

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

MINUTES OF MEETING
Held on June 22, 2022

1. CALL TO ORDER.

Pursuant to written public notice posted on the State of Hawaii Calendar of Events on June 15, 2022, at 3:34 p.m., the meeting of the Commission to Promote Uniform Legislation (CPUL) was called to order by Chair Lani L. Ewart at 8:32 a.m. on Wednesday, June 22, 2022, via Zoom conferencing facilitated by Brandon Salbedo and Robert Kagawa of the Department of the Attorney General, with Brandon Salbedo also acting as a Zoom moderator. In compliance with section 92-3.7, Hawaii Revised Statutes, a physical meeting site was provided at Hale Auhau First Floor Conference Room, 425 Queen Street, Honolulu, Hawaii 96813.

Commissioners Present: Lani L. Ewart
Peter Hamasaki
Elizabeth Kent
Blake Oshiro
Michael Tanoue

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,
and Romina Marquez, Legal Clerk, of the Legislative Division of the Department of the Attorney General

Jill T. Nagamine, Kotoba Kanazawa, and Romina Marquez participated from the physical meeting place via Zoom. The rest of the participants joined the meeting via Zoom remotely. For the first seventeen minutes or so, Life Member Takayama's camera and microphone did not work. His wife, Diane Kishimoto, was in the room with Life Member Takayama while she was helping him fix the technical issues.

2. APPROVAL OF MINUTES OF MEETING OF DECEMBER 8, 2021.

Chair Lani Ewart noted that the minutes of the meeting held on December 8, 2021, were well done and complete and thanked the Legislative Division on the nice job done. She asked the commissioners if there was any comment or correction on the minutes. Commissioner Kent moved and Commissioner Hamasaki seconded the motion to approve the minutes of the meeting of December 8, 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. How the bills to enact uniform acts or related to CPUL fared in the 2022 regular session.

- (1) Senate Bill No. 2741/Act 14 (2022). Chair Ewart explained that the act will allow more than two commissioners to be able to communicate with each other with respect to the ULC meetings and conference calls where the CPUL members get information from the ULC on uniform and model laws and specific recommendations and suggestions. This is a big step that will allow the CPUL to conduct its business with the ULC. It was enacted as Act 14, and it was one of the first bills to be enacted. She thanked everyone for contributing and supporting the act, especially Commissioner Oshiro, who attended every single public hearing for this bill, and the Legislative Division.
- (2) House Bill No. 1891/Act 107 (2022) – Uniform Recognition and Enforcement of Canadian Domestic-Violence Orders Protection Act. Chair Ewart asked Commissioner Kent to go over House Bill No. 1891, the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act, which was enacted as Act 107. Commissioner Kent thanked Life Member Takayama for figuring out how to save the bill when it was about to die. She commented that it was wonderful that it was just signed into law and that Representative Lisa Marten has an intern who is a dual Canadian and United States citizen, so Representative Marten and the intern are working on raising awareness about the act. Representative Marten wanted Commissioner Kent to be in her newsletter for this act, so even though she usually does not feel comfortable in the media, Commissioner Kent agreed to allow a picture of herself in Representative Marten's newsletter. Commissioner Kent thought it was wonderful that Representative

Marten cared enough about the act to put it in her newsletter. Commissioner Kent added that, thanks to Life Member Takayama and the support of the Legislature and the Governor, Canadian tourists and visitors will be more protected when they visit Hawai'i.

- (3) Senate Bill No. 3329/Act 96 (2022) – Uniform Public Expression Protection Act. Chair Ewart also asked Commissioner Kent to report on Senate Bill No. 3329, the Uniform Public Expression Protection Act (also known as the "anti-SLAPP act"), which was enacted as Act 96. Commissioner Kent reported that Professor Denise Antolini at William S. Richardson School of Law, who was working on a bill that was intended to update Hawaii's anti-SLAPP statute, which was pending in the Legislature, heard about the Uniform Public Expression Protection Act (UPEP Act). Professor Antolini thought the UPEP Act was much better than the currently pending bill and contacted Commissioner Kent. Oregon Commissioner Lane Shetterly, who was the Chair of the Drafting Committee for the UPEP Act, helped Commissioner Kent with the bill. Commissioner Kent gave kudos to Professor Antolini, who worked very hard to pass this bill, contacting 60-70 people, including unions, the ACLU, and retired Representative Hermina "Mina" Morita, who was an introducer of the anti-SLAPP statute that was in effect before Act 96 was enacted. Retired Representative Morita testified that her version was a good start, but compared to the UPEP Act, it was a "clunker" of a statute, and it was time to update it. Commissioner Kent added that the bill received a lot of support from Senator Karl Rhoads and other legislators and there was never any opposition to it. Professor Antolini just contacted Commissioner Kent this morning and asked to talk about ways that they can let the community know about the new act, possibly a signing ceremony of some sort. Commissioner Kent suggested to Professor Antolini that they could write an article about the act for the bar journal, Civil Beat, or the Honolulu Star-Advertiser because it is about public participation. Commissioner Kent said that it would be good to highlight Professor Antolini and what can be done when people like her get involved.
- (4) Senate Bill No. 618 – Uniform Parentage Act. Chair Ewart asked Commissioner Kent to say a few words about the status of the Uniform Parentage Act, which did not pass this session. Commissioner Kent reported that she and Commissioner Oshiro tried to help resurrect the bill, but neither of them was successful. She anticipates that it would be reintroduced next session, probably in a different form with narrower focus. She is expecting to see a

draft that will address only one part of the Uniform Parentage Act later this month and is working with the ULC main office in Chicago on it. Commissioner Kent asked Commissioner Oshiro to help her from the start, including alerting some of the legislators to get them on board during the fall before the next session. Commissioner Oshiro said he would be happy to help.

b. Other old business.

There was no other old business.

4. NEW BUSINESS.

a. Welcoming the new commissioner, Michael Tanoue.

Chair Ewart welcomed Commissioner Tanoue and asked him to introduce himself. Commissioner Tanoue said that he is a graduate of the William S. Richardson School of Law and has been practicing law for 36 years, and his area of practice has been primarily representing insurance companies, but he also represented plaintiffs and worked in the Department of Corporation Counsel of the City and County of Honolulu for about three and a half years. He currently serves as Vice President/General Counsel/Secretary for Island Insurance Company. He added that Life Member Toyofuku was his first employer to hire him as a legal clerk while he was in the law school. He also stated that he likes precision in language, so he would enjoy working as a commissioner. Chair Ewart commented that it sounded like Commissioner Tanoue has a good background to be a great commissioner. Chair Ewart also congratulated Commissioner Kent for being nominated and reappointed as a commissioner for another term.

b. National Conference of Commissioners on Uniform State Laws (NCCUSL).

- (1) Informal Sessions of NCCUSL Drafting Committees. Chair Ewart expressed that the informal sessions where drafting committees present the current condition of their acts and get input from other commissioners, which probably started last year or the year before, have been really helpful because they enable commissioners to focus on the acts that would be up for consideration at the ULC annual meeting. She thanked CPUL members who volunteered to

cover some of the informal sessions and asked them to give brief reports on the sessions.

Commissioner Toyofuku reported that he monitored the informal session on the Uniform Telehealth Act. He thought there were a lot of good questions and comments at the session, but he was a bit surprised that the Committee kept saying that they would have to take a look at them and get back to the questioners and commenters later; he still thought it was helpful because the Committee would know which state is watching it and what kind of questions and comments would be raised at the annual meeting. Commissioner Kent also stated that she monitored the session and followed up with Washington Commissioner Michele Radosevich, Chair of the Drafting Committee on Telehealth Act, on the question Commissioner Kent raised during the session with some research that supported her question and that Chair Radosevich responded that the Committee would consider it. Commissioner Kent agreed with Chair Ewart and Commissioner Toyofuku that having the informal sessions is a great idea and helps the committees and other commissioners be prepared for the ULC annual meetings. Commissioner Hamasaki agreed with them, too. Chair Ewart explained that one of the main purposes of the informal sessions is to get input from other commissioners and consider that input before proposing a draft act before the final meeting.

Chair Ewart asked Commissioner Hamasaki to report on the informal session on the Uniform Alcohol Direct-Shipping Compliance Act. Commissioner Hamasaki clarified that he was not on the drafting committee for this act and explained that the act primarily deals with registration and tax issues and ensuring compliance with registration, reporting, and tax requirements. He said that he anticipated significant opposition from the industry and wondered if it made sense for Hawai'i to be one of the early adopters, but he thought that if it comes out, the CPUL could circulate it to agencies to get their input and thoughts about a timeline. Life Member Takayama said that a friend of his who works for the Department of Liquor Control for the County of Hawai'i did not think there is likely to be a strong opposition to it.

Commissioner Tanoue reported that he raised a few questions and there was a slew of other questions raised at the session for the Model Public Meetings During Emergencies Act. He was also surprised that given that the draft was up for final approval this summer, the committee kept saying "we will get back to you." Life

Member Toyofuku said these informal sessions really help because they give committees information on what kinds of questions would be raised at the annual meeting, and even at the annual meeting, there are a lot of questions raised at the second floor reading. Chair Ewart said the committee members often want to confer among the committee members before responding to some of the questions raised at informal sessions. Commissioner Oshiro mentioned that he is on the drafting committee, but he was unable to attend the informal session.

Chair Ewart reported that she listened to the informal sessions on the Uniform Commercial Code and Emerging Technologies (UCC Tech) and the Uniform Electronic Estate Planning Documents Act, which are both up for the final adoption at the annual meeting.

Chair Ewart mentioned that earlier this spring, UCC Tech received the approval of the American Law Institute, which is the partner on the Uniform Commercial Code (UCC) with the ULC. Chair Ewart added that the ULC had a very big committee on UCC Tech, and during their deliberations they had over 100 people participating, so it went through reviews by a lot of interested people from different industries. She commented that UCC Tech is going to be pushed for adoption by states as soon as possible, because the goal is to keep the UCC as uniform as possible across states. UCC Tech is nearly 300 pages long, with comments, but the committee promises good summaries, bullet points, and a lot of support from the national office for each state.

Chair Ewart explained that the Uniform Electronic Estate Planning Documents Act deals with DocuSign and electronic signing of estate planning documents, which section was left out of the last update and the ULC wanted to clean it up, and, therefore, it is a pretty discrete act. She thought the committee did a good job with answering questions at the informal session and it is pretty much ready for final as well, except that there may be a change in the title because the title seems to imply a lot broader scope than it actually is.

Chair Ewart said that other acts that were heard at this year's informal sessions are up for second reading (and not up for final reading) at the annual meeting. She asked if commissioners had any comments on those acts or sessions.

Life Member Takayama encouraged Commissioner Tanoue to turn in any concerns he might have about the Model Public Meetings During Emergencies Act, if he has any. Life Member Takayama said that raising questions early on would help committees and the committees might have some very good answers to questions. Commissioner Tanoue thanked Life Member Takayama.

Commissioner Hamasaki reported that he attended the informal session on updates to the Uniform Unincorporated Organization Acts, which mostly deals with amendments to the Uniform Partnership Act, Uniform Limited Liability Company Act, Uniform Limited Partnership Act, and other related acts. He commented that the amendments were fairly technical, and the proposed amendments can be taken apart for each uniform act.

Commissioner Kent wanted to bring attention to the updates to the Uniform Health-Care Decisions Act and asked whoever is going to attend the annual meeting to raise the issue she has with the act. She explained that, in addressing who is going to make a health-care decision after you are unable to do so yourself, the act seems to have a bias towards prolonging life. The act lists certain priority people who can step in to decide what happens to you when you become unable to make a decision yourself and you did not previously make a decision as to who would be your power of attorney or surrogate – those priority people are called the default surrogates in the act. The current draft of the act does not allow you the opportunity to disqualify anyone from the list of the priority default surrogates. It allows a situation where, even though you know that your estranged relative may make an end-of-life decision that is contrary to what you would want, you are unable to pre-disqualify that person. Missouri Commissioner Patricia Fry raised the issue, and Commissioner Kent believes that it is an important issue that should be addressed in the act. Commissioner Kent and others who were concerned about the issue contacted the chair of the committee, Pennsylvania Commissioner Nora Winkelman, and the chair said she would consider the issue. Commissioner Kent asked those who would be attending the annual meeting to be aware of the issue.

- (2) Hawai'i 2023 Legislative Planning call with NCCUSL staff. Commissioner Ewart reported that the CPUL had a legislative planning session via Zoom with the ULC staff on June 6, 2022, where most of the commissioners were able to attend.

Life Member Toyofuku said that when the Legislative Council of the ULC met on May 14, one of the topics discussed was whether they should continue the practice of assigning various ULC staff members to different regions so they could continue assisting state delegations with legislative planning. The ULC thought it was helpful to hear what concerns delegations have about introducing some of the uniform acts, so they are going to continue offering that service. Chair Ewart agreed that she also found that support helpful. The ULC legislative staff has done research on how Hawai'i may need to amend various uniform acts if it decides to adopt them and why a particular act may be something Hawai'i might want to adopt, and they have also given delegations information about other states that have adopted uniform acts.

c. 2022 Annual Meeting of NCCUSL to be held in Philadelphia, PA.

Chair Ewart said as far as she knows, she, Life Members Takayama and Toyofuku, and Commissioner Tanoue were planning to attend the annual meeting.

Assignment of Acts under consideration.

Friday, July 8, 2022

First Session 9:00 a.m.-10:45 a.m. – Chair Ewart, Commissioner Tanoue, and Life Members Takayama and Toyofuku

First Session 10:45 a.m.-12:00 p.m. – Consideration of the Uniform Commercial Code and Emerging Technologies – Chair Ewart

Second Session 1:30 p.m.-4:15 p.m. – Further consideration of the Uniform Commercial Code and Emerging Technologies – Chair Ewart

Second Session 4:15 p.m.-6:00 p.m. – Consideration of the Special Deposits Act – Chair Ewart (she is on the drafting committee)

Saturday, July 9, 2022

Third Session 8:00 a.m.-11:00 a.m. – Consideration of the Uniform Telehealth Act – Life Members Takayama and Toyofuku

Third Session 11:00 a.m.-12:00 p.m. – Consideration of the Uniform Electronic Estate Planning Documents Act – Chair Ewart

Fourth Session 1:30 p.m.-3:30 p.m. – Further consideration of the Uniform Electronic Estate Planning Documents Act – Chair Ewart

Fourth Session 3:30 p.m.-6:00 p.m. – Consideration of the Uniform Alcohol Direct-Shipping Compliance Act – Life Member Takayama

Sunday, July 10, 2022

Fifth Session 8:00 a.m.-11:00 a.m. – Consideration of the Model Public Meetings During Emergencies Act – Commissioner Tanoue (Commissioner Oshiro is on the drafting committee, but he is unable to attend)

Monday, July 11, 2022

Sixth Session 8:00 a.m.-11:00 a.m. – Consideration of the Updates to Uniform Unincorporated Organizations Act – Chair Ewart

Legislative Lunch – Life Member Toyofuku reported that, instead of early breakfasts, the ULC decided to have lunches split up by regions. At lunch, there will be a PowerPoint presentation on how to get involved in the legislative process. Life Member Toyofuku will be moderating at Lunch 2, which region includes Hawai'i. Life Member Toyofuku commented that some states struggle to get uniform acts enacted, but some states like Utah require that a certain number of the commissioners be legislators, and those states have easier time to get uniform acts enacted.

Seventh Session 1:30 p.m.-3:30 p.m. – Consideration of the Debt Collection Default Judgments Act – Commissioner Tanoue

Tuesday, July 12, 2022

Ninth Session 10:00 a.m.-12:00 p.m. – Consideration of the Mortgage Modifications Act – Chair Ewart

Tenth Session 1:30 p.m.-3:30 p.m. – Consideration of the Model Public-Emergency Authority Act – Life Member Takayama

Tenth Session 3:30 p.m.-5:30 p.m. – Consideration of the Restrictive Covenants in Deeds Act – Chair Ewart

Wednesday, July 13, 2022

Eleventh Session 9:00 a.m.-11:00 a.m. – Consideration of the Updates to the Uniform Health-Care Decisions Act – Commissioner Tanoue

Eleventh Session 11:00 a.m.-12:00 p.m. – Consideration of the Tenancy in Common Ownership Default Rules Act – Chair Ewart

Twelfth Session 1:30 p.m.-3:00 p.m. – Further consideration of the Tenancy in Common Ownership Default Rules Act – Chair Ewart

The Uniform Determination of Death Act, which was discussed at the informal sessions, is not on the agenda. Chair Ewart commented that, if there is any schedule change, the commissioners and life members will readjust their plans and that they need to make sure to be present for the final readings. She also mentioned that the commissioners who cover these sessions may be asked to act as leads and submit testimony and attend hearings when those acts are being introduced in Hawai'i.

Life Member Takayama wanted to know what commissioners thought about the changes the ULC President Dan Robbins proposed to make on the Legislative Enactment Program. Among other things, President Robbins wants to have every commissioner be involved in efforts to get uniform laws enacted. Commissioner Kent stated that she believed that the ULC as a whole drafts some good laws, but, if those laws just sit there and collect dust, the commissioners are not doing all that they are supposed to do, but some people have been uncomfortable to get involved in the legislative process. She also suggested that, as it was for the uniform anti-SLAPP act in Hawai'i, it might be helpful for each state to identify someone who had been a defendant in an anti-SLAPP suit. Professor Antolini was a defendant in an anti-SLAPP suit and that was one of the factors for the success in getting the uniform anti-SLAPP act passed and enacted here. Chair Ewart agreed with Commissioner Kent and added that it was great that the ULC President is trying to get more uniform laws enacted. Commissioner Kent asked what Life Member Takayama thought of the proposed changes. Life Member Takayama answered that more explanatory background and supporting materials prepared by the ULC staff for the unenacted uniform and model acts would be helpful. He also suggested designating one slot in a drafting committee to a person who would be dedicated to enactment issues. Life Member Toyofuku reported that one of the issues discussed at the ULC Legislative Council meeting was enactability of certain acts and whether the Scope and Program Committee and the Executive Committee should try to get more input when they are deciding on a particular issue or matter as the subject of a uniform or model act. There are certain acts for which

commissioners work hard for two years, and then they never get passed because there is too much opposition within the ULC and states. Chair Ewart mentioned that there was a committee to review uniform acts and consider whether the acts that see little or no enactment should be dropped, amended, or receive some more time and initiatives, but she was not sure if the committee still existed. Life Member Toyofuku commented that one of the reasons why this year's ULC lunch's presentation will be about how to get involved in the legislative process is because getting more acts at the state level is on President Robbins' priority list. He added that Pennsylvania Commissioner Nora Winkelman reminded the Legislative Council at its meeting that it should not be just about the number of enactments but also about the quality of acts that get enacted, and commissioners should consider all the legal issues facing the country and the states and look at those as a criterion as well. Commissioner Kent also commented that some of the study committees she has participated in have discussed enactability of certain acts, which she thought was helpful, but she also added that the discussion at the study committees can become one-sided because people on the committees tend to be proponents of the particular uniform act, and they are not necessarily looking to hear opposition's input. Life Member Toyofuku also commented that he was on a study committee that considered a uniform act on bail issues, and it decided not to form a drafting committee because the issue was just too controversial.

Life Member Toyofuku reported that the ULC is having a legislative summit, which would include the Legislative Committee, the staff, and leadership, in Chicago to discuss enactability of uniform and model acts. He anticipated it to be a big conference if people could make it.

Life Member Takayama had to leave the meeting at 9:48 a.m. At the same time, Commissioner Kent briefly excused herself and returned in two minutes.

d. 2023 NCCUSL Annual Meeting in Honolulu.

Chair Ewart stated that the ULC annual meeting will be at the Sheraton in Waikiki. All of the CPUL members except Commissioner Tanoue, who is new, have been involved in communications and telephone calls about helping ULC staff with the plans for what would happen during that week outside the meeting, so there would be venues available for the Uniform Law

Foundation gala and different receptions, etc. ULC staff is planning to set up a zoom call with the CPUL members probably sometime in late July to get more ideas. Elizabeth Cotton-Murphy, ULC Chief Administrative Officer, and Rachel Hewitt, ULC Meeting and Event Manager, had an informal meeting with Lynne Toyofuku and Diane Kishimoto, spouses of Life Members Toyofuku and Takayama, respectively, on June 29, 2022, to discuss plans for venues for activities outside the meeting. Elizabeth Cotton-Murphy and President Robbins and his wife are planning to come to Honolulu in September to look at some sites for places that are different from usual tourist spots. Lynne Toyofuku is going to take them around and show them different places that have been identified so far. Chair Ewart suggested that commissioners look at the meeting guide for Philadelphia, so they can get an idea of what kind of things ULC conference attendants are looking for, and they could start thinking about creating a guide for Honolulu, too.

Commissioner Kent reported that she has made three proposals to the Scope and Program Committee. She made two of the proposals with North Dakota Commissioner Bradley Myers. One of them is on mental health and registration to address an issue about the extent of questions that can be asked about mental health at registration. They conducted some research and found out that there is a lot of overreach, and a lot of people are so worried about the mental health questions on registrations that they choose not to seek treatment. Commissioner Kent said that the second one deals with breed-specific legislation that would prevent certain breeds of dogs to reside in a state or would impose a lot of restrictions on those breeds. The issue with that kind of legislation is that the science about breeds is not very advanced and one study found out that 87.5 percent of the people who worked in animal shelters mischaracterized the breed of a dog, which has an impact on dogs as well as owners. Commissioner Kent stated that thousands of dogs, probably hundreds of thousands of dogs, get euthanized each year because of this kind of legislation and people might not be able to get renter's insurance or homeowner's insurance because of the breed of their pet dogs. Commissioner Kent was able to hire a law student from the William S. Richardson School of Law to conduct research on this matter, and the student earned her 50 hours of pro bono. Commissioner Kent also made a proposal about the Guardianship, Conservatorship, and Other Protective Arrangements Act. She met with the probate committee at the Hawaii Judiciary to talk about it; the committee was not particularly enthusiastic about it but did not shut it down. The

American Association of Retired Persons (AARP) is fairly enthusiastic about the issue, so it is willing to partner with the ULC, but the Guardianship, Conservatorship, and Other Protective Arrangements Act is not likely to be introduced in 2023. It may be more likely in 2024 or 2025.

5. ADJOURNMENT.

There being no other new business or announcements, Chair Ewart adjourned the meeting at 9:58 a.m.

Respectfully submitted,



Romina N. Marquez
Legal Clerk
Legislative Division

Approved for Submission:



Jill T. Nagamine
Deputy Attorney General

Approved by the Commission:

_____ As Submitted

_____ With Corrections

Date Approved: _____