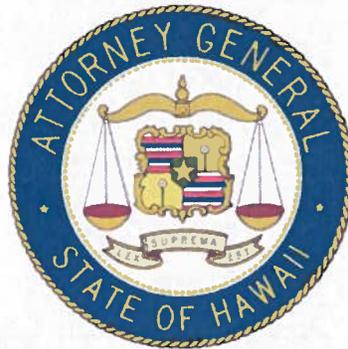


STATE OF HAWAII
Department of the Attorney General



2012 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION

SUBMITTED TO
THE TWENTY-SEVENTH STATE LEGISLATURE
Regular Session of 2013

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2012 REPORT OF THE

COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-SEVENTH
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 2012 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 150 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 represents literally thousands of hours of legal expertise. The total requested contribution of all the states to the operation of the ULC is \$2,538,600 in fiscal year 2012-2013. The smallest state contribution is \$26,400, and the largest is \$151,500. Hawaii's contribution for fiscal year 2012-2013 is \$31,200, 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 thirty four 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 \$2,980,833 for the current fiscal year (July 1 to June 30). Of this amount, \$519,523 (approximately 15.6%) 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 \$149,525 (or 5.0%). About \$624,468.98 (21.0%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$381,280 (12.8%) is spent on the annual meeting. Public education for uniform and model acts costs about \$226,759 (7.6%) 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 also established 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 twelve 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 2011-2012 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 2012-2013 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 2011-2012, Commissioner Ewart served as a member of the Standby Committee on Partition of Heirs Property.

For 2012-2013, Commissioner Ewart will continue to serve on the Standby Committee on Uniform Partition of Heirs Property Act.

In 2011-2012, Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2012-2013 .

Commissioner Ewart communicated through telephone conferences

and e-mail with individuals and organizations interested in various uniform acts, including the Uniform Partition of Heirs Property Act. Commissioner Ewart reviewed materials and reports for the annual meeting and reviewed the revised the plan for the 2013 Hawaii legislative session for presentation at the annual meeting.

PETER J. HAMASAKI

For 2011-2012, Commissioner Hamasaki served on the Standby Committee to Revise the Uniform Law on Notarial Acts.

For 2012-2013, Commissioner Hamasaki will continue to serve on the Standby Committee to Revise the Uniform Law on Notarial Acts.

ELIZABETH KENT

For 2011-2012, Commissioner Kent served as a member of the Standby Committee on a Uniform Collaborative Law Act and on the Study Committee on Uniform Family Law Arbitration Act.

For 2012-2013, Commissioner Kent will continue to serve as a member of the Standby Committee on a Uniform Collaborative Law Act and the Study Committee on Uniform Family Law Arbitration Act. She will also serve on the Study Committee on Model Veterans Court Act.

Commissioner Kent wrote an article for the Hawaii Bar Journal, researched and submitted suggestions for a new drafting project, co-hosted a forum on the Uniform Collaborative Law for the public, and generally assisted with promoting uniform state laws.

KEVIN P. H. SUMIDA

In 2011-2012, Commissioner Sumida served as a member of the Standby Committee on Harmonization of Business Entity Acts, on the

Enactment Committee on the Uniform Unsworn Foreign Declarations Act, and on the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act.

In 2012-2013, Commissioner Sumida will continue to serve as a member of the Standby Committee on Harmonization of Business Entity Acts and the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act.

He attended two meetings of the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act -- one on March 8-10, 2012, in Washington, D.C., and one on October 12-13, 2012, in Washington, D.C.

KEN H. TAKAYAMA

For 2011-2012, Commissioner Takayama served as a member of the Drafting Committee on Deployed Parents Visitation and Custody Act. He also served as a member of the Committee on Membership and Attendance and the Committee of Legislative Attorneys. In addition, he served as Hawaii's liaison member of the Legislative Committee.

For 2012-2013, Commissioner Takayama will serve on the Standby Committee on Deployed Parents Custody and Visitation Act, and will serve as a member of the Study Committee on Portability and Recognition of Professional and Occupational Licensing for Military Spouses and the Standby Committee on Uniform Protection of Genetic Information in Employment Act. He will continue to serve as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Attorneys and the Committee on Membership and Attendance.

Commissioner Takayama participated in a conference call on December 11, 2012, relating to the Study Committee on Portability and

Recognition of Professional and Occupational Licensing for Military Spouses. He also spent time reviewing material on the Uniform Deployed Parents Custody and Visitation Act.

ROBERT S. TOYOFUKU

For 2011-2012, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2012-2013. 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.

For 2011-2012, Life Member Toyofuku served as a member of the Study Committee on Regulation of Lawsuit Loans.

HIROSHI SAKAI

During 2011-2012, Life Member Hiroshi Sakai served on the Committee on International Legal Developments, the Standby Committee on

Uniform Debt-Management Services Act, and the Drafting Committee on a Manufactured Housing Act.

For 2012-2013, Life Member Sakai will continue to serve on the Committee on International Legal Developments and on the Standby Committee on Uniform Debt-Management Services Act and the Standby Committee on a Uniform Manufactured Housing Act.

In 2012, Life Member Sakai attended three meetings: Two meetings of the Drafting Committee on a Manufactured Housing Act, one on February 22-24, 2012, in Chicago, Illinois, and one on April 11-14, 2012, in Chicago, Illinois, and one meeting of the Committee on International Legal Developments in Denver, Colorado, on November 10, 2012.

Commissioner Sakai along with other committee members presented the final draft of the Uniform Manufactured Housing Act to the Conference. He also spent numerous hours reviewing documents in preparation for 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 121st year in Nashville, Tennessee, from July 13-19, 2012.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and former Hawaii Commission members and ULC Life Members Sakai and Toyofuku attended the 2012 annual meeting. 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 four new uniform acts: the Uniform Electronic Legal Material Act, the Uniform Certificate of Title for Vessels Act, the Model Protection of Charitable Assets Act, and the Harmonized Uniform Business Organizations Code. In addition, the ULC approved amendments to the Uniform Debt Management Services Act.

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 2011-2012 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 2012, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Hawaii Uniform Collaborative Law Act, the Uniform Interstate Family Support Act, the Uniform Military and

Overseas Voters Act, the Uniform Parentage Act 2002 Article 7, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the Uniform Commercial Code Article 9 Amendments, and the Uniform Interstate Depositions and Discovery 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 Commercial Code Article 9 Amendments, (H.B. No. 2162), which was enacted as Act 33.

Commissioner Takayama attended hearings, answered questions 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. He prepared testimony and testified on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the Uniform Interstate Depositions and Discovery Act, the Uniform Collaborative Law Act, and the Uniform Military and Overseas Voters Act. He also submitted supporting testimony on the confirmation of the reappointments of Commissioners Peter Hamasaki and Kevin Sumida.

Commissioner Ewart generally monitored hearing schedules, reviewed testimony, and responded to questions arising during the session regarding the uniform acts under consideration, including any acts or amendments not originally introduced on behalf of the Commission to Promote Uniform Legislation. She reviewed and revised the Hawaii Commission to Promote Uniform Legislation annual report to the Legislature.

She also submitted written testimony in support of the reappointment of Commissioners Peter Hamasaki and Kevin Sumida for a new Commission to Promote Uniform Legislation term. She submitted written testimony and testified on the Uniform Commercial Code Article 9 Amendments.

Commissioner Sumida drafted testimony and attended Senate and House committee hearings to testify on the Adult Guardianship and Protective Proceedings Jurisdiction and the Uniform Interstate Depositions and Discovery Act. He researched and inserted rule provisions in the Uniform Interstate Depositions and Discovery Act.

Commissioner Kent assisted with testimony on the Adult Guardianship and Protective Proceedings Jurisdiction, the Uniform Military and Overseas Voters Act, and the Hawaii Uniform Collaborative Law Act. She also collaborated with the Judiciary and other stakeholders.

All of the commissioners and life members 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 2012.

During the regular session of 2012, bills were introduced to enact the following uniform acts: (1) the Uniform Military and Overseas Voters Act; (2) the Uniform Collaborative Law Act; (3) the Adult Guardianship and Protective Proceedings Jurisdiction Act; (4) the Uniform Interstate Family Support Act; (5) the Uniform Commercial Code Article 9 2010 Amendments; and (6) the Uniform Interstate Depositions and Discovery Act. Of these, the Uniform Interstate Depositions and Discovery Act was passed by the legislature and approved by the Governor as Act 17 on April 12, 2012; the Uniform Commercial Code Article 9 2010 Amendments was approved by the Governor as Act 33 on April 20, 2012; the Uniform Collaborative Law Act was approved by the Governor as Act 207 on July 3, 2012; the Uniform Military and Overseas Voters Act was approved by the Governor as Act 226 on July 5, 2012; and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act was approved by the Governor as Act 236 on July 6, 2012.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the seventy-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 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 2012 annual meeting, the ULC considered and adopted five new uniform acts. These acts are briefly described below, based on summaries prepared by the ULC.

A. Uniform Asset Freezing Orders Act.

The Uniform Asset Freezing Orders Act (UAFOA) creates a uniform process for the issuance of asset freezing orders, which are in personam orders freezing the assets of a defendant, and imposing collateral restraint on nonparties such as the defendant's bank, in order to preserve assets from dissipation, pending judgment. An asset freezing order is different from other types of pre-judgment orders such as a writ of attachment or a writ of garnishment (in rem orders) because an asset freezing order attaches to the defendant and not the property. If the defendant fails to comply with the order, the remedy is that the defendant may be held in contempt of court. The UAFOA provides state legislatures with a uniform process for the issuance of asset freezing orders. The Act also contains a mechanism for recognition and enforcement of asset freezing orders issued by other states and from foreign countries.

B. Uniform Deployed Parents Custody and Visitation Act.

The increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently. The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) standardizes and simplifies the rules covering custody and visitation issues for deployed parents. The goal of the UDPCVA is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military.

One of the key points of the new Act provides that the mere absence of a military parent from a state will not be used to deprive that state of custody jurisdiction. For most cases, a move is a purely voluntary thing. For service members, however, a move is not voluntary but is made under a military order. Such an involuntary move should not lead to the loss of jurisdiction by a state most familiar and involved with the child's best interests. The UDPCVA ultimately promotes a just balance of interests – protecting the rights of the service member, the other parent, and, above all, the best interests of the children involved.

C. Uniform Manufactured Housing Act.

The Uniform Manufactured Housing Act (UMHA) gives owners the option to classify manufactured homes as either real property or personal property. The Act's primary focus is to enable a purchaser to elect to treat his or her manufactured home (also commonly called mobile homes) as real property. Under the UMHA, manufactured homes are personal property until the owner follows a simple procedure to reclassify the home as real property: (1) locate the home on a particular parcel of land, and (2) file a certificate of location with the land records office of the jurisdiction where the home is located. To ensure consumers are fully informed, the UMHA requires dealers of manufactured homes to inform the buyer of the option to reclassify the home as real property at the time of sale. The UMHA specifies that even when a manufactured home is located on land and reclassified as real property, title to the home remains separate from title to the land. This ensures that lenders who provide financing for either the land or the home will have the right to foreclose on the appropriate collateral in the event of default. The Act also states that reclassification of a home as real property does not affect manufacturer's warranties, does not affect landlord and tenant rights under a lease if the home is located on leased

property, and does not subject the property to the law of fixtures. The Act is intended to modernize the law in this area, increase the supply of affordable housing by making manufactured home financing more available and affordable, and provide owners of manufactured homes with many of the same legal protections as owners of site-built homes.

D. Uniform Premarital and Marital Agreements Act.

The Uniform Premarital and Marital Agreements Act (UPMAA) brings clarity and consistency across a range of agreements between spouses and those who are about to become spouses.

A number of states currently treat premarital agreements and marital agreements under different legal standards, with higher burdens on those who wish to enforce marital agreements. The UPMAA, however, treats premarital agreements and marital agreements under the same set of principles and requirements. The Act harmonizes the standards in existing uniform acts governing premarital and marital agreements (including the Uniform Premarital Agreement Act, Uniform Marital Property Act, Uniform Probate Code, and Model Marriage and Divorce Act). The Act provides that a premarital or marital agreement is unenforceable if a party establishes that: the party's consent was involuntary or the result of duress; the party did not have access to independent legal representation; the party did not receive a conspicuous notice of rights that may be modified or waived by the agreement; or that the party did not receive adequate financial disclosures. The Act also provides that a court may refuse to enforce a term of a premarital or marital agreement that it finds to be unconscionable.

E. Uniform Choice of Court Agreements Convention Implementation Act.

The Uniform Choice of Court Agreements Convention Implementation Act will assist in the implementation and ratification of the Hague Convention on Choice of Court Agreements, and is meant to harmonize with federal implementing legislation.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2013

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 2013, the Commission recommends enactment of the Uniform Commercial Code Article 4A amendments (2012) and the Uniform Electronic Legal Material Act.

These acts are summarized below:

A. UCC Article 4A Amendments (2012) Summary.

The Dodd-Frank Wall Street Reform and Consumer Protection Act is an amendment to the Federal Electronic Funds Transfer Act (EFTA) that will have an important impact on the scope of Article 4A of the Uniform Commercial Code. Presently Article 4A does not apply to a funds transfer any part of which is governed by EFTA. The implementing regulations for

the federal act were published in the Federal Register in November 2011, with a delayed effective date of the rules to February 2013, expressly to permit changes to Article 4A so it might continue to govern aspects of some remittance transfers. Absent a change to Article 4A, there could be legal uncertainty for a class of remittance transfers currently governed by Article 4A. The Permanent Editorial Board for the Uniform Commercial Code has recommended an amendment to section 4A-108 and its comments. Both the American Law Institute and the ULC have approved the amendment.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the EFTA governed only consumer wire transfers. Section 4A-108 was drafted with that in mind. When the amendment to EFTA goes into effect in 2013, EFTA will govern “remittance transfers” whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. Thus, when the amendment and its implementing regulation go into effect, the result of section 4A-108 in its present form will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer (not a consumer remittance transfer). Thus a number of important issues in those remittance transfers will be governed neither by Article 4A or the EFTA.

The proposed amendment revises section 4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA.

B. Uniform Electronic Legal Material Act.

The Uniform Electronic Legal Material Act (UELMA) addresses many of the concerns posed if state primary legal material is published solely

online. UELMA provides a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and will be permanently available to the public in unaltered form. It furthers state policies of accountability and transparency in providing legal information to the public.

The Act applies to electronic legal material that has been designated official. Four categories of basic state legal material are specifically named in the Act, including the state constitution, state session laws, codified laws, and agency regulations that have the effect of law. The state has discretion to include any other publications it desires.

The Act requires that official electronic legal material be:

Authenticated, by providing a method to determine that it is unaltered;
Preserved, either in electronic or print form; and
Accessible, for use by the public on a permanent basis.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. The UELMA is intended to be complementary to the Uniform Commercial Code (UCC, which covers sales and many commercial transactions), the Uniform Real Property Electronic Recording Act (URPERA, which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (UETA, which deals with electronic commerce).

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 Adult Guardianship and Protective Proceedings Jurisdiction Act	Chapter 551G
2. Uniform Anatomical Gift Act (1968)(1987)(2008)	Part I, Chapter 327
3. Uniform Arbitration Act (1956)(2000)	Chapter 658A
4. Uniform Athlete Agents Act (2000)	Chapter 481E
5. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
6. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
7. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
8. Uniform Collaborative Law Act	Chapter 658G
9. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
10. Uniform Commercial Code Article 1 – General Provisions (2001)	Article 1, Chapter 490
11. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
12. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
13. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
14. Uniform Commercial Code Article 4A -- Funds Transfer (1989)	Article 4A, Chapter 490
15. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490
16. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)
17. Uniform Commercial Code Article 7 -- Documents of Title (2003)	Article 7, Chapter 490
18. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)	Article 8, Chapter 490
19. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999) (2010)	Article 9, Chapter 490
20. Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
21. Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
22. Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
23. Uniform Custodial Trust Act (1987)	Chapter 554B
24. Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
25. Uniform Determination of Death Act (1978)(1980)	§ 327C-1 (Substantially similar definition)

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
26. Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
27. Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510
28. Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
29. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
30. Uniform Electronic Transactions Act (1999)	Chapter 489E
31. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
32. Uniform Environmental Covenants Act	Chapter 508C
33. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
34. Uniform Fiduciaries Act (1922)	Chapter 556
35. Uniform Foreign-Country Money Judgments Recognition Act (2005)	Chapter 658F
36. Uniform Foreign-Money Claims (1989)	Chapter 658B
37. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
38. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
39. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560

ACT (Date of ULC Adoption
or Amendment)

HAWAII REVISED STATUTES

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| 40. | Uniform Health-Care Decisions Act (Modified) | Chapter 327E |
| 41. | Uniform Information Practices Code (1980) | Chapter 92F
(Substantially similar) |
| 42. | Uniform Interstate Depositions and Discovery Act | Chapter 624D |
| 43. | Uniform Interstate Family Support Act (1992)(1996) | Chapter 576B |
| 44. | Uniform Jury Selection and Service Act (1970)(1971) | Part I, Chapter 612
(Substantially similar) |
| 45. | Uniform Limited Liability Company Act (1995) (1996) | Chapter 428 |
| 46. | Uniform Limited Partnership Act (1976)(1983)(1985) | Chapter 425D (Repealed effective July 1, 2004) |
| 47. | Uniform Limited Partnership Act (2001) | Chapter 425E (Effective on July 1, 2004) |
| 48. | Uniform Management of Institutional Funds Act (1972) | Chapter 517D |
| 49. | Uniform Military and Overseas Voters Act | Chapter 15D |
| 50. | Uniform Parentage Act (1973) | Chapter 584 |
| 51. | Uniform Partnership Act (1914) (1997) | Part IV, Chapter 425 |
| 52. | Uniform Photographic Copies as Evidence Act (1949) | § 626-1, Rules 1001 to 1008 |
| 53. | Uniform Premarital Agreement Act (1983) | Chapter 572D |

ACT (Date of ULC Adoption
or Amendment)

HAWAII REVISED STATUTES

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| 54. | Uniform Principal and Income Act (1997)(2000) | Chapter 557A |
| 55. | Uniform Probate Code (1969)(1975)(1982)(1987)(1989)(1990)(1991)(1998) | Chapter 560 |
| 56. | Uniform Prudent Investor Act (1994) | Chapter 554C |
| 57. | Uniform Prudent Management of Institutional Funds Act (2006) | Chapter 517E |
| 58. | Uniform Real Property Electronic Recording Act (2004) (2005) | Part XII, Chapter 502 |
| 59. | Uniform Real Property Transfer on Death Act (2009) | Chapter 527 |
| 60. | Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968) | Chapter 576
(Repealed 1997) |
| 61. | Model Registered Agents Act (2006) | Chapter 425R |
| 62. | Uniform Rendition of Accused Persons (Superseded 1980) | Chapter 833 |
| 63. | Uniform Residential Landlord and Tenant Act (1972) | Chapter 521 |
| 64. | Uniform Securities Act (1956)(1958) (Superseded 1985) | Chapter 485 |
| 65. | Uniform Status of Convicted Persons Act (1964) | Chapter 831 |
| 66. | Uniform Statutory Rule Against Perpetuities Act (1986)(1990) | Chapter 525 |

ACT (Date of ULC Adoption
or Amendment)

HAWAII REVISED STATUTES

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| 67. | Uniform Testamentary Additions to Trusts Act (1960)(1961)
(Uniform Probate Code § 2-511 (1991)) | § 560:2-511 |
| 68. | Uniform Trade Secrets Act
(1979)(1985) | Chapter 482B |
| 69. | Uniform Transfer-on-Death (TOD) Security Registration Act (1998) | Chapter 539 |
| 70. | Uniform Transfers to Minors Act
(1983)(1986) | Chapter 553A |
| 71. | Uniform Trustees' Powers Act
(1964) | Chapter 554A |
| 72. | Uniform Unclaimed Property Act
(1981) | Part I, Chapter 523A |
| 73. | Uniform Unincorporated Nonprofit Association Act (1992)(1996) | Chapter 429 |