

DAVID Y. IGE
GOVERNOR



CLARE E. CONNORS
ATTORNEY GENERAL

DANA O. VIOLA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

February 23, 2021

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the House of
Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the 2020 Report of the Commission to Promote Uniform Legislation. In accordance with section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>.

If you have any questions or concerns, please feel free to call me at 586-1500.

Sincerely,

Clare E. Connors
Attorney General

c: David Y. Ige, Governor
Josh Green, Lieutenant Governor
Legislative Reference Bureau (Attn.: Karen Mau)
Leslie H. Kondo, State Auditor
Craig K. Hirai, Director of Finance, Department of Budget and Finance
Stacey A. Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, PhD., President, University of Hawaii

Enclosure

State of Hawai'i
Department of the Attorney General



2020 REPORT
OF THE
COMMISSION TO PROMOTE
UNIFORM LEGISLATION

Pursuant to Section 26-7, Hawaii Revised Statutes

*Submitted to
The Thirty-First State Legislature
Regular Session of 2021*

TABLE OF CONTENTS

I.	HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (NOW REFERRED TO AS THE UNIFORM LAW COMMISSION)	1
II.	OPERATION OF THE ULC	1
	A. Financial Support of the ULC	1
	B. Creation of Uniform and Model Acts	3
	C. Administration of the ULC	4
III.	ACTIVITIES OF THE HAWAII COMMISSIONERS	5
	A. Membership of the Hawaii Commission to Promote Uniform Legislation	5
	B. ULC Committee Assignments	6
	C. Meetings Attended	9
	D. Legislative Appearances by the Hawaii Commissioners	10
IV.	UNIFORM ACTS ENACTED IN HAWAII	10
	A. Uniform Acts Introduced for Enactment in 2020	10
	B. Uniform Acts Enacted in Hawaii	11
V.	A SUMMARY OF NEW UNIFORM ACTS	11
	A. Uniform Easement Relocation Act	11
	B. Uniform Pretrial Release and Detention Act	11
	C. Uniform Public Expression Protection Act	12
VI.	RECOMMENDATIONS FOR ENACTMENT IN 2021	12
	A. Uniform Employee and Student Online Privacy Protection Act	12
	B. Other Targeted Acts	13
VII.	CONCLUSION	13
	Table of Uniform Acts Enacted in Hawaii	Appendix i-vi

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

2020 REPORT OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION

TO THE HONORABLE MEMBERS OF THE THIRTY-FIRST LEGISLATURE:

The Hawaii Commission to Promote Uniform Legislation (CPUL), the members of which are Hawaii's representatives to the National Conference of Commissioners on Uniform State Laws, respectfully submits this 2020 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 \$3,089,000 in fiscal year 2020-2021. The smallest state contribution is \$20,300 (for the U.S. Virgin Islands), and the largest is \$178,850 (for California). Hawaii's contribution for fiscal year 2020-2021 is \$37,950, 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 \$3,556,227 for the current fiscal year (July 1, 2020, to June 30, 2021). For fiscal year 2021, the ULC is expecting significant changes in both revenue and expenses due to the pandemic. Typically, however, approximately 45 percent of the ULC's budget is used to identify and draft acts,

including holding the annual meeting where the acts are presented to the commissioner body for approval. Another 20 percent is spent assisting state legislatures with bill enactment and public education of Uniform and Model Acts. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

The Uniform Commercial Code (UCC) is a joint venture between the ULC and the American Law Institute (ALI). In the 1940s, the Falk Foundation supported the UCC's original development. Proceeds from copyright licensing of UCC materials replenish the original funds. Whenever work on the UCC commences, a percentage of ULC and ALI costs are paid from endowment income.

Grants from foundations, including the Uniform Law Foundation, 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 Commission'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 Commission expands the value of every state dollar invested in its work.

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 the Scope and Program Committee believes that an idea for an act is worthy of consideration, it usually will recommend that a study committee be appointed. Study committees consider the need for and feasibility of drafting and enacting uniform or model legislation in an area and report back to the Scope and Program Committee. Recommendations from the Scope and Program Committee go to the ULC Executive Committee, which makes the final decisions as to whether to study a proposal or undertake a drafting project.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. Almost all drafting committees have a reporter, and some committees are assisted by two reporters.

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 attend drafting committee meetings and to contribute comments throughout the drafting process. Advisors and observers do not make decisions with respect to the final contents of an Act. Only ULC members who compose the drafting committee may participate in any necessary votes.

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. During the pandemic, committees are meeting online rather than in person. Most acts require four committee meetings, although some require more. A committee usually produces 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. (During the pandemic, committees are meeting online rather than in person.) 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 fifteen 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 Commission has established royalty agreements with major legal publishers which reprint the ULC's uniform and model acts in their publications.

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 member of the bar. 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 2019-2020 were as follows:

- (1) Lani L. Ewart;
- (2) Peter Hamasaki;
- (3) Elizabeth Kent;
- (4) Blake Oshiro; and
- (5) Kevin Sumida;

The members of the Hawaii Commission for 2020-2021 are as follows:

- (1) Lani L. Ewart;
- (2) Peter Hamasaki;
- (3) Elizabeth Kent;
- (4) Blake Oshiro; and
- (5) Kevin Sumida

Former commissioners Robert S. Toyofuku and Ken Takayama continue to actively participate in ULC activities as ULC Life Members. 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 Jill T. Nagamine of the Legislative Division was assigned in November, 2020, by the Attorney General to provide staff support for the commissioners. Deputy Attorney General Maurice Kato continues to provide support 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 L. EWART

In 2019-2020, Commissioner Ewart, who is a Life Member of the ULC, served as the Chair of the CPUL, but did not formally serve on any ULC committees. Nonetheless, she attended meetings by means of interactive conference technology, including a Hawaii Legislative Planning Session with ULC staff and the Hawaii commissioners, an informal meeting of the Drafting Committee on Easement Relocation Act, all four sessions of the 2020 Annual ULC Meeting, an informal meeting of the Drafting Committee on Community Property Rights at Death Act, the first reading

of the Community Property Rights at Death Act, and the first reading of the Common Interest Ownership Act.

Chair Ewart reviewed the testimony of commissioners submitted during the 2020 Legislative Session relating to the Uniform Employee and Student Online Privacy Protections Act and the Revised Law on Notarial Acts, and followed up with comments regarding the Acts and the questions raised during the legislative hearings and from interested persons. During the year, she also responded to questions by phone and email regarding various uniform acts and laws.

PETER J. HAMASAKI

In 2019-2020, Commissioner Hamasaki currently serves on the Uniform Common Ownership Interest Act Drafting Committee, Revised Uniform Law on Notarial Acts Standby Committee, and Study Committee on Emergency Family Court Orders.

He attended meetings by means of interactive conference technology, including the ULC Annual Meeting, six meetings of the Uniform Common Ownership Interest Act Drafting Committee, and meetings on the Revised Uniform Law on Notarial Acts Standby Committee, the Study Committee on Emergency Family Court Orders, the Drafting Committee on Registration and Licensing of Direct-to-Consumer Sales of Wine and Prevention of Illegal Sales Act Listening Session, and a Hawaii Legislative Planning Session. He also attended in-person meetings in early 2020 with the ACLU on the Uniform Employee and Student Online Privacy Protection Act, and with attorney general staff and others on the Revised Uniform Law on Notarial Acts.

Commissioner Hamasaki provided testimony and comments to several Legislative committees in 2020 on both the Uniform Employee and Student Online Privacy Protection Act, and the Revised Uniform Law on Notarial Acts.

ELIZABETH KENT

In 2019-2020, Commissioner Kent served on the Enactment Committee on the Model Veterans Treatment Court Act, the Committee to Monitor Civil Litigation and Dispute Resolution, and the Family Court Emergency Procedures Study Committee. She chaired a sub-committee to Monitor Civil Litigation and Dispute Resolution that focused on on-line dispute resolution. She spent about 40 hours in research time, telephone calls, and numerous meetings for the sub-committee.

For 2020-2021, Commissioner Kent will continue to serve on the Standby Committee on Model Veterans Treatment Court Act, the Committee to Monitor Civil Litigation and Dispute Resolution, the Enactment Committee on the Model Veterans Treatment Court Act, and the Family Court Emergency Procedures Study Committee.

During 2019-2020, Commissioner spent approximately 15 hours on work related to the Uniform Law Foundation.

BLAKE OSHIRO

In 2019-2020, Commissioner Oshiro served on the Public Meetings During Emergencies Drafting Committee. He attended by means of interactive conference technology a Hawaii Legislative Planning Session and an informal session on Collection and Use of Personally Identifiable Data.

In 2020-2021, he will continue to serve on the Public Meetings During Emergencies Drafting Committee.

KEVIN P. H. SUMIDA

In 2019-2020, Commissioner Sumida served on the Study Committee on Fundraising Through Public Appeals Act (formerly the Drafting Committee on Management of Funds Raised through Crowdfunding Efforts Act) and attended several telephone conferences in that regard. He also attended a Hawaii Legislative Planning Session.

KEN H. TAKAYAMA

For 2019-2020, Life Member Takayama served on the Standing Committee on Membership and Attendance, the Committee on Legislative Attorneys, and the Legislative Committee (as Hawaii's liaison).

He attended meetings by interactive conference technology, including the 2020 ULC annual meeting, an informal session on the Public Expression Protection Act, an informal session on the Easement Relocation Act, a Review of ULC Acts, an informal session on Economic Rights of Unmarried Cohabitants, a meeting on Personally identifiable data, multiple meetings on Adopted Children, a meeting on Unmarried cohabitants, and a meeting of New Commissioners on the Committee for Membership and Attendance).

Life Member Takayama participated in an effort by CPUL to pass the Uniform Employee and Student Online Privacy Protection Act in 2020. He worked with legislative aides and sponsors to introduce House Bill 1904 and Senate Bill 2010. He then worked with Legislative staff to have these bills scheduled for committee hearings. He prepared and submitted testimony to support the passage of these bills. Unfortunately the abbreviated 2020 Legislative Session prevented either bill from advancing to passage.

ROBERT S. TOYOFUKU

For 2019-2020, Life Member Robert S. Toyofuku served as a member of the Legislative Council and the Fines and Fees Study Committee, and will continue to serve as such during 2020-2021. 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. Life Member Toyofuku is responsible to oversee the legislative activities in the states in the Western Region (Alaska, California, Hawaii, Nevada, Oregon, and Washington) and to work with the liaisons from each of those states.

In 2019-2020, Life Member Toyofuku attended several interactive meetings either by conference call or by a Zoom call and participated in Legislative Council calls almost monthly throughout the year from January 2020 through November 2020. During May and June, 2020, in coordination with the Chicago ULC office and a legislative staff member, he arranged, planned, and assisted in conducting six one-hour calls with all of the state delegations in the Western Region to discuss future issues and plans. He also participated in with the Fines and Fees Study Committee, on which he serves. He also participated in our state delegation meetings during the year.

In February, 2020, Life Member Toyofuku prepared for and made a presentation on behalf of the National Conference of Commissioners on Uniform State Laws at the National Center for State Courts/Conference of Chief Justices being held in Honolulu. Former ULC President and Chief Justice of Oregon, Martha Lee Walters, could not attend the meeting, and Life Member Toyofuku presented a report at her request.

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. Committee meetings in 2019-2020 were predominantly held via interactive conference technology or telephone calls.

The 2020 annual meeting was held online from July 10-15, 2020, due to the pandemic. Commissioners Ewart, Hamasaki, Kent, and Sumida and former Hawaii Commission members and ULC Life Members Takayama and Toyofuku attended the 2020 annual meeting via interactive conference technology.

After consideration of the latest drafts, the ULC approved three new uniform acts or amendments to existing acts: the Uniform Easement Relocation Act, the Uniform Pretrial Release and Detention Act, and the Uniform Public Expression Protection Act.

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

D. Legislative Appearances by the Hawaii Commissioners.

Life Member Ken Takayama continues to serve as the Commission's liaison to the Hawaii State Legislature. The CPUL is advisory to the State Legislature, as well as to the Attorney General. He tracks bills to enact uniform laws and notifies the commissioners when public hearings will be held. Life Member Takayama and Chair Ewart assign bills among the commissioners for advocacy during the Legislative Session.

During the 2020 Hawaii legislative regular session and prior to the Capitol being closed to the public due to the pandemic, Commissioner Hamasaki spent approximately 30 hours reviewing bills and preparing testimony and correspondence and testifying in House and Senate committees on various ULC-related bills. In addition, he attended multiple hearings and meetings regarding H.B. No. 1904 and S.B. No. 2010, relating to the Uniform Employee and Student Online Privacy Protection Act. He also met or corresponded with agency, legislative, and third-parties and attended multiple hearings regarding H.B. No. 2294 and S.B. No. 2275 relating to the Revised Uniform Law on Notarial Acts. The Thirtieth Legislature passed S.B. No. 2275, Relating to Notarial Acts.

During the 2020 Hawaii legislative regular session, Commissioner Oshiro spent approximately 20 hours working on various ULC-related bills. He attended an information session to discuss the matter regarding the Collection and Use of Personally Identifiable Data.

Commissioners Ewart, Hamasaki, Oshiro, and Sumida attended the Hawaii Legislative Planning Session on June 12, 2020.

IV. **UNIFORM ACTS ENACTED IN HAWAII**

The State of Hawaii has supported the ULC not only by encouraging its commissioners to actively participate in the ULC but also by enacting some of 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 2020.

During the regular session of 2020, CPUL worked with the Department of the Attorney General to support H.B. No. 2294 and its companion bill, S.B. No. 2275, the bill modeled after the Revised Uniform Law on Notarial Acts (2018). S.B. No. 2275 was passed by the Legislature and approved by the Governor as Act 54 on September 15, 2020.

The Uniform Employee and Student Online Privacy Protection Act, which had been carried over from the 2019 regular session, was not among the 76 bills that passed during the 2020 Legislative Session, which was abbreviated due to COVID-19.

B. Uniform Acts Enacted in Hawaii.

Attached as Appendix 1 to this report is a table listing the eighty-three 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 2020 annual meeting, the ULC considered and adopted three new uniform acts or amendments to existing acts. These acts are briefly described below, based on summaries prepared by the ULC.

A. Uniform Easement Relocation Act.

In many, but not all, states, the owner of the burdened property and the holder of an easement must consent to relocate the easement, such as the legal right to use a driveway that runs from a public road across one property to access another. When the owner of the burdened property asks to relocate an easement to allow further development, an easement holder in a state that follows the mutual consent rule can withhold consent to prevent the development or demand a ransom payment before agreeing to the change. The Uniform Easement Relocation Act allows the burdened estate owner to obtain a court order to relocate an easement if the relocation does not materially impair the utility of the easement to the easement holder or the physical condition, use, or value of the benefited property. The burdened property owner must file a civil action, give other potentially affected real-property interest owners notice, and bear all the costs of relocation. These conditions build on the rule contained in the Restatement (Third) of Property: Servitudes, whose approach to easement relocation has been fully or partially adopted in a number of states. The Uniform Easement Relocation Act excludes conservation easements and public-utility easements from its scope and contains a number of additional safeguards, not found in the Restatement, to protect the easement holder's interest in the use and enjoyment of the easement during and after the relocation.

B. Uniform Pretrial Release and Detention Act.

The Uniform Pretrial Release and Detention Act responds to the need for a comprehensive and balanced statute to guide courts in making pretrial release and detention decisions for the millions of people charged with crimes each year in state court. The Act provides a comprehensive procedural framework for release and detention determinations. Provisions of the Act address many issues, including: (1) the

use of citations in lieu of arrest for minor offenses; (2) a time limit on when a hearing must be conducted for an individual who is arrested; (3) appointment of counsel; (4) a pretrial risk determination by a court to individualize release or detention; (5) review of a defendant's financial condition so that inability to pay a fee does not lead to detention; and (6) an obligation on the court to consider restrictive conditional release as an alternative to detention.

C. Uniform Public Expression Protection Act

The purpose of the Uniform Public Expression Protection Act is to provide a remedy for defendants involved in lawsuits called "Strategic Lawsuits Against Public Participation," or "SLAPPs." SLAPPs are abusive civil lawsuits that may be brought against individuals, entities, or government officials. The topics of these lawsuits range from education and zoning to politics and the environment. Though the claim of the lawsuit may be defamation, tortious interference with business expectations, invasion of privacy, or something else, the real goal of a SLAPP lawsuit is to entangle the defendant in expensive litigation that stifles the defendant's ability to engage in constitutionally protected activities. The Uniform Public Expression Protection Act creates a clear process through which SLAPPs can be challenged and their merits fairly evaluated in an expedited manner. The Act protects individuals' rights to petition and speak freely on issues of public interest while, at the same time, protecting the rights of people and entities to file meritorious lawsuits for real injuries.

VI. RECOMMENDATIONS FOR ENACTMENT IN 2021

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. This year, 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 2021, the Commission supports enactment of the Uniform Employee Student Online Privacy Protection Act, which is summarized below:

A. 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.

B. Other Targeted Acts

The CPUL is not introducing any other Uniform Acts in the 2021 Legislative Session, but will monitor any legislation that is based on Uniform Acts.

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

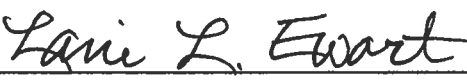
By: 
LANI L. EWART
Chair

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 (Repealed 2019)
5. Uniform Athlete Agents Act (Revised)	Chapter 481Z
6. Uniform Attendance of Out of State Witnesses Act (1931)(1936)	Chapter 836
7. Uniform Certificate of Title for Vessels Act	Chapter 200A
8. Uniform Child Custody Jurisdiction Act (1968)	Chapter 583 (Repealed 2002)
9. Uniform Child-Custody Jurisdiction and Enforcement Act (1997)	Chapter 583A
10. Uniform Collaborative Law Act	Chapter 658G
11. Uniform Commercial Code (1951)(1957) (1962)(1966) (and Revised Articles)	Chapter 490
12. Uniform Commercial Code Article 1 – General Provisions (2001)	Article 1, Chapter 490
13. Uniform Commercial Code Article 2A -- Leases (1987)(1990)	Article 2A, Chapter 490
14. Uniform Commercial Code Article 3 -- Negotiable Instruments (1990)(1991)	Article 3, Chapter 490
15. 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>
16. Uniform Commercial Code Article 4A -- Funds Transfer (1989) (2013)	Article 4A, Chapter 490
17. Uniform Commercial Code Article 5 -- Letters of Credit (1995)	Article 5, Chapter 490
18. Uniform Commercial Code Article 6 -- Bulk Sales (1989)	Article 6, Chapter 490 (Repealed 1998)
19. Uniform Commercial Code Article 7 -- Documents of Title (2003)	Article 7, Chapter 490
20. Uniform Commercial Code Article 8 -- Investment Securities (1977)(1994)	Article 8, Chapter 490
21. Uniform Commercial Code Article 9 -- Secured Transactions (1972) (1999) (2010)	Article 9, Chapter 490
22. Uniform Common Trust Fund Act (1938)(1952)	Chapter 406
23. Uniform Controlled Substances Act (1970)(1973)	Chapter 329 (Substantially similar)
24. Uniform Criminal Extradition Act (Superseded 1980)	Chapter 832
25. Uniform Custodial Trust Act (1987)	Chapter 554B
26. Uniform Deceptive Trade Practices Act (1964)(1966)	Chapter 481A
27. Uniform Determination of Death Act (1978)(1980)	Section 327C-1 (Substantially similar definition)
28. Uniform Disclaimer of Property Interests Act (1999)	Chapter 526
29. Uniform Disposition of Community Property Rights at Death Act (1971)	Chapter 510

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
30. Uniform Division of Income for Tax Purposes Act (1957)	Part II, Chapter 235
31. Uniform Durable Power of Attorney Act (1979)(1987)	Chapter 551D
32. Uniform Electronic Legal Material Act	Chapter 98
33. Uniform Electronic Transactions Act (1999)	Chapter 489E
34. Uniform Enforcement of Foreign Judgments Act (1948)(1964)	Chapter 636C
35. Uniform Environmental Covenants Act	Chapter 508C
36. Uniform Rules of Evidence Act (1953)(1974)(1986)(1988)	Chapter 626
37. Uniform Family Law Arbitration Act	Chapter 658J
38. Uniform Fiduciaries Act (1922)	Chapter 556
39. Uniform Fiduciary Access to Digital Assets Act	Chapter 556A
40. Uniform Foreign-Country Money Judgments Recognition Act (2005)	Chapter 658F
41. Uniform Foreign-Money Claims (1989)	Chapter 658B
42. Uniform Foreign Money Judgments Recognition Act (1962)	Chapter 658C (Repealed 2009)
43. Uniform Fraudulent Transfer Act (1984)	Chapter 651C
44. Uniform Guardianship and Protective Proceedings Act (1997)	Parts 1-4, Article V, Chapter 560
45. Uniform Health-Care Decisions Act (Modified)	Chapter 327E

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
46. Uniform Information Practices Code (1980)	Chapter 92F (Substantially similar)
47. Uniform Interstate Depositions and Discovery Act	Chapter 624D
48. Uniform Interstate Family Support Act (1992)(1996)(2015)	Chapter 576B
49. Uniform Jury Selection and Service Act (1970)(1971)	Part I, Chapter 612 (Substantially similar)
50. Uniform Limited Liability Company Act (1995) (1996)	Chapter 428
51. Uniform Limited Partnership Act (1976)(1983)(1985)	Chapter 425D (Repealed, effective July 1, 2004)
52. Uniform Limited Partnership Act (2001)	Chapter 425E (Effective on July 1, 2004)
53. Uniform Management of Institutional Funds Act (1972)	Chapter 517D
54. Uniform Mediation Act (2013) (2014)	Chapter 658H
55. Uniform Military and Overseas Voters Act	Chapter 15D
56. Uniform Notarial Acts Act (2010)(2018)	Chapter 456
57. Uniform Parentage Act (1973)	Chapter 584
58. Uniform Partition of Heirs Property Act	Chapter 668A
59. Uniform Partnership Act (1914) (1997)	Part IV, Chapter 425
60. Uniform Photographic Copies as Evidence Act (1949)	Section 626-1, Rules 1001 to 1008
61. Uniform Power of Attorney Act (2014)	Chapter 551E

<u>ACT (Date of ULC Adoption or Amendment)</u>	<u>HAWAII REVISED STATUTES</u>
62. Uniform Premarital Agreement Act (1983)	Chapter 572D
63. Uniform Principal and Income Act (1997)(2000)	Chapter 557A
64. Uniform Probate Code (1969)(1975)(1982)(1987)(1989)(1990)(1991)(1998)	Chapter 560
65. Model Protection of Charitable Assets Act (2014)	Chapter 28
66. Uniform Prudent Investor Act (1994)	Chapter 554C
67. Uniform Prudent Management of Institutional Funds Act (2006)	Chapter 517E
68. Uniform Real Property Electronic Recording Act (2004) (2005)	Part XII, Chapter 502
69. Uniform Real Property Transfer on Death Act (2009)	Chapter 527
70. Uniform Reciprocal Enforcement of Support Act (1950)(1958)(1968)	Chapter 576 (Repealed 1997)
71. Model Registered Agents Act (2006)	Chapter 425R
72. Uniform Rendition of Accused Persons (Superseded 1980)	Chapter 833
73. Uniform Residential Landlord and Tenant Act (1972)	Chapter 521
74. Uniform Securities Act (1956)(1958) (Superseded 1985)	Chapter 485
75. Uniform Status of Convicted Persons Act (1964)	Chapter 831
76. Uniform Statutory Rule Against Perpetuities Act (1986)(1990)	Chapter 525

ACT (Date of ULC Adoption
or Amendment)

HAWAII REVISED STATUTES

- | | | |
|-----|---|----------------------|
| 77. | Uniform Testamentary Additions to Trusts Act (1960)(1961) (Uniform Probate Code § 2-511 (1991)) | Chapter 560:2-511 |
| 78. | Uniform Trade Secrets Act (1979)(1985) | Chapter 482B |
| 79. | Uniform Transfer-on-Death (TOD) Security Registration Act (1998) | Chapter 539 |
| 80. | Uniform Transfers to Minors Act (1983)(1986) | Chapter 553A |
| 81. | Uniform Trustees' Powers Act (1964) | Chapter 554A |
| 82. | Uniform Unclaimed Property Act (1981) (1995) | Part I, Chapter 523A |
| 83. | Uniform Unincorporated Nonprofit Association Act (1992)(1996) | Chapter 429 |