

**STATE OF HAWAI'I
DEPARTMENT OF THE ATTORNEY GENERAL**

COMMISSION TO PROMOTE UNIFORM LEGISLATION

**MINUTES OF MEETING
Held on October 27, 2022**

1. CALL TO ORDER.

Pursuant to written public notice posted on the State of Hawai'i Calendar of Events on October 27, 2022, at 4:56 p.m., the meeting of the Commission to Promote Uniform Legislation (CPUL) was called to order by Chair Lani L. Ewart at 1:00 p.m. on Thursday, October 27, 2022, via Zoom conferencing facilitated by Brandon Salbedo of the Department of the Attorney General, who also acted as the 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, Hawai'i 96813.

Commissioners Present: Lani L. Ewart
Peter Hamasaki (left meeting at 2:00 p.m. during the discussion of item 4.b.; no votes were taken after he left.)
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
Linda (no last name provided), a member of the public

Jill T. Nagamine, Kotoba Kanazawa, and Romina Marquez participated from the physical meeting place via Zoom. The rest of the participants joined the meeting remotely via Zoom. All commissioners were visible via Zoom.

2. APPROVAL OF MINUTES OF MEETING OF JUNE 22, 2022.

Chair Lani Ewart asked the commissioners if there were any comments or corrections on the minutes. Commissioner Kent noted a correction to page 3; in that Representative Morita did not say "clunker." Someone else said it, but not her. In item (3) on that page, the sentence that reads:

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.

should be corrected to:

Retired Representative Morita testified that her version was a good start, but the UPEP Act is much better and it is time to update the statute with the UPEP Act.

Motion: Commissioner Kent moved to approve the minutes as amended, and Commissioner Tanoue seconded the motion. No discussion was needed. The roll call vote on the motion was unanimous and the motion carried. The minutes are approved as amended.

3. OLD BUSINESS.

- a. Follow-up with the 2022 Annual Meeting of the National Conference of Commissioners on Uniform State Laws (NCCUSL) held in Philadelphia, Pennsylvania.

Chair Ewart and Commissioner Tanoue, and Life Members Takayama and Toyofuku attended the annual meeting in person. Meetings were also telecast, but there was no ability to participate online.

Chair Ewart noted her impression that the meetings were well-run, the committees were well-prepared because of informal sessions before the annual meeting, and it was apparent that the ULC and the commissioners had done a lot of work. Unfortunately, ULC President Dan Robbins came down with COVID-19 the day before the meeting started. During the week, other attendees came down with COVID-19 too. Chair Ewart and Life Member Toyofuku noted the limited mask use at the beginning of the meeting when probably only ten percent of the attendees were wearing masks. After people started coming down with COVID-19, mask use increased. The Hawaii Delegation was good about mask use and did not contract COVID-19.

Chair Ewart reported that the following five Uniform Acts were approved:

- (1) Amendments to the Uniform Commercial Code (UCC) to Accommodate Emerging Technologies
- (2) Uniform Alcohol Direct Shipping Compliance Act
- (3) Uniform Electronic Estate Planning Documents Act

- (4) Public Meetings During Emergencies Act
- (5) Uniform Telehealth Act

Chair Ewart believes that the Amendments to the UCC have already been approved by the American Bar Association. She is not sure about the others, but thinks that they will be ready for the States to enact starting next year.

Chair Ewart asked Life Member Toyofuku, who is the Legislative Council Member of Region 5 of the Legislative Committee, to report about the new format of the Legislative Meetings. Life Member Toyofuku thinks the new format is better than previous meetings. As background, past Legislative Meetings were breakfasts for regional delegations. The purpose was mostly to fill out a plan for the coming year, and some commissioners would pitch the importance of a particular act. But the breakfasts were so early that not everyone made it. This year's meetings were lunch meetings, and they were attended by states that were from different regions. Life Member Toyofuku moderated one of the lunches, and his section was not limited to the states in the region that he oversees (California, Hawaii, Nevada, and Utah), they were mixed, so he had to prepare with other states in mind. The whole purpose was to get together and see how legislation was going in other States. He heard some comments that it was slow and hard to get the commissioners together, but for a first effort, he thinks it went well.

Chair Ewart asked Commissioner Tanoue, as a new commissioner, to report on his impressions of the annual meeting. He said he thoroughly enjoyed himself. He had not known what to expect. He thought the bill readings were interesting. He also thought that Life Member Toyofuku did well moderating the Legislative Meeting. He had a chance to speak to ULC Chief Administrative Officer Elizabeth Cotton-Murphy about the new commissioner luncheon at the planning dinner in Waikiki (for next year's annual ULC meeting) and he told her that he thought the new commissioner luncheon would have been better for new commissioners if it had been a mingling-type format, such as a pupu reception, instead of a formal, sit-down luncheon, because with the luncheon he was only able to talk to about eight people, but if it had been more conducive to mingling, then he could have met more people. He also attended a cocktail reception one day and it was a stand-up meet-and-mingle kind of format, and it was really great. He got to meet people from all over and they were all complimentary of the Hawaii delegations in the past, as well as the current one. Chair Ewart noted that the cocktail reception for new commissioners was a new event this year. She said it is an effort to get new commissioners involved as quickly as possible, while the luncheon was designed for new commissioners to learn the background of the ULC.

Life Member Toyofuku reported that there was an awards night for legislative enactments, and Commissioner Kent got an award for her legislative work in shepherding one of our acts through last year. Life Member Toyofuku accepted it for her and mailed it to her. Commissioner Kent noted her appreciation for the efforts of Life Member Takayama and Commissioner Oshiro for their part in the team effort.

Chair Ewart thanked Commissioner Tanoue and Life Members Takayama and Toyofuku for traveling so far to attend.

- b. There was no other old business.

4. NEW BUSINESS.

- a. Proposed Uniform Acts for Introduction in the 2023 Regular Legislative Session.

Uniform Parentage Act

Commissioner Kent reported that the Uniform Parentage Act will likely be introduced in the 2023 Session. She is just waiting to see who will introduce it. She is hoping it will be part of the Judiciary package. It may be part of another bill in another package too.

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

Commissioner Kent is also working on the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. She met with a judiciary committee, and thinks they might not introduce it this year. But Commissioner Kent would not be surprised if community members might introduce it.

Amendments to the Uniform Commercial Code (UCC) to Accommodate Emerging Technologies

Life Member Toyofuku reported that Amendments to the Uniform Commercial Code to Accommodate Emerging Technologies (the UCC bill) was the main bill in the 2022 Annual Meeting in Philadelphia. He indicated that the ULC group would like to see the UCC bill passed in as many states as possible. It is a very complicated bill, with over 200 pages of amendments that touch on different articles in the UCC. Even drafting it is complicated. He says we can get drafting help from the ULC, which has resources to help. He noted that District of Columbia Commissioner James McKay is working on drafting.

Life Member Takayama worked out an arrangement with a drafting agency for assistance in developing a bill to enact the 2022 UCC amendments. For a variety of reasons, the bill may well turn out to be more difficult to prepare than it appears. The reasons include: (1) It is a long bill. The simple reality is that long bills take more time to review, check, and revise than do shorter bills; (2) The UCC bill is not drafted in the form of the Ramseyer format that is used in Hawaii—and will likely have a fair amount of statutory material added for "context; (3) The voluminous nature of the UCC bill is a good reason to have started bill preparation early.

Chair Ewart suggested not waiting for Commissioner McKay to complete the draft he is working on, and instead continue to work with a Hawaii drafting agency because of Hawaii's particular bill drafting requirements and the intricacies of the UCC bill.

In terms of getting the UCC bill introduced, Chair Ewart asked Commissioner Hamasaki to lead the effort with assistance from Commissioners Oshiro and herself. They agreed. Commissioner Oshiro questioned when a draft will be available. Life Member Takayama indicated it is difficult to predict, but hopes that one may be available by the end of December so that a draft can be presented in January. Commissioner Oshiro opined that if a bill draft is not ready until the second week in January, the scheduling for soliciting approval would be really tight, and if it is not ready until the third week in January, getting it introduced would require asking for (and getting) a special favor. Life Member Toyofuku pointed out that the committee chairs of both the House and Senate consumer protection committees will change with the retirement of Senator Rosalyn H. Baker and the decision of Representative Aaron Ling Johanson not to run for re-election. Chair Ewart suggested that once we know who the legislators are we can put together a package and start the process, even before an actual bill draft is ready. Life Member Toyofuku emailed a packet of materials regarding the UCC bill to Life Member Takayama, and Chair Ewart indicated that there are also webinar resources available about the UCC bill. Life Member Toyofuku said that there will be a Legislative Council meeting in Chicago tomorrow (October 28, 2022), and although he will not be in attendance, he will get feedback from Kaitlyn Wolff, the Legislative Program Director, and will find out if there are additional resources available for the UCC bill.

Commissioner Kent pointed out that the acts being discussed for introduction (Uniform Parentage Act, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, and Amendments to the Uniform Commercial Code to Accommodate Emerging Technologies) are all really long acts. She questions whether there might be added obstacles from having bills with 150 plus pages? Life Member Toyofuku pointed out that the bills ought to go through different committees, so perhaps the bills will be split among legislators so as not to burden any particular committee. Commissioner Oshiro indicated his belief that the Legislature recognizes what a uniform law is and the process that goes into creating a uniform law, so he thinks that the fact that these bills are uniform laws helps counteract the length of the bills.

Life Member Toyofuku indicated his concerns that there could be pushback from banks and other commercial entities that do not understand the changes to the law made by the UCC bill. Commissioner Hamasaki suggested it might be a good approach to send the supporting reference materials to banks. Often local banks are okay with changes, but their national counterparts are hesitant. Chair Ewart thinks that the national banking groups are already on board with the updates to the UCC.

Chair Ewart asked Commissioner Kent about the length of the parentage and guardianship acts, and Commissioner Kent indicated that the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is longer than the Uniform Parentage Act. There is no assurance that the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act will be introduced this year, but Commissioner Kent noted that there is a lot of interest in it, and she thinks that someone might introduce it.

Assuming the Uniform Parentage Act is introduced, Commissioner Kent will take the lead on that with Life Member Takayama and Commissioner Oshiro as backup.

If the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is introduced, Commissioner Kent will take the lead with Life Member Takayama and Commissioner Tanoue as backup.

Motion: Commissioner Kent moved for the CPUL to actively pursue the Uniform Parentage Act and the Amendments to the Uniform Commercial Code to Accommodate Emerging Technologies in the Regular Session of 2023. Commissioner Tanoue seconded the motion. There was no discussion. The roll call vote on the motion was unanimous and the motion carried.

Commissioner Kent noted that in the past, the CPUL always supported any other uniform law that happened to be introduced. The members indicated that there is no need to digress from that past practice. If the members hear of any bills, they should notify Jill Nagamine so that she can notify the group. She will also notify the group if the Legislative Division identifies any bills that contain uniform laws.

Motion: Commissioner Kent moved to give Chair Ewart standing authority to decide whether or not the CPUL would support an unexpected bill that introduces a uniform law or makes a change in a uniform law. Commissioner Oshiro seconded the motion. It was discussed that not all bills that relate to uniform laws would be appropriate to support. For example, there was a bill that would have changed the Uniform Trust Code but which did not follow the uniform law. That kind of change would typically not be supported. The roll call vote on the motion was unanimous and the motion carried.

b. 2023 Annual Meeting of NCCUSL to be held in Honolulu, Hawaii.

Chair Ewart reported that there have already been a number of Zoom meetings with ULC staff, and she thinks that so far, the process seems to be going well. Fortunately, the ULC leadership, staff, and events planners are taking the lead.

Fundraising may be an issue. The standards of conduct for state employees found in chapter 84, HRS, apply to members of commissions (section 84-3, HRS), so all of us, except perhaps Life Members Takayama and Toyofuku are limited in what we can do.

The audio-visual costs will be approximately \$140,000.00 (Jill Nagamine did not have the correct amount at the time of the meeting, but added it to these minutes).

Life Member Toyofuku reported that the Speaker of the House told him that an appropriation would not be possible. Commissioner Oshiro indicated that a grant would be difficult to get because it would have to be to a State-licensed organization. The Uniform Law Foundation is registered with the State as a charitable organization, but it

is not incorporated under the laws of the State pursuant to a search in the Business Registration Division of the Department of Commerce and Consumer Affairs, so it appears that it would not qualify for a grant pursuant to chapter 42F, HRS. Commissioner Oshiro and Life Member Toyofuku will pursue this further to see if there is any way that a grant might be available. But Life Member Toyofuku is not hopeful because he thinks that because the Uniform Law Foundation has a lot of assets it will not appear to be one of those charitable organizations that needs resources. (Commissioner Hamasaki left the meeting at this point.)

Life Member Toyofuku suggested that because the commissioners would not be traveling out-of-state for next year's annual meeting of the ULC, that the savings from that could be donated for the annual meeting. Jill Nagamine indicated her understanding that funding for that travel comes from the Attorney General's operating budget, the details of which are submitted to the Governor and the Legislature for approval each year, so it is not just a matter of switching the funds. Travel funds are not budgeted in a year when the commissioners do not need to travel out of state for the annual ULC meeting.

Life Member Toyofuku will contact the Hawaii Tourism Authority to see if it might be able to assist.

Commissioner Kent believes that the State Ethics Commission is okay with fundraising that takes a broad approach, such as a general request in the Hawaii Bar Journal. Life Member Toyofuku thinks that a broad approach historically does not yield a very good return. To be effective, he thinks you need to personally contact people, look them in the eye, and ask for a donation.

Life Members Takayama and Toyofuku are encouraged to consult the State Ethics Commission to see if their fundraising is limited. While Life Member Toyofuku is willing to follow up with the Ethics Commission to see if it approves fundraising for him and Life Member Takayama, he indicated that if the Ethics Commission approves fundraising for them it would be good, but he cannot do all of the fundraising. He says he can at least talk to the Hawaii Tourism Authority.

Life Member Toyofuku thinks that Chair Ewart and the others ought to be able to go to the partners in their law firms and make a request. But there is a concern that soliciting colleagues might create the type of influence the code of conduct is trying to prevent (section 84-13, HRS). If there is doubt, the Ethics Commission ought to be consulted. Chair Ewart said that they need to find this out as soon as possible because the ULC will want to know. Hawaii is not the only state that has ethical limitations on fundraising. Chair Ewart thinks that there are some national organizations that contribute to the ULC Annual Meeting too.

Chair Ewart thinks that the ULC will be setting up another call to discuss plans and fundraising sometime in November or December. Life Member Toyofuku indicated his

plans to be gone for several weeks during that time frame, so he may not be able to attend.

c. Other new business

There was no additional new business, but the following informational items were discussed:

Commissioner Kent had a general question whether anyone had information about ratification of an international treaty, and she was referred to the International Legal Developments Committee of the ULC.


Jill Nagamine advised the commissioners that within the next few weeks she would be sending each commissioner a request for updated information to include in the CPUL annual report to the Legislature.

Linda, the member of the public who was listening to the meeting, suggested in the Zoom chat feature that we "post a letter at the state's agency calendar that has a clickable Zoom link or one that can be copied/pasted." The Zoom link that we included in the posted notice and agenda that was linked to the State Public Meetings calendar and which was also posted on the Attorney General's website had a clickable link, but we can probably add the clickable link to the calendar itself for the next meeting.

5. ADJOURNMENT.

Chair Ewart adjourned the meeting at 2:22 p.m.

Respectfully submitted,

for 
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: _____