

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

COMMISSION TO PROMOTE UNIFORM LEGISLATION

**MINUTES OF MEETING
Held on December 8, 2021**

1. CALL TO ORDER.

Pursuant to written public notice posted on the State of Hawaii Calendar of Events on November 30, 2021, at 11:04 a.m., the meeting of the Commission to Promote Uniform Legislation (CPUL) was called to order by Chair Lani L. Ewart at 12:33 p.m. on Wednesday, December 8, 2021, via Zoom conferencing facilitated by Victor Mau and Brandon Salbedo, of the Department of the Attorney General, who also acted as Zoom moderators.

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 T. Nagamine, Deputy Attorney General,
Maurice S. Kato, Deputy Attorney General,
Kotoba Kanazawa, Deputy Attorney General,
Romina Marquez, Legal Clerk, of the Legislative
Division of the Department of the Attorney
General, and
Loretta Kaeo, Legal Secretary

2. APPROVAL OF MINUTES OF MEETING of June 25, 2021.

Chair Lani Ewart asked the commissioners to review the minutes of the meeting held on June 25, 2021. Commissioner Kent noted that the Legislative Division did a nice job on the minutes. Commissioner Ewart agreed they were very complete. No correction or change was requested to the minutes, and Commissioner Kent moved and Commissioner Hamasaki seconded the motion to approve the minutes of June 25, 2021, as written. Chair Ewart conducted a roll-call vote of the commissioners. The motion passed

unanimously, with all commissioners voting in favor of the motion to approve the minutes with no correction or change.

3. OLD BUSINESS.

a. Follow up on the 2021 Annual Uniform Law Commission (ULC) meeting held in Madison, Wisconsin.

Chair Ewart asked for comments about how the virtual summer annual meeting was held in Madison, Wisconsin, as well as any comments about any particular acts that were presented.

Commissioner Kent shared that she personally liked it and found it much better than traveling to Madison, Wisconsin. She thought it was better for safety reasons and generally went well. One drawback for her was that it was challenging to attend some sessions when the schedule changed without notice. For example, at 3:00 or 4:00 in the morning, one of the other commissioners would send her a text that her assigned session was about to start, but if she was sleeping she did not get the message. She was thankful to those commissioners who stepped in for her when she missed a session she had wanted to attend. She indicated her wish that we would always have a hybrid ULC Annual Meeting. She felt there would be better attendance if virtual meetings were available.

Chair Ewart agreed that the timing issue was difficult, especially because of the way the sessions ran and got modified along the way, e.g., when one session ended ahead of schedule, the next one would begin right away instead of at its scheduled time. She agreed that it was really difficult with a hybrid situation where you did not have people around that you could actually contact at that time of the morning.

Commissioner Sumida shared that he personally did not like the virtual format and still preferred the in-person meeting. He found the five-hour time zone difference made it difficult for him, both with availability and adjusting to the five-hour time zone difference. He thought that a new commissioner would feel disconnected from the process if it were always virtual. He felt that the ability to interact personally with other commissioners was very important, and it was always very useful for him.

Chair Ewart asked Jill Nagamine her thoughts about her first annual meeting. Ms. Nagamine shared that she liked it because otherwise she would probably be conflicted with her obligations related to the Governor and the Legislature and probably would be unable to attend the in-person meeting. The virtual meeting gave her the opportunity to join, and it gave her a perspective and appreciation for what the ULC did that she did not have before. She listened to as many of the meetings as she could.

Commissioner Ewart indicated her understanding that having a hybrid session of the annual meeting including in-person and virtual was incredibly expensive for the ULC, so she was not sure it would happen in that format for the meeting next year in Philadelphia.

Commissioner Ewart asked Commissioner Oshiro to compare his first meeting in Anchorage, Alaska, with the virtual meeting this year. Commissioner Oshiro shared that he preferred in-person meetings because the virtual did not feel as integrated, but he could see the benefits of having both formats.

b. Other old business.

There was no other old business

4. NEW BUSINESS.

a. Targeted Uniform Acts for the 2022 Legislative Regular Session (comment, discussion, and possible decisions on which Uniform Acts the Commission may recommend for enactment, including carryover bills from the 2021 Session).

Chair Ewart called on Life Members Takayama and Toyofuku because of their familiarity with what the ULC was looking for as possible target Acts for 2022. She asked them if there were any carryover bills from the 2021 session that the CPUL was still looking at for 2022.

Life Member Takayama did not think there were any carryover bills, because both the Uniform Employee and Student Online Privacy Protection Act (H.B. No. 125/Act 39 (2021)) and the Uniform Trust Code (S.B. No. 385/Act 32 (2021)), passed in 2021.

Uniform Parentage Act

Life Member Takayama was not sure what happened to the Uniform Parentage Act. It appeared to have been put aside. Commissioner Kent reported hearing that a group of legislators intended to introduce a draft that the working group and State First Circuit District Family Judge Jessi Hall worked on. She thought that draft was essentially the same as the one Judge Hall worked on last year. If so, the Commission would have to pay attention to it. Chair Ewart asked if the draft was close to the Uniform Act. Both Commissioner Kent and Life Member Takayama had met with various members of the working group about the draft and thought that they (Kent and Takayama) would be fine with any difference in the draft. Commissioner Kent thought it was close enough for uniformity.

Life Member Takayama asked if any of the executive agencies were actively involved with it. Commissioner Kent was not sure but thought it was not going to be included in the Governor's bill package so they would not ask for it to be introduced.

Chair Ewart asked if there were any other targeted acts that the CPUL should consider.

Life Member Toyofuku stated that the most recent list of the new uniform acts included:

- Uniform Cohabitants Economic Remedies Act
- Uniform College Athlete Name, Image or Likeness Issues Act (Life Member Toyofuku noted that Dale G. Higer, Idaho Commissioner, called him to see if Hawaii would consider introducing this Act)
- Amendments to Uniform Common Interests Ownership Act
- Uniform Community Property Disposition at Death Act
- Uniform Restrictive Employment Agreement Act (Covenant Not to Compete Issue)
- Uniform Personal Data Protection Act
- Uniform Unregulated Child Custody Transfer Act

Life Member Toyofuku also mentioned a quick overview of some of the acts that were on the targeted list but not enacted:

- Uniform Voidable Transactions Act
- Uniform Limited Liability Company Act, Revised
- Uniform Deployed Parents Custody and Visitation Act
- Uniform Directed Trust Act
- Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act.
- Uniform Unclaimed Property Act, Revised
- Uniform Law on Prevention of and Remedies for Human Trafficking
- Uniform Unsworn Declarations Act

Chair Ewart suggested that the group look at the target list, other than the brand new acts, to see which ones might realistically be acts that we thought could be introduced and adopted.

Uniform Voidable Transactions Act

Chair Ewart noted that the Uniform Voidable Transactions Act was related to issues that the bar's bankruptcy section deals with. She asked Life Member Toyofuku if he knew how many States had already adopted it, but he did not have that information at hand. Chair Ewart recalls that when that act first came out she approached her partner who is with the bankruptcy section of the bar and, at that time, they were not interested because at that time there were few, if any, other states that had adopted it. She was interested in knowing the number of other states that may have adopted it, because if there is a good number she could try asking about it again.

Uniform Limited Liability Company Act Revised

Chair Ewart asked Commissioner Hamasaki if he recalled the status. Commissioner Hamasaki recalled that there was not a strong interest on the part of practitioners to do something different by changing existing law. He recalled that they felt comfortable with the existing law and would not want to change it unless there is some tremendous advantage to the new act. He did not see a need to change existing law.

Uniform Deployed Parents Custody and Visitation Act

Life Member Takayama reported that the Judiciary took the position that it was handling the cases just fine and this act was completely unnecessary. Life Member Toyofuku agreed that the Judiciary did not support it.

Uniform Directed Trust Act

Commissioner Hamasaki reported that the ULC website indicates that twenty-eight states have enacted this already. Chair Ewart said that she could raise the Uniform Directed Trust Act with her trust and estates partners. Commissioner Kent reported that the Directed Trust Act addresses the rise of directed trusts, in which a person, other than a trustee has a power over some aspect of the trust's administration. It provides clear, functional rules that allow a settler to freely structure a directed trust while preserving key fiduciary safeguards for beneficiaries. So a person may be called a trust protector, trusted advisor, or, in the terminology of this act, trust director. The division of authority between the trust director and a trustee raises difficult questions about how to divide fiduciary power and duty. Commissioner Hamasaki reported that fifteen states have adopted this Act. Chair Ewart said the CPUL should decide whether the CPUL can get the support of practitioners with the trust act and some of the other acts that are in a specialized or particular area in order to get this to the Legislature.

Uniform Unclaimed Property Act, Revised

Life Member Toyofuku said Hawaii has not adopted the revised version and he thought the revised version has been a problem for many states. Commissioner Hamasaki reported that eight states have enacted the revised act. Life Member Takayama commented that in the past when the Unclaimed Property Act was being amended it was broadening the types of assets that could be subject to the act. But the last draft reflected an effort on the part of holders (banks and other companies) to try to make the act more restrictive and therefore they would not have to turn over to the states. So there was less in it for the states to amend in the most current version. But Life Member Takayama said he could contact the Department of Budget and Finance and see what the department's position is on it. Commissioner Kent asked if the revised act provided more for consumers or less, because she thought it sounded like it gave less. Life Member Takayama replied that it gave more, but not as much as typically done in the past. Commissioner Kent commented that the description of the act in the ULC materials said it addressed unclaimed gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors. Life Member Takayama clarified that those were the things that could be counted towards unclaimed property. Chair Ewart asked Life Member Takayama to touch base with his contact at the Department of Budget and Finance and see if this act is on their radar and what they think about it, if anything. That could be for future discussions.

Uniform Law on Prevention of and Remedies for Human Trafficking

Life Member Toyofuku thought it would be very difficult to get this act passed. Chair Ewart thought the State already had laws on this. Commissioner Kent indicated her thought that the Attorney General was not in support of this Act.

Uniform Unsworn Declarations Act

Life Member Toyofuku indicated that the Judiciary did not support this. Commissioner Kent confirmed that and did not know if it is worth checking with the Judiciary again.

Uniform Disclaimer on Property Interests Act

Life Member Toyofuku said that there were two acts that the ULC wanted the CPUL to consider for introduction. One is the Uniform Disclaimer on Property Interests Act. Commissioner Hamasaki said that it was an older act that Hawaii adopted in 1980 and there is a 2006 update.

Revised Unincorporated Nonprofit Association Act

Life Member Toyofuku said that this is the other act that the ULC wanted the CPUL to consider. It is the 2008 update.

Uniform College Athlete Name, Image or Likeness Issues Act

Life Member Toyofuku also mentioned that Dale G. Higer from the ULC called him to see if we would consider introducing this one. Chair Ewart noted that this Act was considered at this year's annual ULC meeting. She pointed out that the issue had come up about college athletes and their name, image, and likeness, and that had accelerated the consideration.

Chair Ewart commented that the CPUL needed to acquire more background on the Targeted Acts in order to be in a position to introduce them. She asked if there is one particular one that the CPUL would need or would want in the 2022 Legislative Session.

Concerns were raised that Legislators in the House will be limited in the number of bills they are allowed to introduce. Life Member Toyofuku pointed out that in terms of introducing bills, apparently in the House they are only going to allow legislators to introduce ten bills each. They are really trying to cut back. Commissioner Oshiro heard the same. Exceptions will be allowed but will not be easy to get. Life Member Toyofuku says that usually the numbers of bills allowed is unlimited until the first Friday and then five per person after that. He is not sure if this is limited to only the House. He says that the Governor can usually put in as many bills for the Administration as he wants because it is by request and the President and Speaker put them in. Life Member Takayama recalls that, in the past, they were still supposedly subject to an overall limit per person. There were other exceptions for committee chairs. The trend has been to be more restrictive in the introductions. Life Member Toyofuku brought this up because the commissioners may want to talk to chairs and legislators already if the CPUL wants to introduce uniform acts.

Chair Ewart indicated that, since the Uniform Disclaimer on Property Interests Act and the Revised Unincorporated Nonprofit Association Act are already in Hawaii law and all Hawaii needs to amend what is already laws, those might be easier to do. Life Member Toyofuku will check with Kaitlin Wolff, ULC Legislative Program Director in Chicago, to confirm we need the updates and see if she can send us background information kits to make it easier. He agreed that, since these two are updates only, it might be easier to get that.

Commissioner Kent mentioned that, because Hawaii gets a lot of snowbirds (winter visitors) from Canada, it would be a good idea to get authentication of their domestic violence orders through the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act. There has been some past support of it and she thought that, if introduced, it would keep the discussion going. One of the people she has worked with said why limit it to Canada, why not the world, but the United States has a lot of trust in the Canadian legal system, so that is why we would start with Canada. Not sure it would get resolved, but it would be a start.

Life Member Toyofuku said that he had some information about the Civil Remedies for Unauthorized Disclosure of Intimate Images Act and he will send it to Jill Nagamine for distribution to the Commission.

Commissioner Kent expressed interest in the Uniform College Athlete Name, Image or Likeness Issues Act, but is already working on the Uniform Parentage Act and the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act, so she was not sure she can take on something else right now.

Recap by Chair Ewart:

- (1) The Uniform Parentage Act or something similar may be introduced by other legislators. The CPUL should be prepared to support it.
- (2) Consider introducing the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act.
- (3) Possible introduction of updates to the Uniform Disclaimer on Property Interests Act and the Revised Unincorporated Nonprofit Association Act (Bob will follow up on information on those), and
- (4) Consider the Uniform College Athlete Name, Image or Likeness Issues Act.

b. Discussion of proposed bill to exempt the CPUL's participation in meetings of the ULC from the Sunshine Law.

Chair Ewart mentioned that Jill Nagamine and the Legislative Division of the Department of the Attorney General drafted a proposal based on concerns that it was difficult having only two commissioners meet at a time during ULC meetings. She thought that it was a really good effort and something the CPUL is going to need to carry on its business and work expeditiously as possible. She wondered if there was still interest and, if so, would Life Member Takayama be willing to see if he could get it introduced.

Jill Nagamine commented that if the CPUL decides to go forward with this, someone from the CPUL should try to arrange a meeting with Cheryl Kakazu-Park of the Office of Information Practices (OIP) to make sure that OIP understands the reasoning behind it and how crucial it is to the work that the CPUL was established to do. We could see if there would be any objections to it. It would be useful to get OIP's support early on.

Chair Ewart agreed that would be a good process and asked who would be able to help with that. Commissioner Oshiro volunteered.

Commissioner Kent moved that the CPUL have the bill introduced, subject to the meeting with OIP and not getting objections. Commissioner Sumida seconded the motion. Chair Ewart asked for a vote and indicated that she was able to see by a show of hands that all of the Commissioners voted aye, with none voting no. Commissioner Oshiro will reach out to Cheryl Kakazu Park and Jill Nagamine and Life Member Takayama will assist.

Appreciation was expressed to the team of Jill Nagamine, Kotoba Kanazawa, and Maurice Kato for preparing the draft.

c. Discussion of responses to queries from the Uniform Law Commission.

Chair Ewart indicated she was unaware of any specific question that the ULC had for the CPUL other than the acts that Life Member Toyofuku discussed.

Life Member Toyofuku mentioned that he is still a member of the Legislative Council, as he was reappointed for another year. Dan Robbins is the ULC President and there has been a kind of reorganization at the ULC office in Chicago. There used to be ten regions, but that has been expanded to thirteen. So instead of being in charge of six states, Life Member Toyofuku oversees four. Jamie Paterson is going to be one of the council members. Katie Robinson is no longer the head of the legislative group; it's Kaitlin Wolff. He talked to Commissioner Terry Care from Nevada, who said that, because of the pandemic the conference as a whole is slipping. (He thinks that were eight states in 2020 or 2021 that did not introduce any Uniform Acts). The reorganization is an attempt to help bring the ULC back on track. They are looking at having a Legislative Summit in the fall of next year where all of the liaisons of all fifty states would come to a meeting to discuss how to increase the number of acts that the various states can pass.

d. Nominations and election of Chair and Vice Chair of CPUL.

Chair Lani Ewart called for nomination and election of a new Chair and Vice Chair of the CPUL. She has served as Chair and Life Member Takayama has served as Vice-Chair for a number of years. Because Life Member Takayama is no longer serving as an appointed commissioner, he cannot continue as Vice Chair.

Elizabeth Kent nominated Lani Ewart to continue as the Chair, and Peter Hamasaki seconded the nomination. Chair Ewart said seconds were not necessary.

Chair Ewart said she would be happy to be the Vice Chair; she would also be happy to continue as Chair, but said someone else might want to have a chance.

Life Member Toyofuku asked Commissioner Hamasaki if he would be interested. The timing is not right for him because he is still in the transition phase with his new job.

Chair Ewart called for other nominations, but there were none. With hers being the only name under consideration, Lani Ewart remains the Chair.

Chair Ewart called for nominations for a new Vice Chair.

Commissioner Hamasaki nominated Elizabeth Kent for Vice Chair (she commented that it was funny because she was going to nominate him). Life Member Takayama commented that when he became Vice Chair, he had been nominated because he was the most senior member of the CPUL, so he thought that it would be appropriate for Commissioner Kent to serve as Vice Chair because of her seniority. Commissioner Kent asked what the duties of a Vice Chair are, and was told that the Vice Chair basically shadows the Chair and if the Chair becomes unable to serve the Vice Chair would step up until the Chair can serve again. Commissioner Kent asked Commissioner Hamasaki if he would be willing to do it because she thinks he will be around a lot longer. He said he could if she could not. Jill Nagamine asked for clarification whether this was a nomination of Commissioner Hamasaki and was told it was just discussion. Commissioner Kent and Commissioner Hamasaki concluded that for now it makes the most sense for Commissioner Kent to serve as Vice Chair and they will revisit the issue in a future meeting. To the extent that Commissioner Kent has nominated Commissioner Hamasaki, she withdrew that nomination.

With no further nominations being made, Chair Ewart announced that Elizabeth Kent is the new Vice Chair.

e. Discussion of applications for soon-to-be-vacant Commissioner Position.

Chair Ewart announced that Commissioner Sumida's position is open and Commissioner Kent's term will expire. Chair Ewart is expecting that Commissioner Kent will be reappointed.

We have two applicants so far who have expressed interest in applying for the open position. Commissioner Hamasaki recommended Catherine ("Cat") Taschner and Commissioner Sumida recommended Michael Tanoue.

Chair Ewart said that they have to follow the same processes that the other commissioners have followed by filing an application with the Governor's Office and sending references and then the Governor's Office will decide on which person to nominate and send the recommendation to the Senate. As a courtesy, Jill Nagamine has sent a link to the Governor's Boards and Commissions webpage to both of the potential applicants.

Commissioner Kent shared that Ronette Kawakami is also interested.

Life Member Toyofuku says he had mentioned Representative Della Belatti to Chair Ewart but had not given her name because he was under the impression that the Attorney General felt that having a serving member of the House would not be appropriate. He just wanted to mention that because many states have legislators serve as commissioners and those states have success in getting bills passed, and that was the point he wanted to

make. Chair Ewart said it is possible for Representative Belatti to apply. She is not aware of an explicit prohibition.

Life Member Toyofuku asked if the opening was going to be announced and how would people know about the opening? He said he would have no idea because he has not seen anything. Commissioner Kent replied that the State Boards and Commissions website lists a lot of different openings. Jill Nagamine confirmed that there is a long list of openings on the Boards and Commissions website. Commissioner Kent said that her representative sent out a link to that website and she thought that the Hawaii Women Lawyers sent it out too. She said they encourage everyone to go through the list and see what they might be interested in. She thought that there were 100 to 200. Jill Nagamine thought the list is longer than that.

Jill Nagamine said that, if interested people reach out to her, she will send them the link to the Governor's Boards and Commissions website where they can find an application.

Jill Nagamine said that, because the CPUL is attached to the Department of the Attorney General, the Governor might ask the Attorney General if she has a recommendation. Life Member Toyofuku pointed out that any member of the CPUL can make a recommendation. Jill Nagamine encouraged the commissioners to make recommendations to the Governor to help him decide who to choose.

f. Any other issues to discuss?

Commissioner Hamasaki asked whether anyone knew if the 2022 session is going to be virtual, hybrid, or opened up to the public. Life Member Toyofuku said that he was working on learning that from various members of the Legislature and was going to include that information in his annual seminar on January 7 related to how the 2022 Legislative Session will be conducted. Initial discussion indicated it will possibly be hybrid, and they were definitely planning to allow virtual testimony so at least those on the neighbor islands do not have to fly in to Honolulu to participate. The Legislature's leaders still have not decided if they will be able to have in-person testimony, but, if they do, it will likely be restricted because they do not want 100 to 200 people at the Capitol at one time. Life Member Toyofuku is hoping that they will at least be able to open it up during conferences. Commissioner Oshiro heard that, before the COVID-19 Omicron variant emerged, the Speaker was leaning towards a hybrid situation because he did not see how he could preclude people from coming in if they could show proof of vaccination. The Speaker was going to try to follow the Mayor's order related to gathering as much as possible. But figuring out how to keep people socially distanced once they were inside remains a logistical issue for him. Commissioner Kent opined that, if there is anything we have learned from the COVID-19 pandemic, it is that there are many things we can do better when it is over, such as always having the ability for people to participate by giving testimony remotely without having to go down to the Capitol. This is a convenience not only for the neighbor islands but for those who have difficulty finding parking downtown close to the Capitol, people with disabilities, and also those who do not like to drive over an

hour just to give five minutes of testimony. She and many others she has worked with prefer a permanent hybrid approach.

Commissioner Kent asked if she could get a volunteer to assist with getting the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act introduced. Life Member Takayama volunteered to help.

5. ADJOURNMENT.

Holiday wishes to all were exchanged, and gratitude was expressed for all of the efforts that each of us put forth for the CPUL

Chair Ewart adjourned the meeting at 1:59 p.m.

Respectfully submitted,

Romina Marquez

Romina N. Marquez
Legal Clerk
Legislative Division

Approved for Submission:

Jill T. Nagamine

Jill T. Nagamine
Deputy Attorney General

Approved by the Commission:

As Submitted

With Corrections

Date Approved: 6/22/22 *JJH*