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UNIFORM ACTS CURRENTLY PROMULGATED
BY THE
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

A COMPARISON OF UNIFORM ACTS
WITH COMPARABLE PROVISIONS
OF THE REVISED LAWS OF HAWAII 1945

Prepared by the
LEGISLATIVE REFERENCE BUREAU
UNIVERSITY OF HAWAII
for the
COMMISSION TO PROMOTE UNIFORM LEGISLATION
TERRITORY OF HAWAII
November 15, 1950
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STATE OF HAWAII

JUL 09 2019

LEGISLATIVE REFERENCE BUREAU

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UNIFORM ACTS CURRENTLY BEING PROMULGATED BY THE
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

There are fifty-nine uniform acts, as drafted and approved by the National Conference of Commissioners on Uniform State Laws, which are currently being promulgated by the Conference. Hawaii has adopted nineteen of these acts. (Two of these each encompass, in effect, two promulgated uniform acts. The Veterans' Guardianship Act, as revised, adopted by Hawaii in 1947, covers the complete original uniform act, as is the case of the Criminal Extradition Act, as revised, adopted by Hawaii in 1941 which comprehends both the original act and later amendments.)

Hawaii has enacted statutory provisions comparable in substance to fifteen additional uniform acts. (Again, two additional uniform acts, incorporating amendments to the Acknowledgment Act, may be included with this group.) The Territory has no legislation dealing directly with the remaining twenty-one uniform acts and amendments thereto.

A list of the uniform acts currently being promulgated by the Conference which have been adopted by Hawaii follows:

<u>Act</u>	<u>Reference</u>	<u>Year Adopted</u>
Common Trust Fund Act	Secs. 8674-8683	1947
Contribution Among Tortfeasors Act	Secs. 10487-10493	1941
Criminal Extradition Act as Revised	Secs. 10631-10658	1941
Desertion and Non-Support Act	Secs. 12251-12254	1913
Business Records as Evidence Act	Sec. 9902	1941
Judicial Notice of Foreign Law Act	Secs. 9931-9934	1941
Federal Tax Lien Registration Act	Secs. 12790-12794	1931
Fiduciaries Act	Secs. 8845.01-8445.14	1945
Limited Partnership Act	Secs. 8613-8640	1943
Narcotic Drug Act	Secs. 2601-2622	1931
Negotiable Instruments Act	Secs. 8901-9093	1907
Proof of Statutes Act	Sec. 9885	1927

<u>Act</u>	<u>Reference</u>	<u>Year Adopted</u>
Reciprocal Transfer Tax Act	Sec. 5561	1929
Sales Act	Secs. 9200-9274	1929
Simultaneous Death Act	Secs. 12131-12137	1941
Stock Transfer Act	Secs. 8325.01-8325.26	1947
Vendor and Purchaser Risk Act	Secs. 9281-9283	1941
Veterans' Guardianship Act (as Revised)	Secs. 12561.01-12561.22	1947
Vital Statistics Act	Act 327, S. L. 1949	1949

Hawaii has not enacted legislation comprehensively covering subjects of the following uniform acts:

- Absence as Evidence of Death and Absentees' Property Act
- Act Fixing Basis of Participation by Secured Creditors in Insolvent Estates
- Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings (being a revision of Act to Secure Attendance of Witnesses from Without the State in Criminal Cases)
- Ancillary Administration of Estates Act
- Bills of Lading Act
- Divorce Recognition Act
- Enforcement of Foreign Judgments Act
- Interstate Arbitration of Death Taxes Act
- Interstate Compromise of Death Taxes Act
- Narcotic Drug Act (As Amended)
- Powers of Foreign Representatives Act
- Principal and Income Act
- Reverter of Realty Act
- Sales Act Amendments
- Trust Receipts Act
- Trustees' Accounting Act as Amended
- Unauthorized Insurers Act
- Warehouse Receipts Act
- Warehouse Receipts Act Amendments

Legislation, comparable in substance to fifteen of the uniform acts, has been enacted by the Territory of Hawaii. These statutes include:

- Acknowledgment Act, as amended (comprehending original act and amendment)
- Criminal Statistics Act
- Declaratory Judgments Act
- Official Reports as Evidence Act
- Flag Act
- Foreign Depositions Act
- Fraudulent Conveyances Act

Insurers Liquidation Act
Partnership Act
Photographic Copies of Business and Public Records as Evidence Act
Property Act
Statute of Limitations Act
Transfer of Dependents Act
Trustees' Accounting Act
Trusts Act

A digest of the sections of the Revised Laws of Hawaii 1945, as amended, comparable to each of the foregoing fifteen uniform acts is set forth in this report. After a summary of the applicable sections of the Revised Laws, there follows a digest of the uniform act covering that subject.

1. ACKNOWLEDGMENT ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 12733.

To be entitled to recording, an instrument must be acknowledged.

This section sets out the various forms of acknowledgment.

Section 12734.

The certificate of acknowledgment shall state in substance that the person who executed the instrument appeared before the certifying authority and acknowledged the instrument as his own.

The certificate need not state that the person making the acknowledgment, did so by his own free act.

Section 12735.

When the person offering the acknowledgment is unknown to the officer, the officer shall use a prescribed form. (Form set out)

Section 12736.

The acknowledgment of a married woman can be taken as if she were femme sole.

Section 12737.

An acknowledgment taken outside the Territory may be given credit in the Territory, if the laws of the place where the acknowledgment was taken were complied with.

Section 12738.

An acknowledgment made outside of the Territory must be authenticated by any of the following officers of the state or territory in which the acknowledgment was made:

- a. Secretary of state (with seal).
- b. Clerk of court of record who lives in the same district as the acknowledging officer.
- c. Executive officer or clerk of court authorized to make such an authentication.

Such certificate of authentication must be indorsed, subjoined or attached to the certificate of acknowledgment.

(Form of authentication set out.)

Section 12739 (as amended).

The proof or acknowledgment in a foreign country will be accorded respect if made before the following people:

- a. Authorized officer of the Territory of Hawaii.
- b. Minister, consul, vice-consul, charg d' affaires, consular or commercial agent of the United States. The seal of such official must be included in the acknowledgment.
- c. Person authorized by foreign law, when accompanied by proper certificate.
- d. By persons in the armed forces or before properly authorized officers thereof. Provides for recordation in certain instances where no official is authorized to take proof.

Section 12740.

No acknowledgment of any conveyance or instrument, whereby real estate is conveyed, shall be effected unless the person offering to make the acknowledgment shall be personally known to the officer taking the acknowledgment.

Section 12741.

Every officer or judge who acknowledges an instrument must attach or subjoin a personally signed certificate.

Section 12742.

Any conveyance, to be entitled to recording, must be acknowledged before the registrar of conveyances, or his deputy, or before a judge of a court of record, or a notary public of the Territory.

However, if any person having executed an instrument shall die or depart from the Territory, without having acknowledged the instrument, or shall refuse to acknowledge it, or shall have acknowledged it but such acknowledgment shall not have been duly certified by an officer; the instrument may be entered as of record, on proof of its execution by subscribing witnesses, before any court of the Territory.

If all the subscribing witnesses are dead or out of the Territory, the instrument may be proved by proving the handwriting of the person executing the same.

A person who wrongfully signs as a notary, may be deemed a subscribing witness.

If there is any interlineation, erasure or other change in an instrument, not initialed as required, such instrument may be proved by a special proceeding in equity, or the judge of the land court may certify that the instrument is entitled to be recorded without such a proceeding. If there is question as to validity of the acknowledgment, the burden is on the party relying on such recordation to prove that the interlineation or change was made before the execution of the instrument.

Section 12743.

A deed, lease, mortgage, lien, notice, agreement or other instrument offered for recordation by any judicial, executive or administrative officer of the United States, acting in his official capacity, shall be entitled to recordation without acknowledgment or payment of fees.

Section 12743.01 (as amended by Act 84, Session Laws of Hawaii 1945).

Official signatures entitled to judicial notice shall be sufficient to show due execution by the officer so signing and such officer shall not be required to acknowledge the instrument in order to record it.

Section 12744.

No certificate of acknowledgment, except those executed before July 29, 1872, shall be valid without compliance with the provisions of this chapter.

Section 12745.

Any officer who knowingly incorporates false facts in the certificate of acknowledgment, shall be punished by fine of not more than \$1,000 or imprisonment of one year or both.

This section shall not be construed to take away any civil right of action.

Section 12746.

Before acknowledging, the officer shall examine to see if there are interlineations, erasures or changes. If there are any such interlineations, erasures or changes, such officer shall call for approval by the person offering the instrument. When approval is obtained, the officer shall place his initials in the margin of the instrument opposite each interlineation and shall note at the foot of the instrument, before the acknowledging clause, each interlineation, erasure or change, and the number of the line and page.

Section 12747.

Failing to observe the requirements of the preceding section will

subject the violator to a fine not exceeding \$200.

Section 12748.

The registrar shall not record instruments bearing interlineations, erasures or changes, if the officer acknowledging has not duly initialed the same.

Section 12749.

Each interlineation, erasure or change shall be noted and initialed in the margin by the registrar or his deputy.

Section 12750.

Judges and officers authorized to take acknowledgments shall keep a record of every acknowledgment in a book of records. Each record shall set forth the date of acknowledgment, the parties, the persons acknowledging and some memorandum as to the nature of the instrument acknowledged.

Section 12751.

The books of record mentioned in section 12750 above, shall be deposited every 5 years with the clerk of the circuit court of the judicial district where the judge or other officer is authorized to act, and also upon the death, resignation or removal of a judge or officer.

Section 12752.

The books of record are open to public inspection by responsible persons at reasonable times.

Section 12753.

Any officer failing to keep a record or failing to deposit such record as required, shall be subject to a fine of not less than \$50 nor more than \$250 which may be recovered from such officer, his executors or administrators.

ACKNOWLEDGMENT ACT

B. Provisions of the Uniform Acknowledgment Act, as amended¹.

Section 1.

Provides for alternative acknowledgment of instruments under this act or according to existing law.

Section 2.

Authorizes acknowledgment within the state before a judge, clerk, registrar of deeds, notary, justice of the peace, master, or attorney.

Section 3.

Authorizes acknowledgments within the United States, but outside the state, before a federal or state court clerk, notary public, commissioner of deeds, or a person properly authorized by law.

Section 4.

Authorizes acknowledgment outside the United States before a notary public, judge or clerk of court of the country where the acknowledgment is made, ambassador, minister and various officials.

Section 5.

Requires acknowledging officer to know or have proof of identity of the person making the acknowledgment.

Section 6.

Authorizes acknowledgments by married women.

Section 7.

Prescribes various forms of certificates to be endorsed on the acknowledgment.

Section 8.

Requires signature, seal, title of office and date of expiration of commission, if any, to be affixed by the acknowledging officer.

Section 9.

Does not require authentication of acknowledgment if taken in the state or outside the United States by a United States officer.

¹This uniform act, as amended, includes the original act and a later amendment.

If taken within the United States but outside the state, the acknowledgment must be authenticated.

Authentication of acknowledgment taken outside the United States is also required in certain cases.

Section 10.

If an acknowledgment taken in any state according to law is authenticated, it shall be effective in this state.

Section 11.

Provides for acknowledgments by persons serving in the armed forces before an officer thereof. No authentication of the endorsement is required.

Section 12.

Acknowledgments previously taken are not affected.

Section 13.

Requires uniformity of interpretation.

Section 14.

Act to be cited as the Uniform Acknowledgment Act.

Sec. 15.

Effective date.

2. CRIMINAL STATISTICS ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 1541.

The warden of the territorial prison and the chiefs of police of the several counties are empowered to effect such systems of identification of prisoners and persons suspected of crime or of criminal intent and for the recording of crime statistics as the attorney general shall prescribe.

Section 1541.01.

The attorney general is authorized to organize a bureau known as the bureau of crime statistics and identification, which shall be operated under direction of the director of the bureau of civil identification.

The director shall establish systems of identification and provide for the collection of data relating to crime according to standard methods.

The attorney general shall appoint an executive officer who shall be responsible for instruction of peace officers in the systems of identification employed.

The several counties shall provide the necessary equipment and pay the personnel involved in setting up the systems of identification and statistics. However, all expenses in connection with prison matters exclusively within the control of the Territory shall be borne by the Territory.

Such systems shall be uniform throughout the Territory.

The attorney general, through the bureau, shall keep a uniform record of the work of the courts, prosecuting officers, the police and other crime detection or prevention agencies. These records shall be gathered and put in form suitable for:

- a. study of the causes and prevention of crime and delinquency.
- b. examination of records of the operations of such officers and results thereof.

The chief of the bureau, with the approval of the attorney general, shall have power to prescribe the type of forms to be followed in making reports.

The courts, judges, prosecuting officers, chiefs of police, sheriffs and other crime prevention or detection officers are under a duty to keep records in the form that the chief of the bureau prescribes.

Persons whose fingerprints and photographs have been taken, against whom no charges of crime are preferred or against whom charges of crime are preferred and no convictions secured, shall be entitled to return or destruction of these fingerprints or photographs within 60 days, upon written request. However, if it be ascertained that the person so requesting has a prior conviction or is a fugitive from justice, then such person will not be entitled to a return or destruction of prints or photographs.

Any person having custody or control of such fingerprints and photographs who knowingly violates the provisions of the preceding paragraph shall be subject to a fine of not more than \$100 or by imprisonment for not more than one year, or both.

Section 1541.02.

Whenever the bureau shall receive any record of the conviction of any citizen of 18 years or over in the U. S. district court for the district of Hawaii of any crime punishable by imprisonment for more than one year, the bureau shall transmit such information to the clerk of each county with sufficient identifying description of the citizen. This requisite must be complied with whether the penalty is imposed or not.

Section 1541.03.

The warden of the territorial prison and the chiefs of police of the several counties are charged and ordered to furnish each municipal subdivision and to the Territory, copies of documents required to be filed by this chapter.

Section 1541.04.

Repeals old statutes relating hereto and appropriates funds, etc., for the changeover.

ALSO SEE CHAPTER 23.01 (Bureau of Civil Identification) by Act 246, Series A-38, Session Laws of 1947.

CRIMINAL STATISTICS ACT

B. Provisions of the Uniform Criminal Statistics Act.

Section 1.

Establishes a bureau of criminal statistics in the office of the attorney general.

Section 2.

Provides for a director of the bureau appointed by the attorney general. Sets forth salary, term of office and authorizes clerical assistants.

Section 3.

Requires the director to collect and compile certain information, present surveys re crimes, and gather other information concerning criminals and delinquents helpful to the courts, penal institutions, and other agencies.

Section 4.

Requires director to prepare forms and classify crimes, conforming as near as practicable to the systems employed by the proper United States agencies.

Section 5.

Requires the clerk of every court, head of every police department, and certain other officers to submit reports as the director may designate.

Section 6.*

Requires all coroners to submit reports and information regarding autopsies and inquests, as required by the director.

Section 7.

Authorizes to the director access to public records for the purposes of this Act.

Section 8.*

Empowers the director to enter penal institutions to make investigations and take fingerprints, etc., of any person convicted of a crime for the purpose of obtaining information leading to the identification of criminals.

Section 9.*

Requires the director to file all information received by the bureau for convenient reference, coinciding as far as practicable with the form used in the proper agency of the United States department of justice.

Section 10.*

Requires the director to furnish on request, to certain state and federal officers, a copy of available information on any person of whom the bureau has a record.

Section 11.*

Requires the bureau to cooperate with appropriate federal and state agencies toward developing a uniform system of criminal identification.

Section 12.*

Requires the director to publish and make available reports reflecting the crime situation of the state and make recommendations regarding the administration of criminal justice.

Section 13.*

States that sealed certified copies of documents on file with the bureau shall be admissible in evidence with the same effect as the original.

Section 14.

Allows the governor, attorney general and those authorized by the director access to bureau records. Prohibits release of information other than provided by this Act or by order of court or the aforementioned officers for the facilitation of identification of persons or property.

Section 15.

Willful violation of provisions of this Act is deemed a misdemeanor and a fine is provided.

Section 16.*

Prohibits acceptance of rewards by bureau personnel for apprehension or conviction of any person or recovery of any property.

Section 17.

Requires uniform interpretation of this Act.

Section 18.

Declares provisions of this Act to be severable.

Section 19.

Act to be cited as Uniform Criminal Statistics Act.

Section 20.

Repeals other inconsistent laws.

Section 21.

Effective date.

*Not specifically covered by Hawaii's Act.

3. DECLARATORY JUDGMENTS ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 9971 (revised by Act 74, Series D-172, Session Laws of 1945).

In cases of actual controversies, courts of record shall have the power to make binding adjudications of right, whether or not consequential relief is claimed. No proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right, is prayed for.

Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances and other governmental regulations, may be so determined. This enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

Relief by declaratory judgment or decree may be granted in civil cases where:

- (1) there is actual controversy between contending parties;
- (2) or the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation;
- (3) or the court is satisfied that a party asserts a legal relation, status, right or privilege in which he has a concrete interest and that there is a challenge or denial of such interest;
- (4) and when the declaratory judgment or decree will terminate the uncertainty giving rise to the proceeding.

Where a statute provides for a special form of remedy for a specific type of case, that statutory remedy must be followed. However, the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, or an equitable remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment or decree in any case where the other essentials to such relief are present.

Provides for the submission of questions of fact, in the form of interrogatories, to juries under proper instructions.

Proceeding by declaratory judgment is not permitted in any case where a divorce or annulment of marriage is sought.

DECLARATORY JUDGMENT ACTS

B. Provisions of the Uniform Declaratory Judgment Acts.

Section 1.

Courts of record shall have power to declare rights, status and claims whether or not relief is or could be claimed. Such declarations shall have the effect of a final judgment.

Section 2.

Allows interested parties to written instruments the right to have the courts determine any question of construction or validity arising under the instrument when the same is affected by statute, ordinance, contract or franchise.

Section 3.

Authorizes construction of contracts either before or after a breach.

Section 4.

Persons interested in the administration of a trust or an estate of a decedent may have a declaration of rights in respect thereto: (a) to ascertain classes of creditors, devisees, legatees, heirs, next of kin or others; (b) to direct executors, administrators or trustees to do or abstain from doing any act in their fiduciary capacity; or (c) to determine questions arising in the administration of the estate or trust, as well as construction of wills and writings.

Section 5.

The enumeration of sections 2, 3 and 4 does not limit the exercise of general powers conferred in section 1.

Section 6.

Allows the courts to refuse rendering declaratory judgments where, if rendered, the uncertainty or controversy giving rights to the proceeding would not be terminated.

Section 7.

Authorizes review of judgments, decrees and orders under this Act.

Section 8.*

Authorizes supplemental relief when necessary upon petition to the proper court. Adverse parties shall be required to show cause why further relief should not be granted.

Section 9.*

Authorizes trial by jury wherein issues of fact are to be determined, (in same manner as issue would be determined in a civil action).

Section 10.

The court is authorized to award costs as it may deem equitable.

Section 11.

Requires all parties in interest to be joined when declaratory relief is sought; parties not joined shall not be prejudiced. Requires that the municipality or state be notified in the event that the proceeding involves an ordinance or statute.

Section 12.

States that the act is remedial and for the purpose of affording relief from uncertainty regarding legal relations and should be liberally construed.

Section 13.

"Person" means any person, partnership, stock company, unincorporated association, social or municipal or other corporation of any character whatsoever.

Section 14.

States that the provisions of this Act with exceptions of sections 1 and 2 are severable and the invalidity of any provision shall not affect the remainder thereof.

Section 15.

Requires uniform interpretation of this Act.

Section 16.

Act to be cited as Uniform Declaratory Judgment Act.

Section 17.

Effective date.

*Not specifically covered by Hawaii's Act.

4. FLAG ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 11190.

Any person who shall use contemptuous language concerning any flag, standard, color or ensign of the United States or publish any book or writing calculated to bring into disrepute the flag, standard, color or ensign of the United States shall be guilty of a felony punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment at hard labor for not more than 10 years or by both fine and imprisonment.

Section 11194.

Any person who shall knowingly show disrespect to any flag, standard, color or ensign of the United States, otherwise than as defined in section 11190 above, shall be guilty of a misdemeanor and punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both fine and imprisonment.

Section 11195.

The following acts in relation to the flag of the United States shall be deemed misdemeanors and shall be punished by a fine not exceeding \$100 or by imprisonment for not more than 30 days or both:

- (1) Placing of any word, figure, mark, etc., on any flag, standard, color or ensign of the United States.
- (2) Causing to be exposed to public view any flag, standard, color or ensign upon which shall be printed any mark, design, advertisement of any nature, etc.
- (3) Having for sale, exposing for sale, or giving away any article of merchandise upon which shall be printed, painted, etc., a representation of any flag, standard, color or ensign of the United States.
- (4) Publicly mutilating, defacing, defiling any flag, standard, color or ensign.

Section 11196.

The words flag, standard, color or ensign, as used in this chapter, includes any flag, standard, color, ensign or any picture or representation thereof made of any substance, or represented on any substance, evidently purporting to be the flag of the United State. Any representation on which there shall be shown the colors, stars and stripes in any number, or by which the person seeing the same without deliberation may believe the same to represent the flag of the United

States, shall also be considered the flag of the United States for the purposes of this chapter.

Section 11197.

This subtitle shall not apply to any act permitted by the statutes of the United States or by the United States army and navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry or stationery for use in correspondence on any of which shall be printed, painted or placed the flag disconnected from any advertisement.

FLAG ACT

B. Provisions of the Uniform Flag Act.

Section 1.

Sets forth the applicability of this Act as including any flag, standard, color, ensign or shield, or copy, picture or representation thereof, purporting to be the aforesaid representation of the United States or the state.

Section 2.

Prohibits persons from exhibiting or displaying: (a) any of the aforementioned flags, ensigns or shields, standards or color of the United States or the state on which has been placed any word, figure, mark, design or advertisement; (b) exposing to public view the aforementioned upon which shall have been printed or otherwise produced any such word, figure, mark or advertisement; (c) exposing to public view for sale or otherwise any substance being an article of merchandise or receptacle upon which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, decorate or distinguish such article.

Section 3.

Prohibits public mutilation, defiling, etc., by word or act casting contempt upon any such flag, standard, color, ensign or shield.

Section 4.

Excepts from this Act anything permitted by the United States statutes, army and navy regulations, nor does it apply to written documents, stationery, ornaments, pictures or jewelry wherein on the aforesaid is depicted with no design or words thereon and disconnected with advertising.

Section 5.

Declares a violation of section 2 in this Act a misdemeanor punishable by fine and/or by imprisonment.

Section 6.

Repeals laws inconsistent herewith.

Section 7.

Requires uniform interpretation.

Section 8.

Cites this Act as the Uniform Flag Act.

Section 9.

Effective date.

5. FOREIGN DEPOSITIONS ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

The Uniform Foreign Depositions Act deals primarily with the problem of compelling witnesses within the state to give testimony when a writ, commission or mandate has been issued by a foreign jurisdiction.

The Revised Laws of Hawaii, on the other hand, deals with foreign depositions, but the applicable clause is concerned with the privilege of parties to a trial to have the court aid them in obtaining depositions in foreign jurisdictions.

Section 9851.

Any court of record, or any judge may order a commission to issue for the examination of witnesses residing in a foreign jurisdiction, or in some circuit other than that in which the case is pending.

Section 9856.

The district magistrate is empowered to issue a commission for the examination of any witness residing in any district other than that in which the action is pending. Such commission shall be directed to the magistrate of the district in which such witness resides and forwarded to him with the witness fees, and it shall be the duty of the magistrate to summon such witnesses and take deposition. After taking of the deposition, the magistrate shall return the commission, with the interrogatories and cross-interrogatories accompanying it.

FOREIGN DEPOSITION ACT

B. Provisions of the Uniform Foreign Deposition Act.

Section 1.*

Whenever by authority of any court or record in any other state, territory or foreign jurisdiction it is required to take the testimony of witnesses within this Act, they may be compelled to appear and testify in the same manner and by the same process as is employed for such purpose in the state.

Section 2.

Requires uniformity of interpretation.

Section 3.

Cites this Act as the Uniform Foreign Deposition Act.

Section 4.

Repeals acts inconsistent herewith.

Section 5.

Effective date.

*Not specifically covered by Hawaii's Act.

6. FRAUDULENT CONVEYANCES

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 11330.

Whoever sells and conveys any land or other real property knowing that an undischarged attachment, mortgage or other incumbrance exists thereon which is not noted in the deed or other evidence of title delivered, without informing the grantee of the incumbrance before the consideration is paid, shall be punished by imprisonment at hard labor for a period not exceeding five years.

Section 11331.

Whoever, with fraudulent intent, attempts to place personal property which is subject to a mortgage or subject to an agreement of delivery, beyond the control of the mortgagee or some such person having legal claim for the present or ultimate delivery, shall be subject to a fine of not more than \$500 or by imprisonment for not more than one year.

The same penalty is imposed for those who aid and abet in such removal or concealment.

Growing crops are to be considered personal property for the purposes of this section.

Section 11332.

A mortgagor of personal property who sells or conveys the same or any part thereof without the consent of the mortgagee in writing, and without informing the vendee or grantee that the same is mortgaged, shall be punished by a fine of not more than \$100 or by imprisonment for not more than one year.

Section 11333.

A hirer or lessee who sells personal property without the consent in writing of the owner or lessor, and without informing the vendee or grantee that the same is mortgaged, shall be punished by a fine of not more than \$100 or by imprisonment for not more than one year.

Section 11334.

Any person who holds collateral security for the payment of a debt owing to him, sells, pledges, lends or in any way disposes of the same without the depositor's consent shall be subject to a fine of not more than \$500 or by imprisonment for not more than two years.

Section 11335.

Whoever, with intent to defraud, buys, receives or aids in concealing personal property, knowing it to be hired or leased or held as collateral security, shall be punished by not more than \$100 or by imprisonment for not more than one year.

Section 11336.

Any person conveying or concealing personal property subject to conditions precedent with intent to defraud shall be punished by a fine of not more than \$100 or by imprisonment for not more than one year.

FRAUDULENT CONVEYANCE ACT

B. Provisions of the Uniform Fraudulent Conveyance Act.

Section 1.

Defines assets, conveyance, creditor and debt.

Section 2.*

(1) A person is insolvent when the salable value of his assets is less than his probable liability on matured existing debts when matured.

(2) In considering partnership insolvency, the assets of each general partner in excess of the amount sufficient to meet his own separate creditors shall also be added. In like manner the amount of unpaid subscriptions of each limited partner shall be added.

Section 3.*

Fair consideration is given for property or obligation (a) when in exchange as a fair equivalent therefor, property is conveyed or an antecedent debt is satisfied; or (b) when such property or obligation is received to secure an advance or an antecedent debt.

Section 4.*

Regardless of actual intent, if a conveyance is made or an obligation incurred without fair consideration, the same shall be deemed fraudulent as to creditors when insolvency results.

Section 5.*

Conveyances to persons in business without fair consideration resulting in an unreasonably fair capital is fraudulent as to creditors during continuance of such business regardless of such intent.

Section 6.*

Conveyances by a person believing he will incur debts beyond his ability to pay is fraudulent as to present and future creditors.

Section 7.

Conveyances and obligations made with actual intent to defraud is fraudulent as to both present and future creditors.

Section 8.*

(a) Conveyances and obligations incurred when a partnership will be rendered insolvent thereby is fraudulent as to creditors if the

conveyance is made or obligation incurred to a partner; or (b) to a person without fair consideration to the partnership.

Section 9.

(1) Creditor having a matured claim when any act has been deemed fraudulent against him may, as against any person except a purchaser for value without knowledge, or one who has derived title immediately therefrom, (a) have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim; or (b) disregard the conveyance and levy execution upon the property conveyed.

(2) Purchasers without fraudulent intent having paid less than fair consideration may retain that received as security for repayment.

Section 10.*

Creditors whose claims have not matured may proceed as if they had matured and the court may,

- (a) Restrain disposition of the defendant's property,
- (b) Appoint a receiver therefor,
- (c) Set aside the conveyance or annul the obligation, or
- (d) Make any orders proper with the circumstances.

Section 11.

For cases not provided for in this Act, rules of law and equity, principal and agent, etc., shall govern.

Section 12.

Requires construction to effectuate the general purpose of the Act.

Section 13.

Cites the Act as Uniform Fraudulent Conveyance Act.

Section 14.

Repeals inconsistent legislation.

*Not specifically covered by Hawaii's Act.

7. INSURERS LIQUIDATION ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 8492. Impairment of capital; reduction; winding up; receiver.

When paid-in-capital of domestic insurers is impaired 25 percent or more and not fully restored after sixty days, the commissioner shall revoke the certificate of authority and apply to the proper court to have a receiver appointed to wind up the company's affairs. The insurance commissioner may be appointed receiver.

See also: Sections 8479-8480.

INSURERS LIQUIDATION ACT

B. Provisions of the Uniform Insurers Liquidation Act.

Section 1.*

Defines insurer, delinquency proceeding, state, foreign country, domiciliary state, ancillary state, reciprocal state, general assets, preferred claim, special deposit claim, secured claim and receiver.

Section 2.

(1) In domiciliary proceedings the court has the right to appoint the insurance commissioner as such receiver.

(2) Title to all property shall vest in the domiciliary receiver; ancillary receivers shall have powers here and after as to assets located in this state.

(3) Authorizes domiciliary receiver to proceed according to law for the purpose of conserving the affairs of the insurer and allows appointment of employees.

(No Hawaii statute re ancillary receivers in insurance liquidation.)

Section 3.*

(1) Authorizes the court to appoint the insurance commissioner as an ancillary receiver if there are sufficient assets of said foreign insurer to justify same or if ten resident claimants of this state so request.

(2) Vests the domiciliary receiver in a reciprocal state with title to all property of the insurer located in this state except that an ancillary receiver shall, during such receivership proceedings, have the sole right to recover other assets. Requires the ancillary receiver to liquidate special deposit claims and secured claims as soon as practicable, remaining assets to be transferred to the domiciliary receiver.

Section 4.*

(1) Authorizes non-resident claimants against delinquent domiciliary insurers, providing an alternative filing with the ancillary receiver, if any, in their respective states.

(2) Allows controverted claims of non-residents to be proved in this state or in the state of ancillary proceedings. Any final allowance of a claim by the court in an ancillary state shall be accepted as conclusive as to amount and priority of assets within the ancillary state.

Section 5.*

Authorizes filing and proof of claims of residents of this state against delinquent insurers in domiciliary and reciprocal states; claims may be proven in a domiciliary state or in this state if ancillary proceedings have been commenced. Sets forth requirements of notice that the claimant must serve upon the delinquent insurer.

Section 6.*

Gives preference of claim to residents of ancillary states against an insurer domiciled in this state if the ancillary state does likewise.

Section 7.*

Owners of special deposit claims are given priority against their several deposits according to law. In case of deficiency, the claimants may share in the general assets, such sharing to be deferred until the general creditors have been paid percentages of their claims equal to that percentage paid from the special deposit to the priority claimant.

Section 8.*

Allows holders of secured claims to surrender same and file as a general creditor or resort to the security in which case any deficiency shall be considered on the same basis as claims of unsecured creditors.

Section 9.

Prohibits attachment or garnishment of assessments against delinquent insurers when proceedings have been instituted. Liens obtained by such action within four months prior to any delinquency proceeding shall be void as against rights arising in such proceeding.

Section 10.*

Authorizes the domiciliary receiver of a reciprocal state to sue for recovery of assets due such insurer in this state.

Section 11.

Declares the provisions of this Act to be severable.

Section 12.

Requires uniformity of interpretation.

Section 13.

Cites this Act as the Uniform Insurers Liquidation Act.

Section 14.

Repeals acts inconsistent herewith.

Section 15.

Effective date.

*Not specifically covered by Hawaii's Act.

8. OFFICIAL REPORTS AS EVIDENCE ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 9884.

The following documents may be proved in court, either by examined copies or by copies authenticated as hereinafter mentioned:

(1) All proclamations, treaties and other acts of state of the Territory or of any foreign jurisdiction,

(2) All judgments, decrees, orders and other judicial proceedings of any court in the Territory, or in any foreign jurisdiction, and

(3) All affidavits, pleadings and other legal documents, wills and codicils filed or deposited in any such court.

If the document sought to be proved be a proclamation, treaty or other act of state, the authenticated copy to be admissible in evidence must purport to be sealed with the great seal of the Territory, or of the foreign jurisdiction to which the original document belongs.

If the document sought to be proved be a judgment, decree, order, or other judicial proceeding of a Territorial Court or foreign jurisdiction court, the authenticated copy must be sealed with the seal of the court or if the court has no seal, by the judge who shall make it known that his court has no seal.

The foregoing requirement is also applicable to affidavits, pleadings, wills, codicils or other legal documents sought to be admitted as evidence.

Every copy sought to be admitted, which satisfies the above requirements, will present prima facie evidence of the original thereof.

Section 9885.

Printed books or pamphlets purporting on their face to be the session or statute laws of any of the United States or territories thereof, or of any foreign jurisdiction, and printed by authority of such state or territory, shall be received as prima facie evidence of such statutes.

Section 9886.

County ordinances, rules or regulations formulated under the laws of the United States, the Organic Act or laws of the Territory, must be proved either by certification of the proper officer or by a showing that the copy was printed with authority. Documents so proved will constitute prima facie evidence of the contents of the original document.

Act 17, 1945 S. L., amending section 9886 by addition:

Where any writing is copied by means of any machine, press, photographic device or micrographic equipment, such copy will be prima facie evidence of such writing, upon proof to the court that such copy was taken from the original writing. If satisfactory proof is so given to the court, there need be no showing that such impression or copy was compared with the original and there need to be no production of the original.

Section 9887.

In attempting to prove conveyance of any government land, a certified copy bearing the seal of the proper officer shall be received as prima facie evidence of the original.

Section 9888.

A book or other document which is of such public nature may be introduced and provable by means of a copy which is to be a proved and examined copy, or extract, or if it is signed and certified as a true copy.

Section 9889.

Copies of records in the public archives may be introduced in evidence as prima facie proof of the originals, provided that these copies are certified as true and correct as hereinafter specified.

Section 9890 (amended by Series D-170, Session Laws of Hawaii 1945).

The following persons are empowered to certify copies of originals in their custody:

- (1) Secretary of the Territory, as chairman of commissioners of public archives;
- (2) Commissioner of public archives, in case the board is abolished;
- (3) Librarian or other officer performing duties of the librarian of the public archives.

Fees shall be charged as follows:

(Schedule of amended fees set out)

The above fees shall not be charged where the work involved is required by any department or branch of the federal, territorial or county governments.

Section 9891.

The mere publication of a newspaper purporting to contain public notices published by authority, shall be prima facie evidence of the publication thereof, on the day on which the same bears date.

If the law requires that certain public notices be published in regards to authorization or any act to be done, proof of the newspaper containing such publication is sufficient to establish a prima facie case of such required publication.

Section 9892.

Copies of votes, proclamations and proceedings of the legislature will be admitted in evidence if published by authority.

Section 9893.

A transcript of a judicial proceeding of any court of record will be admitted if authenticated by attestation of the clerk of court with the seal of the court annexed or by the judge's authentication with the seal of the court.

Section 9894.

Transcript of the record of judgment, execution and return of execution issued by a circuit judge in chambers or district magistrate, may be admitted in evidence if subscribed by the judge or magistrate.

Section 9895.

Whenever it is necessary to prove the conviction or acquittal of any person charged with any offense, the whole record need not be introduced in evidence. A certificate containing the substance and effect of the record, omitting the formal parts, signed by the officer in custody of the records, will be sufficient.

Section 9896.

Whenever any certificate, official or public document, or proceeding of any corporation, or joint stock, or other company, or any certified copy of any document or bylaws, entry in any register or other book, or of any other proceeding shall be receivable in evidence; they respectively must purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone as required, or impressed with a stamp, and signed as directed by law, without any proof of the seal or stamp where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same.

Section 9897.

All courts shall take judicial notice of the following signatures:

- (1) Head of any executive department;
- (2) Cabinet minister;
- (3) Judge of the supreme court;
- (4) Judge of the circuit court;
- (5) Clerk of the supreme court;
- (6) Clerk of the circuit court;
- (7) Commissioners of the board to quiet land titles; and
- (8) Masters in chancery.

However, these signatures shall be attached or appended to any decree, order, certificate, affidavit or other judicial or official document.

Section 9897.01.

A written finding of presumed death made by the secretary of war, secretary of the navy or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act (56 Stat. 143, 1903 and P. L. 408, ch. 371, 2nd session, 78th Congress; 50 U. S. C. App. Supp. 1001-17), or a duly certified copy of such finding, shall be received in court as prima facie evidence of the death of the person therein found to be dead, and the date, circumstance and place of disappearance.

Section 9897.02.

An official written report or duly certified record that a person is:

(1) Missing, missing in action, interned in a neutral country or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the Act referred to in Section 9897.01, shall be received in court as prima facie evidence of whatever information reported.

Section 9897.03.

Any finding or report or duly certified copy purporting to have been signed by the required officer or employee of the United States, as described in the preceding sections, shall be prima facie deemed to have been signed and issued within the scope of his authority.

Section 9898.

The probate of a will or codicil, or letters of administration with the will or codicil annexed, shall be prima facie evidence of the original.

Section 9899.

A properly authenticated transcript of the testimony of any witness who has testified concerning pedigree before any court of record or before

any judge of a court of record at chambers prior to January 1, 1880, shall be admissible if the person was a member of the family as to which he testified.

Section 9900.

When it becomes necessary to show the devolution of title to land when the former owner dies intestate, a decree of distribution entered by a court having jurisdiction over the estate, shall constitute prima facie proof of the descent of such title. However, such order must have been entered not less than ten years prior to the date upon which the instant cause was commenced.

Section 9901.

All certificates of Hawaiian birth shall be prima facie evidence of all contained therein.

OFFICIAL REPORTS AS EVIDENCE ACT

Provisions of the Uniform Official Reports as Evidence Act.

Section 1.

Written reports of state officers on matters within scope of their duties is admissible in evidence where relevant.

Section 2.*

Requires delivery of a copy thereof to the adverse party prior to trial before same shall be admissible, unless the adverse party is not unfairly surprised.

Section 3.*

Authorizes cross-examination by adverse party of the person making such report; this testimony being unobtainable shall not affect admissibility of the report, unless the adverse party is unfairly prejudiced.

Section 4.

Requires uniform interpretation of this Act.

Section 5.

Cites this Act as the Uniform Official Reports as Evidence Act.

Section 6.

Repeals acts inconsistent herewith.

Section 7.

Effective date.

*Not specifically covered by Hawaii's Act.

9. PARTNERSHIP ACT

The Hawaiian statutes relating to partnerships are for the most part confined to setting out the manner in which and the times at which the names or changes in names must be filed with the treasurer, and the time and manner of filing notices of dissolution.

The Uniform Partnership Act has not been summarized here because of its extensive coverage of all phases of partnership law. It would perhaps have been more accurate to classify the Uniform Partnership Act as one having no similar counterpart in the Hawaiian laws.

10. PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS
AS EVIDENCE ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 460.01.

Authorizes proper public officer to photograph or otherwise reproduce public records; same to be deemed an original thereof, a certified copy of such reproduction to be deemed a copy of the original. Authorizes destruction of the original records upon proper approval.

PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

B. Provisions of the Uniform Photographic Copies of Business and Public Records as Evidence Act.

Section 1.*

Authorizes any business, institution, member of a profession or government agency that in the regular course of business, keeps written records and causes the same to be reproduced accurately by photographic or other process, to destroy the original and the reproduction, enlargement or facsimiles thereof, shall be admissible in evidence as the original itself.

Section 2.

Requires uniformity of interpretation.

Section 3.

Cites this Act as the Uniform Photographic Copies of Business and Public Records as Evidence Act.

Section 4.

Repeals inconsistent provisions.

Section 5.

Effective date.

*Not specifically covered by Hawaii's Act.

11. PROPERTY ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 12780.

All grants, conveyances and devises of land, or of any interest therein, made to two or more persons, shall be construed to create estates in common and not in joint-tenancy or by entirety, unless it shall manifestly appear from the tenor of the instrument that it was intended to create an estate in joint-tenancy or by entirety, provided however, that the foregoing provisions shall not apply to grants, conveyances, or devises to executors or trustees.

Section 12781.

Land or any interest therein, or any other type of property or property rights or interests or interests therein, may be conveyed by a person to himself and another, or others as joint tenants or to himself and his spouse as tenants by the entirety, or by tenants in common to themselves or themselves and others as joint tenants, without the necessity of conveying through a third party. Each such instrument shall be construed as validly creating a joint tenancy or a tenancy by the entirety, as the case may be, if the tenor of the instrument manifestly indicates an intent to create such tenancy.

Section 10402.

Notwithstanding other provisions of law to the contrary, when real property is rented for an indefinite time with monthly or other periodic rent reserved, such holding shall be construed to be a tenancy from month to month or from period to period on which rent is payable, and shall only be terminated by written notice to vacate or of intention to vacate given 25 days or more preceding the end of any said months or period by either landlord or tenant to the other. When any tenant, without such notice having been given by either landlord or tenant to the other, retains possession of rented premises for any period of time after the expiration of such month or period, a valid and enforceable tenancy shall be thereby created for an additional month or period as the case may be. Further, when a tenant under such a tenancy fails to pay rent reserved at the time agreed upon, the landlord may terminate such tenancy by giving to such a tenant a written notice to vacate of not less than 5 days.

Section 12365.

The real and personal property of a woman shall, upon her marriage, remain her separate property free from the management, control, debts and obligations of her husband; and a married woman may receive, receipt for, hold, manage and dispose of property, real and personal in the same manner as if she were sole.

Section 12366.

A married woman may make contracts, oral and written, sealed and unsealed, in the same manner as if she were sole, except that she shall not contract with her husband; provided, however, that any deed or assignment executed by either husband or wife to or in favor of the other, and any agreement executed by the husband and wife settling their respective rights in property owned by them or either of them when such agreement is made in contemplation of divorce or judicial separation, shall be valid to the same extent as between other persons.

PROPERTY ACT

B. Provisions of the Uniform Property Act.

Section 1.

Defines property, future interest, conveyance, otherwise effective conveyance, and effectively manifested.

Section 2.

This Act applies to corporations unless so indicated.

Section 3.

Estates which can be created regarding land may also be created regarding other things including choses in action.

Section 4.

A conveyance of property transfers the entire interest unless an intent to convey a lesser interest is effectively manifested.

Section 5.

An interest created by the exercise of a power of appointment, power of sale or power of revocation, transfers or revokes the entire interest unless a contrary intent is effectively manifested.

Section 6.

An interest reserved to the conveyor is that which he had prior to the conveyance unless an intent to reserve a different interest is effectively manifested.

Section 7.

Permits conveyances of future interests.

Section 8.

Allows the subjection of future interests to the claim of creditors.

Section 9.

A conveyance of land or a thing other than land in possession of the conveyor is effective as a conveyance of said interest when the land or thing other than land is out of the conveyor's possession whether held adversely or not.

Section 10.

Estates in fee tail and fee simple conditional are abolished.

Section 11.

A word of limitation, unless a different intent is effectively manifested, is a limitation effective only when a person dies not having such relative, then living, or in gestation and is not a limitation to take effect upon indefinite failure of such relatives; nor does it mean that death without such relative must occur in the lifetime of the creator of the interest.

Section 12.

The rule in Shelley's case is abolished.

Section 13.

The rule in Wild's case is abolished.

Section 14.

The doctrine of worthier title is abolished.

Section 15.

An inter vivos conveyance to the heirs or next of kin of the conveyor which creates one or more prior interests in favor of a person in existence operates in favor of such heirs by purchase and not by descent.

Section 16.

Declares contingent interest indestructible.

Section 17.

A conveyance to persons as tenants in common terminable at death, with a remainder,

a. to the survivor of such persons, or

b. to another person,

such conveyance, unless a different intention is manifested, creates cross limitations so that the property will pass as a whole to the remainderman.

Section 18.

(1) Persons owning property may convey same so that the grantor

may be a grantee under a joint tenancy, tenancy by the entireties, or tenancy in common as if it were a conveyance from a stranger who owned the property to the persons named as grantees;

(2) The above section holds true for conveyances executed by two or more persons naming one or more or all of such persons as grantees.

Section 19.

Authorizes conveyances by a married woman without joinder of her husband.

Section 20.

Authorizes direct conveyances between husband and wife.

Section 21.

In actions wherein waste is claimed, recovery shall be limited to compensatory damages except in accordance with covenants, agreements, or conditions binding such defendants.

Section 22.

Requires uniformity of interpretation.

Section 23.

Effective date.

Section 24.

Cites this Act as the Uniform Property Act.

12. STATUTE OF LIMITATIONS ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Part I. Personal Action

Section 10421.

The following actions shall be commenced within 6 years next after the cause of such action accrues:

(1) Actions for the recovery of any debt founded upon any contract, obligation or liability, excepting such as are brought upon the judgment or decree of some court of record.

(2) Actions upon judgments or decrees rendered in any court not of record in the Territory, or subject to the provisions of section 10428 in any court of record in any foreign jurisdiction.

(3) Actions of debt for arrearages of rent.

(4) Actions for taking, detaining or injuring any goods or chattels including actions of replevin.

(5) Special actions on the case for criminal conversation, for libels, or for any other injury to the persons or rights of any except as otherwise provided.

Section 10422.

In all actions of debt, account or assumpsit brought to recover any balance due upon a mutual, open and current account, the cause of action shall be deemed to have accrued from the time of the last item proved in such account.

Section 10423.

All the provisions of part I (section 10421) shall apply to set-offs. In case of set-offs, time will be computed from the time when plaintiff's action was commenced.

Section 10424.

The following actions shall be commenced within two years after the cause of action accrues and not after:

(1) Actions for words spoken slandering the character or title of any person.

(2) Actions for words spoken whereby special damages are sustained.

(3) Actions against the high sheriff, sheriffs or other officers,

for the escape of prisoners or upon any liability incurred by them by the doing of any act in their official capacity, or by the omission of any official duty.

Section 10425.

Every judgment and decree from any court of record in the Territory will be presumed to be paid and discharged at the expiration of 10 years after the judgment or decree is rendered. No action shall be commenced thereon after such expiration.

Section 10426.

Subject to the provisions of section 10428, actions for the recovery of any debt founded upon any contract, obligation or liability, where the cause of action has arisen in any foreign jurisdiction, including actions on judgments or decrees rendered in any court not of record in any foreign jurisdiction, shall be commenced within four years after the cause of action accrued and not after.

Section 10427.

Actions for the recovery of damages for injury to persons or property must be instituted within two years after the cause of action accrued, and not after.

Section 10428.

When a cause of action has arisen in any foreign jurisdiction and by the laws thereof, an action thereon cannot be maintained against a person, by reason of the lapse of time, an action thereon shall not be maintained against him in this Territory, except in favor of a domiciled resident of the Territory, who has held the cause of action from the time it accrued.

Section 10429.

The provisions of part I (section 10421) of this chapter shall not extend to any action which is, or shall be, limited by any statute to be brought within a shorter time than is herein prescribed; but such action shall be brought within the time limited by such statute.

Section 10429.01.(Act 174, S. L. 1945, amending by addition)

Whenever any federal statute provides for an imposition of a civil penalty or imposes a new liability or enlarges an existing liability, and the statute does not specify the period within which suit may be brought, then such action must be brought within one year from the date when the cause of action accrues, if brought within a territorial court.

However, with respect to existing causes of action for such penalty, liquidated damages or sums arising out of such new or enlarged liability, which have not been barred as of the effective date of this

Act, suit must be brought within six months from the date of the approval of this Act.

Section 10429.02. (Act 210, S. L. 1945, amending by addition)

All personal actions of any nature not covered specifically by the laws of the Territory must be instituted within four years after the cause of action accrues and not after.

Section 10430.

Any person entitled to bring any of the personal actions listed in part I (sections 10421-10429) excepting action against the high sheriff, sheriffs or other officers, who shall be at the time the cause of action accrued, either:

- (1) Within the age of 20 years; or
- (2) Insane; or
- (3) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life.

Such persons shall be at liberty to bring such actions within the respective times stated in part I, after such disability is removed.

Section 10431.

No person shall avail himself of any disability enumerated in part I of this chapter, unless such disability existed at the time his right of action accrued.

Section 10432.

Where there shall be two or more such disabilities existing at the time the right of action accrued, the limitations herein prescribed shall not attach until all such disabilities are removed.

Section 10433.

If any person entitled to bring any action in this chapter shall die before the expiration of the time herein limited for the commencement of such suit, if such cause of action shall survive to his representatives, his executors or administrators may, after the expiration of such time and within one year after such date, commence such action but not after that period.

Section 10433.01.

The running of the limitation period upon any personal action shall not be interrupted by the death of the person against whom the cause of action has accrued.

Section 10434.

If at any time when any cause of action specified in part I accrues against any individual and such individual be out of the Territory, such action may be commenced within the time herein limited, after the return of such person into the Territory. If after such cause of action shall have accrued, such person shall depart from and reside out of the Territory, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

Section 10435.

Whenever the commencement of any suit shall be stayed by an injunction of any court of equity, the time during which such injunction shall be in force, shall not be deemed any portion of the time in part I of this chapter.

Section 10436.

Fraudulent concealment of a cause of action will stop the running of the statute. Time will be counted after the person who is entitled to bring the action has discovered the cause of action.

Section 10437.

When a suit is alleged to have been commenced within the time required by law and such allegation shall be put in issue by the defendant, it shall be competent for the defendant to prove that the process issued by the plaintiff was not issued with the intent or in the manner required by law or that any means whatever were used by the plaintiff or his attorney to prevent the service of the writ or to keep the defendant in ignorance of the issuing thereof.

Section 10438.

Upon any such matter being established, or upon its appearance in any other way that any process was issued without any intent that it should be served, such process shall not be deemed the commencement of a suit within the meaning of provisions of part I of this chapter.

Part II. Real Actions

Section 10439.

No person shall commence an action to recover possession of any lands or make any entry thereon, unless made within ten years after the right to bring such action first accrued.

Section 10440.

If such right first accrued to any ancestor or predecessor of the person bringing such action, or making such entry, or to any persons

from, by or under whom he claims, the ten years shall be computed from the time when the right first accrued to such ancestor, predecessor or other persons.

Section 10441.

In the construction of this part II, the right to make an entry or commence action shall be deemed to have first accrued at the times hereinafter mentioned:

(1) When any person shall be disseised, his right of entry or action accrues at the time of such disseisin.

(2) When he claims as heir or devisee of one who died seised, his right shall be deemed to have accrued at the time of such death, unless there is an estate by the curtesy or in dower, or some other estate intervening after the death of such ancestor or devisor, in which case, his right accrues when such intermediate estate expires, or when it would have expired by its own limitation.

(3) When there is such an intermediate estate, and in all other cases where a party claims in remainder, or reversion, his right so far as it is affected by the limitation herein prescribed shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which he might have entered at an earlier time.

(4) The preceding clause shall not prevent any person from entering, when entitled to do so, by reason of any forfeiture or breach of condition, but if he claims under such a title, his right shall be deemed to have accrued when such forfeiture was incurred or condition broken.

(5) In the cases not otherwise specifically provided for, the right shall be deemed to have accrued when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title upon which the entry or action is founded.

Section 10442.

If at the time such right of action accrues, the person entitled to bring the action is within the age of 20 years, or insane, or imprisoned, such person may make entry or bring the action at any time within five years after such disability is removed, notwithstanding the 10 years before limited shall have expired.

Section 10443.

If the person entitled to make such entry or bring such action shall die during the continuance of any of the disabilities mentioned in the preceding section and no determination or judgment shall have been made upon the action, the entry may be made or action brought by his heirs or any other person claiming from, by or under him at any time within five years after his death notwithstanding the 10 years shall have expired.

Section 10444.

If, when such right of action shall first accrue, the person entitled thereto shall be under any of the disabilities before mentioned, and shall die without having recovered the premises, no further time for making such entry or bringing such action shall be allowed beyond what is hereinbefore prescribed by reason of the disability of any other person.

Section 10445.

If any action, of which the commencement is limited by part II of this chapter, shall be abated by the death of any party thereto, or if, after verdict, the judgment shall be arrested, or if the judgment be reversed on error, the party bringing the action or his representative, may bring a new action for the same cause, within one year after the determination of the original action, on the reversal of the judgment thereon.

Section 10446.

No person shall be deemed to have been in possession of any lands within the meaning of part II of this chapter, merely by reason of having made an entry thereon, unless he shall have continued in open and peaceable possession of the same for the space of one year after such entry; or unless an action shall have been commenced upon such entry within one year after ouster.

Section 12208.

A suit to annul a marriage on the ground of physical incapacity of one of the parties at the time of marriage, shall only be maintained by the injured party, against the party whose incapacity is alleged; and shall in all cases be brought within two years from the solemnization of the marriage.

Section 1524.

In case of any breach of condition of any bond furnished by the high sheriff, any person injured thereby may institute action on such bond. No action upon any such bond shall be commenced later than two years after the right of action shall have accrued, provided that infants and persons non compos may sue within one year after disabilities shall cease.

Section 12024.

If any claim be rejected by an executor or administrator, he shall give written notice of such rejection to the creditor. Action must be brought by the rejected creditor within two months after such notice is given or within two months after the same becomes due, or it will be forever barred.

Section 12532.

No action shall be maintained against the sureties on any bond, given by a guardian, unless it be commenced within four years from the time when the guardian shall be discharged, provided that if at the time of the discharge, the person entitled to bring the action shall be out of the Territory, the action may be commenced at any time within four years after his return to the Territory.

Section 12551.

No action for the recovery of any property, sold by a guardian shall be maintained by the ward, or by any person claiming under him unless it be commenced within five years next after the termination of the guardianship. No entry shall be made, unless by judgment of law, upon any lands sold as aforesaid, with a view to avoid the sale, after the expiration of the five years, excepting only that persons out of the Territory and minors and others under any legal disability to sue at the time when the right of action or entry shall first accrue may commence their action at any time within five years after removal of disability or return to the Territory.

NOTE: Statutes relating to the period of limitation concerning special cases have not been considered in this digest.

STATUTE OF LIMITATIONS ACT

B. Provisions of the Uniform Statute of Limitations Act.

Section 1.

Limits the time for commencing actions as hereinafter prescribed.

Section 2.

The periods prescribed shall be reckoned from the date the cause of action accrued.

Section 3.

Actions accruing prior to the effective date of this Act shall be governed by the law existing at that time.

Section 4.*

Invalidates agreements for limitations different than those prescribed herein.

Section 5.*

Events that operate, suspend, toll, interrupt or extend the prescribed periods are not affected by this Act.

Section 6.

The periods of limitation shall be as follows:

(1) Actions for the recovery of real property sold on execution, five years after the date of the recording of the deed made in pursuance of the sale;

(2) Actions for recovery of real property sold under order of the court, five years after the date of the recording of the deed;

(3) Actions for the recovery of real property sold for taxes, two years after the date of recording the tax deed;

(4) Actions for forcible entry or detention of real property, two years;

(5) Actions for recovery of real property otherwise not provided for and where there has been occupancy by adverse title, seven years; and where not under color of title, fifteen years.

Section 7.

(1) Actions on any agreement, contract, or promise in writing, five years;

(2) Actions on unwritten contracts, three years;

(3) Actions upon official bonds or undertakings, five years;

(4) Actions to recover statutory penalties, one year;

(5) Actions upon liabilities created by statute other than forfeitures, three years;

(6) a. Actions for trespass to real property, two years;

b. Actions involving personal property, two years;

(7) Actions for relief on ground of fraud, two years after discovery, or the date when due diligence would have discovered same;

(8) Actions for libel, slander, assault and battery, one year;

(9) Actions for malicious persecution, false arrest and malicious attachment, one year after date of the termination of the proceeding;

(10) Actions for wrongful death, one year;

(11) Actions for personal injury not enumerated, two years;

(12) Actions for damage by unfair trade, copyright infringement and other acts injuring a business or occupation, one year after knowledge of the damage and of the person causing same was discovered or might have been discovered by due diligence;

(13) Actions for relief not herein enumerated, two years.

Section 8.

Declares the provisions of this Act to be severable.

Section 9.

Requires uniformity of interpretation.

Section 10.

Cites this Act as the Uniform Statute of Limitations Act.

Section 11.

Repeals laws inconsistent herewith.

Section 12.

Effective date.

*Not specifically covered by Hawaii's Act.

13. TRANSFER OF DEPENDENTS ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 4832.

The director of public welfare is authorized to negotiate with proper authorities and agencies of states or other political subdivisions or dependencies of the United States, or of any foreign government, outside the Territory relative to the return of needy persons to their places of residence.

In each instance, the legal settlement law of such political subdivision shall be considered the legal settlement law of the Territory insofar as the particular dependent child or aged, blind or other needy person involved in the negotiation is concerned.

Such law shall apply to the needy person only so long as negotiations are under way for his return to his place of residence.

The director shall notify the proper authorities in each of the 48 states, the territories of Alaska and Puerto Rico, the District of Columbia, and other dependencies of the United States of the provisions of this section.

TRANSFER OF DEPENDENTS ACT

B. Provisions of the Uniform Transfer of Dependents Act.

Section 1.

Authorizes the department of public welfare, upon approval, to enter into reciprocal agreements with agencies of the various states, relating to interstate transportation of indigents and their support if so entitled by the laws of this state.

Section 2.

Requires uniformity of interpretation.

Section 3.

Cites this Act as the Uniform Transfer of Dependents Act.

Section 4.

Effective date.

14. TRUSTEES' ACCOUNTING ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 12574.

The court on its own examination or that of its clerk shall, without reference to a master, pass upon the accounts in cases in which the annual income does not exceed \$1000.

If any such guardian or trustee shall fail to file his account as herein required, it shall be the duty of the clerk of court in which such guardian or trustee is required to file such account to notify him promptly of such failure, and if the guardian or trustee fails to file his account within 30 days after such notification, he shall be required to show cause why he should not be punished for contempt of court. The court in its discretion may remove any such guardian or trustee.

Unless otherwise required by the instrument creating the trust, nothing herein shall be construed to require the filing of an annual account by a trustee appointed by the court as additional trustee to serve with or in place of a trustee appointed in the instrument creating the trust, nor by a trustee whose appointment is made in accordance with or pursuant to the provisions of the instrument creating the trust where such appointment has been confirmed by any court in proceedings brought to secure the confirmation or approval thereof. This provision shall apply to trusts existing May 13, 1935 and appointments made thereunder, as well as to future trusts.

Section 12574. (as amended by Act 186, S. L. 1945)

Every guardian and trustee acting under appointment of any court or any appointment requiring the approval of any court, shall file annually an account showing all receipts and disbursements, together with full and detailed inventory of all property in his possession or control. The court in its discretion may permit the accounts to be filed biennially or triennially instead of annually, or if they are filed annually, may permit them to accumulate to be passed on biennially or triennially. If the prior trustee was not required by statute or the instrument creating the trust to so file an accounting, then the present trustee is also excused.

The court on its own examination or that of its clerk, shall without reference to a master, pass upon the accounts in cases where the annual income does not exceed \$1000, except in the case of a final account when the court may refer the same to a master, irrespective of the amount of the annual income.

TRUSTEES' ACCOUNTING ACT

B. Provisions of the Uniform Trustees' Accounting Act.

Section 1.

Defines testamentary trustee, non-testamentary trustee, beneficiary, settlor, relative and affiliate. The act does not apply to resulting trusts, constructive trusts, certain business trusts, investment trusts, voting trusts, insurance trusts prior to the death of the insured, mortgage or pledge trusts, trusts created by courts (except probate court), liquidation trusts, interest, salaries, wages or pensions.

TESTAMENTARY TRUSTS

Section 2.

Requires the testamentary trustee to file an inventory within thirty days after it is his duty to take possession of the trust property.

Section 3.

Requires filing of an intermediate account under oath to be filed by the trustee within thirty days after the expiration of the first year. It shall show:

(a) The period which the account covers;

(b) Names and addresses of the beneficiaries, descriptions of unascertained beneficiaries, names of sureties on, and amount of, trustee's bonds;

(c) A separate schedule showing the trust principal and its present status, investments received and held, additions to trust principals, investments sold or charged off, deductions from principal, the principal on hand, and the estimated market value of investments;

(d) In a separate schedule, the trust income originally on hand, that received, income paid out, income at hand and how invested;

(e) That neither seller nor buyer of trustee was at the time of such sale or purchase,

(1) An officer or employee of the corporate trustee or was

(2) A relative, partner, employer, employee or associate of the trustee; these provisions are not applicable to purchases and sales made by the brokers for the trustees;

(f) A statement of unpaid claims and reasons therefor, as well as statement as to certain taxes;

(g) A summary of the account;

(h) Other facts required by the court.

Requires yearly filing of intermediate accounts corresponding to the above.

Section 4.

After termination of a testamentary trust, or in case of transfer due to death, etc., the successor shall file a final account under or for the period from the last accounting and in case of termination of the trust, the proposed disposition of the property.

Section 5.

Within _____ days after disposition of the property, the trustee shall file a distribution account with receipts therefrom.

Section 6.

Requires the trustee, within ten days after filing intermediate accounts, to give notice of same to each known beneficiary. Authorizes the beneficiaries to obtain court hearings in the discretion of the court. Requires a court hearing for each third intermediate accounting for approval of unapproved accounts; notice to all beneficiaries.

Section 7.

Requires trustee to deliver to beneficiaries a copy of the final account and the notice of time and place same will be presented for approval. The schedule of fees to be requested shall also accompany the notice.

Section 8.

Requires vouchers for all expenditures over \$20.

Section 9.

Allows certain beneficiaries to be represented by other persons.

Section 10.

Requires the trustee to file an affidavit proving delivery of documents required to be sent to the beneficiaries.

Section 11.

Court approval of the trustee's account after notice as provided

shall, subject to appeal, relieve the trustee and his sureties from liability to all beneficiaries. Authorizes reopening of the account if it appears same is incorrect because of fraud or mistake. Sets time limit for reopening of accounts.

NON-TESTAMENTARY TRUSTS

Section 12.

Requires the trustee of a non-testamentary trust to file, within thirty days after it is his duty to take possession of the trust property, a copy of the trust instrument, names and addresses of the known living beneficiaries and the description of unascertained beneficiaries and an inventory of the trust property.

Section 13.

Requires filing of intermediate and final distribution accounts at the same intervals and under the same conditions as herein provided regarding testamentary trustees.

GENERAL PROVISIONS

Section 14.

Requires clerks of probate and equity courts to keep records of inventories and accounts; within thirty days after receipt thereof to notify the respective judges of failures by trustees to file accounts. The court shall then issue a citation requiring the trustee to perform such duty.

Section 15.

Allows the settlor of any trust to relieve any trustee from the duties required under this Act. The settlor may impose additional duties.

Section 16.

Beneficiaries, by written instrument, may exempt the trustee from the duties and liabilities imposed by this Act.

Section 17.

Authorizes a court of competent jurisdiction to require accountings, etc., at times other than herein prescribed; also authorizes the court to excuse a beneficiary from certain of these duties upon cause being shown.

Section 18.

Authorizes beneficiaries to apply to the proper court for an order

requiring the trustee to perform the duties imposed by this Act.

Section 19.

Authorizes penalties for provisions of this Act.

Section 20.

Authorizes competent courts to prescribe forms of inventories and accounts.

Section 21.

Authorizes oaths to be made by an officer of a corporate trustee, or in the case of co-trustee, acting jointly by any one co-trustee.

Section 22.

States that charitable trusts shall be covered by this Act.

Section 23.

Requires uniformity of interpretation.

Section 24.

Cites this as the Uniform Trustees' Accounting Act.

Section 25.

Declares the provisions of this Act to be severable.

Section 26.

Repeals inconsistent legislation.

Section 27.

Effective date.

15. TRUSTS ACT

A. Provisions of the Revised Laws of Hawaii 1945, as amended.

Section 12571.

In case of the valid appointment or succession of any trustee to fill a vacancy in any trusteeship, whether such vacancy be caused by death, removal or otherwise, any circuit judge sitting in equity at chambers may make an order which shall vest the legal title of the trust property in the trustee so appointed. If there be a co-trustee or co-trustees, the new trustee and his co-trustee or co-trustees will hold legal title.

Section 12572.

A majority of the beneficiaries (both in number and interest) may nominate any person or corporation for trusteeship and submit such name to the judge for appointment. The judge will make such appointment if he believes that such person or corporation is fit for such trusteeship. However, if the trust instrument provides a specific method of appointment, such provisions shall be followed.

A beneficiary may be so nominated as trustee by the majority beneficiaries.

The term "majority both in number and interest of the beneficiaries of such trust", as used in the foregoing provisions shall mean a majority of the competent adult beneficiaries holding more than one-half of the value of the then vested interests held by all the competent adult beneficiaries of the trust.

The guardian of any spendthrift, non compos person or minor may execute an instrument of nomination for the best interest of the beneficiary provided that such guardian is not an adult beneficiary or married to an adult beneficiary.

The value of the then vested interests shall be determined as of the date of the presentation of such instrument of nomination to the court, in the manner provided for the appraisal of similar interests under the laws of the Territory for inheritance tax purposes and as the same would be valued for said purposes if said trust had been created in contemplation of death and such death had occurred.

When more than one such instrument is presented to the court designating the same nominee, said date of presentation for the purposes of this section shall be deemed to be the date when the last of such instruments is presented.

This section shall apply to trusts created before, as well as to those created after April 28, 1943.

Section 12573.

Any circuit judge sitting at chambers in equity and having jurisdiction over a trust, may authorize the trustee to lease or extend terms of a lease of real property for such period as may be deemed advantageous to the estate. This authorization may be given by the circuit judge after one or more of the trustees have petitioned for such, and after notice to those interested have been given.

Any lease or extension of lease shall continue for the full period given notwithstanding the trust shall have terminated.

Section 12575.

For purposes of accounting, a bond in a trust estate shall be figured in the following manner:

(1) The gross income from the bond shall be considered to be the interest received at the contract rate expressed in the bond, without deduction if the bond is redeemed, sold or otherwise disposed of below the purchase price or below its value when received, and without addition if it is redeemed, sold or otherwise disposed of above the purchase price or above its value when received.

Section 12576.

Every guardian or trustee, other than a trust company, shall invest the funds of the trust only in the investments authorized by section 8661, except insofar as the trust instrument otherwise provides or the court otherwise orders.

Nothing in this section shall be deemed to authorize any guardian or trustee other than a trust company to issue participation certificates or notes.

Section 12577.

A trustee or assignee for creditors shall have the same right, by application to a court of equity, to request and receive instructions or to have his accounts approved or be discharged from his trust, as any other fiduciary, according to the usual procedure in equity concerning trusts.

Section 12578.

In any proceedings involving a wholly or partly charitable trusts, the court may require the payment of all reasonable and necessary expenses incurred by the attorney general for the protection of beneficial interests. Such expenses may be payable from either corpus or income.

TRUSTS ACT

B. Provisions of the Uniform Trusts Act.

Section 1.

Defines person, trustee, relative, affiliate and trust.

Section 2.

(1) The depositor of any bank account created for the purpose of paying dividends, interest, wages or other benefits to employees, shall be deemed a trustee of said account for creditors to be paid therefrom, subject to revocation if such right has been reserved.

(2) The depositor of such trust may revoke same to any creditor who fails to present his claim for payment one year after due.

Section 3.

Except as in section 4, corporate trustees are prohibited from lending trust funds to itself, an affiliate, director, officer or employee; non corporate trustees are prohibited from lending funds to themselves, relatives, employers, employees, partners or business associates.

Section 4.

(1) A corporate trustee may deposit funds with itself in certain circumstances. A separate fund for securities must also be maintained.

(2) A separate fund shall be marked as such, and the income from same shall belong to the corporate trustee.

Section 5.

A trustee is prohibited from buying or selling to himself, affiliates, etc.

Section 6.

No trustee shall, as trustee of one trust, sell to itself as trustee of another trust.

Section 7.

Prohibits corporate trustees from purchasing trust shares of its own stock, or its bonds, or another's securities, or those of an affiliate.

Section 8.

Corporate stock of trustee may be voted by proxy but liability shall attach for loss resulting from failure to use reasonable care.

Section 9.

Holding stock in the name of the nominee is authorized, provided that:

(1) The trust records clearly show the facts; and

(2) The nominee shall deposit a signed statement showing the trust ownership and shall not have possession of the blank endorsed certificate, except under supervision of the trustee.

Section 10.

All powers of the trustee shall be attached to the office and shall not be personal.

Section 11.

Powers vested in three or more trustees may be exercised by a majority; but those not joined shall not be liable, and any act of dissenting trustee, if the dissenter expresses the same in writing, shall absolve the dissenter trustee from liability.

Section 12.

(1) Authorizes suits against a trustee in his representative capacity, judgments collectible from the trust property;

(2) Requires the plaintiff to serve notice within thirty days after such action on beneficiaries known to the trustees. Prescribes the methods of giving notice;

(3) Authorizes a plaintiff to hold a trustee personally liable on such contract if the contract shall not exclude such personal liabilities. The word trustee shall be deemed prima facie evidence of intent to exclude the trustee from personal liability.

Section 13.

(1) A trustee is entitled to reimbursement from trust fund for torts,

- a. If the tort was a common incident of the kind of business activities in which the trustee was properly engaged; or
- b. If neither the trustee nor any officer or employee of the trustee was guilty of personal fault in incurring the liability.

(2) If a tort, committed by a trustee, increases the value of the trust property, he shall be entitled to exoneration or reimbursement therefor;

(3) The law of liability of trustees of a charitable trust remains in effect.

Section 14.

Sets forth the tort liability of trust estates in certain specified instances.

Section 15.

Withdrawals from mingled trust funds shall be charged to the amount of cash or credit of the trustee in the mingled fund, if any, and after exhaustion of same, then to the several trusts in proportion to their several interests at the time of the withdrawal.

Section 16.

(1) The trustee of an unenforceable trust, created by deed, shall be under the duty to convey the interest in real property to the settlor, or his successor, in interest.

(2) If the intended trustee has transferred part or all of his interest, same being in the hands of a bona fide purchaser, the intended trustee shall be liable therefor less equitable offsets.

Section 17.

The settlor is authorized to relieve his trustee from any or all of his liabilities imposed by this Act or to add duties or liabilities; but no act of a settlor shall relieve a trustee from the duties imposed by sections 3, 4 and 5 of this Act.

Section 18.

Authorizes beneficiaries by written instrument to relieve trustees of duties and liabilities imposed by this Act except those imposed by sections 3, 4 and 5. Authorizes beneficiaries to release trustees from liability for past violations of this Act.

Section 19.

Authorizes the court to relieve trustees from any or all duties and restrictions placed on him by this Act or excuse the trustee who has acted honorably and reasonably for violations of this Act.

Section 20.

Prescribes liabilities for violations of this Act.

Section 21.

Requires uniformity of interpretation.

Section 22.

Cites this as the Uniform Trusts Act.

Section 23.

Declares the provisions of this Act to be severable.

Section 24.

Repeals inconsistent legislation.

Section 25.

Effective date.