various ULC matters, including the Hawaii bill to suspend advisory bodies (including the Hawaii Commission to Promote Uniform Legislation), budget issues, annual meeting agenda, and financial reports. Commissioner Ewart reviewed and revised the plan for 2011 Hawaii legislative session for presentation at the annual meeting.

PETER J. HAMASAKI

For 2009-2010, Commissioner Hamasaki served on the Drafting Committee to Revise the Uniform Law on Notarial Acts.

For 2010-2011, Commissioner Hamasaki will continue to serve on the Standby Committee to Revise the Uniform Law on Notarial Acts.

Commissioner Hamasaki participated in two conference calls for the Drafting Committee to Revise the Uniform Law on Notarial Acts, one on February 23, 2010, and one on March 30, 2010. In addition, he participated in several drafting committee meetings in Chicago during the annual meeting held on July 9-16, 2010.

ELIZABETH KENT

For 2009-2010, Commissioner Kent served as a member of the Drafting Committee on a Uniform Collaborative Law Act.

For 2010-2011, Commissioner Kent will serve as a member of the Standby Committee on a Uniform Collaborative Law Act.

KEVIN P. H. SUMIDA

In 2009-2010, Commissioner Sumida served as a member of the Drafting Committee on Harmonization of Business Entity Acts and on the Standby Committee on the Uniform Unsworn Foreign Declarations Act.

In 2010-2011, Commissioner Sumida will continue to serve as a member of the Drafting Committee on Harmonization of Business Entity Acts and will continue to serve as a member of the Standby Committee on the Uniform Unsworn Foreign Declarations Act. He was recently appointed to the Enactment Committee for the Uniform Unsworn Foreign Declarations Act. He attended one meeting of the Drafting Committee on Harmonization of Business Entity Acts in Minneapolis, Minnesota, on September 23-26, 2010.

Commissioner Sumida participated in several conference calls including a one-hour conference call on October 6, 2010, in connection with the Enactment Committee for Uniform Unsworn Foreign Declarations Act.

KEN H. TAKAYAMA

For 2009-2010, Commissioner Takayama served as a member of the Drafting Committee on Uniform Protection of Genetic Information in Employment and Insurance Act . He also served as a member of the Committee on Membership and Attendance and the Committee of Legislative Counsel. In addition, he served as Hawaii's liaison member of the Legislative Committee.

For 2010-2011, Commissioner Takayama will serve as a member of the Study Committee on Revisions to Residential Landlord-Tenant Act and will continue to serve as a member of the Standby Committee on Uniform Protection of Genetic Information in Employment Act and the Study Committee on Protection of Genetic Information in Insurance. 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 and the Committee on Membership and Attendance.

Commissioner Takayama attended one meeting for the Drafting Committee on Uniform Protection of Genetic Information in Employment and Insurance Act on March 11-14, 2010, in Washington, D.C. He participated in a conference call on January 26, 2010, with regard to a bill relating to the Uniform Athlete Agents Act. He also participated in two conference calls on the Study Committee on Revision of Residential Landlord-Tenant Code on November 10 and November 17, 2010.

ROBERT S. TOYOFUKU

For 2009-2010, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2010-2011. 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).

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 ULC. 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.

On October 16, 2010, Life Member Toyofuku attended a meeting of the Legislative Council in Chicago, Illinois. He also attended a meeting of the Committee to Review the ULC Drafting Process in Washington, D.C., on November 19, 2010.

HIROSHI SAKAI

During 2009-2010, Life Member Sakai served on the Committee on International Legal Developments, the Standby Committee to Amend Uniform Common Interest Ownership Act, the Standby Committee on Uniform Debt-Management Services Act, and the Standby Committee on a Uniform Limited Cooperative Association Act.

For 2010-2011, Life Member Sakai will continue to serve on the Committee on International Legal Developments, the Standby Committee to

Amend Uniform Common Interest Ownership Act, the Standby Committee on Uniform Debt-Management Services Act, and the Standby Committee on a Uniform Limited Cooperative Association Act. He will also serve on the Drafting Committee on Manufactured Housing Act.

In 2010, Life Member Sakai attended a meeting of the Drafting Committee on Manufactured Housing Act in Chicago, Illinois, on October 15-17, 2010. He also participated in a conference call on the Drafting Committee on Manufactured Housing Act on June 25, 2010, for an hour and a half and also participated in a one-hour conference call on the Standby Committee on Uniform Debt Management Act on December 9, 2010. Mr. Sakai spent about seven hours reviewing materials and preparing for discussions and meetings.

C. Meetings Attended.

The commissioners attended the meetings of their respective ULC 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 ULC met in its 119th year in Chicago, Illinois, from July 9-16, 2010.

Commissioners Ewart, Hamasaki, and Takayama and former Hawaii Commission member and ULC Life Member Sakai attended the 2010 annual meeting. They attended the meeting at their own expense because, due to the projected budget shortfall, their expenditure of state funds for the costs to attend the annual meeting was not approved. Commissioners Sumida and Kent, former Hawaii Commission member and ULC Life Member Toyofuku, and Mr. Kato did not attend the meeting.

During the sessions of the annual meeting of the ULC, 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.

After consideration of the latest drafts, the ULC approved ten new uniform acts: the Uniform Military and Overseas Voters Act, the Uniform Commercial Code (UCC) Article 9 amendments, the Uniform Electronic Recordation of Custodial Interrogations Act, the Uniform Collateral Consequences of Conviction Act, the Uniform Faithful Presidential Electors Act, the Uniform Partition of Heirs Property Act, the Uniform Protection of Genetic Information in Employment Act, the Revised Uniform Law on Notarial Acts, the Revised Model State Administrative Procedure Act, and the Insurable Interests Amendment to the Uniform Trust Code.

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

D. Legislative Appearances by the Hawaii Commissioners.

Commissioner Takayama served in 2009-2010 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 2010, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the

movement of bills with regard to the Uniform Adult Guardianship and Protection Proceedings Jurisdiction Act, the Uniform Child Abduction Prevention Act, the Uniform Mediation Act, the Uniform Real Property Transfer on Death Act, and the Uniform Anatomical Gift Act. They spent time at the Legislature meeting with various legislators regarding ULC related bills. They, together with the other commissioners, also prepared testimony and testified before various Senate and House committees.

Commissioner Hamasaki provided written testimony and spent time testifying at hearings on behalf of the Commission to Promote Uniform Legislation with respect to the Uniform Real Property Transfer on Death Act (S.B. No. 2799) and the Uniform Child Abduction Prevention Act (H.B. No. 2250). He also did a presentation to the Probate Section of the Hawaii Bar Association on the Uniform Real Property Transfer on Death Act.

Commissioner Takayama attended hearings, answered questions and inquiries raised about acts by legislators, monitored hearings or decision making meetings, alerted other commissioners of hearings scheduled or actions taken, and met with or called legislators or staff to get hearings scheduled.

Commissioner Ewart testified on the Uniform Real Property Transfer on Death Act before the Senate Committee on Commerce and Consumer Protection and followed up on the committee's questions. She generally monitored and responded to questions arising during the session regarding the uniform acts under consideration. She reviewed and revised the Hawaii Commission to Promote Uniform Legislation annual report to the Legislature. She also submitted written testimony for Commissioner Elizabeth Kent's reappointment for a new Commission to Promote Uniform Legislation term.

Commissioner Sumida attended Senate and House committee

hearings to give testimony on the Uniform Mediation Act (H.B. No. 782 and S.B. No. 120) and on the Uniform Foreign-Country Money Judgments Recognition Act (H.B. No. 779 and S.B. No. 119). He also prepared testimony and testified on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (H.B. No. 2248 and S.B. No. 2193).

Commissioner Kent testified in support of the Uniform Prudent Management of Institutional Funds Act (H.B. No. 618 and S.B. No. 121). She also testified on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (H.B. No. 2248 and S.B. No. 2193) and the Uniform Child Abduction Prevention Act (H.B. No. 2250 and S.B. No. 2192).

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 ULC not only by sending a delegation of commissioners to the ULC but also by enacting the uniform acts adopted by the ULC. 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 2010.

During the regular session of 2010, bills were introduced to enact the following uniform acts: (1) the Uniform Adult Guardianship and Protective

Proceedings Jurisdiction Act; the Uniform Child Abduction Prevention Act, and the Uniform Real Property Transfer on Death Act. None of the bills passed during the legislative session.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the sixty-eight 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 ULC 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 2010 annual meeting, the ULC considered and adopted ten new uniform acts or amendments to existing acts. These acts are briefly described below, based on summaries prepared by the ULC.

A. Uniform Military and Overseas Voters Act

The 2010 Uniform Military and Overseas Voters Act (UMOVA) establishes reasonable, standard timetables for application, registration, provision of ballots and election information for covered voters, and submission of ballots, and provides for the determination of the address that should be used for active-duty military and overseas voters. The act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. UMOVA allows voters to make use of

electronic transmission methods for applications and receipt of registration and balloting materials, tracking the status of applications, and expands use of the Federal Post Card Application and Federal Write-In Absentee Ballot. Finally, UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new act uses and builds upon the key requirements of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and the Military and Overseas Voter Empowerment Act of 2009 (MOVE), and extends the important protections and benefits of these acts to voting in applicable state and local elections.

B. 2010 Amendments to Article 9 of the Uniform Commercial Code

The 2010 amendments to Uniform Commercial Code Article 9, which governs secured transactions in personal property, address filing issues as well as other matters that have arisen in practice following over a decade of experience with the revised Article 9 (last revised in 1998 and enacted in all states and the District of Columbia). Of most importance, the 2010 amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments also improve the system for filing financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company, or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required. In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity. Finally, the amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

C. Uniform Electronic Recordation of Custodial Interrogations Act

The Uniform Electronic Recordation of Custodial Interrogations Act addresses difficult problems that accompany interrogations conducted by law enforcement officials. These issues include false confessions and frivolous claims of abuse that ultimately waste court resources. By requiring law enforcement to electronically record custodial interrogations, the act promotes truth-finding and judicial efficiency, and further protects the rights of law enforcement and those under investigation. The act is carefully drafted to avoid undue burdens and technical pitfalls for law enforcement officials and prosecutors. The act does not require law enforcement to make recordings that are unfeasible or that would endanger confidential informants, nor does it punish law enforcement for equipment failures. A uniform statute governing the electronic recordation of custodial interrogations will provide consistent rules between the states to improve the administration of justice.

D. Uniform Faithful Presidential Electors Act

The Uniform Faithful Presidential Electors Act (UFPEA) addresses the problem of a presidential elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that assures that states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process. Under the UFPEA, electors take a pledge of faithfulness. A vote in violation of that pledge constitutes resignation from the office of elector. Correspondingly, the Act provides a mechanism for filling a vacancy created because of this constructive resignation. The UFPEA disallows faithless voting and assures that faithful votes are substituted for faithless ones. In doing so, it provides the voters of the state

with the confidence that the votes they have cast will be honored when the Electoral College meets.

E. Uniform Partition of Heirs Property Act

The Uniform Partition of Heirs Property Act (UPHPA) establishes a hierarchy of remedies for use in those partition actions involving heirs property. The remedies are designed to help those who own heirs property to maintain ownership of their property when possible or to ensure at the very least that any court-ordered sale of the property is conducted under commercially reasonable circumstances that will protect the owners from losing substantial wealth upon the sale of their property. Courts use the act's guideline to determine if tenancy in common property is heirs property that must be partitioned in accordance with the act. UPHPA provides the procedures by which notice is provided to cotenants and appraisers and brokers are hired. The act also mandates that any commissioners, referees, or partitioners that are appointed by the court must be disinterested. Importantly, UPHPA incorporates an option and statutory procedure for cotenants to buy-out the interests of those other cotenants seeking partition by sale. In those instances in which a buy-out does not resolve the action, the act retains the widespread current preference for a partition in kind but outlines specific criteria a court must consider in determining whether a partition by sale may be justified. The UPHPA provides a supplementary mechanism for existing state partition law to help preserve the character and integrity of family-owned property and to protect a family's property-based wealth while still allowing a fair partition action to proceed.

F. Uniform Protection of Genetic Information in Employment Act

The need for regulation of genetic information and the desirability of uniformity in the area was recognized at the federal level with the enactment

of the Genetic Information Nondiscrimination Act (GINA) of 2008. However, much in the same way that states have supplemented federal employment nondiscrimination acts with their own fair employment acts, there is a role for states in the regulation of genetic information in the workplace.

The uniform act is designed to eliminate the preemption problems created by GINA for existing state statutes. It thus incorporates the key definitions and concepts of GINA. It also complements and supplements GINA with additional provisions that are more protective of employees, following the pattern of many state fair employment laws that supplement Title VII and other federal statutes. The act comprehensively regulates acquisition, use, retention, and disclosure of genetic information in the employment setting.

G. Model State Administrative Procedure Act

The Model State Administrative Procedure Act (MSAPA) was first promulgated by the Uniform Law Commission (ULC) in 1946. The MSAPA has since been revised three times: 1961, 1981, and the most recent revision was completed and adopted by the ULC in July of 2010. The 2010 MSAPA maintains continuity with the provisions of the 1961 Act, and to a lesser degree, the 1981 Act. This act returns to the external hearing rights approach followed in the 1961 Act, but also includes constitutionally required hearings in the mix of sources of hearing rights law. This act is designed especially for adoption by states that currently have the 1961 Act, but would like to replace that act with a more modern up to date administrative procedure act. The act is composed to ensure fairness in administrative proceedings, increase public access to the law administered by agencies, and promote efficiency in agency proceedings by providing for extensive use of electronic technology by state governments. The act has been drafted to

be less detailed and less comprehensive than the 1981 Act. Consistent with both the 1961 MSAPA and the 1981 MSAPA, the act provides for a uniform minimum set of procedures to be followed by agencies subject to the act. The act creates only procedural rights and imposes only procedural duties. Throughout the act there are provisions that refer generally to other state laws governing related topics. When specific state laws are inconsistent with the provisions of the act, those specific state laws will be controlling.

H. Revised Uniform Law on Notarial Acts

The 2010 Revised Uniform Law on Notarial Acts (RULONA) comprehensively revises and replaces the earlier, 1982 Uniform Law on Notarial Acts (ULONA). Since the original promulgation of ULONA, society and technology have advanced considerably, requiring notarial officers and their practice to adapt. In particular, RULONA recognizes the ascendance of electronic commerce and transactions in the public and private sectors, and brings the law governing electronic notarial acts on par with laws governing other forms of electronic transactions. RULONA continues to focus on preservation of the integrity of the notarial transaction, whether tangible or electronic. References to the notarial seal are replaced with an “official stamp”, and RULONA provides for affixing an official stamp to a notarial certificate for tangible documents or logically associating it with an electronic one. RULONA provides minimal standards for commissioning notarial officers, and handles recognition of notarial acts from other states and certain foreign equivalents. Finally, the revised act addresses deceptive and fraudulent practices and advertising, transactions in which the notary or a spouse is a party or has an interest, and prohibitions on unauthorized practice of law.

I. Insurable Interest Amendments to the Uniform Trust Code

Personal life insurance trusts are a key component of most modern estate plans, and trust and estate planners create them routinely. The trustee is typically designated as the owner, and usually also as the beneficiary, of one or more insurance policies held on the life of the trust's creator (i.e., the "grantor" or "settlor"). These trusts are extremely useful devices for ensuring that life insurance proceeds are managed competently for the beneficiaries of the trust, and, in the case of irrevocable life insurance trusts ("ILITs"), for removing life insurance proceeds from an insured's gross estate. A recent federal district court decision (Chawla ex rel Giesinger v. Transamerica Occidental Life Insurance Co, aff'd in part, vac'd in part, 440 F.3d 639 (4th Cir. 2006)) inserted doubt into the estate planning world by stating in dicta that that a trust did not have an insurable interest in the life of the insured who was the settlor and the creator of the trust. The amendment attempts to clarify, with respect to trusts, what constitutes an "insurable interest" for purposes of insurance law, while at the same time allowing for the transfer of interest in insurance as property.

J. Uniform Collateral Consequences of Conviction Act

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009 and subsequently amended in 2010, improves the understanding of penalties that attach when an individual is convicted of an offense and, in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. Individuals will be advised of the particular collateral

consequences associated with the offense for which they are charged at or before arraignment. Notice is also to be given at the time of sentencing and, if an individual is sentenced to prison, at the time of release. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent.

Amendments approved in 2010 responded to the Supreme Court decision in Padilla v. Kentucky. This decision mandated that defense counsel must advise a defendant of certain collateral consequences associated to the crime. The need for an attorney to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the act.

The act provides mechanisms for relieving collateral sanctions imposed by law. The act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The act also creates a Certificate of Restoration of Rights. The certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2011

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 2011, the Commission recommends enactment of the Uniform Military and Overseas Voters Act, Uniform Commercial Code Article 9 Amendments, Uniform Real Property Transfer on Death Act, Uniform Collaborative Law Act, and the Uniform Interstate Family Support Act Amendments. The Uniform Military and Overseas Voters Act and the amendments to UCC Article 9 are summarized in Section V of this report. The Uniform Real Property Transfer on Death Act, Uniform Collaborative Law Act, and the Uniform Interstate Family Support Act Amendments are summarized below:

A. Uniform Real Property Transfer on Death Act (2009)

Asset-specific mechanisms for the non-probate transfer of property and funds are now common – the proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in pay on death (POD) bank accounts are good examples of property that have benefitted from this trend in modern property law. However, a straightforward, inexpensive, and reliable means of passing real property, which may be a decedent's major asset, directly to a beneficiary is not generally available. The Uniform Real Property Transfer on Death Act (URPTODA) enables an owner of real property to pass it to a beneficiary upon the owner's death by a similar mechanism – simply, directly, and without probate. Under URPTODA, the property passes by means of a

recorded transfer on death (TOD) deed. URPTODA sets forth the requirements for the creation and revocation of a TOD deed, and clarifies the effect of the TOD deed for all parties while the transferor is living and after they pass away. A TOD deed is effective without consideration, and without notice or delivery to the beneficiary. Beneficiaries take the property subject to allowed claims against the transferor's estate. If the intended beneficiary wishes, they may disclaim all or part of their beneficiary interest in the property. Finally, URPTODA provides optional language for forms to create and revoke TOD deeds.

B. Uniform Collaborative Law Act (2009)

The Uniform Collaborative Law Act, promulgated by the ULC in 2009, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory framework is necessary in order to guarantee the benefits of the process and to further regulate its use. The act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.

The act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the

act. Additionally, the act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

C. 2008 Amendments to the Uniform Interstate Family Support Act.

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The 2008 Uniform Interstate Family Support Act Amendments, approved by the ULC, serve as the implementing language for the Convention within United States states and territories.

In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. Section 7 of the 2008 UIFSA provides important guidelines and procedures for the registration, recognition, enforcement, and modification of foreign support orders from countries that are parties to the Convention. Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and will help ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

Federal implementing legislation submitted to Congress will require that the 2008 version of UIFSA be enacted in every jurisdiction, as a condition for continued receipt of federal funds supporting state child support

programs. Failure to enact these amendments will result in the loss of this important federal funding.

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 ULC. 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 ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
1. Uniform Anatomical Gift Act (1968)(1987)(2008)	Part I, Chapter 327
2. Uniform Arbitration Act (1956)(2000)	Chapter 658A
3. Uniform Athlete Agents Act (2000)	Chapter 481E
4. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
5. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
6. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
7. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
8. Uniform Commercial Code Article 1 – General Provisions (2001)	Article 1, Chapter 490
9. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
10. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
11. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490
12. Uniform Commercial Code Article 4A -- Funds Transfer (1989)	Article 4A, Chapter 490
13. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490

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

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
27. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
28. Uniform Electronic Transactions Act (1999)	Chapter 489E
29. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
30. Uniform Environmental Covenants Act	Chapter 508C
31. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
32. Uniform Fiduciaries Act (1922)	Chapter 556
33. Uniform Foreign-Country Money Judgments Recognition Act (2005)	Chapter 658F
34. Uniform Foreign-Money Claims (1989)	Chapter 658B
35. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
36. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
37. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
38. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
39. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
40. Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
41. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
42. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
43. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
44. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
45. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
46. Uniform Parentage Act (1973)	Chapter 584
47. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
48. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
49. Uniform Premarital Agreement Act (1983)	Chapter 572D
50. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
51. Uniform Probate Code (1969)(1975)(1982)(1987)(1989)(1990)(1991)(1998)	Chapter 560
52. Uniform Prudent Investor Act (1994)	Chapter 554C
53. Uniform Prudent Management of Institutional Funds Act (2006)	Chapter 517E

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
54. Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
55. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
56. Model Registered Agents Act (2006)	Chapter 425R
57. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
58. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
59. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
60. Uniform Status of Convicted Persons Act (1964)	Chapter 831
61. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525
62. Uniform Testamentary Additions to Trusts Act (1960)(1961) (Uniform Probate Code § 2-511 (1991))	§ 560:2-511
63. Uniform Trade Secrets Act (1979)(1985)	Chapter 482B
64. Uniform Transfer-on-Death (TOD) Security Registration Act (1998)	Chapter 539
65. Uniform Transfers to Minors Act (1983)(1986)	Chapter 553A

ACT (Date of ULC Adoption
or Amendment)

HAWAII REVISED STATUTES

66. Uniform Trustees' Powers Act
(1964)

Chapter 554A

67. Uniform Unclaimed Property Act
(1981)

Part I, Chapter 523A

68. Uniform Unincorporated Nonprofit
Association Act (1992)(1996)

Chapter 429