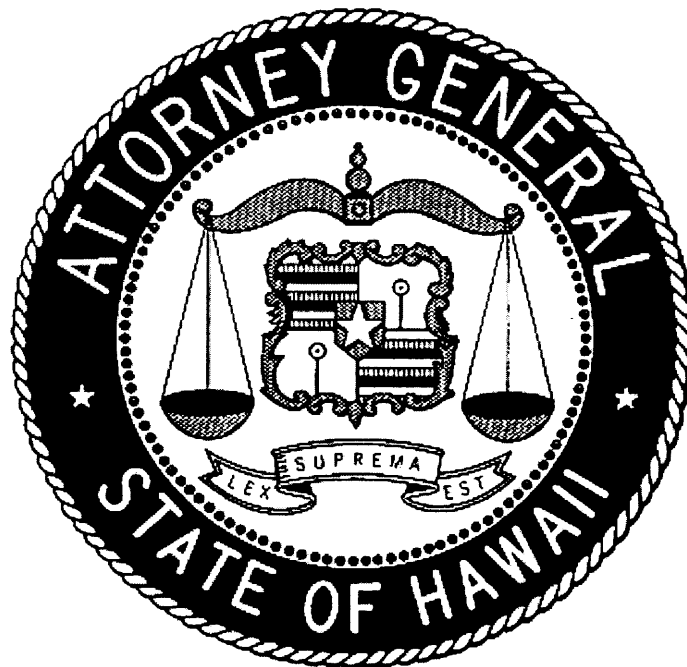


2001 REPORT OF THE COMMISSION TO PROMOTE UNIFORM LEGISLATION



**STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL**

**STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL**

**2001 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION**

**SUBMITTED TO
THE TWENTY-FIRST STATE LEGISLATURE
Regular Session of 2002**

TABLE OF CONTENTS

	<u>Page</u>
I. HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (NCCUSL)	1
II. OPERATION OF THE NCCUSL	2
A. Financial Support of the NCCUSL	2
B. Creation of Uniform and Model Acts	6
C. Administration of the NCCUSL	7
III. ACTIVITIES OF THE HAWAII COMMISSIONERS	9
A. Membership of the Hawaii Commission to Promote Uniform Legislation	9
B. NCCUSL Committee Assignments	10
C. Meetings Attended	12
D. Legislative Appearances by the Hawaii Commissioners	12
IV. UNIFORM ACTS ENACTED IN HAWAII	13
A. Uniform Acts Introduced for Enactment in 2001	13
B. Table of Uniform Acts Enacted in Hawaii	14
V. A SUMMARY OF NEW UNIFORM ACTS	14
A. Uniform Limited Partnership Act	14
B. Amendments to the Uniform Interstate Family Support Act	15
C. Uniform Consumer Leases Act	16

	<u>Page</u>
D. Uniform Mediation Act	17
E. Revised Uniform Commercial Code Article 1	18
VI. RECOMMENDATIONS FOR ENACTMENT IN 2002	19
A. Uniform Child Custody Jurisdiction and Enforcement Act	19
B. Uniform Athlete Agents Act	20
VII. CONCLUSION	21
APPENDIX 1. Table of Uniform Acts Enacted in Hawaii	

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2001 REPORT OF THE

COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-FIRST
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 2001 Report.

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

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

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

II. OPERATION OF THE NCCUSL

A. Financial Support of the NCCUSL.

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

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

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

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

The NCCUSL also permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. He or she receives compensation only for actual expenses incurred. The NCCUSL estimates that each commissioner devotes approximately 200 hours a year to NCCUSL work, including work on various drafting committees and attendance at the annual meeting. These are hours mainly spent in research and drafting work -- solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts averages about \$6,000,000 per year, at a conservative estimate. The total requested contribution of all the states to the operation of the NCCUSL is \$1,498,961 in 2001-2002. The smallest state contribution is \$9,350 and the largest is \$121,600. Hawaii's contribution is \$13,970, which represents an extraordinarily good, cost-

effective investment for the citizens of Hawaii. Even a modest use of the work product of the NCCUSL guarantees any state a substantial return on each dollar invested. The average number is seventy of current uniform and model acts adopted in all states. This state has had one hundred nine 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 \$2,189,452 for the current fiscal year (July 1 to June 30). Of this amount, \$1,015,500 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 \$441,053 is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$350,490 is spent on the annual meeting. Public education for uniform and model acts costs about \$119,482 and includes contractual services, materials costs, and travel expenses. The remainder of the budget pays general administrative costs.

The American Bar Association makes a yearly contribution to the NCCUSL. For fiscal year 2001-2002, it has contributed \$56,250. The NCCUSL also seeks grants from the federal government and from foundations for specific drafting efforts. The last federal grant was a grant of \$30,000 to fund the drafting effort for the Uniform Environmental Covenants Act.

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

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

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

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

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

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

B. Creation of Uniform and Model Acts.

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

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

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

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

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

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

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

C. Administration of the NCCUSL.

The governing body of the NCCUSL is the NCCUSL Executive

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

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

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

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

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

III. ACTIVITIES OF THE HAWAII COMMISSIONERS

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

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

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

The members of the Hawaii Commission during 2000-2001 were as follows:

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

All members will continue to serve for 2001-2002. Deputy Attorney General Maurice S. Kato has been assigned by the Attorney General to continue to provide necessary assistance to the Commission.

B. NCCUSL Committee Assignments.

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

Commissioner Hiroshi Sakai served in 2000-2001 as the chair of the Standby Committee on Uniform Disclaimer of Property Interests Act. For 2001-2002, Commissioner Sakai will continue to be the chair of the Standby Committee on Uniform Disclaimer of Property Interests Act and will serve as a member of both the Study Committee on Consumer Debt Counseling and the Drafting Committee on Environmental Covenants Act. Commissioner Sakai attended a meeting of the Drafting Committee on Environmental Covenants Act in Washington D.C. on November 16-18, 2001.

For 2001-2002, Commissioner Lani Liu Ewart served on the Drafting

Committee on Nonjudicial Foreclosure Act. Commissioner Ewart attended two meetings of the Drafting Committee on Nonjudicial Foreclosure Act, one in San Diego, California, on February 16-18, 2001 and the other in New Orleans, Louisiana, on November 30-December 2, 2001. For 2001-2002, Commissioner Ewart will continue to serve as a member of the Drafting Committee on Nonjudicial Foreclosure Act.

For 2001-2002, Commissioner Elizabeth Kent served on the Standby Committee on Uniform Mediation Act. Commissioner Kent attended a meeting of the Standby Committee on Uniform Mediation Act in New Orleans, Louisiana, on February 9-11, 2001. For 2001-2002, Commissioner Kent will continue to be a member of the Standby Committee on Uniform Mediation Act.

For 2000-2001, Commissioner Ken H. Takayama served as a member of the Committee on Liaison with Legislative Drafting Agencies and as a member of the Study Committee on Misuse of Genetic Information and of the Standby Committee on Uniform Money Services Act. For 2001-2002, Commissioner Takayama will continue to serve on the Committee on Liaison with Legislative Drafting Agencies as well as a member of the Study Committee on Misuse of Genetic Information and of the Standby Committee on Uniform Money Services Act.

During 2000-2001, Commissioner Robert S. Toyofuku continued to serve as Hawaii's liaison member of the NCCUSL's Legislative Committee and as a member of the Study Committee on Tort Reform. During the 2001 NCCUSL annual meeting, he attended meetings of the Legislative Committee Liaisons. For 2001-2002, Commissioner Toyofuku will continue to serve as Hawaii's liaison member of the NCCUSL's Legislative Committee and as a member of the Study Committee on Tort Reform.

C. Meetings Attended.

Commissioners Ewart, Kent, Sakai, Takayama, and Toyofuku attended the 2001 annual meeting held at The Greenbrier at White Sulphur Springs, West Virginia, on August 8 through 18, 2001. In addition, the commissioners attended the meetings of their respective NCCUSL committees (as stated in the previous section), which are scheduled by the committee chairs as needed and which are usually held on the mainland.

D. Legislative Appearances by the Hawaii Commissioners.

In addition to serving as Hawaii's liaison member of the NCCUSL Legislative Committee, Commissioner Toyofuku served in 2000-2001 as the Commission's liaison to the Hawaii State Legislature. The Commission to Promote Uniform Legislation is advisory to the State Legislature, as well as to the Attorney General, and stands ready to assist the Legislature in providing information on any uniform act that the Legislature may be considering for enactment. Consequently, the Hawaii commissioners, upon notification by Commissioner Toyofuku of scheduled public hearings and as assigned by Chairman Sakai, have testified before the committees of the Legislature when public hearings have been held on bills to enact uniform laws.

During the regular session of 2001, Commissioner Toyofuku arranged for the introduction of and monitored the movement of bills with regard to the technical amendments to the Uniform Commercial Code Article 9 -- Secured Transactions; the Child Custody Jurisdiction and Enforcement Act; and the Revised Uniform Arbitration Act.

Commissioner Ewart prepared testimony and lobbied for bills relating

to the Revised Uniform Commercial Code Article 9 before the House Committee on Consumer Protection and Commerce and the Senate Committee on Commerce, Consumer Protection and Housing.

Commissioner Robert Toyofuku prepared testimony and lobbied for bills relating to the Uniform Child Custody Jurisdiction and Enforcement Act before the House Committee on Judiciary and Hawaiian Affairs and the Senate Committees on Judiciary and Health and on Human Services. He also testified on the Uniform Arbitration Act before the House Committees on Judiciary and Hawaiian Affairs and on Finance and before the Senate Committee on Judiciary.

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 2001.

During the regular session of 2001, bills were introduced to enact or amend the following uniform and model acts: (1) Revised Uniform Arbitration Act; (2) Uniform Child Custody Jurisdiction and Enforcement Act; (3) Revised Uniform Commercial Code Article 9 Technical Amendments; and (4) Model Supervision of Trustees for Charitable Purposes Act (1954). Of these, the following were passed by the Legislature and approved by the Governor and enacted as acts of the Session Laws of Hawaii 2001:

Revised Uniform Arbitration Act, on June 22, 2001, as Act 265; and the Revised Uniform Commercial Code Article 9 Technical Amendments, on June 13, 2001, as Act 228.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the fifty-seven 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 2001 annual meeting, the NCCUSL considered and adopted five new or revised uniform acts. These acts are briefly described below, based on summaries prepared by John M. McCabe, Esq., Legislative Director and Legal Counsel of the NCCUSL.

A. Uniform Limited Partnership Act.

The Uniform Limited Partnership Act (2001) updates limited partnership law to reflect modern business practices by allowing for greater variety and flexibility in the formation and management relationships within these entities. The ULPA allows for the use of a limited partner's name in the entity's name, and authorizes family limited partnerships, entities which

by nature require entrenched management and passive limited partners. It shifts default liability away from limited partners by allowing for limited liability limited partnership status, and allows for easier dissolution upon the consent of all general partners together with a number of limited partners owning a majority of the rights to distributions. The ULPA furthers estate planning considerations by restricting the ability of a limited partner to disassociate from an entity prior to its termination, except for specific circumstances. Finally, the ULPA eliminates the previous rule requiring a termination date to be included in a limited partnership certificate, thereby allowing for the default creation of a perpetual entity. ULPA is also a free-standing, comprehensive act, no longer dependent upon general partnership law for rules that are not contained within ULPA. The ULPA represents a significant revision of limited partnership law to reflect modern usages, makes the limited partnership even more appealing to business ventures and estate planners, and will enhance the business climate of those states which adopt it.

B. Amendments to the Uniform Interstate Family Support Act.

Because of the importance of tracking and enforcing family support orders, every U.S. state and jurisdiction has adopted the Uniform Interstate Family Support Act, as it was amended in 1996. In the intervening years, the state child support enforcement community has depended on the act in their efforts, and members of that community have suggested further operational improvements. These amendments incorporate those suggestions. First, jurisdictional rules are clarified with respect to efforts to modify existing orders, and in identifying which order is controlling. Second, clearer guidance is given to state support agencies as to the redirection of support payments to an obligee's current state of residence. Third, foreign

support orders are recognized and brought within the UIFSA system if a state has established comity with that country or if the U.S. State Department has determined that reciprocity exists. Finally, the amendments incorporate certain technical updates concerning the use of electronic communications, the evolution of specific agency practices and forms, and organizational changes meant to clarify certain provisions. These changes improve the operation of the interstate family support system, without changing any of the underlying functionality or policy choices of the act.

C. Uniform Consumer Leases Act.

While federal law and regulations require certain disclosures to be made in connection with consumer leases, with the exception of automobile leases, most states apply commercial leasing law rules even in consumer contexts. The Uniform Consumer Leases Act (UCLA) is designed to provide substantive contractual and procedural protections to consumer leases of personal property. The UCLA applies to consumer leases (where the property is for personal, family, or household use) with a term of at least four months and a total value of less than \$150,000. This excludes short-term rentals, as well as rent-to-own arrangements that may be terminated at will or on a weekly or monthly basis. The protections of the UCLA include a prohibition on taking a broad security interest in a lessee's property (beyond the goods themselves), limits and rules concerning the assessment, cure, and dispute of late, delinquency, and default fees, and protection of a lessee's right to bring actions against assignees of the original lessor. The UCLA also prohibits mandatory gap coverage insurance, imposes reasonable standards on valuation in the event of early termination, and requires lessors to return a trade-in and refund payments received in the event a consumer's lease application is disapproved. The Uniform

Consumer Leases Act will help set a fair balance between the need to provide consumer protections and the commercial realities faced by personal property lessors, and should be a valuable addition to state consumer protection law.

D. Uniform Mediation Act.

The use of mediation as the means for resolving disputes has increased markedly in recent years, and states have enacted over 2,500 separate statutes providing for, or in some way regulating, its use in various contexts. Because mediation depends on the ability of the parties to communicate and negotiate in reaching a voluntary agreement, the candor of the participants is vital to a mediation's success. The multiplicity of potentially applicable statutes, however, makes it difficult for the participants to know which law might apply to a particular proceeding, and thus the participants may be reluctant to communicate necessary information if they fear it may be used against them in the event the mediation fails. The Uniform Mediation Act addresses this problem by providing a statute applicable to all mediations that prescribes precise rules about how the mediation communications of the parties, non-party participants, and mediator may be used. At its core, the act provides that each participant in a mediation proceeding is the holder of a privilege concerning the participant's own mediation communications, and may prevent those communications from being disclosed or used in a subsequent formal proceeding. The parties to a mediation hold the additional power to block the disclosure or use of any participant's mediation communication. There are of course exceptions to this broad rule. There is no privilege for ongoing or future crimes, threats of bodily injury, evidence concerning the abuse or neglect where a protective services agency is a participant, and other

circumstances. Evidence that is otherwise admissible does not become inadmissible simply because it is referenced or repeated in a mediation communication. The Uniform Mediation Act is the result of a unique joint project between the NCCUSL and the American Bar Association, and will further the goals of alternative dispute resolution by promoting the candor of the parties.

E. Revised Uniform Commercial Code Article 1.

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

however, the "reasonable relation" test still applies; more significantly, even if a contractual designation meets this test, the application of that state's law may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or where the consumer makes a contract and takes delivery of goods.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2002

The Hawaii Commission to Promote Uniform Legislation annually selects uniform acts that have not yet been enacted in Hawaii and recommends the enactment of those selected uniform acts. However, the Commission's selection is based in part on practical and logistical considerations and the number of uniform acts recommended for enactment in any legislative session is not intended to imply that other uniform acts should not be considered. The Commission stands ready to provide information and support on any uniform act that the Legislature may have before it for consideration.

For the regular session of 2002, the Commission recommends enactment of the the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Athlete Agents Act; Revised Uniform Commercial Code Article 1; and further technical amendments to Uniform Commercial Code Article 9. The Revised Uniform Commercial Code Article 1 is summarized in Section V of this report. The other uniform acts are summarized below:

A. Uniform Child Custody Jurisdiction and Enforcement Act.

This act replaces the Uniform Child Custody Jurisdiction Act, promulgated in 1968. The new act combines rules for taking jurisdiction over child custody disputes with rules for enforcing child custody (and

visitation) orders issued by courts of another state. A state may take jurisdiction if it is the child's home state, there is a significant connection between the parties and the state, there is no state that is the home state and the litigants are all within the state, or there is danger of abuse to the child, a sibling, or a parent unless the state takes jurisdiction. The latter ground for jurisdiction authorizes temporary emergency jurisdiction only. Any state that is the child's home state has preference over any other state in taking jurisdiction over a child custody dispute. Once a state takes jurisdiction as provided in this act, that state holds continuing exclusive jurisdiction until all parties to the dispute have left that state entirely. Once a court of a state with jurisdiction has issued an order, the courts of that state are the only courts that can modify that order so long as the state has continuing exclusive jurisdiction. Child custody and visitation orders issued in one state may be enforced in another state under this act by registering the order in the second state so that it becomes as if it is a domestic order of that state, or by petitioning for an expedited proceeding that is a habeas corpus type proceeding. Prosecuting attorneys have the power to enforce custody and visitation orders and to use law enforcement to investigate and secure the presence of children. There is provision for issuance of warrants to secure the presence of children.

B. Uniform Athlete Agents Act.

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

specified duties.

VII. CONCLUSION

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

Respectfully submitted,

COMMISSION TO PROMOTE UNIFORM
LEGISLATION

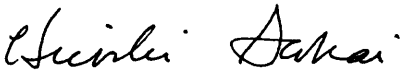
By: 
HIROSHI SAKAI
Chairman

TABLE OF
UNIFORM ACTS ENACTED IN HAWAII

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
1. Uniform Anatomical Gift Act (1968)(1987)	Part I, Chapter 327
2. Uniform Arbitration Act (1956)(2000)	Chapter 658A
3. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
4. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583
5. Uniform Commercial Code (1951)(1957) (1962)(1966)	Chapter 490
6. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
7. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
8. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490
9. Uniform Commercial Code Article 4A -- Funds Transfer (1989)	Article 4A, Chapter 490
10. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490
11. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)
12. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)	Article 8, Chapter 490

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
13. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999)	Article 9, Chapter 490
14. Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
15. Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
16. Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
17. Uniform Custodial Trust Act (1987)	Chapter 554B
18. Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
19. Uniform Determination of Death Act (1978)(1980)	§ 327C-1(Substantially similar definition)
20. Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
21. Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510
22. Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
23. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
24. Uniform Electronic Transactions Act (1999)	Chapter 489E

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
25. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
26. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
27. Uniform Fiduciaries Act (1922)	Chapter 556
28. Uniform Foreign-Money Claims (1989)	Chapter 658B
29. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
30. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
31. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
32. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
33. Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B
34. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
35. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
36. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D
37. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
38. Uniform Parentage Act (1973)	Chapter 584

<u>ACT (Date of NCCUSL Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
39. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
40. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
41. Uniform Premarital Agreement Act (1983)	Chapter 572D
42. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
43. Uniform Probate Code (1969)(1975)(1982)(1987)(1989) (1990)(1991)	Chapter 560
44. Uniform Prudent Investor Act (1994)	Chapter 554C
45. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
46. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
47. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
48. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
49. Uniform Status of Convicted Persons Act (1964)	Chapter 831
50. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525

ACT (Date of NCCUSL Adoption
or Amendment)

HAWAII REVISED STATUTES

- | | | |
|-----|--|----------------------|
| 51. | Uniform Testamentary Additions to Trusts Act (1960)(1961)
(Uniform Probate Code § 2-511 (1991)) | § 560:2-511 |
| 52. | Uniform Trade Secrets Act
(1979)(1985) | Chapter 482B |
| 53. | Uniform Transfer-on-Death (TOD) Security Registration Act (1998) | Chapter 539 |
| 54. | Uniform Transfers to Minors Act
(1983)(1986) | Chapter 553A |
| 55. | Uniform Trustees' Powers Act
(1964) | Chapter 554A |
| 56. | Uniform Unclaimed Property Act
(1981) | Part I, Chapter 523A |
| 57. | Uniform Unincorporated Nonprofit Association Act (1992)(1996) | Chapter 429 |