

**STATE OF HAWAI'I**  
**Department of the Attorney General**



**2017 REPORT**  
**OF THE**  
**COMMISSION TO PROMOTE**  
**UNIFORM LEGISLATION**

**SUBMITTED TO**  
**THE TWENTY-NINTH STATE LEGISLATURE**  
**Regular Session of 2018**

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STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
  
2017 REPORT OF THE  
  
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE TWENTY-NINTH  
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 2017 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 United States 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 that have been adopted uniformly by nearly all the states or that 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 only reimbursement 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 \$2,848,150 in fiscal year 2017-2018. The smallest state contribution is \$18,850, and the largest is \$165,300. Hawaii's contribution for fiscal year 2017-2018 is \$35,150, 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 forty 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 \$3,748,878 for the current fiscal year (July 1, 2017 to June 30, 2018). Of this amount, \$838,419 (approximately 22.4%) 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 \$217,665 (or 5.8%). About \$648,201 (17.3%) is spent in assisting state legislatures with bills based on uniform and model acts and this amount includes salaries and travel expenses. About \$466,304 (12.4%) is spent on the annual meeting. Public education for uniform and model acts costs about \$120,522 (3.2%) 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 that 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 fourteen people. The small staff provides support for drafting and legislative efforts. 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 2016-2017 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 2017-2018 will remain the same.

Former commissioner Robert S. Toyofuku continued to actively participate in ULC activities as a ULC Life Member. Upon recommendation of the ULC Executive Committee and by the affirmative vote of two-thirds of the commissioners present at an annual meeting, he was elected as a ULC Life Member 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 2016-2017, Commissioner Ewart served on the Standby Committee on Uniform Partition of Heirs Property Act and on the Joint Study Committee on Harmonization of the Law of Canada, Caribbean Nations, and the United States Concerning Registration of Foreign Judgments.

In 2016-2017, Commissioner Ewart was also a Liaison Member to the Uniform Law Foundation Trustees, and will continue to be a member in 2017-2018.

During the year, Commissioner Ewart responded to questions by phone and email regarding various uniform acts. She provided information relating to the Uniform Trust Code to the Hawaii trust and probate attorneys who are researching the Code. She also worked on an article published in the Hawaii Bar Journal as an update on the activities of the Uniform Law Commission and the CPUL.

PETER J. HAMASAKI

For 2016-2017, Commissioner Hamasaki served on the Study Committee on Amendments to the Revised Uniform Law on Notarial Acts, and on the Standby Committee to Revise the Uniform Law on Notarial Acts.

For 2017-2018, Commissioner Hamasaki will serve on the Drafting Committee to Amend the Revised Law on Notarial Acts.

Commissioner Hamasaki attended one meeting of the Drafting Committee to Amend the Revised Law on Notarial Acts, on November 3-4, 2017, in Washington, D.C.

ELIZABETH KENT

For 2016-2017, Commissioner Kent served on the Joint Study Committee on Harmonization of the Law of Canada, Caribbean Nations and the United States Concerning Registration of Foreign Judgments and as a member of the Standby Committee on a Uniform Collaborative Law Act, the Drafting Committee on Model Veterans Court Act, and the Standby Committee to Monitor Developments in Civil Litigation and Dispute Resolution.

For 2017-2018, Commissioner Kent will serve on the Standby Committee on Model Veterans Treatment Court Act, the Standby Committee on Uniform Family Law Arbitration Act, the Standby Committee on a Uniform Collaborative Law Act, Committee on Civil Litigation and Dispute Resolution, the Diversity Committee, the Study Committee on Adverse Possession, and on the Enactment Committee on the Model Veterans Treatment Court Act.

Commissioner Kent attended one meeting of the Drafting Committee on Model Veterans Court Act, on March 4-5, 2017, in Chicago, Illinois.

She spent time working on the enactment of the Uniform Family Law Arbitration Act, made numerous telephone calls. She did research, coordination, and presentation at two continuing legal education meetings on the Uniform Family Law Arbitration Act. She also drafted an article for the Hawaii State Bar Association Journal, and generally assisted with promoting uniform state laws.

KEVIN P. H. SUMIDA

For 2016-2017, Commissioner Sumida served on the Study Committee for Trust Management of funds Raised Through Public Fundraising Act. He also served as a member of the Standby Committee on Harmonization of Business Entity Acts and the Standby Committee on the Revised Uniform Residential Landlord and Tenant Act (2015).

For 2017-2018, Commissioner Sumida will serve on the Standby Committee of the Harmonization of Business Entity Act, the Drafting Committee on Management of Funds Raised Through Crowdfunding Efforts, and Standby Committee on the Revised Uniform Residential Landlord and Tenant Act (2015).

KEN H. TAKAYAMA

For 2016-2017, Commissioner Takayama served as a member of the Study Committee on the Regulation of Drones and on the Standby Committee on Uniform Deployed Parents Custody and Visitation 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 2017-2018, Commissioner Takayama will serve on the Standby Committee on Uniform Deployed Parents Custody and Visitation Act. He will also 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.

During the year, Commissioner Takayama did a 90-minute presentation on the Uniform Law Commission and a number of uniform laws developed by the ULC that have been enacted in Hawaii. This was done as a CLE presentation for the Government Attorneys Section of the HSBA. He

spent approximately 47 hours on the presentation and the development of the slides for the Powerpoint presentation.

Commissioner Takayama assisted the Division of Financial Institutions of the Department of Commerce and Consumer Affairs (DCCA) in coordinating their attendance at the ULC annual meeting to monitor proceedings on the Regulation of Virtual Currency Businesses Act. He had regular contact with the Division of Financial Institutions of the DCCA on the position it would take during the 2018 regular session assuming that a bill was introduced to enact the Uniform Regulation of Virtual Currency Businesses Act. He also assisted the Child Support Enforcement Agency (CSEA) with a general summary of the Uniform Parentage Act when the CSEA was considering whether to introduce the Uniform Parentage Act during the 2018 session. In addition, he spent approximately eight hours assisting the Division of Boating and Ocean Recreation of the DLNR by helping them put together a draft of the Uniform Certificate of Title for Vessels Act (UCOTVA) into legislative bill form in order for them to get departmental approval to introduce the bill.

#### ROBERT S. TOYOFUKU

For 2016-2017, Life Member Robert S. Toyofuku served as a member of the Legislative Council and will continue to serve as such during 2017-2018. 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. As a member of the Council, Life Member Toyofuku is responsible to work with the liaisons from six states: Alaska, California, Hawaii, Nevada, Oregon, and Washington, and monitor progress on any legislation regarding ULC acts.

In 2017, Life Member Toyofuku, as a member of the Legislative Council, participated in monthly conference calls (about 30-45 minutes) with members of the Legislative Council to update the Chicago office and other council members on the progress being made in passing uniform acts within the six states in the Western region that he oversees. He also communicated with the liaisons in each of the six states from January through May of 2017.

He attended a legislative council meeting in Chicago, Illinois, on November 9-12, 2017.

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 126th year in San Diego, California, from July 14-20, 2017.

Commissioners Ewart, Hamasaki, Kent, Sumida, and Takayama and former Hawaii Commission member and ULC Life Member Toyofuku

attended the 2017 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 six new uniform acts or amendments to existing acts: the Uniform Regulation of Virtual Currency Businesses Act; the Uniform Directed Trust Act; the Uniform Guardianship, Conservatorship, and Other Protected Arrangements Act; the Uniform Parentage Act (2017); the Uniform Protected Series Act; and the Model Veterans Treatment Court Act and Rules.

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 2016-2017 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 Commissioner 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 2017, Commissioner Takayama and Life Member Toyofuku arranged for the introduction of and/or monitored the movement of bills with regard to the Uniform Employee and Student Online Privacy Protection Act, the Uniform Family Law Arbitration Act, and the

Revised Uniform Athlete Agents Act (2015).

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.

During the 2017 legislative session, Commissioner Ewart reviewed and commented on testimony regarding the Revised Uniform Athlete Agents Act and the Uniform Employee and Student Online Privacy Protections Act and coordinated assignments of commissioners for other uniform acts before the legislature.

Commissioner Sumida testified on the Uniform Employee and Student Online Privacy Protection Act, and spent time reviewing and researching material and testimony, and communicating by email and participating in hour-long conferences with various individuals on various acts introduced.

Commissioner Kent spent approximately 25 hours corresponding with legislative staff, the Uniform Law Commission, and the Judiciary. She also spent time reviewing material and testimony on the various acts introduced.

On Senate Bill No. 430, Relating to Athlete Agents, Commissioner Takayama prepared testimony and testified before joint hearing of the Senate Committees on Commerce, Consumer Protection and Health and Judiciary and Labor and submitted comments to Senate Committee on Ways and Means. On House Bill No. 507, Relating to Athlete Agents, he prepared testimony and testified before the House Committee on Intrastate Commerce and communicated with committee's staff to get the bill scheduled for hearing. On Senate Bill No. 429, Relating to the Uniform Employee and Student Online Privacy Protection Act, Commissioner Takayama assisted Commissioner Hamasaki in preparing testimony and

when he testified before the joint hearing of Senate Committees on Judiciary and Labor and on Higher Education, and before the House Labor and the House Judiciary committees, spent approximately 15 hours in communication with Uniform Law Commission staff, and the chair and reporter of the Drafting Committee on the Uniform Employee and Student Online Privacy Protection Act.

Commissioner Hamasaki spent approximately 30 hours attending hearings, preparing testimony, making telephone calls, and meeting with drafting committee chair and Uniform Law Commission staff. He also corresponded with interested third parties on Senate Bill No. 429 and House Bill No. 814, Relating to the Uniform Employee and Student Online Privacy Protection Act.

Life Member Toyofuku spent approximately 10 hours tracking the bills, reviewing testimony, and keeping up with the progress of bills being heard.

#### 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 2017.

During the regular session of 2017, three bills were introduced to enact the Revised Uniform Athlete Agents Act (2015), the Uniform Employee and Student Online Privacy Protection Act, and the Uniform Family Law Arbitration Act. House Bill No. 1235, Relating to the Uniform Family Law Arbitration Act, was passed by the Legislature and approved by the Governor as Act 113 on July 10, 2017.

B. Table of Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the eighty 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 2017 annual meeting, the ULC considered and adopted six new uniform acts or amendments to existing acts. These acts are briefly described below, based on summaries prepared by the ULC.

A. Uniform Directed Trust Act.

The Uniform Directed Trust Act (UDTA) addresses the rise of directed trusts. In a directed trust, a person other than a trustee has a power over some aspect of the trust's administration. Such a person may be called a "trust protector," "trust adviser," or in the terminology of the UDTA, a "trust director." The division of authority between a trust director and a trustee raises difficult questions about how to divide fiduciary power and duty. The Uniform Directed Trust Act provides clear, functional rules that allow a settlor to freely structure a directed trust while preserving key fiduciary safeguards for beneficiaries. The UDTA also provides sensible default rules for a variety of matters that might be overlooked in the drafting of a directed trust, including information sharing among trustees and trust directors, the

procedures for accepting appointment as a trust director, the distinction between a power of direction and a nonfiduciary power of appointment, and many other matters.

B. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is an updated version of the Uniform Guardianship and Protective Proceedings Act, originally promulgated in 1969 as part of the Uniform Probate Code, and revised in 1982 and 1997. This new version is a comprehensive and modern guardianship statute that better protects the individual rights of both minors and adults subject to a guardianship or conservatorship order. The Act promotes person-centered planning to incorporate an individual's preferences and values into a guardianship order, and requires courts to order the least-restrictive means necessary for protection of persons who are unable to fully care for themselves. The act includes a set of optional forms to help courts implement its provisions effectively.

C. Uniform Parentage Act (2017).

The Uniform Parentage Act (2017) is a revision of the Uniform Parentage Act (UPA) of 2000, which has been adopted in 11 states. The UPA covered several topics, including: the parent-child relationship; voluntary acknowledgments of paternity; registry of paternity; genetic testing; proceedings to adjudicate parentage of children of assisted reproduction. As a result of the Supreme Court decision in *Obergefell v. Hodges*, as well as other developments in the states, a revision to the Act became necessary. The revised Act addresses issues related to same-sex couples, surrogacy, the right of a child to genetic information, de facto parentage, and parentage of children conceived through sexual assault.

D. Uniform Protected Series Act.

The Uniform Protected Series Act provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both “horizontal” liability shields, as well as the standard “vertical” liability shield. All modern business entities provide the traditional, “vertical” shield – protecting the entity’s owners (and their respective assets) from automatic, vicarious liability for the entity’s debts. A “series” limited liability company provides “horizontal” shields – protecting each protected series (and its assets) from automatic, vicarious liability for the debts of the company and for the debts of any other protected series of the company. A horizontal shield likewise protects the series limited liability company (and its assets) from creditors of any protected series of the company. The Act integrates into any existing LLC Act, whether it is the Uniform Limited Liability Company Act or not.

E. Uniform Regulation of Virtual-Currency Businesses Act.

The Uniform Regulation of Virtual-Currency Businesses Act (URVCBA) creates a statutory framework for regulating virtual currency business activity, which includes businesses engaged in the exchange of virtual currencies for cash, bank deposits, or other virtual currencies; the transfers of virtual currency between customers; and certain custodial or fiduciary services. Under the URVCBA, “virtual currency” is a digital representation of value that is used as a medium of exchange, unit of account, or store of value and is not legal tender. This technology-neutral definition covers as many types of virtual currency as possible. The URVCBA’s unique, three-tiered structure clarifies whether an individual or company engaging in virtual currency business activity is (1) exempt from the act; (2) must register; or (3) must obtain a license. The URVCBA also contains numerous consumer protections.

F. Model Veterans Treatment Court Act and Rules.

Veterans' courts have been created in many judicial districts around the United States to ensure that veterans in the criminal justice system receive the treatment and support necessary to rehabilitate them into being productive members of society. Very few states have legislation on veterans' courts, but many local judicial districts have effectively created veterans' courts by rule or practice. The Model Veterans Treatment Court Act provides guidelines for the establishment of veterans' courts while permitting substantial local discretion necessary to accommodate circumstances in different communities. Some of the issues that the model act and rules address include: what subset of veterans are entitled to diversion into a veterans' court; for what type of offenses is diversion into a veterans' court appropriate; what rights should victims have to participate in proceedings in veterans' courts; and how, in general, should veterans' courts be organized and operated. The Act provides that participation in the veterans' treatment program requires approval of the prosecutor, but expressly reserves to the court all power regarding punishment including probation, conditions of probation, and consequences of violation of terms of participation in the treatment program. This Act can also be implemented as a set of court rules.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2018

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 2018, the Commission supports enactment of the Revised Uniform Athlete Agents Act (2015) and the Uniform Employee-Student Privacy Protection Act, which are summarized below:

A. Revised Uniform Athlete Agents Act (2015).

The Revised Uniform Athlete Agents Act (2015) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states. The 2000 act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The revised act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete”; providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

B. Uniform Employee and Student Online Privacy Protection Act.

Today, most individuals have online accounts of some type. These include social media accounts, bank accounts, and email accounts, among others. Generally, when someone asks for access to the login information for, or content of, a personal online account, an individual is free to say no. But that is less true in the employment and educational contexts. Indeed, employers and educational institutions now sometimes ask current and/or prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers’ access to employees or prospective employees’ social media and other online accounts accessed via username and password or

other credentials of authentication as well as educational institutions' access to students' or prospective students' similar online accounts.

## 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 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 Family Law Arbitration Act	Chapter 658J
36. Uniform Fiduciaries Act (1922)	Chapter 556
37. Uniform Fiduciary Access to Digital Assets Act	Chapter 556A
38. Uniform Foreign-Country Money Judgments Recognition Act (2005)	Chapter 658F
39. Uniform Foreign-Money Claims (1989)	Chapter 658B
40. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
41. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
42. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
43. Uniform Health-Care Decisions Act (Modified)	Chapter 327E
44. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
45. Uniform Interstate Depositions and Discovery Act	Chapter 624D
46. Uniform Interstate Family Support Act (1992)(1996)(2015)	Chapter 576B
47. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
48. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
49. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed effective July 1, 2004)
50. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
51. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
52. Uniform Mediation Act (2013) (2014)	Chapter 658H
53. Uniform Military and Overseas Voters Act	Chapter 15D
54. Uniform Parentage Act (1973)	Chapter 584

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
55. Uniform Partition of Heirs Property Act	Chapter 668A
56. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
57. Uniform Photographic Copies as Evidence Act (1949)	§ 626-1, Rules 1001 to 1008
58. Uniform Power of Attorney Act (2014)	Chapter 551E
59. Uniform Premarital Agreement Act (1983)	Chapter 572D
60. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
61. Uniform Probate Code (1969)(1975)(1982)(1987)(1989) (1990)(1991)(1998)	Chapter 560
62. Model Protection of Charitable Assets Act (2014)	Chapter 28
63. Uniform Prudent Investor Act (1994)	Chapter 554C
64. Uniform Prudent Management of Institutional Funds Act (2006)	Chapter 517E
65. Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
66. Uniform Real Property Transfer on Death Act (2009)	Chapter 527
67. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
68. Model Registered Agents Act (2006)	Chapter 425R

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
69. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
70. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
71. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
72. Uniform Status of Convicted Persons Act (1964)	Chapter 831
73. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525
74. Uniform Testamentary Additions to Trusts Act (1960)(1961) (Uniform Probate Code § 2-511 (1991))	§ 560:2-511
75. Uniform Trade Secrets Act (1979)(1985)	Chapter 482B
76. Uniform Transfer-on-Death (TOD) Security Registration Act (1998)	Chapter 539
77. Uniform Transfers to Minors Act (1983)(1986)	Chapter 553A
78. Uniform Trustees' Powers Act (1964)	Chapter 554A
79. Uniform Unclaimed Property Act (1981) (1995)	Part I, Chapter 523A
80. Uniform Unincorporated Nonprofit Association Act (1992)(1996)	Chapter 429