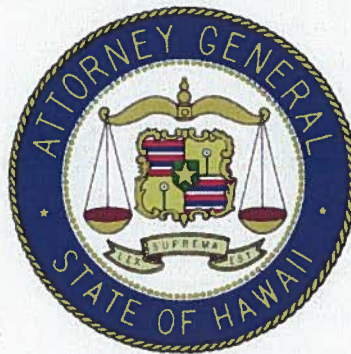


STATE OF HAWAII
Department of the Attorney General



2011 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION

SUBMITTED TO
THE TWENTY-SIXTH STATE LEGISLATURE
Regular Session of 2012

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2011 REPORT OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-SIXTH
LEGISLATURE:

The Hawaii Commission to Promote Uniform Legislation, the members of which are Hawaii's representatives to the National Conference of Commissioners on Uniform State Laws, respectfully submits this 2011 Report.

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

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

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

II. OPERATION OF THE ULC

A. Financial Support of the ULC.

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

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

valuable references for the legislatures in their effort to improve the quality of state law.

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

The ULC also permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. He or she receives compensation only for actual expenses incurred. The ULC estimates that each commissioner devotes approximately 200 hours a year to ULC work, including work on various drafting committees and attendance at the annual meeting. These are hours mainly spent in research and drafting work -- solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts comes to literally thousands of hours. The value of this donated time averages over \$10,000,000 annually. The total requested contribution of all the states to the operation of the ULC is \$2,497,900 in fiscal year 2011-2012. The smallest state contribution is \$25,700, and the largest is \$150,000. Hawaii's contribution for fiscal year 2011-2012 is \$30,300, which represents an extraordinarily good, cost-effective investment for the citizens of Hawaii. Even a modest use of the work product of the ULC guarantees

any state a substantial return on each dollar invested. The State of Hawaii has had one hundred twenty-seven enactments of uniform acts, amendments to uniform acts, and revised uniform acts. For every dollar invested by each state, it has received very substantial and valuable services.

The annual budget of the ULC comes to \$2,969,473 for the current fiscal year (July 1 to June 30). Of this amount, \$519,523 (approximately 17.5%) goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and editing and personnel costs. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is \$134,597 (or 4.5%). About \$676,392 (22.8%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$344,256 (11.6%) is spent on the annual meeting. Public education for uniform and model acts costs about \$250,867 (8.5%) and includes contractual services, materials costs, and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

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

The Uniform Commercial Code (UCC) is a joint venture between the

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

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

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

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

B. Creation of Uniform and Model Acts.

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

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

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

A committee meets according to the needs of the project. A meeting ordinarily begins on Friday morning and finishes by Sunday noon, so as to conflict the least with ordinary working hours. A short act may require one or

two committee meetings. Major acts may require a meeting per month for a considerable period of time -- several years, in some instances. A given committee may produce a number of successive drafts, as an act evolves.

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

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

C. Administration of the ULC.

The governing body of the ULC is the ULC Executive Committee, which is composed of the officers, certain ex officio members, and members appointed by the President of the ULC. Certain activities are conducted by

standing committees. As mentioned above, the Committee on Scope and Program considers all new subject areas for possible uniform acts. The Legislative Committee superintends the relationships of the ULC to the state legislatures.

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

The ULC has consciously limited its staff to prevent accrual of needless administrative costs. The full-time staff numbers only twelve people. In addition, the ULC contracts for professional services to aid in the drafting effort. These professional reporters, so-called, are engaged at very modest honoraria to work with drafting committees on specific acts. Most often they are law professors with specific expertise in the area of law addressed in the act they draft. The ULC also contracts with professional, independent contractors for part of its public information and educational materials.

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

III. ACTIVITIES OF THE HAWAII COMMISSIONERS

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

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

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

The members of the Hawaii Commission during 2010-2011 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 2011-2012 will remain the same.

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

B. ULC Committee Assignments.

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

LANI LIU EWART

For 2010-2011, Commissioner Ewart served as a member of the Executive Committee, the Standby Committee on Partition of Heirs Property Act, and the Standby Committee on Uniform Statutory Trust Entity Act.

For 2011-2012, Commissioner Ewart will continue to serve on the Standby Committee on Uniform Partition of Heirs Property Act. At the 2011 annual meeting, Commissioner Ewart served as a member of the Nominating Committee.

In 2010-2011, Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2011-2012 .

Commissioner Ewart attended two committee meetings in 2011: She attended an Executive Committee meeting in Naples, Florida, from January 6-10, 2011; and met with the Executive Committee prior to the annual meeting, on July 6, 2011, in Vail, Colorado.

Commissioner Ewart communicated through telephone conferences and e-mail with organizations interested in the Revised Uniform Principal and Interest Act and the Revised Uniform Limited Liability Company Act. She also had numerous telephone conferences, conference calls, and e-mail communication with the Executive Committee with regard to various ULC matters, budget issues, ABA actions relating to uniform acts, annual meeting agenda, and financial reports. Commissioner Ewart reviewed materials and reports for the Executive Committee meetings and for the annual meeting and reviewed the revised the plan for the 2012 Hawaii legislative session for presentation at the annual meeting.

PETER J. HAMASAKI

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

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

ELIZABETH KENT

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

For 2011-2012, Commissioner Kent will serve as a member of the Standby Committee on a Uniform Collaborative Law Act.

KEVIN P. H. SUMIDA

In 2010-2011, Commissioner Sumida served as a member of the Drafting Committee on Harmonization of Business Entity Acts and on the Enactment Committee on the Uniform Unsworn Foreign Declarations Act.

In 2011-2012, Commissioner Sumida will serve as a member of the Standby Committee on Harmonization of Business Entity Acts and will continue to serve as a member of the Enactment Committee on the Uniform Unsworn Foreign Declarations Act. He was recently appointed to the Drafting Committee of the Residential Landlord and Tenant Act.

He attended one meeting of the Drafting Committee on Harmonization of Business Entity Acts in San Antonio, Texas, on January 27-30, 2011.

Commissioner Sumida participated in numerous conference calls relating to the Uniform Unsworn Foreign Declarations Act.

KEN H. TAKAYAMA

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

served as a member of the Committee on Membership and Attendance and the Committee of Legislative Counsel. In addition, he served as Hawaii's liaison member of the Legislative Committee.

For 2011-2012, Commissioner Takayama will serve as a member of the Study Committee on Revisions to Residential Landlord-Tenant Act. He was appointed to and will serve as a member of the Drafting Committee on Deployed Parents Visitation and Custody Act. He will continue to serve as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Counsel and the Committee on Membership and Attendance.

Commissioner Takayama participated in conference calls on May 11, 2011, on revisions of the Uniform Residential Landlord and Tenant Act, and on June 20, 2011, on the Uniform Protection of Genetic Information in Employment Act.

ROBERT S. TOYOFUKU

For 2010-2011, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2011-2012. He is the Legislative Committee council member who oversees the legislative activities in the states in the Western Region (Alaska, California, Hawaii, Nevada, Oregon, and Washington).

The Legislative Committee was created as a standing committee to encourage the development of legislative programs in each state to accomplish the introduction and passage of bills to enact uniform and model acts of the ULC. The activities of the Legislative Committee are directed by the Chair and the Legislative Council. Each state and the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin

Islands are represented by a commissioner designated as the liaison member for that jurisdiction who is responsible for the legislative program in that commissioner's home jurisdiction. The represented jurisdictions are grouped into ten regions. A member of the Legislative Council is assigned to each region, with the responsibility to oversee the legislative activities in the states in the assigned region.

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

On October 28-30, 2011, Life Member Toyofuku attended a meeting of the Legislative Council in Chicago, Illinois.

HIROSHI SAKAI

During 2010-2011, Life Member Hiroshi Sakai served on the Committee on International Legal Developments, the Standby Committee to Amend Uniform Common Interest Ownership Act, the Standby Committee on Uniform Debt-Management Services Act, and the Standby Committee on a Uniform Limited Cooperative Association Act. He also served on the Drafting Committee on Manufactured Housing Act.

For 2011-2012, Life Member Sakai will continue to serve on the Committee on International Legal Developments, the Standby Committee on Uniform Debt-Management Services Act, and the Drafting Committee on Manufactured Housing Act.

In 2011, Life Member Sakai attended a total of four meetings: Two meetings of the Drafting Committee on Manufactured Housing Act, one on March 25-27, 2011, in Washington, D.C., and one on October 26-30, 2011, in Chicago, Illinois. He attended two meetings on July 9, 2011, in Vail, Colorado, one of the Committee on Internal Legal Development and one on

the Committee of Debt Management Services Act amendments.

C. Meetings Attended.

The commissioners attended the meetings of their respective ULC committees (as listed in the previous section), which are scheduled by the committee chairs as needed and which are usually held on the mainland. In addition, the ULC met in its 120th year in Vail, Colorado, from July 7-13, 2011.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and former Hawaii Commission members and ULC Life Members Sakai and Toyofuku attended the 2011 annual meeting. Mr. Kato did not attend the meeting.

During the sessions of the annual meeting of the ULC, the commissioners who are members of committees meet separately with their committees and, if scheduled, appear with their committees on the dais in the main meeting room during the reading of draft uniform acts.

After consideration of the latest drafts, the ULC approved four new uniform acts: the Uniform Electronic Legal Material Act, the Uniform Certificate of Title for Vessels Act, the Model Protection of Charitable Assets Act, and the Harmonized Uniform Business Organizations Code. In addition, the ULC approved amendments to the Uniform Debt Management Services Act.

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

D. Legislative Appearances by the Hawaii Commissioners.

Commissioner Takayama served in 2010-2011 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 2011, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Military and Overseas Voters Act, the Hawaii Uniform Collaborative Law Act, the Uniform Real Property Transfer on Death Act, and the Uniform Interstate Family Support Act. They spent time at the Legislature meeting with various legislators regarding ULC related bills. They, together with the other commissioners, also prepared testimony and testified before various Senate and House committees.

Commissioner Hamasaki provided written testimony and spent time testifying at hearings on behalf of the Commission to Promote Uniform Legislation with respect to the Uniform Real Property Transfer on Death Act (S.B. No. 105), which was enacted as Act 173.

Commissioner Takayama attended hearings, answered questions and inquiries raised about acts by legislators, monitored hearings or decision making meetings, alerted other commissioners of hearings scheduled or actions taken, and met with or called legislators or staff to get hearings scheduled on the Uniform Military and Overseas Voters Act, the Hawaii Collaborative Law Act, the Uniform Real Property Transfer on Death Act, and the Uniform Interstate Family Support Act.

Commissioner Ewart monitored and responded to questions arising during the session regarding the uniform acts under consideration. She reviewed and revised the Hawaii Commission to Promote Uniform Legislation annual report to the Legislature. She also submitted written testimony for Commissioner Ken Takayama's reappointment for a new Commission to Promote Uniform Legislation term.

Commissioner Sumida attended Senate and House committee hearings to give testimony on the Uniform Military and Overseas Voters Act. He also prepared testimony and testified on the Uniform Interstate Family Support Act.

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

IV. UNIFORM ACTS ENACTED IN HAWAII

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

A. Uniform Acts Introduced for Enactment in 2011.

During the regular session of 2011, bills were introduced to enact the

following uniform acts: (1) the Uniform Military and Overseas Voters Act; (2) the Hawaii Uniform Collaborative Law Act; (3) the Uniform Real Property Transfer on Death Act; and (4) the Uniform Interstate Family Support Act. Of these, the Uniform Real Property Transfer on Death Act was passed by the legislature and approved by the Governor on June 27, 2011, as Act 173.

B. Table of Uniform Acts Enacted in Hawaii.

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

V. A SUMMARY OF NEW UNIFORM ACTS

During the 2011 annual meeting, the ULC considered and adopted four new uniform acts and amendments to an existing act. These acts are briefly described below, based on summaries prepared by the ULC.

A. Uniform Electronic Legal Material Act.

The Uniform Electronic Legal Material Act (UELMA) addresses many of the concerns posed by the publication of state primary legal material online. UELMA provides a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and will be permanently available to the public in unaltered form. It furthers

state policies of accountability and transparency in providing legal information to the public.

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

The Act requires that official electronic legal material be:

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

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

B. Uniform Certificate of Title for Vessels Act.

The Uniform Certificate of Title for Vessels Act (UCOTVA) regulates the titling of boats and other vessels that are principally used on an adopting state's waters and that are of at least sixteen feet in length, as well as all vessels propelled by an engine of at least ten horsepower.

The UCOTVA removes or avoids ambiguities found in many state titling laws regarding the effect of the title, the consequence of a failure to

title, or the effect of errors on the title, thereby facilitating transfers of ownership of a vessel.

The UCOTVA deters and impedes the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel.

The UCOTVA accommodates existing financing arrangements for vessels and provides certain consumer protections when purchasing a vessel through the Act's branding initiative.

Additionally, the UCOTAV integrates seamlessly with the Uniform Commercial Code.

C. Uniform Business Organizations Code.

The Uniform Business Organizations Code harmonizes the numerous uniform business entity acts. The primary purposes of the new Code are: (1) to harmonize the language of all of the unincorporated entity laws, and (2) to revise the language of each of those acts in a manner that permits their integration into a single Code of entity laws. States that choose to adopt this new Code will also have the option of including all of their corporation and nonprofit corporation acts within the Uniform Code.

The harmonization process involved the revision of the following acts:

Model Entity Transactions Act

Model Registered Agents Act

Uniform Partnership Act (1997)

Uniform Limited Partnership Act (2001)

Uniform Limited Liability Company Act (2006)

Uniform Statutory Trust Entity Act

Uniform Limited Cooperative Association Act

Uniform Unincorporated Nonprofit Association Act (2008)

The harmonized version of each of these acts will remain available as stand-alone acts, and can be adopted as such in the states. States can also choose to adopt the entire Business Organization Code as a single Code, or, in states that have adopted one or more of these acts, those states can simply amend the already-enacted acts to harmonize with the others.

D. Model Protection of Charitable Assets Act.

The Model Protection of Charitable Assets Act (MPOCAA) was drafted to clarify and harmonize the role of states' Attorneys General in charitable regulation, and to enhance their ability to effectively track and oversee charitable institutions. It builds upon the older 1954 Uniform Supervision of Trustees for Charitable Purposes Act and takes into account the "best practices" in modern charitable regulation from around the country.

MPOCAA was drafted as a model law, as opposed to a uniform law, with the intent that all or parts of the act would be useful to the widest variety of states. As a whole, it provides a minimalist structure for those states without significant existing provisions and regulatory regimes, but components of the act will still enhance the existing laws of those states that do. While uniformity is desirable, adoption by all the states of at least portions of this framework should enhance further cooperation between the state regulators, to the benefit of the public, to those charities operating exclusively within a particular state, and those that operate in multiple jurisdictions.

E. Amendments to the Uniform Debt Management Services Act.

In October 2010, the Federal Trade Commission amended its Telemarketing Sales Rule to cover the business of debt-management services. Several of the provisions of the amended Rule are inconsistent with provisions in the Uniform Debt Management Services Act. To avoid any inconsistency between this Act and the newly revised federal law, amendments were drafted to address the timing of fee collection and the use of powers of attorney. Several other changes have been made throughout the Act, to clarify the disclosure and reporting requirements and to address circumstances that have changed since 2005.

The Act has also been revised to adopt the position that the debt-management services business should be open to both for-profit and not-for-profit entities. Removal of the option to restrict the business to not-for-profit entities has the incidental benefit of simplifying the Act.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2012

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 2012, the Commission recommends enactment of the Uniform Military and Overseas Voters Act, the Hawaii

Uniform Collaborative Law Act, the Uniform Interstate Depositions and Discovery Act, Uniform Commercial Code Article 9 Amendments, and the Uniform Interstate Family Support Act Amendments. These acts are summarized below:

A. Uniform Military and Overseas Voters Act

The 2010 Uniform Military and Overseas Voters Act (UMOVA) establishes reasonable, standard timetables for application, registration, provision of ballots and election information for covered voters, and submission of ballots, and provides for the determination of the address that should be used for active-duty military and overseas voters. The act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. UMOVA allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, tracking the status of applications, and expands use of the Federal Post Card Application and Federal Write-In Absentee Ballot. Finally, UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new act uses and builds upon the key requirements of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and the Military and Overseas Voter Empowerment Act of 2009 (MOVE), and extends the important protections and benefits of these acts to voting in applicable state and local elections.

B. Uniform Collaborative Law Act (2009)

The Uniform Collaborative Law Act, promulgated by the ULC in 2009, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law,

including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory framework is necessary in order to guarantee the benefits of the process and to further regulate its use. The act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.

The act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the act. Additionally, the act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

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

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

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

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

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

Federal implementing legislation submitted to Congress will require that the 2008 version of UIFSA be enacted in every jurisdiction, as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments will result in the loss of this important federal funding.

VII. CONCLUSION

The Hawaii Commission to Promote Uniform Legislation offers its assistance in obtaining information or advice regarding the uniform acts recommended for consideration, or any other uniform act adopted by the

ULC. The Commission wishes to express its appreciation for the interest in and support of the Commission's efforts to promote uniform legislation that have been received from the Governor, the Attorney General, and the Legislature.

Respectfully submitted,

COMMISSION TO PROMOTE UNIFORM
LEGISLATION

By: Lani L. Ewart
LANI L. EWART
Chairman

**TABLE OF
UNIFORM ACTS ENACTED IN HAWAII**

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

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

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

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

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
54. Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
55. Uniform Real Property Transfer on Death Act (2009)	Chapter 527
56. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
57. Model Registered Agents Act (2006)	Chapter 425R
58. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
59. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
60. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
61. Uniform Status of Convicted Persons Act (1964)	Chapter 831
62. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525
63. Uniform Testamentary Additions to Trusts Act (1960)(1961) (Uniform Probate Code § 2-511 (1991))	§ 560:2-511
64. Uniform Trade Secrets Act (1979)(1985)	Chapter 482B
65. Uniform Transfer-on-Death (TOD) Security Registration Act (1998)	Chapter 539
66. Uniform Transfers to Minors Act (1983)(1986)	Chapter 553A

**ACT (Date of ULC Adoption
or Amendment)**

HAWAII REVISED STATUTES

67. Uniform Trustees' Powers Act
(1964)

Chapter 554A

68. Uniform Unclaimed Property Act
(1981)

Part I, Chapter 523A

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

Chapter 429