

# **2003 REPORT OF THE COMMISSION TO PROMOTE UNIFORM LEGISLATION**



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

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**2003 REPORT  
OF THE  
COMMISSION TO PROMOTE  
UNIFORM LEGISLATION**

**SUBMITTED TO  
THE TWENTY-SECOND STATE LEGISLATURE  
Regular Session of 2004**

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STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL

2003 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 2003 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 \$1,637,700 in 2003-2004. The smallest state contribution is \$10,800 and the largest is \$126,500. Hawaii's contribution is \$16,200, 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 fourteen 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 \$1,852,873 for the current fiscal year (July 1 to June 30). Of this amount, \$380,650 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 \$333,971 is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$230,982 is spent on the annual meeting. Public education for uniform and model acts costs about \$162,970 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 2003-2004, 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 2002-2003 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 2003-2004. 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.

For 2002-2003, Commissioner Hiroshi Sakai served as the chair of the Standby Committee on Uniform Disclaimer of Property Interests Act, and as a member of the Study Committee of Business Cooperatives, Study Committee on Consumer Debt Counseling, and the Drafting Committee on Uniform Environmental Covenants Act. In September 2003, he was appointed to the Drafting Committee on Agricultural and Agricultural-

Related Cooperatives (formerly Business Cooperatives). Commissioner Sakai attended three meetings of the Drafting Committee on Environmental Covenants Act, two in Washington, D.C., on February 28 - March 3, 2003, and on August 1-7, 2003, and in Chicago, Illinois, on May 9 -11, 2003. He also attended a meeting of the Drafting Committee on Agricultural and Agricultural Related Cooperatives in Chicago, Illinois, on December 12-14, 2003. For 2003-2004, he will continue to be the chair of the Standby Committee on Uniform Disclaimer of Property Interests Act, a member of the Drafting Committee on Uniform Environmental Covenants Act, a member of the Study Committee on Consumer Debt Counseling, and a member of the Study Committee on Consumer Debt Counseling.

For 2002-2003, Commissioner Lani Liu Ewart served on the Standby Committee on Nonjudicial Foreclosure Act. Commissioner Ewart attended two meetings of the Drafting Committee on Uniform Mortgage Satisfaction Act, one in Atlanta, Georgia, on May 1-4, 2003, and one in Chicago, Illinois, on November 6-9, 2003. She also attended a meeting of the Drafting Committee on Uniform Real Property Electronic Recordation Act in Chicago, Illinois, on November 13-15, 2003, and a meeting of the Drafting Committee on Mortgagee Access to Rents Act in Chicago, Illinois, on December 11-13, 2003. For 2003-2004, Commissioner Ewart will continue to serve as a member of the Standby Committee on Nonjudicial Foreclosure Act. She will also serve as the chair Division F and will serve as an ex officio member of the following committees: Study Committee on Internet Private Law, Drafting Committee on Mortgagee Access to Rents Act, Study Committee to Revise Uniform Conflicts of Laws – Limitations Act, and the Drafting Committee on Uniform Real Property Electronic Recordation Act, and she will serve as Enactment Plan Coordinator as well as an ex officio member of the Drafting Committee on Mortgage Satisfaction Act.

For 2002-2003, Commissioner Elizabeth Kent served on the Drafting Committee on International Conciliation Amendments to the Uniform Mediation Act and was a member of the Study Committee on Public Health Emergency Response Authority. For 2003-2004, Commissioner Kent will continue to be a member of the Standby Committee on Uniform Mediation Act.

For 2002-2003, 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 Study Committee on Revision/Expansion to the Uniform Money Services Act. For 2003-2004, Commissioner Takayama will continue to serve on the Committee of Legislative Counsel (formerly the Committee on Liaison with Legislative Drafting Agencies) as well as the Study Committee on Misuse of Genetic Information, the Standby Committee on Uniform Money Services Act, and on the Study Committee on Revision/Expansion of the Uniform Money Services Act. In addition, he will serve as Hawaii's liaison member for the NCCUSL's Western Region of the Legislative Council .

During 2002-2003, Commissioner Robert S. Toyofuku served as Hawaii's liaison member of the NCCUSL's Legislative Committee and until August 2003, was Hawaii's liaison member for the Western Region of the Legislative Council. As of August 2003, upon the death of Oregon's Commissioner, Oglesby Young, a member of the Legislative Council, Commissioner Toyofuku was asked to be one of the ten commissioners who are members of the NCCUSL's Legislative Council. For 2003-2004, Commissioner Toyofuku will continue to serve as a member of the Legislative Council.



C. Meetings Attended.

Commissioners Ewart, Sakai, Takayama, and Toyofuku attended the 2003 annual meeting held at JW Marriott Hotel, Washington, D.C., from the morning of Friday, August 1, 2003, to the afternoon of Thursday, August 7, 2003. 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 2002-2003 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 2003, Commissioner Toyofuku arranged for the introduction of and monitored the movement of bills with regard to the amendments to Uniform Commercial Code Article 1 and amendments to Uniform Commercial Code Articles 3 and 4. He spent time at the Legislature meeting with various legislators regarding NCCUSL related bills.

Commissioner Ewart prepared testimony and testified before the House Committee on Consumer Protection and Commerce on Uniform Commercial Code Article 1. She prepared testimony and lobbied for amendments to the Uniform Commercial Code Articles 3 and 4. She also spent time preparing supporting testimony on the Uniform Limited Partnership Act.

#### 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 2003.

During the regular session of 2003, bills were introduced to enact or amend the following uniform and model acts: (1) the Revised Uniform Commercial Code Article 1; (2) Amendments to Uniform Commercial Code Articles 3 and 4; and (3) Replacement of chapter 425D, Hawaii Revised Statutes, the Uniform Limited Partnership Act, with a modified version of the 2001 Revised Uniform Limited Partnership Act. Of these, one was passed by the Legislature and approved by the Governor and enacted as an act of the Session Laws of Hawaii 2003: the Revised Uniform Limited Partnership Act was enacted on June 26, 2003, as Act 210.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the fifty-nine 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 2003 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. 2003 Amendments to Article 2, Uniform Commercial Code.

Article 2 of the Uniform Commercial Code governs sales of goods. It was promulgated as part of the Uniform Commercial Code in 1951. It has ancestry in the Uniform Sales Act, originally promulgated in 1906. The amendments incorporate electronic transactions so that sale contracts can be formed and enforced though in electronic media. Other areas of Article 2 are clarified in light of the experience with this Article since 1951, the year it replaced the Uniform Sales Act and the year the Uniform Commercial Code was launched.

B. 2003 Amendments to Article 2A, Uniform Commercial Code.

Article 2A governs leases of goods in a parallel fashion to the governance of sales of goods in Article 2. Article 2A was added to the Uniform Commercial Code in 1987, and was the first new article in the Uniform Commercial Code since its original promulgation in 1951. Article 2A was amended in 1990. The primary purpose of the 2003 amendments is to incorporate electronic transactions so that lease contracts can be formed and enforced though in electronic media. There are other clarifications based on the experience with Article 2A since 1987.

C. Revised Article 7, Uniform Commercial Code.

Article 7 governs the transfer of bills of lading and warehouse receipts as documents of title. Generally, transfer of a document of title from one person to another transfers the rights in the goods represented by the document of title. Article 7 provides for negotiable documents of title, which transfer interests in goods represented in such documents free of any claims or defenses of the issuer or other transferor of the document. The revisions establish the rules for electronic documents of title. It authorizes them, incorporates electronic records and signatures for statute of fraud purposes, provides an analogous system for transfer of electronic documents to the system of negotiable paper documents of title, provides for conversion of electronic documents of title into tangible documents of title and vice versa, and prepares for the expected reliance upon electronic documents of title into the future. A key concept to transfer of electronic documents of title is that of "control." Control occurs when it is possible to identify every transfer of an authoritative copy of an electronic document with absolute certainty and when transfer can only occur when the party in control authorizes transfer.

D. Uniform Environmental Covenants Act.

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

E. 2003 Revision of the Uniform Estate Tax Apportionment Act.

This is a revision of earlier acts, and part of the Uniform Probate Code, that provides for apportioning the burden of federal or state estate taxes between the respective interests of heirs or legatees of an estate, or beneficiaries of a revocable trust, when the fiduciary for an estate or trust is required to pay such taxes. Generally, the tax burden is allocated to the interests of estate or trust beneficiaries in proportion to their interests in the whole of the taxable estate. There are special rules for specific sorts of interests such as qualified terminable interest property trusts (a kind of marital trust) and when certain kinds of property are insulated from inclusion

in the apportionable estate, though they are taxable property. This update takes into account all changes in tax rules arising since the last time this act was amended.

F. 2003 Amendments to Uniform Mediation Act: UNCITRAL Model Act on Commercial Conciliation.

The 2003 Amendment to the Uniform Mediation Act provides for adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Commercial Conciliation by incorporating it by reference in the Uniform Mediation Act. The Model Law was adopted by UNCITRAL in 2002, and provides for the appointment of conciliators (mediators) and the conduct of a conciliation between international commercial disputants. Conciliation and mediation are virtually synonymous for the purposes of these acts.

G. 2003 Amendments to the Uniform Trust Code.

The 2003 amendments to the Uniform Trust Code (2000) follow a set of amendments approved in 2001. The changes consist of several clarifications and technical corrections, mostly nonsubstantive. An amendment to section 105(b)(8) clarifies the mandatory rule requiring qualified beneficiaries over the age of 25 to be notified of the existence of an irrevocable trust, the identity of the trustee and of their right to request a trustee's reports. An amendment to section 411 adds the words "modification or" to correct an inadvertent technical glitch. The section relates to the modification or termination of a noncharitable irrevocable trust by consent. Amendments to sections 602 and 603 deal with revocable trusts and who controls the rights of the beneficiaries while the trust is revocable. The objective is to make sure that, in cases of a trust with a joint

interest, a settlor is notified if another settlor amends or revokes the trust. Since section 603 is much broader in scope, the language has been stricken from it and added more precisely into section 602. Another amendment to section 802 deals with the trustee's duty of loyalty. The amendment to section 802(f) clarifies the Uniform Trust Code provision on proprietary mutual funds. The amendment provides that section 802(f) applies to institutional trustees in many other contexts other than proprietary mutual funds. The last amendment changes an "or" to an "and" in section 815, relating to general powers of a trustee. While a technical typographical glitch, its impact is substantive. This amendment clarifies the intent of the drafters that, to the extent the terms of the trust are silent, the trustee powers will be supplemented by those in the Uniform Trust Code.

H. 2003 Amendment to the Uniform Tort Appointment Act.

This Act, which was promulgated originally in 2002 and which replaces the Uniform Comparative Fault Act of 1979, received some limited amendments in 2003. Language relating to "strict liability" in section 3 has been deleted, since the defense of contributory fault has not ordinarily been available in strict liability cases. The act applies in negligence and any other case in which a defense of contributory fault may have been a defense. Other amendments clarify the reallocation provisions, primarily providing for a more precise statement relating to any security position or subrogation rights considered in reallocating damages. A precise time of ninety days has been provided for filing for reallocation in the event a share of a party is uncollectible.

## VI. RECOMMENDATIONS FOR ENACTMENT IN 2004

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 2004, the Commission recommends enactment of the Uniform Athlete Agents Act (pending waiver of the Auditor's sunrise review), the Revised Uniform Commercial Code Article 1, Revised Uniform Commercial Code Article 7, and a bill changing the applicability date of the Revised Uniform Arbitration Act from 2004 to 2005. The Revised Uniform Commercial Code Article 7 is 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

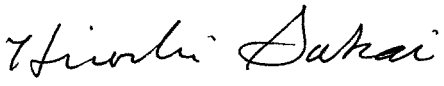
By:   
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TABLE OF  
UNIFORM ACTS ENACTED IN HAWAII

<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 (Repealed effective July 1, 2004)

	<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
38.	Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
39.	Uniform Management of Institutional Funds Act (1972)	Chapter 517D
40.	Uniform Parentage Act (1973)	Chapter 584
41.	Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
42.	Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
43.	Uniform Premarital Agreement Act (1983)	Chapter 572D
44.	Uniform Principal and Income Act (1997)(2000)	Chapter 557A
45.	Uniform Probate Code (1969)(1975)(1982)(1987)(1989) (1990)(1991)	Chapter 560
46.	Uniform Prudent Investor Act (1994)	Chapter 554C
47.	Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
48.	Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
49.	Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
50.	Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485

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