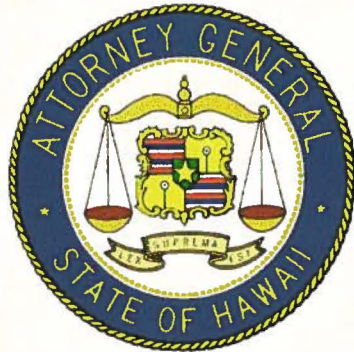


STATE OF HAWAII
Department of the Attorney General



2013 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION

SUBMITTED TO
THE TWENTY-SEVENTH STATE LEGISLATURE
Regular Session of 2014

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STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2013 REPORT OF THE

COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-SEVENTH
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 2013 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 150 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 represents literally thousands of hours of legal expertise. The total requested contribution of all the states to the operation of the ULC is \$2,611,800 in fiscal year 2013-2014. The smallest state contribution is \$27,700, and the largest is \$154,500. Hawaii's contribution for fiscal year 2013-2014 is \$32,700, 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 thirty-four 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 \$3,514,604 for the current fiscal year (July 1, 2013 to June 30, 2014). Of this amount, \$764,140 (approximately 21.7%) 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 \$167,190 (or 4.8%). About \$684,341 (19.5%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$437,084 (12.4%) is spent on the annual meeting. Public education for uniform and model acts costs about \$167,058 (4.8%) 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 also established 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 2012-2013 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 2013-2014 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 2012-2013, Commissioner Ewart served as a member of the Standby Committee on Uniform Partition of Heirs Property Act.

For 2013-2014, Commissioner Ewart will serve on the Joint Study Committee on Harmonization of the Law of Canada, Caribbean Nations, and the United States Concerning Registration of Foreign Judgments, and will continue to serve on the Standby Committee on Uniform Partition of Heirs Property Act.

In 2012-2013, Commissioner Ewart was a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2013-2014.

PETER J. HAMASAKI

For 2012-2013, Commissioner Hamasaki served on the Standby

Committee to Revise the Uniform Law on Notarial Acts.

For 2013-2014, Commissioner Hamasaki will continue to serve on the Standby Committee to Revise the Uniform Law on Notarial Acts.

ELIZABETH KENT

For 2012-2013, Commissioner Kent served as a member of the Standby Committee on a Uniform Collaborative Law Act, on the Study Committee on Uniform Family Law Arbitration Act and on the Study Committee on Model Veterans Court Act.

For 2013-2014, Commissioner Kent will continue to serve as a member of the Standby Committee on a Uniform Collaborative Law Act, the Study Committee on Uniform Family Law Arbitration Act, and the Study Committee on Model Veterans Court Act. She will also serve on the Study Committee on Firearms Information, the Study Committee on Registration of Foreign Judgments, and the Drafting Committee on Home Foreclosure Procedures Act.

In 2013, Commissioner Kent attended two meetings: One meeting of the Study Committee on Family Law Arbitration, in Chicago, Illinois, on October 24-27, 2013, and one on the Drafting Committee on Home Foreclosure Procedures Act, in Washington, D.C., on November 13-17, 2013.

Commissioner Kent did research and drafting on the Home Foreclosure Procedures Act. She spent time researching, preparing for meetings, drafting letters, and on phone calls regarding different acts. She also wrote an article for the Hawaii State Bar Association Journal, and generally assisted with promoting uniform state laws.

KEVIN P. H. SUMIDA

In 2012-2013, Commissioner Sumida served as a member of the Standby Committee on Harmonization of Business Entity Acts and on the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act.

In 2013-2014, Commissioner Sumida will continue to serve as a member of the Standby Committee on Harmonization of Business Entity Acts and the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act. On September 3, 2013, he was appointed to the Study Committee on Out-of-State Unsworn Declarations.

He attended two meetings of the Drafting Committee to Revise the Uniform Residential Landlord and Tenant Act on February 13-17, 2013, and November 15-17, 2013, both in Washington, D.C. He also participated in telephone conferences on the Standby Committee on Harmonization of Business Entity Acts on February 11, 2013, April 29, 2013, and on June 10, 2013.

KEN H. TAKAYAMA

For 2012-2013, Commissioner Takayama served as a member of the Standby Committee on Uniform Deployed Parents Custody and Visitation Act, as a member of the Study Committee on Portability and Recognition of Professional and Occupational License of Military Spouses and as a member of the Standby Committee on Uniform Protection of Genetic Information in Employment Act. In addition, he served as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Attorneys and on the Committee on Membership and Attendance.

For 2013-2014, Commissioner Takayama will serve on the Standby Committee on Uniform Deployed Parents Custody and Visitation Act, and will serve as a member of the Study Committee on Portability and Recognition of Professional and Occupational License of Military Spouses. He will continue to serve as Hawaii's liaison member of the Legislative Committee and as a member of the Committee of Legislative Attorneys and the Committee on Membership and Attendance.

In 2013, Commissioner Takayama attended one meeting on July 9, 2013, during the 2013 annual meeting in Boston, Massachusetts, and participated in two conference calls, on June 10, 2013, and September 9, 2013, on the Study Committee on Uniform Deployed Parents Custody and Visitation Act and participated in two conference calls on June 7, 2013, and December 11, 2013, relating to the Study Committee on Portability and Recognition of Professional and Occupational License of Military Spouses.

ROBERT S. TOYOFUKU

For 2012-2013, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2013-2014. 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.

In 2013, Life Member Toyofuku participated in a two-hour conference call on May 13, 2013, with members of the Legislative Council, attended a Legislative Council meeting during the 2013 ULC annual meeting in Boston, Massachusetts, and attended one meeting of the Legislative Council in Chicago, Illinois, on October 25-27, 2013.

He had monthly conference calls as a member of the Legislative Council and has monthly contact with the liaisons from California, Washington, Oregon, Alaska, Nevada, and here in Hawaii.

HIROSHI SAKAI

During 2012-2013, Life Member Hiroshi Sakai served on the Committee on International Legal Developments, the Standby Committee on Uniform Debt-Management Services Act, and the Drafting Committee on a Uniform Manufactured Housing Act.

For 2013-2014, Life Member Sakai will continue to serve on the Committee on International Legal Developments, on the Standby Committee on Uniform Debt-Management Services Act, and on the Standby Committee on a Uniform Manufactured Housing Act.

In 2013, Life Member Sakai attended one meeting on the Committee on International Legal Developments, on November 8-10, 2013, in Denver, Colorado.

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 122nd year in Boston, Massachusetts, from July 6-12, 2013.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and former Hawaii Commission members and ULC Life Members Sakai and Toyofuku attended the 2013 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 or amendments to existing acts: the Uniform Act on Prevention of and Remedies for Human Trafficking, the Uniform Powers of Appointment Act, the Uniform Harmonized Business Organization Code, and the amendments to the Uniform Child Custody Jurisdiction and Enforcement Act Pertaining to International Proceedings.

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 2012-2013 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 2013, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Electronic Legal Material Act, the Uniform Commercial Code Article 4A amendment, the Uniform Mediation Act, the Uniform Child Testimony by Alternative Methods Act, and the Uniform Partition of Heirs Property 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 Ewart prepared testimony for and testified on the Uniform Partition of Heirs Property Act before the Senate Committee on Commerce and Consumer Protection and the House Committee on Consumer Protection and Commerce, and also prepared the testimony for the hearing on that act before the Senate Committee on Judiciary and Labor. She had meetings with and communicated through telephone conferences and e-mail with attorneys who practice in the partition area and representatives of the State Judiciary regarding the Uniform Partition of Heirs Property Act and also exchanged numerous phone calls and e-mail messages with the Chicago Office of the ULC, the reporter and members of the drafting committee, and other interested parties. Commissioner Ewart also reviewed testimony and coordinated assignments of commissioners for other uniform acts before the legislature, including the Uniform Commercial

Code Article 4A amendment and the Uniform Electronic Legal Materials Act, and she prepared the materials required for her confirmation to another term on the Commission to Promote Uniform Legislation and testified at the Senate Committee on Judiciary and Labor hearing relating to the confirmation.

Commissioner Takayama spent numerous hours tracking, reviewing material, and testifying on various bills enacting or revising certain uniform acts (including Uniform Mediation Act, Uniform Electronic Legal Material Act, the Uniform Commercial Code Article 4A amendment, Uniform Child Testimony by Alternative Methods Act, and Uniform Partition of Heirs Property Act) that were introduced in the 2013 regular session.

Commissioner Kent spent time researching and preparing testimony on the bill to introduce the Uniform Electronic Legal Material Act.

Commissioner Sumida researched, drafted testimony, and testified on bills relating to the Uniform Child Testimony by Alternative Methods Act. He also had multiple telephone conferences with stakeholders to obtain background information, researched, prepared testimony, testified, and prepared numerous correspondence to the ULC and to Senator Clayton Hee, Chair of the Senate Committee on Judiciary and Labor, on the Uniform Mediation Act.

Commissioner Hamasaki researched and drafted testimony on bills to enact the Uniform Commercial Code Article 4A amendment and the Uniform Partition of Heirs Property Act. He also corresponded with title companies with regard to Uniform Commercial Code Article 9 amendments.

Life Member Sakai reviewed proposed legislation of various uniform acts to be introduced.

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 2013.

During the regular session of 2013, bills were introduced to enact the following uniform acts: (1) the Uniform Electronic Legal Material Act; (2) the Uniform Commercial Code Article 4A amendment; (3) the Uniform Mediation Act; (4) the Uniform Child Testimony by Alternative Methods Act; (5) and the Uniform Partition of Heirs Property Act. Of these, the Uniform Electronic Legal Materials Act, was passed by the Legislature and approved by the Governor as Act 11 on April 11, 2013; the Uniform Commercial Code Article 4A amendment was approved by the Governor as Act 16 on April 16, 2013; and the Uniform Mediation Act was approved by the Governor as Act 248 on July 9, 2013.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the seventy-five 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 2013 annual meeting, the ULC considered and adopted four new uniform acts or amendments to existing acts. These acts are briefly described below, based on summaries prepared by the ULC.

A. Uniform Act on Prevention of and Remedies for Human Trafficking.

The Uniform Act on Prevention of and Remedies for Human Trafficking is a comprehensive new law directed against human trafficking. Human trafficking – a form of modern day slavery – is a global concern that affects the United States on federal, state, and local levels. The federal Trafficking Victims Protection Act of 2000 identifies two primary forms of human trafficking: sex trafficking and labor trafficking. The Uniform Act provides the three components necessary for ending human trafficking: comprehensive criminal provisions; provisions for victim services; and the establishment of a coordinating body to help government and non-government organizations coordinate their human trafficking activities. A comprehensive uniform act will enable federal, state, and local agencies to better identify victims, provide needed services, and facilitate prosecution.

B. Uniform Powers of Appointment Act.

A power of appointment is an estate planning tool that permits the owner of property to name a third party and give that person the power to direct the distribution of that property among some class of permissible beneficiaries. It is an effective and flexible technique used in a wide variety of situations, but there is very little statutory law governing the creation and use of powers of appointment. Instead, estate planning attorneys must rely on a patchwork of state court decisions. The drafters of the Uniform Powers

of Appointment Act did not set out to change the law, but rather to codify the existing common law, relying heavily on the Restatement (Third) of Property: Wills and other Donative Transfers. Therefore, estate planning attorneys will already be familiar with the act's provisions, and are likely to welcome the legal certainty that would result from its enactment.

C. 2013 Amendments to Harmonized Business Organization Acts.

The objective of the Uniform Harmonized Business Organization Code (UHBOC) is to harmonize, to the extent possible, the language in the ULC's business entity acts (including the Model Entity Transactions Act, Uniform Partnership Act, Uniform Limited Partnership Act, Uniform Limited Liability Company Act, Uniform Statutory Trust Entity Act, Uniform Limited Cooperative Associations Act, Uniform Unincorporated Nonprofit Association Act, and the Model Registered Agents Act) so that the language in the provisions that are common in one or more of the acts are identical. Amendments to the UHBOC approved in 2013 address some technical corrections that need to be made since the act's promulgation in 2011.

D. Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Pertaining to International Proceedings.

The 2013 Amendments to the UCCJEA were drafted and approved as part of the effort to implement the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. The United States has signed the Convention, and the UCCJEA amendments constitute part of the implementing legislation. Federal legislation (which is not yet enacted) will implement the rest of the Convention. Although the ULC approved the Amendments to UCCJEA Pertaining to International Proceedings in 2013, because federal implementing legislation has not yet

been drafted, the ULC does not intend to present the Amendments for state enactment at this time.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2014

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 2014, the Commission supports enactment of the Uniform Power of Attorney Act, the Uniform Partition of Heirs Property Act, and section 3 of the Model Protection of Charitable Assets Act.

The Uniform Partition of Heirs Property Act, the Model Protection of Charitable Assets Act Section 3, and the Uniform Power of Attorney Act are summarized below:

A. Uniform Partition of Heirs Property Act.

The Uniform Partition of Heirs Property Act (UPHPA) establishes a hierarchy of remedies for use in those partition actions involving heirs property. The remedies are designed to help those who own heirs property to maintain ownership of their property when possible or to ensure at the very least that any court-ordered sale of the property is conducted under commercially reasonable circumstances that will protect the owners from losing substantial wealth upon the sale of their property. Courts use the

act's guideline to determine if tenancy in common property is heirs property that must be partitioned in accordance with the act. UPHPA provides the procedures by which notice is provided to cotenants and appraisers and brokers are hired. The act also mandates that any commissioners, referees, or partitioners that are appointed by the court must be disinterested. Importantly, UPHPA incorporates an option and statutory procedure for cotenants to buy-out the interests of those other cotenants seeking partition by sale. In those instances in which a buy-out does not resolve the action, the act retains the widespread current preference for a partition in kind but outlines specific criteria a court must consider in determining whether a partition by sale may be justified. The UPHPA provides a supplementary mechanism for existing state partition law to help preserve the character and integrity of family-owned property and to protect a family's property-based wealth while still allowing a fair partition action to proceed.

B. Model Protection of Charitable Assets Act Section 3.

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.

The Attorney General of Hawaii has determined that enactment of section 3 of the MPOCAA will provide clarity that the Attorney General has oversight of charitable assets regardless of the form in which the assets are held and may investigate breaches of duty and diversions of charitable assets and intervene in actions for the protection of charitable assets.

C. Uniform Power of Attorney Act.

The Uniform Power of Attorney Act (UPAA) replaces the 1969 Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act and provisions on power of attorney in the Uniform Probate Code. Durable powers of attorney have been allowed only since the late 1960s to early 1970s in almost every state. A durable power survives the incapacity of the principal to avoid the need to bring expensive and time-consuming guardianship or conservatorship actions to care for the principal's assets. The named agent steps in the same way a guardian or conservator would. The 1969 act was originally enacted in almost every state. But amendments from state to state have eroded uniformity between the states. UPAA requires that certain powers be expressly and specifically conferred rather than be general powers; this eliminates questions about the agent's authority and are cautionary in intent. UPAA provides a form power of attorney that must be accepted by any third party. There are civil penalties for refusal to accept if the third party has assets of the principal. There are other provisions that protect the principal from a dishonest agent.

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
Chairman

TABLE OF
UNIFORM ACTS ENACTED IN HAWAII

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
1. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	Chapter 551G
2. Uniform Anatomical Gift Act (1968)(1987)(2008)	Part I, Chapter 327
3. Uniform Arbitration Act (1956)(2000)	Chapter 658A
4. Uniform Athlete Agents Act (2000)	Chapter 481E
5. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
6. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
7. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
8. Uniform Collaborative Law Act	Chapter 658G
9. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
10. Uniform Commercial Code Article 1 – General Provisions (2001)	Article 1, Chapter 490
11. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
12. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
13. Uniform Commercial Code Article 4 -- Bank Deposits and Collections (1990)	Article 4, Chapter 490

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
14. Uniform Commercial Code Article 4A -- Funds Transfer (1989) (2013)	Article 4A, Chapter 490
15. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490
16. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)
17. Uniform Commercial Code Article 7 -- Documents of Title (2003)	Article 7, Chapter 490
18. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)	Article 8, Chapter 490
19. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999) (2010)	Article 9, Chapter 490
20. Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
21. Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
22. Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
23. Uniform Custodial Trust Act (1987)	Chapter 554B
24. Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
25. Uniform Determination of Death Act (1978)(1980)	§ 327C-1 (Substantially similar definition)

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
26. Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
27. Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510
28. Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
29. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
30. Uniform Electronic Legal Material Act	Chapter 98
31. Uniform Electronic Transactions Act (1999)	Chapter 489E
32. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
33. Uniform Environmental Covenants Act	Chapter 508C
34. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
35. Uniform Fiduciaries Act (1922)	Chapter 556
36. Uniform Foreign-Country Money Judgments Recognition Act (2005)	Chapter 658F
37. Uniform Foreign-Money Claims (1989)	Chapter 658B
38. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C
39. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
40. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
41. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
42. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
43. Uniform Interstate Depositions and Discovery Act	Chapter 624D
44. Uniform Interstate Family Support Act (1992)(1996)	Chapter 576B
45. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
46. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
47. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
48. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
49. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
50. Uniform Mediation Act	Chapter 658H
51. Uniform Military and Overseas Voters Act	Chapter 15D
52. Uniform Parentage Act (1973)	Chapter 584
53. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
54. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
55. Uniform Premarital Agreement Act (1983)	Chapter 572D
56. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
57. Uniform Probate Code (1969)(1975)(1982)(1987)(1989)(1990)(1991)(1998)	Chapter 560
58. Uniform Prudent Investor Act (1994)	Chapter 554C
59. Uniform Prudent Management of Institutional Funds Act (2006)	Chapter 517E
60. Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
61. Uniform Real Property Transfer on Death Act (2009)	Chapter 527
62. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
63. Model Registered Agents Act (2006)	Chapter 425R
64. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
65. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
66. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
67. Uniform Status of Convicted Persons Act (1964)	Chapter 831
68. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525

ACT (Date of ULC Adoption
or Amendment)

HAWAII REVISED STATUTES

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| 69. | Uniform Testamentary Additions to Trusts Act (1960)(1961)
(Uniform Probate Code § 2-511 (1991)) | § 560:2-511 |
| 70. | Uniform Trade Secrets Act
(1979)(1985) | Chapter 482B |
| 71. | Uniform Transfer-on-Death (TOD)
Security Registration Act (1998) | Chapter 539 |
| 72. | Uniform Transfers to Minors Act
(1983)(1986) | Chapter 553A |
| 73. | Uniform Trustees' Powers Act
(1964) | Chapter 554A |
| 74. | Uniform Unclaimed Property Act
(1981) | Part I, Chapter 523A |
| 75. | Uniform Unincorporated Nonprofit
Association Act (1992)(1996) | Chapter 429 |