

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



**2007 REPORT  
OF THE  
COMMISSION TO PROMOTE  
UNIFORM LEGISLATION**

**SUBMITTED TO  
THE TWENTY-FOURTH STATE LEGISLATURE  
Regular Session of 2008**

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STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL

2007 REPORT OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-FOURTH  
LEGISLATURE:

The Hawaii Commission to Promote Uniform Legislation, the members of which are Hawaii's representatives to the National Conference of Commissioners on Uniform State Laws, respectfully submits this 2007 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 Commission") convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. By 1912, every state was

participating in the NCCUSL. As it has developed, the NCCUSL is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

## II. OPERATION OF THE NCCUSL

### A. Financial Support of the NCCUSL.

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

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

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

The NCCUSL also permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. He or she receives compensation only for actual expenses incurred. The NCCUSL estimates that each commissioner devotes approximately 200 hours a year to NCCUSL work, including work on various drafting committees and attendance at the annual meeting. These are hours mainly spent in research and drafting work -- solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts averages about \$6,000,000 per year, at a conservative estimate. The total requested contribution of all the states to the operation of the NCCUSL is \$2,082,700 in fiscal year 2007-2008. The smallest state contribution is \$19,000 and the largest is \$140,000. Hawaii's contribution is \$22,400, 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 State of Hawaii has had one hundred twenty 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 \$3,218,450 for the current fiscal year (July 1 to June 30). Of this amount, \$754,960 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 \$674,275 is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$489,289 is spent on the annual meeting. Public education for uniform and model acts costs about \$194,555 and includes contractual services, materials costs, and travel expenses. The remainder of the budget pays general administrative costs.

The NCCUSL 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 NCCUSL'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 NCCUSL expands the value of every state dollar invested in its work.

The Uniform Commercial Code (UCC) is a joint venture between the NCCUSL and the American Law Institute (ALI). The ALI holds the Falk Foundation funds that are allocated to work on the UCC. The original Falk Foundation grant came in the late 1940s for the original development of the UCC. Proceeds from copyright licensing of UCC materials provide revenue to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of NCCUSL and ALI costs is paid from Falk Foundation income.



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

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.

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. 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 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 twelve

people. In addition, the NCCUSL contracts for professional services to aid in the drafting effort. These professional reporters, so-called, are engaged at very modest honoraria to work with drafting committees on specific acts. Most often they are law professors with specific expertise in the area of law addressed in the act they draft. The NCCUSL also contracts with professional, independent contractors for part of its public information and educational materials.

The NCCUSL maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the NCCUSL. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an on-going basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

### III. ACTIVITIES OF THE HAWAII COMMISSIONERS

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

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

legislative bills, sits with the Commission to provide technical assistance, as necessary, and is recognized as an associate member of Hawaii's delegation to the NCCUSL.

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

The members of the Hawaii Commission during 2006-2007 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 2007-2008 will remain the same.

Former commissioners Hiroshi Sakai and Robert S. Toyofuku are NCCUSL Life Members who continue to actively participate in NCCUSL activities. Upon recommendation of the NCCUSL Executive Committee and by the affirmative vote of two-thirds of the commissioners present at an annual meeting, they were elected as NCCUSL Life Members with the privilege to participate in NCCUSL activities. Deputy Attorney General Maurice S. Kato of the Legislative Division has been assigned by the Attorney General to provide staff support for the commissioners and is

recognized as an Associate Member of the NCCUSL.

B. NCCUSL Committee Assignments.

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

LANI LIU EWART

In order to provide liaison between the study, drafting, and standby committees and the NCCUSL's Executive Committee, the work of the NCCUSL is divided into six divisions with committees assigned to the divisions. One of the six divisions, Division F, was chaired by Commissioner Lani Liu Ewart in 2006-2007, for which she was assigned:

Study Committees:

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

Drafting Committees:

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

Standby Committees:

- on Uniform Assignment of Rents Act
- to Revise Uniform Commercial Code Article 2, Sales, and Article 2A, Leases
- to Consider Adding Divisions to Model Entity Transactions Act

- on Uniform Environmental Covenants Act
- to Prepare Amendments to Uniform Interstate Family Support Act
- on Uniform Real Property Electronic Recording Act
- on Uniform Residential Mortgage Satisfaction Act
- on Uniform Securities Act
- on Model Registered agents Act.

In 2006-2007, Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2007-2008.

For 2007-2008, Commissioner Ewart will serve as a member of the Executive Committee, the Drafting Committee on Uniform Statutory Trust Entity Act, and the Drafting Committee on Partition of Tenancy-in-Common Real Property Act.

At the 2007 annual meeting, Commissioner Ewart served as a member of the Nominating Committee for officers of the NCCUSL.

Commissioner Ewart attended two committee meetings in 2007: (1) Standby Committee on Model Entity Transactions Act from March 29 to April 2, 2007, in Philadelphia, Pennsylvania; and (2) Drafting Committee on Certification of Unsworn Foreign Declarations Act and the Drafting Committee on Uniform Statutory Trust Entity Act from April 19-22, 2007, in Salt Lake City, Utah. She also participated in meetings by conference call on the Study Committee on Notice and Repair of Construction Defects; the Study Committee on Insurable Interests; and the Study Committee on Bank Deposits Act.

PETER J. HAMASAKI

For 2006-2007, Commissioner Hamasaki served on the Standby

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

For 2007-2008, Commissioner Hamasaki will serve on the Drafting Committee to Revise the Uniform Law on Notarial Acts, for which he participated in its initial meeting by telephone conference call on November 20, 2007.

#### ELIZABETH KENT

For 2006-2007, Commissioner Kent served as a member of the Drafting Committee on a Collaborative Law Act.

For 2007-2008, Commissioner Kent will continue to serve as a member of the Drafting Committee on a Collaborative Law Act.

Commissioner Kent attended two meetings on the Drafting Committee on a Collaborative Law Act, the first on April 20-21, 2007, in Salt Lake City, Utah, and the second on October 5-6, 2007, in Boise, Idaho.

#### KEVIN P. H. SUMIDA

In 2006-2007, Commissioner Sumida served on the Drafting Committee on Uniform Cooperative Association Act and on the Drafting Committee on a Certification of Unsworn Foreign Declarations Act

For 2007-2008, he will serve as a member of the Standby Committee on a Uniform Limited Cooperative Association Act and continue to serve as a member of the Drafting Committee on a Certification of Unsworn Foreign Declarations Act.

Commissioner Sumida attended one meeting on the Drafting Committee on a Certification of Unsworn Foreign Declarations Act on October 6-7, 2007, in Boise, Idaho.



## KEN H. TAKAYAMA

For 2006-2007, Commissioner Takayama served as a member of the Drafting Committee on the Misuse of Genetic Information in Employment and Insurance as well as a Subcommittee of the Drafting Committee on the Misuse of Genetic Information in Employment and Insurance. He also served as a member of the following committees: Study Committee on DNA Evidence, Study Committee on the Regulation of Medical Examiners, Committee on Membership and Attendance, and Committee of Legislative Counsel. In addition, he served as Hawaii's liaison member of the Legislative Committee.

For 2007-2008, Commissioner Takayama will continue to serve as a member of the Drafting Committee on the Misuse of Genetic Information in Employment and Insurance as well as a Subcommittee of the Drafting Committee on the Misuse of Genetic Information in Employment and Insurance. He will also continue to serve as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Counsel.

Commissioner Takayama attended two meetings for the Drafting Committee on the Misuse of Genetic Information on April 20-22, 2007, and on November 16-18, 2007, both in Chicago, Illinois. Commissioner Takayama also spent time on conference calls and on preparation for meetings of the Drafting Committee on the Misuse of Genetic Information.

## ROBERT S. TOYOFUKU

The Legislative Committee was created as a standing committee to encourage the development of legislative programs in each state to accomplish the introduction and passage of bills to enact uniform and model

acts of the NCCUSL. The activities of the Legislative Committee are directed by the Chair and the Legislative Council. Each state and the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands are represented by a commissioner designated as the liaison member for that jurisdiction who is responsible for the legislative program in that commissioner's home jurisdiction. The represented jurisdictions are grouped into ten regions. A member of the Legislative Council is assigned to each region, with the responsibility to oversee the legislative activities in the states in the assigned region.

For 2006-2007, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2007-2008. 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). In 2006-2007, he also served as a member of the Study Committee on Interstate Depositions.

On November 10-11, 2007, NCCUSL Life Member Toyofuku attended a meeting of the Legislative Committee in Denver, Colorado.

#### HIROSHI SAKAI

During 2006-2007, Life Member Sakai served on the Drafting Committee on a Uniform Cooperative Association Act, the Standby Committee on Uniform Debt-Management Services Act, the Standby Committee on Uniform Environmental Covenants Act and the Drafting Committee to Amend Uniform Common Interest Ownership Act.

For 2007-2008, Life Member Sakai will serve on the Drafting Committee to Amend Uniform Common Interest Ownership Act, the Standby Committee on Uniform Debt-Management Services Act, and the Committee on International Legal Developments.

In 2007, Life Member Sakai attended three meetings of the committees as follows: (1) Standby Committee on a Uniform Limited Cooperative Association Act, on March 8-11, 2007, in Washington D.C.; (2) Uniform Common Interest Ownership Act, on November 8-10, 2007, in Denver, Colorado; and (3) Standby Committee on Uniform Debt-Management Services Act, on November 16-18, 2007, in Chicago, Illinois.

C. Meetings Attended.

The commissioners attended the meetings of their respective NCCUSL committees (as listed in the previous section), which are scheduled by the committee chairs as needed and which are usually held on the mainland. In addition, the NCCUSL met in its 116th year in Pasadena, California, from July 27 to August 3, 2007.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama, former Hawaii Commission members and NCCUSL Life Members Sakai and Toyofuku, and Deputy Attorney General Maurice S. Kato attended the 2007 annual meeting. During the sessions of the annual meeting of the NCCUSL, the commissioners who are members of committees meet separately with their committees and, if scheduled, appear with their committees on the dais in the main meeting room during the reading of draft uniform acts.

During the 2007 annual meeting, Commissioner Lani Ewart served as Chairman of the Committee of the Whole for Consideration of the Uniform Interstate Depositions and Discovery of Documents Act.

After consideration of the latest drafts, the NCCUSL approved four new uniform acts: the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the Uniform Rules Relating to Discovery of Electronically Stored Information, the Uniform Interstate Depositions and

Discovery Act, and the Uniform Limited Cooperative Association Act.

In addition, the NCCUSL approved amendments to the Uniform Emergency Volunteer Health Practitioners Act, the Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act, and the Model Entity Transactions Act.

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

D. Legislative Appearances by the Hawaii Commissioners.

Commissioner Takayama served in 2006-2007 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 2007, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Debt-Management Services Act, Uniform Athlete Agents Act, Unclaimed Property, and a resolution for a sunrise review on the Registration of Providers of Debt-Management Services. They spent time at the Legislature meeting with various legislators regarding NCCUSL related bills. They, together with the other commissioners, also prepared testimony and testified before various Senate and House committees.

Life Member Hiroshi Sakai provided written testimony and spent time testifying at the Legislature on H.B. No. 184 and S.B. No. 159, Relating to the Uniform Debt-Management Services Act.

Commissioners Takayama and Hamasaki attended hearings and submitted testimony on H.B. No. 275 and S.B. No. 1016, Relating to the Uniform Athlete Agents Act, and on H.C.R. No. 46 and S.C.R. No. 35, Requesting a Sunrise Review on the Registration of Providers of Debt-Management Services.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and Life Members Sakai and Toyofuku also spent time attending meetings, making telephone calls, reviewing material and preparing supporting testimony and making various appearances on behalf of the Commission at the Legislature. Life Members Sakai and Toyofuku are specifically authorized by the Commission to represent the Commission before the Legislature.

#### IV. UNIFORM ACTS ENACTED IN HAWAII

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

##### A. Uniform Acts Introduced for Enactment in 2007.

During the regular session of 2007, bills were introduced to enact the following uniform acts: (1) Uniform Athlete Agents Act; and (2) the Uniform Debt-Management Services Act. In addition, a resolution was introduced for

a sunrise review on the Registration of Providers of Debt-Management Services. Of these, the Uniform Athlete Agents Act was approved by the Governor on July 3, 2007, as Act 248; and the Concurrent Resolution Requesting a Sunrise Review on the Registration of Providers of Debt-Management Services was adopted by the Legislature.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the sixty-four 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 2007 annual meeting, the NCCUSL considered and adopted six new or amended uniform acts. These acts are briefly described below, based on summaries prepared by the NCCUSL.

A. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Under the act, a “guardian” is appointed to make decisions regarding the person of an incapacitated adult, and a “conservator” is appointed to manage the

property. The objective of the new uniform act is simple: to ensure that only one state has jurisdiction at any one time. To that end, the act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The act does this by prioritizing the states that might claim jurisdiction. The state with primary jurisdiction is the “home state,” defined as the state in which the adult has lived for at least six consecutive months immediately before the beginning of the adult guardianship or protective proceeding. The second is the “significant-connection state,” which is broadly defined to include the location of the individual’s family, a state where the individual might have lived for many years, or the state where the individual’s property is located. The act provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred; it also avoids the existing functional requirement of having to restart the guardianship process anew whenever the protected party crosses state lines. The act also provides transfer procedures from one state to another. In this and other respects, the new act accomplishes for adult guardianship determinations the same certainty that has occurred in child custody law with the promulgation of the 1997 Uniform Child Custody Jurisdiction and Enforcement Act, now the law in 48 states.

B. Uniform Rules Relating to the Discovery of Electronically Stored Information.

The primary purpose of the new Uniform Rules Relating to the Discovery of Electronically Stored Information is to provide states with up-to-date rules for the discovery of electronic documents in civil cases. The Uniform Rules provide procedures for parties in a civil case to jointly follow relating to a number of issues, including the preservation of the electronic information; the form in which the information will be produced; and the period of time in which the information must be produced. The Uniform

Rules limit the sanctions which may be imposed on a party for failure to provide electronic information that has been lost as the result of routine operation of an electronic information system. This rule applies to information lost due to the routine operation of an information system only if the system was operated in good faith. The Uniform Rules address the unique difficulties in accessing some electronic information by providing certain restrictions on its discovery. For instance, a party may object to discovery of electronically stored information on the grounds that the information is not reasonably accessible because of undue burden or expense. However, the court may order discovery of such information if it is shown that the likely benefit of the proposed discovery outweighs the likely burden or expense, and may allocate between the parties the expense of conducting the discovery.

C. Uniform Interstate Depositions and Discovery Act.

The Uniform Interstate Depositions and Discovery Act provides efficient and inexpensive procedures to enable a party in one state to effectuate depositions of witnesses, discover documents, or inspect premises in other states. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased. The act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena must comply with the rules of the state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the act shall be brought in and governed by the rules of the discovery state. The goal of the act is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of



out-of-state litigation.

D. Uniform Limited Cooperative Association Act.

The Uniform Limited Cooperative Association Act creates a new form of business entity and is an alternative to other cooperative and unincorporated structures. This act is more flexible than most current law, and provides a default template that encourages planners to utilize tested cooperative principles for a broad range of entities and purposes. It promotes rural development by creating the option of a statutorily defined entity that combines traditional cooperative values with modern financing mechanisms. The act would, for example, allow a group of wheat farmers to build a value-added pasta facility, keeping their business in a cooperative form while being able to attract and utilize investment capital. The act will be equally useful in an urban setting, where the cooperative value of individuals getting together to democratically own, run, and share in the benefit of their business can be combined with modern financing techniques. For example, it might be used by an urban food coop to attract investment capital to build facilities for the operation of the cooperative's business.

E. Uniform Emergency Volunteer Health Practitioners Act.

The Uniform Emergency Volunteer Health Practitioners Act, first approved in 2006, allows state governments to give reciprocity to other states' licenses of emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements. Amendments to UEVHPA were approved in 2007 to complete previously reserved sections addressing the civil liability of disaster volunteers and the care of volunteers who are injured, become ill, or die while delivering emergency services. With regard to civil liability, the act provides two options. In "Alternative A," a volunteer health practitioner is not

liable for acts or omissions, nor can any party be held vicariously liable for a volunteer practitioner's acts or omissions, unless the conduct in question rises to the level of willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct, represents an intentional tort; involves a breach of contract, is a claim by a host or deploying entity, or is an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

"Alternative B" utilizes the same basic exclusions, but caps the compensation a volunteer can receive in connection with the emergency (not including reimbursement of reasonable expenses) at \$500 per year, and does not include the limitation on vicarious liability. It is anticipated that enacting states will choose the alternative that most closely tracks their existing state provisions regarding "Good Samaritan" liability protection or each state's implementation of federal law on this subject. The 2007 amendments also provide that a volunteer health practitioner who is not otherwise covered by the workers' compensation laws of the host or deploying state may elect to be deemed an employee of the host state for purposes of making a claim under the host state's workers' compensation system. The act directs enacting states to coordinate implementation of this coverage with other enacting states.

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

The Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act (URCANCPA) tries to answer a question that has plagued domestic relations law for a long time: "who should represent a child in a custody or abuse and neglect proceeding, and what is the nature of that representation?" URCANCPA, as amended in 2007, establishes three categories of representatives: a child's attorney, a best interests attorney, and a best interests advocate. A child's attorney represents the child as a traditional client-directed lawyer. A best interests attorney is also

a lawyer for the child but must advocate the child's "best interests" based on applicable legal criteria and the unique circumstances and needs of the child. The best interests advocate is a non-lawyer representative appointed by the court to investigate and make recommendations regarding the child's welfare. Because of the fundamental importance of the interests at stake in child protective cases, URCANCPA requires the court to appoint either a child's attorney or a best interests attorney for every child in an abuse or neglect proceeding. For custody cases, in contrast, the appointment of any representative is a matter of court discretion. The act identifies the many duties of legal representation that are common to both categories of attorney, and it also clarifies the distinct responsibilities of the child's attorney and the best interests attorney. URCANCPA should not only bring greater certainty to the roles and expectations of children's representatives across the United States but also improve the quality of representation by providing needed standards of conduct.

## VI. RECOMMENDATIONS FOR ENACTMENT IN 2008

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 2008, the Commission recommends enactment of the Uniform Unclaimed Property Act (1995), the Uniform Debt-Management Services Act (UDMSA), the Revised Uniform Anatomical Gift

Act (2006), the Model Registered Agents Act, and the Uniform Real Property Electronic Recording Act. These acts are summarized below:

A. Uniform Unclaimed Property Act (1995).

The Uniform Unclaimed Property Act (1995) provides a system for transferring intangible personal property and personal property in safety deposit accounts, held by an entity or person other than the rightful owner, to the state when it is deemed abandoned by the rightful owner. The state holds the property for the rightful owner in perpetuity. Eligible property is considered abandoned when the owner has neither shown interest nor communicated with the holder for a specific period of time. The basic time period is five years, but there are special times ranging from one to fifteen years for specific kinds of property. There are procedures for holders to report on unclaimed property to the state, for transfer to the state, and for rightful owners to claim their property when it has been transferred to the custody of the state. The uniform act has rules governing which state is entitled to have custody of property when holders and owners are in different states. The uniform act also permits states to cooperate in identifying unclaimed property, obtaining reports from holders, and obtaining its transfer to the appropriate state. This act supersedes the Uniform Disposition of Unclaimed Property Act of 1954 and the Uniform Unclaimed Property Act of 1981.

B. Uniform Debt-Management Services Act (UDMSA).

The consumer debt management industry has taken many forms over the time since its development in the 1950s. The industry has had a checkered past, with frequent accusations of abuse. The interest in debt counseling and management, however, has been dramatically escalated by the bankruptcy reform legislation passed by Congress in 2005. It mandates

counseling by a private agency before an individual may enter into bankruptcy. The Uniform Debt-Management Services Act regulates debt-management companies by requiring them to register with the state. To obtain a certificate of registration, a provider must supply information about itself, must obtain insurance against employee dishonesty, and must post a surety bond to safeguard any money that it receives from individuals for payment of creditors. The act also regulates interaction with consumers, including steps to be taken before entering an agreement with an individual, the content of an agreement (including limitations on the fees that may be charged), and provisions concerning the performance and termination of agreements. Finally, the act provides for enforcement both by a public authority and by private individuals, including rule-making power on the part of the administrator and recovery of minimum, actual, and, in appropriate cases, punitive damages in private enforcement actions.

C. Uniform Anatomical Gift Act (2006).

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

put a document of gift for notice purposes. It more clearly provides for a document of refusal if an individual does not want organs donated. There are criminal penalties for misrepresentation of a document of gift for the purposes of selling organs or tissue. The act attempts to resolve ambiguity and conflict between anatomical gifts and "Do Not Resuscitate" instructions. Without changing the basic concept that an individual may execute a document of gift to donate organs, UAGA 2006 makes the act more usable than the earlier acts are currently.

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

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

E. Uniform Real Property Electronic Recording Act.

The Uniform Real Property Electronic Recording Act equates electronic documents and signatures to original paper documents and manual signatures so that electronic documents pertaining to real estate transactions may be electronically recorded. The act also establishes a state board to establish standards for electronic recording.

VII. CONCLUSION

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

Respectfully submitted,

COMMISSION TO PROMOTE UNIFORM  
LEGISLATION

By: Lani L. Ewart  
LANI L. EWART  
Chairman

TABLE OF  
UNIFORM ACTS ENACTED IN HAWAII

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



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

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
27. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
28. Uniform Electronic Transactions Act (1999)	Chapter 489E
29. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
30. Uniform Environmental Covenants Act	Chapter 508C
31. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
32. Uniform Fiduciaries Act (1922)	Chapter 556
33. Uniform Foreign-Money Claims (1989)	Chapter 658B
34. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
35. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
36. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
37. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
38. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
39. Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B
40. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
41. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
42. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
43. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
44. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
45. Uniform Parentage Act (1973)	Chapter 584
46. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
47. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
48. Uniform Premarital Agreement Act (1983)	Chapter 572D
49. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
50. Uniform Probate Code (1969)(1975)(1982)(1987)(1989) (1990)(1991)(1998)	Chapter 560
51. Uniform Prudent Investor Act (1994)	Chapter 554C
52. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
53. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833

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