

# **2002 REPORT OF THE COMMISSION TO PROMOTE UNIFORM LEGISLATION**



**STATE OF HAWAII  
Department of the Attorney General**

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**2002 REPORT  
OF THE  
COMMISSION TO  
PROMOTE UNIFORM  
LEGISLATION**

**SUBMITTED TO  
THE TWENTY-SECOND STATE LEGISLATURE  
Regular Session of 2003**

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STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL

2002 REPORT OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-SECOND  
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 2002 Report.

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

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

Commissioners") convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state was participating in the NCCUSL. As it has developed, the NCCUSL is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

## II. OPERATION OF THE NCCUSL

### A. Financial Support of the NCCUSL.

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

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

adopted, the texts consistently contribute to the improvement of the law and have served as valuable references for the legislatures in their effort to improve the quality of state law.

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

The NCCUSL also permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. He or she receives compensation only for actual expenses incurred. The NCCUSL estimates that each commissioner devotes approximately 200 hours a year to NCCUSL work, including work on various drafting committees and attendance at the annual meeting. These are hours mainly spent in research and drafting work -- solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts averages about \$6,000,000 per year, at a conservative estimate. The total requested contribution of all the states to the operation of the NCCUSL is \$1,588,000 in 2002-2003. The smallest state contribution is \$10,300 and the largest is \$122,900. Hawaii's contribution is \$15,400, which represents an extraordinarily good, cost-

effective investment for the citizens of Hawaii. Even a modest use of the work product of the NCCUSL guarantees any state a substantial return on each dollar invested. The average number is eighty-five of current uniform and model acts adopted in all states. This state has had one hundred thirteen enactments of uniform acts, amendments to uniform acts, and revised uniform acts. For every dollar invested by each state, it has received very substantial and valuable services.

The annual budget of the NCCUSL comes to \$1,848,869 for the current fiscal year (July 1 to June 30). Of this amount, \$432,991 goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and, editing and personnel costs. About \$374,600 is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$251,000 is spent on the annual meeting. Public education for uniform and model acts costs about \$180,890 and includes contractual services, materials costs, and travel expenses. The remainder of the budget pays general administrative costs.

The American Bar Association makes a yearly contribution to the NCCUSL. For fiscal year 2002-2003, it has contributed \$56,250. The NCCUSL also seeks grants from the federal government and from foundations for specific drafting efforts. The last federal grant was a grant of \$60,000 to fund the drafting effort for the Uniform Environmental Covenants Act.

The Uniform Commercial Code (UCC) is a joint venture between the NCCUSL and the American Law Institute (ALI). The ALI holds the Falk Foundation funds that are allocated to work on the UCC. The original Falk Foundation grant came in the late 1940s for the original development of the



UCC. Proceeds from copyright licensing of UCC materials provide revenue to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of NCCUSL and ALI costs are paid from Falk Foundation income.

The NCCUSL will not take money from any source except on the understanding that its drafting work is autonomous. No source may dictate the contents of any uniform act because of a financial contribution.

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

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

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

## B. Creation of Uniform and Model Acts.

The procedures for preparing an act are the result of long experience with the creation of legislation. The NCCUSL maintains a standing committee called the Scope and Program Committee that considers new subject areas of state law for potential uniform or model acts. That committee studies suggestions from many sources, including the organized bar, state government, and private persons. If a subject area cannot be adequately studied by the Scope and Program Committee, it is likely to be given to a special study committee. Study committees report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the NCCUSL Executive Committee, and to the entire NCCUSL for approval or disapproval, however the case may be.

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

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

A committee meets according to the needs of the project. A meeting

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

At each annual meeting during its working life, each drafting committee must present its work to the whole body of the NCCUSL. The most current draft is read and debated. The entire text of each working draft is actually read aloud -- a reading of a proposed uniform law is not by title only, but is considered section by section either by section title or word for word -- and debated during proceedings of the committee of the whole. This scrutiny continues from annual meeting to annual meeting until a final draft satisfies the whole body of the commissioners. No act is promulgated without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting and a final reading at a subsequent annual meeting. As noted previously, there is often more than one interim reading and a drafting process that exceeds two years in duration. A draft becomes an official act by a majority vote of the states (one vote to each state). The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

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

C. Administration of the NCCUSL.

The governing body of the NCCUSL is the NCCUSL Executive

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

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

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

The NCCUSL maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the NCCUSL. Liaison is also maintained with the American Law Institute, the Council of State

Governments, and the National Conference of State Legislatures on an on-going basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

### III. ACTIVITIES OF THE HAWAII COMMISSIONERS

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

The Hawaii Commission to Promote Uniform Legislation was originally created by law in 1911. The Commission is presently within the State Department of the Attorney General and, pursuant to section 26-7, Hawaii Revised Statutes, is advisory to the Attorney General and to the Legislature on matters relating to the promotion of uniform legislation. Pursuant to sections 3-1 and 26-7, Hawaii Revised Statutes, the Commission consists of five members, who are appointed by the Governor, with the advice and consent of the Senate, for staggered terms of four years and until their successors are appointed and qualified. The NCCUSL Constitution requires that each commissioner be a lawyer. A deputy attorney general, assigned by the Attorney General to coordinate the review and preparation of legislative bills, sits with the Commission to provide technical assistance, as necessary, and is recognized as an associate member of Hawaii's delegation to the NCCUSL.

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

The members of the Hawaii Commission during 2001-2002 were as follows:

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

All members will continue to serve for 2002-2003. Deputy Attorney General Maurice S. Kato has been assigned by the Attorney General to continue to provide necessary assistance to the Commission.

B. NCCUSL Committee Assignments.

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

Commissioner Hiroshi Sakai served until January 12, 2002, as the chair of the Standby Committee on Uniform Disclaimer of Property Interests Act. For 2001-2002, Commissioner Sakai served as a member of the Drafting Committee on Uniform Environmental Covenants Act and the Study Committee on Consumer Debt Counseling. For 2002-2003, he will continue to be a member of the Drafting Committee on Uniform Environmental Covenants Act and a member of the Study Committee on Consumer Debt Counseling. Commissioner Sakai attended two meetings of the Drafting Committee on Environmental Covenants Act, both in Washington, D.C., on April 19-21, 2002, and on December 6-8, 2002. In November 2002,

Commissioner Sakai was appointed to the Study Committee on a Business Cooperatives Act.

For 2001-2002, Commissioner Lani Liu Ewart served on the Drafting Committee on Nonjudicial Foreclosure Act. Commissioner Ewart attended one meeting of the Drafting Committee on Nonjudicial Foreclosure Act, in Chicago, Illinois, on February 15-17, 2002. For 2002-2003, Commissioner Ewart will to serve as a member of the Standby Committee on Nonjudicial Foreclosure Act.

For 2001-2002, Commissioner Elizabeth Kent served on the Standby Committee on Uniform Mediation Act. For 2002-2003, Commissioner Kent will continue to be a member of the Standby Committee on Uniform Mediation Act. In November 2002, she was appointed to the Committee to Draft International Conciliation Amendments to the Uniform Mediation Act and the Study Committee on Public Health Emergency Response Authority. Commissioner Kent attended a meeting of the Committee to Draft International Conciliation Amendments to the Uniform Mediation Act in Washington, D.C., on December 6-8, 2002.

For 2001-2002, Commissioner Ken H. Takayama served as a member of the Committee on Liaison with Legislative Drafting Agencies, on the Study Committee on Misuse of Genetic Information and on the Standby Committee on Uniform Money Services Act. For 2002-2003, Commissioner Takayama will continue to serve on the Committee on Liaison with Legislative Drafting Agencies as well as the Study Committee on Misuse of Genetic Information and the Standby Committee on Uniform Money Services Act. In November 2002, he was appointed to be a member of the Study Committee on Revision/Expansion of the Uniform Money Services Act.

During 2001-2002, Commissioner Robert S. Toyofuku served as Hawaii's liaison member of the NCCUSL's Legislative Committee and until January 12, 2002, served as a member of the Study Committee on Tort Reform. For 2002-2003, Commissioner Toyofuku will continue to serve as Hawaii's liaison member of the NCCUSL's Legislative Committee.

C. Meetings Attended.

Commissioners Ewart, Kent, Sakai, and Takayama, attended the 2002 annual meeting held at Lowes Ventana Canyon Resort in Tucson, Arizona, from July 26 through August 2, 2002. In addition, the commissioners attended the meetings of their respective NCCUSL committees (as stated in the previous section), which are scheduled by the committee chairs as needed and which are usually held on the mainland.

D. Legislative Appearances by the Hawaii Commissioners.

In addition to serving as Hawaii's liaison member of the NCCUSL Legislative Committee, Commissioner Toyofuku served in 2001-2002 as the Commission's liaison to the Hawaii State Legislature. The Commission to Promote Uniform Legislation is advisory to the State Legislature, as well as to the Attorney General, and stands ready to assist the Legislature in providing information on any uniform act that the Legislature may be considering for enactment. Consequently, the Hawaii commissioners, upon notification by Commissioner Toyofuku of scheduled public hearings and as assigned by Chairman Sakai, 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 2002, Commissioner Toyofuku arranged



for the introduction of and monitored the movement of bills with regard to the Uniform Child Custody Jurisdiction and Enforcement Act; the Uniform Athlete Agents Act, amendments to the Uniform Arbitration Act to deal with the repeal date; amendments to Uniform Commercial Code Article 1; and amendments to Uniform Commercial Code Article 9.

Commissioner Ewart prepared testimony and lobbied for bills relating to the prevention of the filing of frivolous financing statements, the Uniform Commercial Code, and the amendments to the Revised Uniform Commercial Code Article 9 before the House Committees on Consumer Protection and Commerce; Water and Land Use; and Judiciary; and the Senate Committees on Commerce, Consumer Protection and Housing; Agriculture and Commerce, Consumer Protection and Housing; and Judiciary.

Commissioner Robert Toyofuku also prepared testimony and lobbied for various bills.

#### IV. UNIFORM ACTS ENACTED IN HAWAII

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

##### A. Uniform Acts Introduced for Enactment in 2002.

During the regular session of 2002, bills were introduced to enact or amend the following uniform and model acts: (1) the Uniform Athlete

Agents Act; (2) technical amendments to the Revised Uniform Commercial Code Article 9 – Secured Transactions; (3) the Revised Uniform Commercial Code Article 1; and (4) the Uniform Child-Custody Jurisdiction and Enforcement Act. Of these, the following were passed by the Legislature and approved by the Governor and enacted as acts of the Session Laws of Hawaii 2002: the Uniform Child Custody Jurisdiction and Enforcement Act, on May 31, 2002 as Act 124 with a delayed effective date of January 1, 2003, and the technical amendments to the Uniform Commercial Code Article 9—Secured Transactions, on April 25, 2002, as Act 27.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the fifty-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 National Conference after enactment in Hawaii. A review of the superseding uniform acts should be done on an ongoing basis for the eventual updating of the Hawaii Revised Statutes by enactment of the superseding uniform acts.

V. A SUMMARY OF NEW UNIFORM ACTS

During the 2002 annual meeting, the NCCUSL considered and adopted eight new or revised uniform acts. These acts are briefly described below, based on summaries prepared by John M. McCabe, Esq., Legislative Director and Legal Counsel of the NCCUSL.

A. Uniform Apportionment of Tort Responsibility Act.

This Act provides for a modified form of comparative fault that compares the fault of an injured party with that of all contributing tortfeasors in an action for damages until the injured person's contribution reaches or exceeds fifty percent of his or her own injury. Then contributory fault is an absolute bar to recovery. Joint and several liability of multiple tortfeasors is limited to certain instances, primarily the one in which multiple tortfeasors act in concert. Otherwise, joint and several liability is abolished. There is a reallocation procedure when there are multiple tortfeasors and it appears reasonably certain that a tortfeasor will not pay compensation to an entitled injured party.

B. Uniform Child Witness Testimony by Alternative Methods Act.

This act authorizes a court to consider whether to allow a child to testify outside the presence of a party and outside a proceeding when so testifying would impair the testimony of the child witness or subject the child witness to distress. In a criminal proceeding, to obtain an alternative method, it must be proved by clear and convincing evidence that testimony will cause the child great emotional distress. In a civil proceeding, it must be shown that an alternative is in the best interests of the child by a preponderance of the evidence. Party rights to examination and cross-examination are preserved.

C. Amendments to Uniform Commercial Code Articles 3 and 4.

Very limited amendments to Uniform Commercial Code Articles 3 and 4 were promulgated by the American Law Institute and the NCCUSL in 2002. These articles govern negotiable instruments and, bank deposits, and

collections. The most significant amendment deals with adding suretyship rules from the Restatement of Suretyship to replace the rules for indorsers and accommodation parties when an obligation is released without payment. There are new warranty rules for telephonically generated checks, a new phenomenon. Certain writing requirements are extended to include electronic records. These are examples of these amendments. The primary character of negotiable instruments and checks remains unchanged.

D. Uniform Computer Information Transactions Act (Last Amended in 2002).

The Uniform Computer Information Transactions Act (UCITA) is the first comprehensive act governing the commercial licensing of computer information and network access contracts. It governs all aspects of licensing contracts from formation to remedies in the event there is breach of contract. Computers operate with, produce, and use digitized information. The software that runs the computer and the music that it plays are all the same in that sense. What is transferred from person to person is that digitized information stored electronically. A licensing contract is a contract to transfer the informational rights and copies of the information that the originator of computer information has to a transferee. Usually, the transferor of computer information reserves some of the informational rights — the right to copy being the most commonly withheld right. Computer information can be copied and disseminated instantly and infinitely, and the license contract protects the transferor's economic interest in computer information by limiting the transferee's subsequent transfer rights. There are special formation rules in UCITA for acquisition of licenses in the mass-market, warranty rules for transfer of information, including special compatibility rules, rules relating to the authentication of transfers of computer information, and rules for memorializing contracts using electronic

records. Remedies for breach of an agreement are, generally, damages. The 2002 amendments cut off electronic self-help as a remedy, limit the ability to prohibit reverse engineering, and make licensing contracts non-binding until they are available for review either electronically or in a writing.

E. Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (Last Amended in 2002).

This act implements the obligation of full faith and credit for domestic violence protection orders required by the U.S. Constitution and the federal Violence against Women Act. There are two principal methods of enforcement, (1) direct enforcement by a court of the domestic violence protection orders of another state; or (2) enforcement by law enforcement officers upon a finding that there is probable cause to believe that a domestic violence protection order from another state has been violated. In addition, a domestic violence protection order from another state may be registered in advance of any possible violation of that order to expedite enforcement by courts or law enforcement officers. The 2002 amendments expressly add anti-stalking orders to the scope of this act.

F. Uniform Nonjudicial Foreclosure Act.

This act permits the foreclosure of real estate mortgages without a judicial proceeding. It allows traditional sale by auction, placing foreclosed property directly on the real estate market or strictly foreclosing on the property. Nonjudicial foreclosure of a residential mortgage eliminates deficiency judgments for good faith debtors. Post-sale redemption is eliminated. The premise for this act is that in the huge majority of cases, the right to foreclose is clear and unequivocal. A judicial proceeding in every case therefore impedes the inevitable result, which is sale of the property to satisfy the debt. There is always recourse to a court if there is doubt about

the right to foreclose.

G. Uniform Parentage Act (Last Amended in 2002).

The original Uniform Parentage Act (UPaA) was promulgated in 1973. It removed the legal status of illegitimacy from the law of the U.S. and provided a first modern civil paternity action. The 2002 UPaA augments and streamlines the 1973 UPaA. It includes the basic paternity or parentage action with expanded standing to bring such an action, but provides for a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of paternity in a court, providing that there is no presumed father of the child. The presumption of fatherhood is based on the relationship between a man and woman with respect to a child. The most common presumed father is the man married to the birth mother of the child at the time of conception. The acknowledgment proceeding is predicated on the availability of the precise genetic testing that has developed since 1973. A paternity registry is provided in the 2002 UPaA. There is a specific, separate judicial proceeding for ordering genetic testing. The 2002 UPaA provides specific standards for genetic testing. Only genetic tests that identify another man as a father or exclude the presumed father, may be used to rebut the presumption of fatherhood in a paternity action. Also included in the 2002 UPaA are rules for determining the parents of children whose conception is not the result of sexual intercourse. Included kinds of assisted conception are artificial insemination and in vitro fertilization. The 2002 UPaA also incorporates sections on gestational agreements, but as optional sections because of state law differences on these kinds of contracts. The principal amendments in 2002 return some of the nonmarital presumptions of paternity from the 1973 Act that were eliminated in the 2000 Act.

#### H. Uniform Securities Act (Last Revised in 2002).

A major revision of the Uniform Securities Act was promulgated in 2002. There has been a uniform act on the issues of securities regulation going back to 1930. This act replaces both the 1956 Uniform Act and the 1985/88 Uniform Act. It provides basic law for registration of securities issues, broker-dealers, and investment advisors, along with enforcement powers for the securities administrator. Coordination with federal law, particularly after the 1996 National Securities Markets Improvement Act, is a primary goal. The 1996 federal act specifically preempted state securities regulation, making all existing state law out of compliance. The act also accommodates electronic records and filing systems.

#### VI. RECOMMENDATIONS FOR ENACTMENT IN 2003

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 2002, the Commission recommends enactment of the Uniform Athlete Agents Act (pending the Auditor's completion of sunrise review), the Revised Uniform Commercial Code Article 1, and amendments to Uniform Commercial Code Articles 3 and 4. The amendments to the Uniform Commercial Code Articles 3 and 4 are

summarized in Section V of this report. The Uniform Athlete Agents Act and the Revised Uniform Commercial Code Article 1 are summarized below:

A. Uniform Athlete Agents Act.

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

B. Revised Uniform Commercial Code Article 1.

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions that apply to transactions covered by other articles of the UCC. As other articles of the UCC have been revised and amended to conform to modern usages and legal developments, the revisions to Article 1 are intended to make both conforming, technical changes, as well as changes clarifying various ambiguities that have arisen over the years. The revisions also make certain substantive changes, including expanding the definition of good faith to include "the observance of reasonable commercial standards of fair dealing," and allowing courts to use evidence of the "course of performances" of a transaction in contract interpretation. But perhaps the most significant change to Article 1 involves the ability of parties to designate the application of a particular state's law by contract. Under the current rule, all transactions must bear a "reasonable relation" to the designated state. Under the Revised Article 1, this requirement is dropped as a general restriction, and parties are instead allowed to designate the law of any state (in a domestic transaction) or that of any country (in an



international transaction), subject to a limitation that such a designation is ineffective if that application would be contrary to a fundamental public policy of the state or country whose law would otherwise govern in the absence of a contractual designation. Where one of the parties is a consumer, however, the "reasonable relation" test still applies; more significantly, even if a contractual designation meets this test, the application of that state's law may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or where the consumer makes a contract and takes delivery of goods.

## VII. CONCLUSION

The Hawaii Commission to Promote Uniform Legislation offers its assistance in obtaining information or advice regarding the uniform acts recommended for consideration, or any other uniform act adopted by the NCCUSL. The Commission wishes to express its appreciation for the interest in and support of the Commission's efforts to promote uniform legislation that have been received from the Governor, the Attorney General, and the Legislature.

Respectfully submitted,

COMMISSION TO PROMOTE UNIFORM  
LEGISLATION


By:   
HIROSHI SAKAI  
Chairman

TABLE OF  
UNIFORM ACTS ENACTED IN HAWAII

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
1. Uniform Anatomical Gift Act (1968)(1987)	Part I, Chapter 327
2. Uniform Arbitration Act (1956)(2000)	Chapter 658A
3. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
4. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583
5. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
6. Uniform Commercial Code (1951)(1957) (1962)(1966)	Chapter 490
7. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
8. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
9. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490
10. Uniform Commercial Code Article 4A -- Funds Transfer (1989)	Article 4A, Chapter 490
11. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490
12. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
13. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)	Article 8, Chapter 490
14. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999)	Article 9, Chapter 490
15. Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
16. Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
17. Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
18. Uniform Custodial Trust Act (1987)	Chapter 554B
19. Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
20. Uniform Determination of Death Act (1978)(1980)	§ 327C-1(Substantially similar definition)
21. Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
22. Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510
23. Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
24. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D

	<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
25.	Uniform Electronic Transactions Act (1999)	Chapter 489E
26.	Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
27.	Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
28.	Uniform Fiduciaries Act (1922)	Chapter 556
29.	Uniform Foreign-Money Claims (1989)	Chapter 658B
30.	Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
31.	Uniform Fraudulent Transfer Act (1984)	Chapter 651C
32.	Uniform Health-Care Decisions Act (Modified)	Chapter 327E
33.	Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
34.	Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B
35.	Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
36.	Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
37.	Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
38. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
39. Uniform Parentage Act (1973)	Chapter 584
40. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
41. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
42. Uniform Premarital Agreement Act (1983)	Chapter 572D
43. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
44. Uniform Probate Code (1969)(1975)(1982)(1987)(1989) (1990)(1991)	Chapter 560
45. Uniform Prudent Investor Act (1994)	Chapter 554C
46. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
47. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
48. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
49. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
50. Uniform Status of Convicted Persons Act (1964)	Chapter 831

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