

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

COMMISSION TO PROMOTE UNIFORM LEGISLATION

**MINUTES OF MEETING
Held on June 25, 2021**

1. CALL TO ORDER.

Pursuant to written public notice posted on the State of Hawaii Calendar of Events on June 16, 2021, at 12:25 p.m., and filed in the Office of the Lieutenant Governor on June 16, 2021, at 12:40 p.m., the meeting of the Commission to Promote Uniform Legislation (CPUL) was called to order by Chair Lani L. Ewart at 10:02 a.m. on Friday, June 25, 2021, via Zoom conferencing facilitated by Daniel Jacob, Deputy Attorney General, who also acted as a Zoom moderator.

Commissioners Present: Lani L. Ewart
Peter Hamasaki
Elizabeth Kent
Blake Oshiro
Kevin Sumida

Commissioners Absent: None

Also Present: Ken Takayama and
Robert S. Toyofuku, Life Members of the National
Conference of Commissioners on Uniform
State Laws, also referred to as the Uniform
Law Commission (ULC),
Jill Nagamine, Deputy Attorney General,
Maurice S. Kato, Deputy Attorney General,
Kotoba Kanazawa, Deputy Attorney General, and
Loretta Kaeo, Acting Legal Clerk, of the Legislative
Division of the Department of the Attorney
General

2. APPROVAL OF MINUTES OF MEETING OF DECEMBER 15, 2020.

Chair Lani Ewart asked the commissioners to review the minutes of the meeting held on December 15, 2020.

Commissioner Kent made a correction to section IV.a(2) stating she and Life Member Takayama are not on the Uniform Pretrial Release and Detention Act committee. Although they followed that act during the 2020 Annual Meeting of the ULC held virtually on July 10-15, 2020. Regarding section IV.a(1), Commissioner Hamasaki

reported that he was not a member of the Public Expression Protection Act committee and Commissioner Sumida reported that he and Commissioner Oshiro also were not members of that committee. Commissioner Sumida noted that the named Hawaii commissioners monitored the presentation of the acts during the annual meeting, but were not members of the drafting committees making the presentations.

Chair Ewart added that she had a few technical corrections to the minutes. Section III.b(2), second paragraph, third line, refers to the "model" act, but it should be to the "uniform act." Section III.b(3), second sentence, references "the Bar Association," but it should be to "the Trust Section of the Bar Association." Section IV.b, under "Other Targeted Uniform Acts discussed," on page 4, in the report of Chair Ewart's comments about the Voidable Transactions Act Amendments, the reference to the "Bar Association" should be clarified to be to "the Bankruptcy Section of the Bar Association." In the same section, last line, the reference to her firm's "trust section" should be corrected to the "bankruptcy section."

Commissioner Sumida moved and Commissioner Kent seconded the motion to approve the minutes of December 15, 2020, as amended. Chair Ewart conducted a roll-call vote of the commissioners. The motion passed unanimously, with all commissioners voting in favor of the motion.

3. OLD BUSINESS.

- a. Status of previously proposed legislation and
- b. How our bills fared in the 2021 session.

Chair Ewart asked Life Member Takayama to provide a summary of the 2021 legislative session.

Life Member Takayama reported that, for this legislative session, two bills to enact uniform laws were introduced, the first was House Bill No. 125, the Uniform Employee and Student Online Privacy Protection Act, and the second was Senate Bill No. 385, the Uniform Trust Code. Both bills passed and the Governor signed them into law as Act 39 and Act 32, respectively, Session Laws of Hawaii 2021. Life Member Takayama thanked all Commissioners who participated in the legislative session, recognizing Commissioners Oshiro and Hamasaki as taking the lead with little to no opposition to the bills.

Commissioner Oshiro commented it was a smooth sailing session.

Chair Ewart also thanked all Commissioners in support of getting those acts done. She noted that on the ULC's website there was a congratulatory message to Hawaii on getting those acts passed.

Commissioner Kent acknowledged Chair Ewart for all her years and dedication in trying to get the Trust Code in place.

Commissioner Oshiro commented that the process for the virtual legislative hearings and the submission of testimony went smoothly, as long as the testimony was submitted on time. Chair Ewart reported that the confirmation process also went smoothly for the reappointments of Commissioner Hamasaki and herself.

- c. Other old business.

There was no other old business.

4. NEW BUSINESS.

- a. Reports from Commissioners on ULC Informal Sessions.

Chair Ewart stated that the first item of new business was reports on the informal sessions held by the ULC for acts that are up for final reading as well as first readings at the upcoming annual meeting, or those acts just getting started. The Executive Committee of the ULC created the informal sessions to provide an ability to have better discussions on the acts before the acts got to the annual meeting where time is limited. The informal sessions allowed committee members more time to hear comments and concerns from the commissioners and observers. Chair Ewart asked if a commissioner or Life Member who followed the act could give a brief summary in a sentence or two, where the Act stands and a general impression. There were twelve informal sessions in all.

Community Property Disposition at Death Act.

Chair Ewart reported that the Community Property Disposition at Death Act is an amendment and updating of an act Hawaii and a number of other states have. This act deals with people who have community property because they lived in a community property state, then move to a state like Hawaii that does not have community property and how, upon their death, that community property is handled. This act is being updated because there have been changes in the way community property is handled and it was never addressed what happened to trust property. Chair Ewart stated that Hawaii may want to consider this act seriously, because it updates a law that Hawaii already has.

Unregulated Transfers of Adopted Children Act.

Commissioners Hamasaki and Kent reported that they attended the informal session on the Unregulated Transfers of Adopted Children Act. Commissioner Hamasaki reported that they discussed the problem of adopted children at what they called the second level. Where a child is adopted through an adoption

agency and a few years down the line the adoption is unsuccessful and there is a dispute with the adoption agency, the child may end up in the hands of a person who did not adopt the child and who did not go through the scrutiny to adopt the child. There is always a concern that the child could end up in the hands of a person ill-suited to care for the child, or someone more dangerous, such as a trafficker. This is what this act is trying to get a handle on.

Commissioner Kent added this is an interesting act that she thought the CPUL may want to look at sometime in the future.

Personal Data Protection Act.

Commissioner Sumida stated that he attended the Informal session on the Personal Data Protection Act, although he had a hard time following the act and does not have a very good report on this act.

College Athlete Name, Image, and Likeness Issues Act.

Life Member Takayama reported he thinks the committee is trying to fast track the College Athlete Name, Image, and Likeness Issues Act because the Supreme Court recently came out with a decision saying it is going to be a much more open free fire zone in terms of the educational benefits that certain schools can plan for. This act is carving out certain areas -- likeness, image, and so forth -- that states can prevent people from taking from their existing athletes. Many states are moving in this direction, although this area is very much in flux.

Covenants Not to Compete Act.

Commissioner Sumida reported that the Covenants Not to Compete Act deals with restrictive employment agreements and the process that should be used to protect employees and when and how they sign covenants not to compete. He stated he had a concern with one of the issues raised regarding a requirement that an agreement made between an employee and employer that does not follow certain timelines for procedures is considered invalid. Even if it is a good faith agreement between the two parties, for example, regarding the resolution of a dispute, it would not be considered valid. He reported that the committee is looking at the issue and thinks this act might be rather important for employers as there will be a structure imposed upon them if this act is enacted.

Life Member Takayama stated he believes this is one that the leadership gave a one-year expedited process.

Common Interest Ownership Act.

Commissioner Hamasaki reported that he is on the drafting committee to amend or revise the Common Interest Ownership Act. He said that there was a lot of discussion. Because Hawaii has chapter 514B, Hawaii Revised Statutes, which

was recodified within the last ten years or so, he thinks that there would not be a lot of appetite to do a further recodification for another decade. Commissioner Hamasaki thought that this act would be available as a resource, but he would not expect anyone to go through the work to switch over from chapter 514B.

Commissioner Ewart thinks Hawaii did not go with the Uniform Condominium Act and so it may be more difficult, in addition to the fact that chapter 514B was just more recently done, to go with this particular act. The condominium people have been looking at the different kinds of provisions from the uniform act and that might be happening in the near future.

Updates to Unincorporated Organizations Act.

Chair Ewart reported she attended the informal session on the updates to the Unincorporated Organizations Act and noted this act is not up for reading at the annual meeting. Chair Ewart stated her belief that the committee is still working through the different sections that have to be addressed. She stated that, basically, the committee is looking at all the acts that deal with entities that are not corporations and trying to coordinate and make consistent different kinds of provisions relating to those kinds of entities. It is a pretty massive project to go through the different entity statutes, so it will not be up for first reading this year, but it might be up next year for first reading.

Alcohol Direct Shipping Compliance Act.

Commissioner Hamasaki reported that the Alcohol Direct Shipping Compliance Act basically relates to regulation of shippers, the actual people shipping the alcohol, and it does not affect those who can sell directly. It is a mechanism for compliance really focused on the shipping portion, so it is actually pretty narrow in scope.

Economic Rights of Unmarried Cohabitants Act.

Life Member Takayama reported that the Economic Rights of Unmarried Cohabitants Act is targeted to the problem of people who are unmarried cohabitants and all these types of issues that were empowered in the divorce cases until the act started to evolve. It seems intended to come up with a more regularized process.

Commissioner Sumida stated he also attended the informal session on this act. Because Hawaii, to his understanding, does not recognize common law marriages, if we pass this act, there will be kind of an intermediate position where the essence of a marriage or a common law marriage can be recognized under this act in a domestic cohabitation situation. You can have marriage-like properties implied, not just written, but implied by contract and the economic rights to parties can be adjusted accordingly.

He stated that he had a hard time following this act as well and that he could not see how this act is going to interplay with Hawaii law.

Uniform Commercial Code and Emerging Technologies Provision.

Chair Ewart stated she attended the informal session on the Uniform Commercial Code (UCC) and Emerging Technologies. Basically, the idea is to get virtual currency under the UCC through specifically Article 9 dealing with security interests, but also seeing how it interplays with some of the other articles of the UCC. It has a lot of amendments to different sections.

Telehealth Act.

Life Member Toyofuku reported there was a robust discussion of the Telehealth Act that was very helpful to the committee. Nebraska Commissioner Harvey Perlman and Washington, DC., Commissioner James McKay were very involved. They spent thirty minutes on the definitions. Much of the discussion was about a section regarding the standard of care – Commissioner McKay did not feel there should be a standard of care provision. But Life Member Toyofuku said that the section only said that the practitioner providing telehealth care should do so consistent with the standard of care in that particular state and did not specify what the standard of care is. The courts decide the standard of care.

Commissioner Sumida asked about telehealth being used to provide access to abortion. Life Member Toyofuku responded that out of state practitioners would have some restrictions and issues about licenses and credentials were discussed. Life Member Takayama stated he also attended this informal session. He stated he was surprised it was not as emotionally charged as he expected it might be, because of the strong arguments made by Texas Commissioner Marilyn Phelan. There is that component he thinks to the opposition to the Telehealth Act that it is going to be used to allow people to have abortions using practitioners from a jurisdiction other than where they are and where abortions might be more difficult. It was much more a technical discussion. There were policy issues raised by Texas Commissioner Phelan.

Commissioner Kent stated that she also attended. She thought that the main focus is you have to follow the laws of the state and that addresses that concern. She suspects that the next draft is going to use that term, "laws of the state," a lot more frequently and just make it clear. She became aware of an interesting situation where, in Guam, abortion is legal but there are no abortion providers and there are a couple of doctors in Hawaii that are registered to practice in Guam. So those Hawaii doctors technically could provide services. The issue that the committee raised does not only

apply to abortion. There are a lot of big issues the Telehealth Act could apply to, so the focus on what is the law of the state will be essential.

Commissioner Oshiro stated that he attended most of the informal session on the Telehealth Act. He noted that under the emergency proclamations for the pandemic, Governor David Ige has temporarily expanded the scope of telehealth in Hawaii. This past session, the Hawaii Legislature amended the law to allow a doctor-patient relationship to be established by telehealth instead of by an in person, face-to-face visit, but the law only allows this only for doctors who are licensed in the State.

Public Meetings During Emergency Act.

Commissioner Oshiro is on the drafting committee for the Public Meetings During Emergencies Act. He reported that there was a good discussion on definitions because a lot of the act is tied into technology itself and what the technology modems or abilities are. The other big issue was the scope on when and how this act would apply. How do you define emergencies? This will be an interesting proposal at July's meeting.

- b. 2021 Annual Meeting of the NCCUSL to be held in Madison, Wisconsin, from July 9-15, 2021.

Chair Ewart stated that the ULC is asking for a commissioner who could vote if something is brought up on an act. Usually it is a voice vote. For the hybrid meeting attended virtually, you would use the raise-your-hand function on Zoom Webinar. Those would be generally across the board that is logged into that particular section. The commissioner who is following the act, we would designate you as the person to do the roll call vote. It starts July 9, 2021, at 4:00 a.m. All times reflected are of Central Daylight Time Zone.

First Session – Friday, July 9, 2021, 9:00 a.m. – 11:00 a.m.

Chair Ewart and Commissioner Hamasaki

11:00 a.m. –12:00 p.m. - Uniform Common Interest Ownership Act -- Commissioner Hamasaki

Second Session – Friday, July 9, 2021, 1:30 p.m. – 6:00 p.m.

1:30 p.m. – 3:30 p.m. – Further Consideration of Amendments to the Uniform Common Interest Ownership Act (continuation from First Session) -- Commissioner Hamasaki

3:30 p.m. - 6:00 p.m. – Consideration of the Unregulated Transfers of Adopted Children Act -- Commissioner Kent

Third Session – Saturday, July 10, 2021, 8:00 a.m. – 12:00 p.m.

8:00 a.m. - 9:00 a.m. – Further Consideration of the Unregulated Transfer of Adopted Children Act (continuation from Second Session) -- Commissioner Kent

9:00 a.m. – 12:00 p.m. – Consideration of the Uniform Personal Data Protection Act -- Commissioner Sumida

Fourth Session – Saturday, July 10, 2021, 1:30 p.m. – 6:00 p.m.

1:30 p.m. – 4:30 p.m. – Consideration of the Uniform College Athlete Name, Image, and Likeness Issues Act -- Commissioner Kent

4:30 p.m. – 6:00 p.m. – Consideration of the Uniform Covenants Not to Compete Act -- Commissioner Sumida

Fifth Session – Sunday, July 11, 2021, 8:00 a.m. – 11:00 a.m.

8:00 a.m. – 9:45 a.m. – Consideration of the Uniform Covenants Not to Compete Act -- Commissioner Sumida

9:45 a.m. – 11:00 - Time reserved for acts returning to the floor.

Sixth Session – Monday, July 12, 2021, 8:00 a.m. – 12:00 p.m.

8:00 a.m. – 11:00 a.m. – Consideration of the Uniform Community Property Disposition at Death Act -- Chair Ewart

11:00 a.m. – 12:00 p.m. – Time reserved for acts returning to the floor.

Seventh Session – Monday, July 12, 2021, 1:30 p.m. – 6:00 p.m.

1:30 p.m. – 4:30 p.m. – Consideration of the Uniform Economic Rights of Unmarried Cohabitants Act -- Commissioner Kent

4:30 p.m. – 6:00 p.m. – Consideration of Amendments to ULC Constitution and Bylaws -- Chair Ewart

Eighth Session – Monday, July 12, 2021, 7:00 p.m. – 9:00 p.m.

7:00 p.m. – 9:00 p.m. – On Hold

Ninth Session Tuesday, July 13, 2021, 8:00 a.m. – 12:00 p.m.

8:00 a.m. – 9:45 a.m. – Further Consideration of Amendments to ULC Constitution and Bylaws -- Chair Ewart

9:45 a.m. – 12:00 p.m. – Time reserved for acts returning to the floor.

Tenth Session Tuesday, July 13, 2021, 1:30 p.m. - 6:00 p.m.

1:30 p.m. – 3:30 p.m. – Time reserved for acts to return to the floor.

3:30 p.m. – 6:00 p.m. – Consideration of the Uniform Commercial Code and Emerging Technologies -- Commissioner Hamasaki

Eleventh Session Wednesday, July 14, 2021, 8:00 a.m. – 12:00 p.m.

8:00 a.m. – 10:00 a.m. – Consideration of the Telehealth Act -- Life Member Toyofuku and Commissioner Sumida

10:00 a.m. – 12:00 p.m. – Consideration of the Alcohol Direct Shipping Compliance Act -- Commissioner Hamasaki

Twelfth Session Wednesday, July 14, 2021, 1:30 p.m. – 6:00 p.m.

1:30 p.m. – 2:30 p.m. – Consideration of Public Meetings During Emergencies Act -- Commissioner Oshiro

3:00 p.m. – 6:00 p.m.

Life Members Presentation - Chair Ewart and Life Member Toyofuku
Memorials – Chair Ewart, Commissioner Kent, and Life Member Toyofuku
Vote by State – Chair Ewart

Thirteenth Session Thursday, July 15, 2021 8:00 a.m. – 9:00 a.m.

Time reserved for acts returning to the floor.

SUMMARY.

The commissioners volunteered to participate in active discussions as well as represent Hawaii if there is a voting process of Acts during the 2021 Annual Meeting. Should a commissioner or Life Member opt out of the respective time the commissioner or Life Member volunteered for, that person is responsible for finding a replacement.

Ms. Nagamine reminded the commissioners of the section 92-2.5, Hawaii Revised Statutes, requirement that the permitted interactions of members shall be no more than two members of a board but less than the number of members that would constitute a quorum. In this case, the number of members allowable at any given session is two members.

A discussion occurred amongst the members and Ms. Nagamine if they could post the agenda of the 2021 Annual Meeting as a notice so the public could be invited to attend. Chair Ewart was to follow-up with the ULC executive office in Chicago, Illinois, regarding the request by commissioners to post a CPUL meeting notice with the ULC agenda. Ms. Nagamine gave a deadline to post the meeting notice by July 1, 2021, to meet Sunshine Law. A decision will be made by both Chair Ewart and Ms. Nagamine after they further research the inquiry raised at this meeting.

c. Other new business.

There was no other new business.

5. ADJOURNMENT.

Chair Ewart adjourned the meeting at 11:27 am.

Respectfully submitted,



Loretta Kaeo
Acting Legal Clerk
Legislative Division

Approved for Submission:



Jill T. Nagamine
Deputy Attorney General

Approved by the Commission:

_____ As Submitted

_____ With Corrections

Date Approved: _____