

1 "Qualifying purchaser" means a purchaser of a controllable
2 electronic record or an interest in a controllable electronic
3 record that obtains control of the controllable electronic
4 record for value, in good faith, and without notice of a claim
5 of a property right in the controllable electronic record.

6 "Transferable record" has the same meaning as in:

- 7 (1) Section 201(a)(1) of the Electronic Signatures in
8 Global and National Commerce Act, title 15 United
9 States Code section 7021(a)(1), as amended; or
10 (2) Section 489E-16(a).

11 "Value" has the same meaning as in section 490:3-303(a), as
12 if references in that section to an "instrument" were references
13 to a controllable account, controllable electronic record, or
14 controllable payment intangible.

15 (b) The following definitions in other articles of this
16 chapter shall apply to this article:

17 "Account debtor". Section 490:9-102.

18 "Chattel paper". Section 490:9-102.

19 "Controllable account". Section 490:9-102.

20 "Controllable payment intangible". Section 490:9-102.

21 "Deposit account". Section 490:9-102.



1 "Electronic money". Section 490:9-102.

2 "Investment property". Section 490:9-102.

3 (c) Article 1 contains general definitions and principles
4 of construction and interpretation applicable throughout this
5 article.

6 **§490:A-103 Relation to article 9 and consumer laws.** (a)

7 If there is conflict between this article and article 9,
8 article 9 shall govern.

9 (b) A transaction subject to this article shall be subject
10 to any applicable rule of law that establishes a different rule
11 for consumers, including any other statute or rule that
12 regulates the rates, charges, agreements, and practices for
13 loans, credit sales, or other extensions of credit and any
14 consumer protection statutes or rules.

15 **§490:A-104 Rights in controllable account, controllable
16 electronic record, and controllable payment intangible.** (a)

17 This section shall apply to the acquisition and purchase of
18 rights in a controllable account or controllable payment
19 intangible, including the rights and benefits under subsections
20 (c), (d), (e), (g), and (h) of a purchaser and qualifying



1 purchaser, in the same manner this section applies to a
2 controllable electronic record.

3 (b) To determine whether a purchaser of a controllable
4 account or a controllable payment intangible is a qualifying
5 purchaser, the purchaser shall be deemed to obtain control of
6 the account or payment intangible if it obtains control of the
7 controllable electronic record that evidences the account or
8 payment intangible.

9 (c) Except as provided in this section, laws other than
10 this article shall determine whether a person acquires a right
11 in a controllable electronic record and the right the person
12 acquires.

13 (d) A purchaser of a controllable electronic record shall
14 be deemed to acquire all rights in the controllable electronic
15 record that the transferor had or had power to transfer, except
16 that a purchaser of a limited interest in a controllable
17 electronic record shall be deemed to acquire rights only to the
18 extent of the interest purchased.

19 (e) A qualifying purchaser shall be deemed to acquire its
20 rights in the controllable electronic record free of a claim of
21 a property right in the controllable electronic record.



1 (f) Except as provided in subsections (a) and (e) for a
 2 controllable account and a controllable payment intangible or
 3 law other than this article, a qualifying purchaser shall take a
 4 right to payment, right to performance, or other interest in
 5 property evidenced by the controllable electronic record subject
 6 to a claim of a property right in the right to payment, right to
 7 performance, or other interest in property.

8 (g) An action shall not be asserted against a qualifying
 9 purchaser based on both a purchase by the qualifying purchaser
 10 of a controllable electronic record and a claim of a property
 11 right in another controllable electronic record, whether the
 12 action is framed in conversion, replevin, constructive trust,
 13 equitable lien, or other theory.

14 (h) Filing of a financing statement under article 9 shall
 15 not be deemed to be a notice of a claim of a property right in a
 16 controllable electronic record.

17 **§490:A-105 Control of controllable electronic record. (a)**

18 A person shall be deemed to have control of a controllable
 19 electronic record if the electronic record; a record attached
 20 to, or logically associated with, the electronic record; or a
 21 system in which the electronic record is recorded:



- 1 (1) Gives the person:
 - 2 (A) Power to avail itself of substantially all the
 - 3 benefit from the electronic record; and
 - 4 (B) Exclusive power, subject to subsection (b), to:
 - 5 (i) Prevent others from availing themselves of
 - 6 substantially all the benefit from the
 - 7 electronic record; and
 - 8 (ii) Transfer control of the electronic record to
 - 9 another person or cause another person to
 - 10 obtain control of another controllable
 - 11 electronic record as a result of the
 - 12 transfer of the electronic record; and
- 13 (2) Enables the person to readily identify itself in any
- 14 way, including by name, identifying number,
- 15 cryptographic key, office, or account number, as
- 16 having the powers specified in paragraph (1).
- 17 (b) Subject to subsection (c), a power shall be deemed
- 18 exclusive under subsection (a) (1) (B) (i) and (ii) regardless of
- 19 whether:
 - 20 (1) The controllable electronic record; a record attached
 - 21 to, or logically associated with, the electronic

1 record; or a system in which the electronic record is
2 recorded limits the use of the electronic record or
3 has a protocol programmed to cause a change, including
4 a transfer or loss of control or a modification of
5 benefits afforded by the electronic record; or

6 (2) The power is shared with another person.

7 (c) A power of a person shall not be deemed to be shared
8 with another person under subsection (b) (2) and the person's
9 power shall not be deemed exclusive if:

10 (1) The person may exercise the power only if the power
11 also is exercised by the other person; and

12 (2) The other person:

13 (A) May exercise the power without exercise of the
14 power by the person; or

15 (B) Is the transferor to the person of an interest in
16 the controllable electronic record or a
17 controllable account or controllable payment
18 intangible evidenced by the controllable
19 electronic record.



1 (d) If a person has the powers specified in subsection
2 (a) (1) (B) (i) and (ii), the powers shall be presumed to be
3 exclusive.

4 (e) A person shall be deemed to have control of a
5 controllable electronic record if another person, other than the
6 transferor to the person of an interest in the controllable
7 electronic record or a controllable account or controllable
8 payment intangible evidenced by the controllable electronic
9 record:

10 (1) Has control of the electronic record and acknowledges
11 that it has control on behalf of the person; or

12 (2) Obtains control of the electronic record after having
13 acknowledged that it will obtain control of the
14 electronic record on behalf of the person.

15 (f) A person having control under this section shall not
16 be required to acknowledge that it has control on behalf of
17 another person.

18 (g) If a person acknowledges that it has or will obtain
19 control on behalf of another person, unless the person otherwise
20 agrees or law other than this article or article 9 otherwise
21 provides, the person shall not owe any duty to the other person



1 and shall not be required to confirm the acknowledgment to any
2 other person.

3 **§490:A-106 Discharge of account debtor on controllable**

4 **account or controllable payment intangible.** (a) An account

5 debtor on a controllable account or controllable payment

6 intangible may discharge its obligation by paying:

7 (1) The person having control of the controllable

8 electronic record that evidences the controllable

9 account or controllable payment intangible; or

10 (2) Except as provided in subsection (b), a person that

11 formerly had control of the controllable electronic

12 record.

13 (b) Subject to subsection (d), the account debtor shall

14 not discharge its obligation by paying a person that formerly

15 had control of the controllable electronic record if the account

16 debtor receives a notification that:

17 (1) Is signed by a person that formerly had control or the

18 person to which control was transferred;

19 (2) Reasonably identifies the controllable account or

20 controllable payment intangible;



- 1 (3) Notifies the account debtor that control of the
2 controllable electronic record that evidences the
3 controllable account or controllable payment
4 intangible was transferred;
- 5 (4) Identifies the transferee, in any reasonable way,
6 including by name, identifying number, cryptographic
7 key, office, or account number; and
- 8 (5) Provides a commercially reasonable method by which the
9 account debtor shall pay the transferee.
- 10 (c) After receipt of a notification that complies with
11 subsection (b), the account debtor may discharge its obligation
12 by paying in accordance with the notification and shall not
13 discharge the obligation by paying a person that formerly had
14 control.
- 15 (d) Subject to subsection (h), notification shall be
16 deemed ineffective under subsection (b):
- 17 (1) Unless, before the notification is sent, the account
18 debtor and the person that, at that time, had control
19 of the controllable electronic record that evidences
20 the controllable account or controllable payment
21 intangible agree in a signed record to a commercially



1 reasonable method by which a person may furnish
2 reasonable proof that control has been transferred;

3 (2) To the extent an agreement between the account debtor
4 and seller of a payment intangible limits the account
5 debtor's duty to pay a person other than the seller
6 and the limitation is effective under law other than
7 this article; or

8 (3) At the option of the account debtor if the
9 notification notifies the account debtor to:

10 (A) Divide a payment;

11 (B) Make less than the full amount of an installment
12 or other periodic payment; or

13 (C) Pay any part of a payment by more than one method
14 or to more than one person.

15 (e) Subject to subsection (h), if requested by the account
16 debtor, the person giving the notification under subsection (b)
17 shall seasonably furnish reasonable proof, using the method in
18 the agreement referred to in subsection (d)(1), that control of
19 the controllable electronic record has been transferred. Unless
20 the person complies with the request, the account debtor may
21 discharge its obligation by paying a person that formerly had



1 control, even if the account debtor has received a notification
2 under subsection (b).

3 (f) A person shall be deemed to have furnished reasonable
4 proof under subsection (e) that control has been transferred if
5 the person demonstrates, using the method in the agreement
6 referred to in subsection (d)(1), that the transferee has the
7 power to:

8 (1) Avail itself of substantially all the benefit from the
9 controllable electronic record;

10 (2) Prevent others from availing themselves of
11 substantially all the benefit from the controllable
12 electronic record; and

13 (3) Transfer the powers specified in paragraphs (1) and
14 (2) to another person.

15 (g) Subject to subsection (h), an account debtor shall not
16 waive or vary its rights under subsections (d)(1) and (e) or its
17 option under subsection (d)(3).

18 (h) This section shall be subject to law other than this
19 article that establishes a different rule for an account debtor
20 who is an individual and who incurred the obligation primarily
21 for personal, family, or household purposes.



1 **§490:A-107 Governing law.** (a) Except as provided in
2 subsection (b), the local law of a controllable electronic
3 record's jurisdiction shall govern a matter covered by this
4 article.

5 (b) For a controllable electronic record that evidences a
6 controllable account or controllable payment intangible, the
7 local law of the controllable electronic record's jurisdiction
8 shall govern a matter covered by section 490:A-106 unless an
9 effective agreement determines that the local law of another
10 jurisdiction shall govern.

11 (c) The following rules shall determine a controllable
12 electronic record's jurisdiction under this section:

13 (1) If the controllable electronic record, or a record
14 attached to, or logically associated with, the
15 controllable electronic record and readily available
16 for review, expressly provides that a particular
17 jurisdiction is the controllable electronic record's
18 jurisdiction for purposes of this chapter or article,
19 that jurisdiction shall be the controllable electronic
20 record's jurisdiction;



- 1 (2) If paragraph (1) does not apply and the rules of the
2 system in which the controllable electronic record is
3 recorded are readily available for review and
4 expressly provide that a particular jurisdiction is
5 the controllable electronic record's jurisdiction for
6 purposes of this chapter or article, that jurisdiction
7 shall be the controllable electronic record's
8 jurisdiction;
- 9 (3) If paragraphs (1) and (2) do not apply and the
10 controllable electronic record, or a record attached
11 to, or logically associated with, the controllable
12 electronic record and readily available for review,
13 expressly provides that the controllable electronic
14 record is governed by the law of a particular
15 jurisdiction, that jurisdiction shall be the
16 controllable electronic record's jurisdiction;
- 17 (4) If paragraphs (1), (2), and (3) do not apply and the
18 rules of the system in which the controllable
19 electronic record is recorded are readily available
20 for review and expressly provide that the controllable
21 electronic record or the system is governed by the law



1 of a particular jurisdiction, that jurisdiction shall
2 be the controllable electronic record's jurisdiction;
3 and

4 (5) If paragraphs (1) through (4) do not apply, the
5 controllable electronic record's jurisdiction shall be
6 the District of Columbia.

7 (d) If subsection (c)(5) applies and article 12 of the
8 Uniform Commercial Code Amendments (2022) is not in effect in
9 the District of Columbia without material modification, the
10 governing law for a matter covered by this article shall be the
11 law of the District of Columbia as though article 12 of the
12 Uniform Commercial Code Amendments (2022) were in effect in the
13 District of Columbia without material modification.

14 (e) To the extent subsections (a) and (b) provide that the
15 local law of the controllable electronic record's jurisdiction
16 governs a matter covered by this article, that law shall govern
17 regardless of whether the matter or a transaction to which the
18 matter relates does not bear any relation to the controllable
19 electronic record's jurisdiction.



1 (f) The rights acquired under section 490:A-104 by a
2 purchaser or qualifying purchaser shall be governed by the law
3 applicable under this section at the time of purchase.

4 **ARTICLE B**

5 **TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS**

6 **(2022)**

7 **PART 1. GENERAL PROVISIONS AND DEFINITIONS**

8 **§490:B-101 Short title.** This article may be cited as
9 Transitional Provisions for Uniform Commercial Code Amendments
10 (2022).

11 **§490:B-102 Definitions.** (a) In this article:

12 "Adjustment date" means July 1, 2025, or the date that is
13 one year after the effective date of this Act, whichever is
14 later.

15 "Article A property" means a controllable account,
16 controllable electronic record, or controllable payment
17 intangible.

18 (b) The following definitions in other articles of this
19 chapter shall apply to this article:

20 "Controllable account". Section 490:9-102.

21 "Controllable electronic record". Section 490:A-102.



1 "Controllable payment intangible". Section 490:9-102.

2 "Electronic money". Section 490:9-102.

3 "Financing statement". Section 490:9-102.

4 (c) Article 1 contains general definitions and principles
5 of construction and interpretation applicable throughout this
6 article.

7 **PART 2. GENERAL TRANSITIONAL PROVISION**

8 **§490:B-201 Saving clause.** Except as provided in part 3, a
9 transaction validly entered into before the effective date of
10 this article and the rights, duties, and interests flowing from
11 the transaction shall remain valid thereafter and may be
12 terminated, completed, consummated, or enforced as required or
13 permitted by law other than this chapter or, if applicable, this
14 chapter, as though this article had not taken effect.

15 **PART 3. TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND A**

16 **§490:B-301 Saving clause.** (a) Except as provided in this
17 part, article 9 as amended by Act , Session Laws of Hawaii
18 2023, and article A shall apply to a transaction, lien, or other
19 interest in property, regardless of whether the transaction,
20 lien, or interest was entered into, created, or acquired before
21 the effective date of this article.



1 (b) Except as provided in subsection (c) and sections
2 490:B-302 through 490:B-306:

3 (1) A transaction, lien, or interest in property that was
4 validly entered into, created, or transferred before
5 the effective date of this article and was not
6 governed by this chapter, but would be subject to
7 article 9, as amended by Act , Session Laws of
8 Hawaii 2023, or article A if it had been entered into,
9 created, or transferred on or after the effective date
10 of this article, including the rights, duties, and
11 interests flowing from the transaction, lien, or
12 interest, shall remain valid on and after the
13 effective date of this article; and

14 (2) The transaction, lien, or interest may be terminated,
15 completed, consummated, and enforced as required or
16 permitted by this article or by the law that would
17 apply if this article had not taken effect.

18 (c) This article shall not affect an action, case, or
19 proceeding commenced before the effective date of this article.

20 **§490:B-302 Security interest perfected before the**

21 **effective date.** (a) A security interest that is enforceable



1 and perfected immediately before the effective date of this
2 article shall be a perfected security interest under this
3 article if, on the effective date of this article, the
4 requirements for enforceability and perfection under this
5 article are satisfied without further action.

6 (b) If a security interest is enforceable and perfected
7 immediately before the effective date of this article, but the
8 requirements for enforceability or perfection under this article
9 are not satisfied on the effective date of this article, the
10 security interest:

11 (1) Shall be deemed a perfected security interest until
12 the earlier of the time perfection would have ceased
13 under the law in effect immediately before the
14 effective date of this article or the adjustment date;

15 (2) Shall remain enforceable thereafter only if the
16 security interest satisfies the requirements for
17 enforceability under section 490:9-203, as amended by
18 Act , Session Laws of Hawaii 2023, before the
19 adjustment date; and



1 (3) Shall remain perfected thereafter only if the
2 requirements for perfection under this article are
3 satisfied before the time specified in paragraph (1).

4 **§490:B-303 Security interest unperfected before the**
5 **effective date.** A security interest that is enforceable
6 immediately before the effective date of this article but is
7 unperfected at that time:

8 (1) Shall remain an enforceable security interest until
9 the adjustment date;

10 (2) Shall remain enforceable thereafter if the security
11 interest becomes enforceable under section 490:9-203,
12 as amended by Act , Session Laws of Hawaii 2023, on
13 the effective date of this article or before the
14 adjustment date; and

15 (3) Shall become perfected:

16 (A) Without further action, on the effective date of
17 this article if the requirements for perfection
18 under this article are satisfied before or at
19 that time; or



1 (B) When the requirements for perfection are
2 satisfied if the requirements are satisfied after
3 that time.

4 **§490:B-304 Effectiveness of actions taken before the**
5 **effective date.** (a) If action, other than the filing of a
6 financing statement, is taken before the effective date of this
7 article and the action would have resulted in perfection of the
8 security interest had the security interest become enforceable
9 before the effective date of this article, the action shall be
10 effective to perfect a security interest that attaches under
11 this article before the adjustment date. An attached security
12 interest shall become unperfected on the adjustment date unless
13 the security interest becomes a perfected security interest
14 under this article before the adjustment date.

15 (b) The filing of a financing statement before the
16 effective date of this article shall be effective to perfect a
17 security interest on the effective date of this article to the
18 extent that the filing would satisfy the requirements for
19 perfection under this article.

20 (c) The taking of an action before the effective date of
21 this article shall be sufficient for the enforceability of a



1 security interest on the effective date of this article if the
2 action would satisfy the requirements for enforceability under
3 this article.

4 **§490:B-305 Priority.** (a) Subject to subsections (b) and
5 (c), this article shall determine the priority of conflicting
6 claims to collateral.

7 (b) Subject to subsection (c), if the priorities of claims
8 to collateral were established before the effective date of this
9 article, article 9, as in effect before the effective date of
10 this article, shall determine priority.

11 (c) On the adjustment date, to the extent the priorities
12 determined by article 9, as amended by Act , Session Laws of
13 Hawaii 2023, modify the priorities established before the
14 effective date of this article, the priorities of claims to
15 article A property and electronic money established before the
16 effective date of this article shall cease to apply.

17 **§490:B-306 Priority of claims when priority rules of**
18 **article 9 do not apply.** (a) Subject to subsections (b) and
19 (c), article A shall determine the priority of conflicting
20 claims to article A property when the priority rules of article



1 9, as amended by Act , Session Laws of Hawaii 2023, do not
2 apply.

3 (b) Subject to subsection (c), when the priority rules of
4 article 9, as amended by Act , Session Laws of Hawaii 2023,
5 do not apply and the priorities of claims to article A property
6 were established before the effective date of this article, law
7 other than article A shall determine priority.

8 (c) When the priority rules of article 9, as amended by
9 Act , Session Laws of Hawaii 2023, do not apply, to the
10 extent the priorities determined by this article modify the
11 priorities established before the effective date of this
12 article, the priorities of claims to article A property
13 established before the effective date of this article shall
14 cease to apply on the adjustment date.

15 **PART 4. EFFECTIVE DATE**

16 **§490:B-401 Effective date.** This article shall take effect
17 on the effective date of this Act."

18 2. By adding three new sections to part 1, subpart 1, of
19 article 9 to be appropriately designated and to read:

20 "§490:9-A Control of electronic money. (a) A person
21 shall be deemed to have control of electronic money if:



1 (1) The electronic money; a record attached to, or
2 logically associated with, the electronic money; or a
3 system in which the electronic money is recorded gives
4 the person:

5 (A) Power to avail itself of substantially all the
6 benefit from the electronic money; and

7 (B) Exclusive power, subject to subsection (b), to:

8 (i) Prevent others from availing themselves of
9 substantially all the benefit from the
10 electronic money; and

11 (ii) Transfer control of the electronic money to
12 another person or cause another person to
13 obtain control of other electronic money as
14 a result of the transfer of the electronic
15 money; and

16 (2) The electronic money; a record attached to, or
17 logically associated with, the electronic money; or a
18 system in which the electronic money is recorded
19 enables the person to readily identify itself in any
20 way, including by name, identifying number,



1 cryptographic key, office, or account number, as
2 having the powers under paragraph (1).

3 (b) Subject to subsection (c), a power shall be deemed
4 exclusive under subsection (a) (1) (B) (i) and (ii) regardless of
5 whether:

6 (1) The electronic money; a record attached to, or
7 logically associated with, the electronic money; or a
8 system in which the electronic money is recorded
9 limits the use of the electronic money or has a
10 protocol programmed to cause a change, including a
11 transfer or loss of control; or

12 (2) The power is shared with another person.

13 (c) A power of a person shall not be deemed to be shared
14 with another person under subsection (b) (2) and the person's
15 power shall not be deemed exclusive if:

16 (1) The person may exercise the power only if the power is
17 also exercised by the other person; and

18 (2) The other person:

19 (A) May exercise the power without exercise of the
20 power by the person; or



1 (B) Is the transferor to the person of an interest in
2 the electronic money.

3 (d) If a person has the powers specified in subsection
4 (a) (1) (B) (i) and (ii), the powers shall be presumed to be
5 exclusive.

6 (e) A person shall be deemed to have control of electronic
7 money if another person, other than the transferor to the person
8 of an interest in the electronic money:

9 (1) Has control of the electronic money and acknowledges
10 that it has control on behalf of the person; or

11 (2) Obtains control of the electronic money after having
12 acknowledged that it will obtain control of the
13 electronic money on behalf of the person.

14 **§490:9-B Control of controllable electronic record,**
15 **controllable account, or controllable payment intangible.** (a)

16 A secured party shall be deemed to have control of a
17 controllable electronic record as provided in section 490:A-105.

18 (b) A secured party shall be deemed to have control of a
19 controllable account or controllable payment intangible if the
20 secured party has control of the controllable electronic record



1 that evidences the controllable account or controllable payment
2 intangible.

3 **§490:9-C No requirement to acknowledge or confirm; no**
4 **duties.** (a) A person having control under section 490:9-104,
5 490:9-105, or 490:9-A shall not be required to acknowledge that
6 it has control on behalf of another person.

7 (b) If a person acknowledges that it has or will obtain
8 control on behalf of another person, unless the person otherwise
9 agrees or law other than this article otherwise provides, the
10 person shall not owe any duty to the other person and shall not
11 be required to confirm the acknowledgment to any other person."

12 3. By adding two new sections to part 3, subpart 1, of
13 article 9 to be appropriately designated and to read:

14 **"§490:9-D Law governing perfection and priority of**
15 **security interests in chattel paper.** (a) Except as provided in
16 subsection (d), if chattel paper is evidenced only by an
17 authoritative electronic copy of the chattel paper or is
18 evidenced by an authoritative electronic copy and an
19 authoritative tangible copy, the local law of the chattel
20 paper's jurisdiction shall govern perfection, the effect of
21 perfection or nonperfection, and the priority of a security



1 interest in the chattel paper, regardless of whether the
2 transaction bears any relation to the chattel paper's
3 jurisdiction.

4 (b) The following rules shall determine the chattel
5 paper's jurisdiction under this section:

6 (1) If the authoritative electronic copy of the record
7 evidencing chattel paper, or a record attached to, or
8 logically associated with, the electronic copy and
9 readily available for review, expressly provides that
10 a particular jurisdiction is the chattel paper's
11 jurisdiction for purposes of this chapter, article, or
12 part, that jurisdiction shall be the chattel paper's
13 jurisdiction;

14 (2) If paragraph (1) does not apply and the rules of the
15 system in which the authoritative electronic copy is
16 recorded are readily available for review and
17 expressly provide that a particular jurisdiction is
18 the chattel paper's jurisdiction for purposes of this
19 chapter, article, or part, that jurisdiction shall be
20 the chattel paper's jurisdiction;



1 (3) If paragraphs (1) and (2) do not apply and the
2 authoritative electronic copy, or a record attached
3 to, or logically associated with, the electronic copy
4 and readily available for review, expressly provides
5 that the chattel paper is governed by the law of a
6 particular jurisdiction, that jurisdiction shall be
7 the chattel paper's jurisdiction;

8 (4) If paragraphs (1), (2), and (3) do not apply and the
9 rules of the system in which the authoritative
10 electronic copy is recorded are readily available for
11 review and expressly provide that the chattel paper or
12 the system is governed by the law of a particular
13 jurisdiction, that jurisdiction shall be the chattel
14 paper's jurisdiction; and

15 (5) If paragraphs (1) through (4) do not apply, the
16 chattel paper's jurisdiction shall be the jurisdiction
17 in which the debtor is located.

18 (c) If an authoritative tangible copy of a record
19 evidences chattel paper and the chattel paper is not evidenced
20 by an authoritative electronic copy, while the authoritative
21 tangible copy of the record evidencing chattel paper is located



1 in a jurisdiction, the local law of that jurisdiction shall
2 govern:

3 (1) Perfection of a security interest in the chattel paper
4 by possession under section 490:9-F; and

5 (2) The effect of perfection or nonperfection and the
6 priority of a security interest in the chattel paper.

7 (d) The local law of the jurisdiction in which the debtor
8 is located shall govern perfection of a security interest in
9 chattel paper by filing.

10 **§490:9-E Law governing perfection and priority of security**
11 **interests in controllable accounts, controllable electronic**
12 **records, and controllable payment intangibles.** (a) Except as
13 provided in subsection (b), the local law of the controllable
14 electronic record's jurisdiction specified in sections
15 490:A-107(c) and (d) shall govern perfection, the effect of
16 perfection or nonperfection, and the priority of a security
17 interest in a controllable electronic record and a security
18 interest in a controllable account or controllable payment
19 intangible evidenced by the controllable electronic record.

20 (b) The local law of the jurisdiction in which the debtor
21 is located shall govern:



1 (1) Perfection of a security interest in a controllable
2 account, controllable electronic record, or
3 controllable payment intangible by filing; and

4 (2) Automatic perfection of a security interest in a
5 controllable payment intangible created by a sale of
6 the controllable payment intangible."

7 4. By adding a new section to part 3, subpart 2, of
8 article 9 to be appropriately designated and to read:

9 "**§490:9-F Perfection by possession and control of chattel**

10 **paper.** (a) A secured party may perfect a security interest in
11 chattel paper by taking possession of each authoritative
12 tangible copy of the record evidencing the chattel paper and
13 obtaining control of each authoritative electronic copy of the
14 electronic record evidencing the chattel paper.

15 (b) A security interest shall be deemed perfected under
16 subsection (a) no earlier than the time the secured party takes
17 possession and obtains control and shall be deemed to remain
18 perfected under subsection (a) only while the secured party
19 retains possession and control.



1 (c) Sections 490:9-313(c) and 490:9-313(f) through (i)
2 shall apply to perfection by possession of an authoritative
3 tangible copy of a record evidencing chattel paper."

4 5. By adding a new section to part 3, subpart 3, of
5 article 9 to be appropriately designated and to read:

6 "§490:9-G Priority of security interest in controllable
7 account, controllable electronic record, and controllable
8 payment intangible. A security interest in a controllable
9 account, controllable electronic record, or controllable payment
10 intangible held by a secured party having control of the
11 account, electronic record, or payment intangible shall have
12 priority over a conflicting security interest held by a secured
13 party that does not have control."

14 SECTION 2. Section 490:1-201, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Subject to definitions contained in other articles of
17 this chapter that apply to particular articles or parts thereof:

18 "Action", in the sense of a judicial proceeding, includes
19 recoupment, counterclaim, set-off, suit in equity, and any other
20 proceeding in which rights are determined.



1 "Aggrieved party" means a party entitled to pursue a
2 remedy.

3 "Agreement", as distinguished from "contract", means the
4 bargain of the parties in fact, as found in their language or
5 inferred from other circumstances, including course of
6 performance, course of dealing, or usage of trade as provided in
7 section 490:1-303.

8 "Bank" means a person engaged in the business of banking
9 and includes a savings bank, savings and loan association,
10 credit union, financial services loan company, and trust
11 company.

12 "Bearer" means a person in control of a negotiable
13 electronic document of title or a person in possession of a
14 negotiable instrument, negotiable tangible document of title, or
15 certificated security that is payable to bearer or indorsed in
16 blank.

17 "Bill of lading" means a document of title evidencing the
18 receipt of goods for shipment issued by a person engaged in the
19 business of directly or indirectly transporting or forwarding
20 goods. [~~The term~~] "Bill of lading" does not include a warehouse
21 receipt.



1 "Branch" includes a separately incorporated foreign branch
2 of a bank.

3 "Burden of establishing" a fact means the burden of
4 persuading the trier of fact that the existence of the fact is
5 more probable than its nonexistence.

6 "Buyer in ordinary course of business" means a person that
7 buys goods in good faith, without knowledge that the sale
8 violates the rights of another person in the goods, and in the
9 ordinary course from a person, other than a pawnbroker, in the
10 business of selling goods of that kind. A person buys goods in
11 the ordinary course if the sale to the person comports with the
12 usual or customary practices in the kind of business in which
13 the seller is engaged or with the seller's own usual or
14 customary practices. A person that sells oil, gas, or other
15 minerals at the wellhead or minehead is a person in the business
16 of selling goods of that kind. A buyer in ordinary course of
17 business may buy for cash, by exchange of other property, or on
18 secured or unsecured credit, and may acquire goods or documents
19 of title under a preexisting contract for sale. Only a buyer
20 that takes possession of the goods or has a right to recover the
21 goods from the seller under article 2 may be a buyer in ordinary



1 course of business. "Buyer in the ordinary course of business"
2 does not include a person that acquires goods in a transfer in
3 bulk or as security for or in total or partial satisfaction of a
4 money debt.

5 "Conspicuous", with reference to a term, means so written,
6 displayed, or presented that, based on the totality of the
7 circumstances, a reasonable person against which it is to
8 operate ought to have noticed it. Whether a term is
9 "conspicuous" or not is a decision for the court. [~~Conspicuous~~
10 ~~terms include the following:~~

11 ~~(1) A heading in capitals equal to or greater in size than~~
12 ~~the surrounding text, or in contrasting type, font, or~~
13 ~~color to the surrounding text of the same or lesser~~
14 ~~size; and~~

15 ~~(2) Language in the body of a record or display in larger~~
16 ~~type than the surrounding text, or in contrasting~~
17 ~~type, font, or color to the surrounding text of the~~
18 ~~same size, or set off from surrounding text of the~~
19 ~~same size by symbols or other marks that call~~
20 ~~attention to the language.]~~



1 "Consumer" means an individual who enters into a
2 transaction primarily for personal, family, or household
3 purposes.

4 "Contract", as distinguished from "agreement", means the
5 total legal obligation that results from the parties' agreement
6 as determined by this chapter and as supplemented by any other
7 applicable law.

8 "Creditor" includes a general creditor, a secured creditor,
9 a lien creditor, and any representative of creditors, including
10 an assignee for the benefit of creditors, a trustee in
11 bankruptcy, a receiver in equity, and an executor or
12 administrator of an insolvent debtor's or assignor's estate.

13 "Defendant" includes a person in the position of defendant
14 in a counterclaim, cross-claim, or third-party claim.

15 "Delivery", with respect to an electronic document of
16 title, means voluntary transfer of control^[7] and, with respect
17 to an instrument, a tangible document of title, or an
18 authoritative tangible copy of a record evidencing chattel
19 paper, means voluntary transfer of possession.

20 "Document of title" means a record:



1 (1) That in the regular course of business or financing is
2 treated as adequately evidencing that the person in
3 possession or control of the record is entitled to
4 receive, control, hold, and dispose of the record and
5 the goods the record covers; and

6 (2) That purports to be issued by or addressed to a bailee
7 and to cover goods in the bailee's possession which
8 are either identified or are fungible portions of an
9 identified mass.

10 [~~The term~~] "Document of title" includes a bill of lading,
11 transport document, dock warrant, dock receipt, warehouse
12 receipt, and order for delivery of goods. An electronic
13 document of title means a document of title evidenced by a
14 record consisting of information stored in an electronic medium.
15 A tangible document of title means a document of title evidenced
16 by a record consisting of information that is inscribed on a
17 tangible medium.

18 "Electronic" means relating to technology having
19 electrical, digital, magnetic, wireless, optical,
20 electromagnetic, or similar capabilities.



1 "Fault" means a default, breach, or wrongful act or
2 omission.

3 "Fungible goods" means:

4 (1) Goods that any unit, by nature or usage of trade, is
5 the equivalent of any other like unit; or

6 (2) Goods that by agreement are treated as equivalent.

7 "Genuine" means free of forgery or counterfeiting.

8 "Good faith" means honesty in fact.

9 "Holder" means:

10 (1) The person in possession of a negotiable instrument
11 that is payable either to bearer or to an identified
12 person that is the person in possession;

13 (2) The person in possession of a negotiable tangible
14 document of title if the goods are deliverable either
15 to bearer or to the order of the person in possession;
16 or

17 (3) The person in control, other than pursuant to section
18 490:7-106(g), of a negotiable electronic document of
19 title.



1 "Insolvency proceeding" includes an assignment for the
2 benefit of creditors or other proceeding intended to liquidate
3 or rehabilitate the estate of the person involved.

4 "Insolvent" means:

- 5 (1) Having generally ceased to pay debts in the ordinary
6 course of business other than as a result of bona fide
7 dispute;
- 8 (2) Being unable to pay debts as they become due; or
- 9 (3) Being insolvent within the meaning of federal
10 bankruptcy law.

11 "Money" means a medium of exchange that is currently
12 authorized or adopted by a domestic or foreign government. [~~The~~
13 ~~term~~] "Money" includes a monetary unit of account established by
14 an intergovernmental organization or by agreement between two or
15 more countries. "Money" does not include an electronic record
16 that is a medium of exchange recorded and transferable in a
17 system that existed and operated for the medium of exchange
18 before the medium of exchange was authorized or adopted by the
19 government.

20 "Organization" means a person other than an individual.



1 "Party", as distinct from a "third party", means a person
2 that has engaged in a transaction or made an agreement subject
3 to this chapter.

4 "Person" means an individual, corporation, business trust,
5 estate, trust, partnership, limited liability company,
6 association, joint venture, government, governmental
7 subdivision, agency, or instrumentality, [~~public corporation,~~]
8 or any other legal or commercial entity. "Person" includes a
9 protected series, however denominated, of an entity if the
10 protected series is established under any law other than this
11 chapter that limits, or limits if conditions specified under the
12 law are satisfied, the ability of a creditor of the entity or of
13 any other protected series of the entity to satisfy a claim from
14 assets of the protected series.

15 "Present value" means the amount as of a date certain of
16 one or more sums payable in the future, discounted to the date
17 certain by use of either an interest rate specified by the
18 parties if that rate is not manifestly unreasonable at the time
19 the transaction is entered into or, if an interest rate is not
20 so specified, a commercially reasonable rate that takes into



1 account the facts and circumstances at the time the transaction
2 is entered into.

3 "Purchase" means taking by sale, lease, discount,
4 negotiation, mortgage, pledge, lien, security interest, issue or
5 reissue, gift, or any other voluntary transaction creating an
6 interest in property.

7 "Purchaser" means a person that takes by purchase.

8 "Record" means information that is inscribed on a tangible
9 medium or that is stored in an electronic or other medium and is
10 retrievable in perceivable form.

11 "Remedy" means any remedial right to which an aggrieved
12 party is entitled with or without resort to a tribunal.

13 "Representative" means a person empowered to act for
14 another, including an agent, an officer of a corporation or
15 association, and a trustee, executor, or administrator of an
16 estate.

17 "Right" includes remedy.

18 "Security interest" means an interest in personal property
19 or fixtures that secures payment or performance of an
20 obligation. "Security interest" includes any interest of a
21 consignor and a buyer of accounts, chattel paper, a payment



1 intangible, or a promissory note in a transaction that is
2 subject to article 9. "Security interest" does not include the
3 special property interest of a buyer of goods on identification
4 of those goods to a contract for sale under section 490:2-401,
5 but a buyer may also acquire a "security interest" by complying
6 with article 9. Except as otherwise provided in section 490:2-
7 505, the right of a seller or lessor of goods under article 2 or
8 2A to retain or acquire possession of the goods is not a
9 "security interest", but a seller or lessor may also acquire a
10 "security interest" by complying with article 9. The retention
11 or reservation of title by a seller of goods notwithstanding
12 shipment or delivery to the buyer under section 490:2-401 is
13 limited in effect to a reservation of a "security interest".
14 Whether a transaction in the form of a lease creates a "security
15 interest" is determined pursuant to section 490:1-203.

16 "Send", in connection with a [writing,] record[7] or
17 [notice] notification, means:

- 18 (1) To deposit in the mail [~~or~~], deliver for transmission,
19 or transmit by any other usual means of communication,
20 with postage or cost of transmission provided for [~~and~~
21 ~~properly addressed and, in the case of an instrument,~~



1 ~~to an address specified thereon or otherwise agreed,~~
2 ~~or if there be none],~~ addressed to any address
3 reasonable under the circumstances; or

4 (2) ~~[In any other way to cause to be received any record~~
5 ~~or notice within the time it would have arrived if~~
6 ~~properly sent.]~~ To cause the record or notification to
7 be received within the time it would have been
8 received if properly sent under paragraph (1).

9 "Signed" ~~[includes any symbol executed or adopted with~~
10 ~~present intention to adopt or accept a writing.],~~ "sign",
11 "signing", or "signature" means, with present intent to
12 authenticate or adopt a record:

13 (1) Execute or adopt a tangible symbol; or

14 (2) Attach to, or logically associate with, the record an
15 electronic symbol, sound, or process.

16 "State" means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of
19 the United States.

20 "Surety" includes a guarantor or other secondary obligor.



1 "Term" means a portion of an agreement that relates to a
2 particular matter.

3 "Unauthorized signature" means a signature made without
4 actual, implied, or apparent authority. [~~The term~~]

5 "Unauthorized signature" includes a forgery.

6 "Warehouse receipt" means a document of title issued by a
7 person engaged in the business of storing goods for hire.

8 "Writing" includes printing, typewriting, or any other
9 intentional reduction to tangible form. "Written" has a
10 corresponding meaning."

11 SECTION 3. Section 490:1-204, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~§490:1-204~~ **Value**. Except as otherwise provided in
14 articles 3, 4, [~~and~~] 5, 6, and A, a person gives value for
15 rights if the person acquires them:

16 (1) In return for a binding commitment to extend credit or
17 for the extension of immediately available credit,
18 whether or not drawn upon and whether or not a
19 charge-back is provided for in the event of
20 difficulties in collection;



- 1 (2) As security for, or in total or partial satisfaction
- 2 of, a preexisting claim;
- 3 (3) By accepting delivery under a preexisting contract for
- 4 purchase; or
- 5 (4) In return for any consideration sufficient to support
- 6 a simple contract."

7 SECTION 4. Section 490:1-301, Hawaii Revised Statutes, is
 8 amended by amending subsection (c) to read as follows:

9 "(c) If one of the following provisions of the Uniform
 10 Commercial Code specifies the applicable law, that provision
 11 [~~governs~~] shall govern and a contrary agreement [~~is~~] shall be
 12 effective only to the extent permitted by the law so specified:

- 13 (1) Section 490:2-402;
- 14 (2) Sections 490:2A-105 and 490:2A-106;
- 15 (3) Section 490:4-102;
- 16 (4) Section 490:4A-507;
- 17 (5) Section 490:5-116;
- 18 (6) Section 490:8-110; [~~and~~]
- 19 (7) Sections 490:9-301 through 490:9-307[~~-~~]; and
- 20 (8) Section 490:A-107."



1 SECTION 5. Section 490:1-306, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§490:1-306 Waiver or renunciation of claim or right after**
4 **breach.** A claim or right arising out of an alleged breach may
5 be discharged in whole or in part without consideration by
6 agreement of the aggrieved party in [~~an authenticated~~] a signed
7 record."

8 SECTION 6. Section 490:2-102, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§490:2-102 Scope; certain security and other transactions**
11 **excluded from this article.** (1) Unless the context otherwise
12 requires, and except as provided in subsection (3), this article
13 [~~applies~~] shall apply to transactions in goods [~~; it does not~~
14 ~~apply to any transaction which although in the form of an~~
15 ~~unconditional contract to sell or present sale is intended to~~
16 ~~operate only as a security transaction nor does this article~~
17 ~~impair or repeal any statute regulating sales to consumers,~~
18 ~~farmers or other specified classes of buyers.] and, in the case
19 of a hybrid transaction, to the extent provided in subsection
20 (2).~~

21 (2) In a hybrid transaction:



1 (a) If the sale-of-goods aspects do not predominate, only
2 the provisions of this article that relate primarily
3 to the sale-of-goods aspects of the transaction shall
4 apply, and the provisions that relate primarily to the
5 transaction as a whole shall not apply; and

6 (b) If the sale-of-goods aspects predominate, this article
7 shall apply to the transaction but shall not preclude
8 application in appropriate circumstances of other law
9 to aspects of the transaction that do not relate to
10 the sale of goods.

11 (3) This article shall not:

12 (a) Apply to a transaction that, even though in the form
13 of an unconditional contract to sell or present sale,
14 operates only to create a security interest; or

15 (b) Impair or repeal any statute regulating sales to
16 consumers, farmers, or other specified classes of
17 buyers."

18 SECTION 7. Section 490:2-106, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§490:2-106 Definitions: "contract"; "agreement";**
21 **"contract for sale"; "sale"; "present sale"; "conforming" to**



1 **contract; "termination"; "cancellation" [-]; "hybrid**
2 **transaction".** (1) In this article unless the context otherwise
3 requires "contract" and "agreement" are limited to those
4 relating to the present or future sale of goods. "Contract for
5 sale" includes both a present sale of goods and a contract to
6 sell goods at a future time. A "sale" consists in the passing
7 of title from the seller to the buyer for a price (section
8 490:2-401). A "present sale" means a sale which is accomplished
9 by the making of the contract.

10 (2) Goods or conduct including any part of a performance
11 are "conforming" or conform to the contract when they are in
12 accordance with the obligations under the contract.

13 (3) "Termination" occurs when either party pursuant to a
14 power created by agreement or law puts an end to the contract
15 otherwise than for its breach. On "termination" all obligations
16 which are still executory on both sides are discharged but any
17 right based on prior breach or performance survives.

18 (4) "Cancellation" occurs when either party puts an end to
19 the contract for breach by the other and its effect is the same
20 as that of "termination" except that the cancelling party also



1 retains any remedy for breach of the whole contract or any
2 unperformed balance.

3 (5) "Hybrid transaction" means a single transaction
4 involving the sale of goods and:

5 (a) The provision of services;

6 (b) The lease of other goods; or

7 (c) The sale, lease, or license of property other than
8 goods."

9 SECTION 8. Section 490:2-201, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§490:2-201 Formal requirements; statute of frauds. (1)**

12 Except as otherwise provided in this section, a contract for the
13 sale of goods for the price of \$500 or more is not enforceable
14 by way of action or defense unless there is [~~some writing~~] a
15 record sufficient to indicate that a contract for sale has been
16 made between the parties and signed by the party against whom
17 enforcement is sought or by [~~his~~] the party's authorized agent
18 or broker. A [~~writing is~~] record shall not be deemed
19 insufficient because it omits or incorrectly states a term
20 agreed upon but the contract [~~is~~] shall not be enforceable under



1 this ~~[paragraph]~~ subsection beyond the quantity of goods shown
2 in ~~[such writing.]~~ the record.

3 (2) Between merchants if within a reasonable time a
4 ~~[writing]~~ record in confirmation of the contract and sufficient
5 against the sender is received and the party receiving it has
6 reason to know its contents, it ~~[satisfies]~~ shall satisfy the
7 requirements of subsection (1) against ~~[such]~~ the party unless
8 ~~[written]~~ notice in a record of objection to its contents is
9 given within ten days after it is received.

10 (3) A contract ~~[which]~~ that does not satisfy the
11 requirements of subsection (1) but ~~[which]~~ that is valid in
12 other respects ~~[is]~~ shall be enforceable:

13 (a) If the goods are to be specially manufactured for the
14 buyer and are not suitable for sale to others in the
15 ordinary course of the seller's business and the
16 seller, before notice of repudiation is received and
17 under circumstances ~~[which]~~ that reasonably indicate
18 that the goods are for the buyer, has made either a
19 substantial beginning of their manufacture or
20 commitments for their procurement; ~~[or]~~



- 1 (b) If the party against whom enforcement is sought admits
2 in his pleading, testimony, or otherwise in court that
3 a contract for sale was made, but the contract [~~is~~
4 shall not be enforceable under this [~~provision~~
5 paragraph beyond the quantity of goods admitted; or
6 (c) With respect to goods for which payment has been made
7 and accepted or [~~which~~ that have been received and
8 accepted (section 490:2-606)."

9 SECTION 9. Section 490:2-202, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§490:2-202 Final [~~written~~] expression: parol or**
12 **extrinsic evidence.** Terms with respect to which the
13 confirmatory memoranda of the parties agree or that are
14 otherwise set forth in a [~~writing~~] record intended by the
15 parties as a final expression of their agreement with respect to
16 such terms as are included therein may not be contradicted by
17 evidence of any prior agreement or of a contemporaneous oral
18 agreement but may be explained or supplemented by:

- 19 (a) Course of performance, course of dealing, or usage of
20 trade (section 490:1-303); and



1 (b) Evidence of consistent additional terms unless the
 2 court finds the [~~writing~~] record to have been intended
 3 also as a complete and exclusive statement of the
 4 terms of the agreement."

5 SECTION 10. Section 490:2-209, Hawaii Revised Statutes, is
 6 amended by amending subsection (2) to read as follows:

7 "(2) A signed agreement [~~which~~] that excludes modification
 8 or rescission except by a signed writing [~~cannot~~] or other
 9 signed record shall not be otherwise modified or rescinded, but
 10 except as between merchants [~~such a~~] this type of requirement on
 11 a form supplied by the merchant [~~must~~] shall be separately
 12 signed by the other party."

13 SECTION 11. Section 490:2A-102, Hawaii Revised Statutes,
 14 is amended to read as follows:

15 "**§490:2A-102 Scope.** (a) This article [~~applies~~] shall
 16 apply to any transaction, regardless of form, that creates a
 17 lease[~~-~~] and, in the case of a hybrid lease, this article shall
 18 apply to the extent provided in subsection (b).

19 (b) In a hybrid lease:

20 (1) If the lease-of-goods aspects do not predominate:



- 1 (A) Only the provisions of this article that relate
- 2 primarily to the lease-of-goods aspects of the
- 3 transaction shall apply, and the provisions that
- 4 relate primarily to the transaction as a whole
- 5 shall not apply;
- 6 (B) Section 490:2A-209 shall apply if the lease is a
- 7 finance lease; and
- 8 (C) Section 490:2A-407 shall apply to the promises of
- 9 the lessee in a finance lease to the extent that
- 10 the promises are consideration for the right to
- 11 possession and use of the leased goods; and
- 12 (2) If the lease-of-goods aspects predominate, this
- 13 article shall apply to the transaction, but shall not
- 14 preclude the application, in appropriate
- 15 circumstances, of other law to aspects of the lease
- 16 that do not relate to the lease of goods."

17 SECTION 12. Section 490:2A-103, Hawaii Revised Statutes,
 18 is amended by amending subsection (a) to read as follows:

19 "(a) In this article [~~unless the context otherwise~~
 20 ~~requires~~]:



1 [(-1)] "Buyer in ordinary course of business" means a person
2 who in good faith and without knowledge that the sale to that
3 person is in violation of the ownership rights or security
4 interest or leasehold interest of a third party in the goods,
5 buys in ordinary course from a person in the business of selling
6 goods of that kind but does not include a pawnbroker. "Buying"
7 may be for cash or by exchange of other property or on secured
8 or unsecured credit and includes acquiring goods or documents of
9 title under a preexisting contract for sale but does not include
10 a transfer in bulk or as security for or in total or partial
11 satisfaction of a money debt.

12 [(+2)] "Cancellation" occurs when either party puts an end
13 to the lease contract for default by the other party.

14 [(+3)] "Commercial unit" means [~~such~~] a unit of goods that
15 as by commercial usage is a single whole for purposes of lease
16 and division of which materially impairs its character or value
17 on the market or in use. [~~A commercial unit~~] "Commercial unit"
18 may be a single article, as a machine, or a set of articles, as
19 a suite of furniture or a line of machinery, or a quantity, as a
20 gross or carload, or any other unit treated in use or in the
21 relevant market as a single whole.



1 ~~[(4)]~~ "Conforming" goods or performance under a lease
2 contract means goods or performance that are in accordance with
3 the obligations under the lease contract.

4 ~~[(5)]~~ "Consumer lease" means a lease that a lessor
5 regularly engaged in the business of leasing or selling makes to
6 a lessee who is an individual and who takes under the lease
7 primarily for a personal, family, or household purpose, if the
8 total payments to be made under the lease contract, excluding
9 payments for options to renew or buy, do not exceed \$25,000.

10 ~~[(6)]~~ "Fault" means wrongful act, omission, breach, or
11 default.

12 ~~[(7)]~~ "Finance lease" means a lease with respect to which:

13 ~~[(i)]~~ (1) The lessor does not select, manufacture, or
14 supply the goods;

15 ~~[(ii)]~~ (2) The lessor acquires the goods or the right to
16 possession and use of the goods in connection with the
17 lease; and

18 ~~[(iii)]~~ (3) One of the following occurs:

19 (A) The lessee receives a copy of the contract by
20 which the lessor acquired the goods or the right



1 to possession and use of the goods before signing
2 the lease contract;

3 (B) The lessee's approval of the contract by which
4 the lessor acquired the goods or the right to
5 possession and use of the goods is a condition to
6 effectiveness of the lease contract;

7 (C) The lessee, before signing the lease contract,
8 receives an accurate and complete statement
9 designating the promises and warranties, and any
10 disclaimers of warranties, limitations or
11 modifications of remedies, or liquidated damages,
12 including those of a third party, such as the
13 manufacturer of the goods, provided to the lessor
14 by the person supplying the goods in connection
15 with or as part of the contract by which the
16 lessor acquired the goods or the right to
17 possession and use of the goods; or

18 (D) If the lease is not a consumer lease, the lessor,
19 before the lessee signs the lease contract,
20 informs the lessee in writing [~~(a)~~ of]:



1 ~~[(8)]~~ "Goods" means all things that are movable at the time
2 of identification to the lease contract, or are fixtures
3 (section 490:2A-309) [~~7~~, ~~but the term~~]. "Goods" does not include
4 money, documents, instruments, accounts, chattel paper, general
5 intangibles, or minerals or the like, including oil and gas,
6 before extraction. [~~The term also~~] "Goods" includes the unborn
7 young of animals.

8 "Hybrid lease" means a single transaction involving a lease
9 of goods and:

10 (1) The provision of services;

11 (2) A sale of other goods; or

12 (3) A sale, lease, or license of property other than
13 goods.

14 ~~[(9)]~~ "Installment lease contract" means a lease contract
15 that authorizes or requires the delivery of goods in separate
16 lots to be separately accepted, even though the lease contract
17 contains a clause "each delivery is a separate lease" or its
18 equivalent.

19 ~~[(10)]~~ "Lease" means a transfer of the right to possession
20 and use of goods for a term in return for consideration [~~7~~, ~~but~~].
21 "Lease" does not include a sale, including a sale on approval or



1 a sale or return, or retention or creation of a security
2 interest [~~is not a lease~~]. Unless the context clearly indicates
3 otherwise, [~~the term~~] "lease" includes a sublease.

4 [~~(11)~~] "Lease agreement" means the bargain, with respect to
5 the lease, of the lessor and the lessee in fact as found in
6 their language or by implication from other circumstances
7 including course of dealing or usage of trade or course of
8 performance as provided in this article. Unless the context
9 clearly indicates otherwise, [~~the term~~] "lease agreement"
10 includes a sublease agreement.

11 [~~(12)~~] "Lease contract" means the total legal obligation
12 that results from the lease agreement as affected by this
13 article and any other applicable rules of law. Unless the
14 context clearly indicates otherwise, [~~the term~~] "lease contract"
15 includes a sublease contract.

16 [~~(13)~~] "Leasehold interest" means the interest of the
17 lessor or the lessee under a lease contract.

18 [~~(14)~~] "Lessee" means a person who acquires the right to
19 possession and use of goods under a lease. Unless the context
20 clearly indicates otherwise, [~~the term~~] "lessee" includes a
21 sublessee.



1 [~~(15)~~] "Lessee in ordinary course of business" means a
2 person who in good faith and without knowledge that the lease to
3 that person is in violation of the ownership rights or security
4 interest or leasehold interest of a third party in the goods
5 leases in ordinary course from a person in the business of
6 selling or leasing goods of that kind but does not include a
7 pawnbroker. "Leasing" may be for cash or by exchange of other
8 property or on secured or unsecured credit and includes
9 acquiring goods or documents of title under a preexisting lease
10 contract but does not include a transfer in bulk or as security
11 for or in total or partial satisfaction of a money debt.

12 [~~(16)~~] "Lessor" means a person who transfers the right to
13 possession and use of goods under a lease. Unless the context
14 clearly indicates otherwise, [~~the term~~] "lessor" includes a
15 sublessor.

16 [~~(17)~~] "Lessor's residual interest" means the lessor's
17 interest in the goods after expiration, termination, or
18 cancellation of the lease contract.

19 [~~(18)~~] "Lien" means a charge against or interest in goods
20 to secure payment of a debt or performance of an obligation[~~7~~
21 ~~but the term~~]. "Lien" does not include a security interest.



1 ~~[(19)]~~ "Lot" means a parcel or a single article that is the
2 subject matter of a separate lease or delivery, whether or not
3 it is sufficient to perform the lease contract.

4 ~~[(20)]~~ "Merchant lessee" means a lessee that is a merchant
5 with respect to goods of the kind subject to the lease.

6 ~~[(21)]~~ "Present value" means the amount as of a date
7 certain of one or more sums payable in the future, discounted to
8 the date certain. The discount is determined by the interest
9 rate specified by the parties if the rate was not manifestly
10 unreasonable at the time the transaction was entered into;
11 otherwise, the discount is determined by a commercially
12 reasonable rate that takes into account the facts and
13 circumstances of each case at the time the transaction was
14 entered into.

15 ~~[(22)]~~ "Purchase" includes taking by sale, lease, mortgage,
16 security interest, pledge, gift, or any other voluntary
17 transaction creating an interest in goods.

18 ~~[(23)]~~ "Sublease" means a lease of goods the right to
19 possession and use of which was acquired by the lessor as a
20 lessee under an existing lease.



1 [(-24)] "Supplier" means a person from whom a lessor buys or
2 leases goods to be leased under a finance lease.

3 [(-25)] "Supply contract" means a contract under which a
4 lessor buys or leases goods to be leased.

5 [(-26)] "Termination" occurs when either party pursuant to a
6 power created by agreement or law puts an end to the lease
7 contract otherwise than for default."

8 SECTION 13. Section 490:2A-107, Hawaii Revised Statutes,
9 is amended to read as follows:

10 "**§490:2A-107 Waiver or renunciation of claim or right**
11 **after default.** Any claim or right arising out of an alleged
12 default or breach of warranty may be discharged in whole or in
13 part without consideration by a [~~written~~] waiver or renunciation
14 in a signed [and] record delivered by the aggrieved party."

15 SECTION 14. Section 490:2A-202, Hawaii Revised Statutes,
16 is amended to read as follows:

17 "**§490:2A-202 Final [~~written~~] expression: parol or**
18 **extrinsic evidence.** Terms with respect to which the
19 confirmatory memoranda of the parties agree or which are
20 otherwise set forth in a [~~writing~~] record intended by the
21 parties as a final expression of their agreement with respect to



1 ~~such~~ the terms as are included therein ~~may~~ shall not be
2 contradicted by evidence of any prior agreement or of a
3 contemporaneous oral agreement but may be explained or
4 supplemented:

5 (1) By course of dealing or usage of trade or by course of
6 performance; and

7 (2) By evidence of consistent additional terms unless the
8 court finds the ~~writing~~ record to have been intended
9 also as a complete and exclusive statement of the
10 terms of the agreement."

11 SECTION 15. Section 490:3-104, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Except as provided in subsections (c) and (d),
14 "negotiable instrument" means an unconditional promise or order
15 to pay a fixed amount of money, with or without interest or
16 other charges described in the promise or order, if it:

17 (1) Is payable to bearer or to order at the time it is
18 issued or first comes into possession of a holder;

19 (2) Is payable on demand or at a definite time; and

20 (3) Does not state any other undertaking or instruction by
21 the person promising or ordering payment to do any act



1 in addition to the payment of money, but the promise
2 or order may contain:

3 (A) An undertaking or power to give, maintain, or
4 protect collateral to secure payment;

5 (B) An authorization or power to the holder to
6 confess judgment or realize on or dispose of
7 collateral; [~~or~~]

8 (C) A waiver of the benefit of any law intended for
9 the advantage or protection of an obligor[~~-~~];

10 (D) A term that specifies the law that governs the
11 promise or order; or

12 (E) An undertaking to resolve in a specified forum a
13 dispute concerning the promise or order."

14 SECTION 16. Section 490:3-105, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) "Issue" means [~~the~~]:

17 (1) The first delivery of an instrument by the maker or
18 drawer, whether to a holder or nonholder, for the
19 purpose of giving rights on the instrument to any
20 person[~~-~~]; or



1 (2) If agreed by the payee, the first transmission by the
 2 drawer to the payee of an image of an item and
 3 information derived from the item that enables the
 4 depository bank to collect the item by transferring or
 5 presenting under federal law an electronic check."

6 SECTION 17. Section 490:3-401, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "**§490:3-401 Signature[-] necessary for liability on**
 9 **instrument.** ~~[-(a)]~~ A person ~~[is]~~ shall not be liable on an
 10 instrument unless (i) the person signed the instrument, or (ii)
 11 the person is represented by an agent or representative who
 12 signed the instrument and the signature is binding on the
 13 represented person under section 490:3-402.

14 ~~[-(b) A signature may be made (i) manually or by means of a~~
 15 ~~device or machine, and (ii) by the use of any name, including a~~
 16 ~~trade or assumed name, or by a word, mark, or symbol executed or~~
 17 ~~adopted by a person with present intention to authenticate a~~
 18 ~~writing.]"~~

19 SECTION 18. Section 490:3-604, Hawaii Revised Statutes, is
 20 amended by amending subsection (a) to read as follows:



1 "(a) A person entitled to enforce an instrument, with or
2 without consideration, may discharge the obligation of a party
3 to pay the instrument (i) by an intentional voluntary act, [~~such~~
4 ~~as~~] including surrender of the instrument to the party,
5 destruction, mutilation, or cancellation of the instrument,
6 cancellation or striking out of the party's signature, or the
7 addition of words to the instrument indicating discharge, or
8 (ii) by agreeing not to sue or otherwise renouncing rights
9 against the party by a signed writing. The obligation of a
10 party to pay a check shall not be discharged solely by
11 destruction of the check in connection with a process in which
12 information is extracted from the check and an image of the
13 check is made and, subsequently, the information and image are
14 transmitted for payment."

15 SECTION 19. Section 490:4A-103, Hawaii Revised Statutes,
16 is amended by amending subsections (a) and (b) to read as
17 follows:

18 "(a) In this article:

19 ~~[(1) "Payment order" means an instruction of a sender to a~~
20 ~~receiving bank, transmitted orally, electronically, or in~~



1 ~~writing, to pay, or to cause another bank to pay, a fixed or~~
2 ~~determinable amount of money to a beneficiary if:~~

3 ~~(i) The instruction does not state a condition to payment~~
4 ~~to the beneficiary other than time of payment;~~

5 ~~(ii) The receiving bank is to be reimbursed by debiting an~~
6 ~~account of, or otherwise receiving payment from, the~~
7 ~~sender; and~~

8 ~~(iii) The instruction is transmitted by the sender directly~~
9 ~~to the receiving bank or to an agent, funds transfer~~
10 ~~system, or communication system for transmittal to the~~
11 ~~receiving bank.~~

12 ~~(2)] "Beneficiary" means the person to be paid by the~~
13 ~~beneficiary's bank.~~

14 ~~[(3)] "Beneficiary's bank" means the bank identified in a~~
15 ~~payment order in which an account of the beneficiary is to be~~
16 ~~credited pursuant to the order or [which] that otherwise is to~~
17 ~~make payment to the beneficiary if the order does not provide~~
18 ~~for payment to an account.~~

19 "Payment order" means an instruction of a sender to a
20 receiving bank, transmitted orally or in a record, to pay, or to



1 cause another bank to pay, a fixed or determinable amount of
2 money to a beneficiary if:

3 (1) The instruction does not state a condition to payment
4 to the beneficiary other than time of payment;

5 (2) The receiving bank is to be reimbursed by debiting an
6 account of, or otherwise receiving payment from, the
7 sender; and

8 (3) The instruction is transmitted by the sender directly
9 to the receiving bank or to an agent, funds-transfer
10 system, or communication system for transmittal to the
11 receiving bank.

12 [~~4~~] "Receiving bank" means the bank to which the sender's
13 instruction is addressed.

14 [~~5~~] "Sender" means the person giving the instruction to
15 the receiving bank.

16 (b) If an instruction complying with subsection [~~a~~](1)

17 (a) is to make more than one payment to a beneficiary, the
18 instruction is a separate payment order with respect to each
19 payment."

20 SECTION 20. Section 490:4A-201, Hawaii Revised Statutes,
21 is amended to read as follows:



1 "**§490:4A-201 Security procedure.** "Security procedure"
2 means a procedure established by agreement of a customer and a
3 receiving bank for the purpose of (i) verifying that a payment
4 order or communication amending or canceling a payment order is
5 that of the customer, or (ii) detecting error in the
6 transmission or the content of the payment order or
7 communication. A security procedure may impose an obligation on
8 the receiving bank or the customer and require the use of
9 algorithms or other codes, identifying words [~~o~~], numbers,
10 symbols, sounds, biometrics, encryption, callback procedures, or
11 similar security devices. Comparison of a signature on a
12 payment order or communication with an authorized specimen
13 signature of the customer [~~i~~s] or requiring a payment order to
14 be sent from a known email address, internet protocol address,
15 or telephone number shall not be, by itself, a security
16 procedure."

17 SECTION 21. Section 490:4A-202, Hawaii Revised Statutes,
18 is amended by amending subsections (b) and (c) to read as
19 follows:

20 "(b) If a bank and its customer have agreed that the
21 authenticity of payment orders issued to the bank in the name of



1 the customer as sender will be verified pursuant to a security
2 procedure, a payment order received by the receiving bank [~~is~~]
3 shall be deemed effective as the order of the customer, whether
4 or not authorized, if (i) the security procedure is a
5 commercially reasonable method of providing security against
6 unauthorized payment orders, and (ii) the bank proves that it
7 accepted the payment order in good faith and in compliance with
8 the bank's obligations under the security procedure and any
9 [~~written~~] agreement or instruction of the customer, evidenced by
10 a record, restricting acceptance of payment orders issued in the
11 name of the customer. The bank [~~is~~] shall not be required to
12 follow an instruction that violates [~~a written~~] an agreement
13 with the customer, evidenced by a record, or notice of which is
14 not received at a time and in a manner affording the bank a
15 reasonable opportunity to act on it before the payment order is
16 accepted.

17 (c) Commercial reasonableness of a security procedure is a
18 question of law to be determined by considering the wishes of
19 the customer expressed to the bank, the circumstances of the
20 customer known to the bank, including the size, type, and
21 frequency of payment orders normally issued by the customer to



1 the bank, alternative security procedures offered to the
2 customer, and security procedures in general use by customers
3 and receiving banks similarly situated. A security procedure is
4 deemed to be commercially reasonable if (i) the security
5 procedure was chosen by the customer after the bank offered, and
6 the customer refused, a security procedure that was commercially
7 reasonable for that customer, and (ii) the customer expressly
8 agreed in [~~writing~~] a record to be bound by any payment order,
9 whether or not authorized, issued in its name and accepted by
10 the bank in compliance with the bank's obligations under the
11 security procedure chosen by the customer."

12 SECTION 22. Section 490:4A-203, Hawaii Revised Statutes,
13 is amended by amending subsection (a) to read as follows:

14 "(a) If an accepted payment order is not, under section
15 490:4A-202(a), an authorized order of a customer identified as
16 sender, but is effective as an order of the customer pursuant to
17 section 490:4A-202(b), the following rules apply:

18 (1) By express [~~written~~] agreement, evidenced by a record,
19 the receiving bank may limit the extent to which it is
20 entitled to enforce or retain payment of the payment
21 order[~~-~~]; and



1 (2) The receiving bank [~~is~~] shall not be entitled to
2 enforce or retain payment of the payment order if the
3 customer proves that the order was not caused,
4 directly or indirectly, by a person (i) entrusted at
5 any time with duties to act for the customer with
6 respect to payment orders or the security procedure,
7 or (ii) who obtained access to transmitting facilities
8 of the customer or who obtained, from a source
9 controlled by the customer and without authority of
10 the receiving bank, information facilitating breach of
11 the security procedure, regardless of how the
12 information was obtained or whether the customer was
13 at fault. [~~Information~~] In this paragraph,
14 "information" includes any access device, computer
15 software, or the like."

16 SECTION 23. Section 490:4A-210, Hawaii Revised Statutes,
17 is amended by amending subsection (a) to read as follows:

18 "(a) A payment order [~~is~~] shall be deemed rejected by the
19 receiving bank by a notice of rejection transmitted to the
20 sender orally [~~, electronically,~~] or in [~~writing.~~] a record. A
21 notice of rejection need not use any particular words and [~~is~~]



1 shall be sufficient if it indicates that the receiving bank is
2 rejecting the order or will not execute or pay the order.
3 Rejection [~~is~~] shall be deemed effective when the notice is
4 given if transmission is by a means that is reasonable in the
5 circumstances. If notice of rejection is given by a means that
6 is not reasonable, rejection [~~is~~] shall be deemed effective when
7 the notice is received. If an agreement of the sender and
8 receiving bank establishes the means to be used to reject a
9 payment order, (i) any means complying with the agreement [~~is~~]
10 shall be deemed reasonable and (ii) any means not complying [~~is~~]
11 shall be deemed not reasonable unless no significant delay in
12 receipt of the notice resulted from the use of the noncomplying
13 means."

14 SECTION 24. Section 490:4A-211, Hawaii Revised Statutes,
15 is amended by amending subsection (a) to read as follows:

16 "(a) A communication of the sender of a payment order
17 canceling or amending the order may be transmitted to the
18 receiving bank orally [~~, electronically,~~] or in [~~writing.~~] a
19 record. If a security procedure is in effect between the sender
20 and the receiving bank, the communication [~~is~~] shall not be
21 deemed effective to cancel or amend the order unless the



1 communication is verified pursuant to the security procedure or
2 the bank agrees to the cancellation or amendment."

3 SECTION 25. Section 490:4A-305, Hawaii Revised Statutes,
4 is amended by amending subsections (c) and (d) to read as
5 follows:

6 "(c) In addition to the amounts payable under subsections
7 (a) and (b), damages, including consequential damages, [~~are~~]
8 shall be recoverable to the extent provided in an express
9 [~~written~~] agreement of the receiving bank~~[-]~~, as evidenced by a
10 record.

11 (d) If a receiving bank fails to execute a payment order
12 it was obliged by express agreement to execute, the receiving
13 bank [~~is~~] shall be liable to the sender for its expenses in the
14 transaction and for incidental expenses and interest losses
15 resulting from the failure to execute. Additional damages,
16 including consequential damages, [~~are~~] shall be recoverable to
17 the extent provided in an express [~~written~~] agreement of the
18 receiving bank, as evidenced by a record, but [~~are~~] shall not
19 otherwise be recoverable."

20 SECTION 26. Section 490:5-104, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§490:5-104 Formal requirements.** A letter of credit,
2 confirmation, advice, transfer, amendment, or cancellation may
3 be issued in any form that is a signed record [~~and is~~
4 ~~authenticated (i) by a signature, or (ii) in accordance with the~~
5 ~~agreement of the parties or the standard practice referred to in~~
6 ~~section 490:5-108(e)]."~~

7 SECTION 27. Section 490:5-116, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§490:5-116 Choice of law and forum.** (a) The liability
10 of an issuer, nominated person, or adviser for action or
11 omission [~~is~~] shall be governed by the law of the jurisdiction
12 chosen by an agreement in the form of a record signed [~~or~~
13 ~~otherwise authenticated~~] by the affected parties [~~in the manner~~
14 ~~provided in section 490:5-104]~~ or by a provision in the person's
15 letter of credit, confirmation, or other undertaking. The
16 jurisdiction whose law is chosen need not bear any relation to
17 the transaction.

18 (b) Unless subsection (a) applies, the liability of an
19 issuer, nominated person, or adviser for action or omission [~~is~~]
20 shall be governed by the law of the jurisdiction in which the
21 person is located. The person [~~is~~] shall be considered to be



1 located at the address indicated in the person's undertaking.
2 If more than one address is indicated, the person [~~is~~] shall be
3 considered to be located at the address from which the person's
4 undertaking was issued.

5 (c) For the purpose of jurisdiction, choice of law, and
6 recognition of interbranch letters of credit, but not
7 enforcement of a judgment, all branches of a bank [~~are~~] shall be
8 considered separate juridical entities and a bank [~~is~~] shall be
9 considered to be located at the place where its relevant branch
10 is considered to be located under [~~this~~] subsection[-] (d).

11 (d) A branch of a bank shall be considered to be located
12 at the address indicated in the branch's undertaking; provided
13 that if more than one address is indicated, the branch shall be
14 considered to be located at the address from which the
15 undertaking was issued.

16 [~~(e)~~] (e) Except as otherwise provided in this subsection,
17 the liability of an issuer, nominated person, or adviser [~~is~~]
18 shall be governed by any rules of custom or practice, [~~such as~~]
19 including the Uniform Customs and Practice for Documentary
20 Credits, to which the letter of credit, confirmation, or other
21 undertaking is expressly made subject. If (i) this article



1 would govern the liability of an issuer, nominated person, or
2 adviser under subsection (a) or (b), (ii) the relevant
3 undertaking incorporates rules of custom or practice, and (iii)
4 there is conflict between this article and those rules as
5 applied to that undertaking, those rules shall govern except to
6 the extent of any conflict with the nonvariable provisions
7 specified in section 490:5-103(c).

8 [~~d~~] (f) If there is conflict between this article and
9 article 3, 4, 4A, or 9, this article [~~governs.~~] shall govern.

10 [~~e~~] (g) The forum for settling disputes arising out of
11 an undertaking within this article may be chosen in the manner
12 and with the binding effect that governing law may be chosen in
13 accordance with subsection (a)."

14 SECTION 28. Section 490:7-102, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) In this article, unless the context otherwise
17 requires:

18 [~~1~~] "Bailee" means a person that by a warehouse receipt,
19 bill of lading, or other document of title acknowledges
20 possession of goods and contracts to deliver them.



1 [~~(2)~~] "Carrier" means a person that issues a bill of
2 lading.

3 [~~(3)~~] "Consignee" means a person named in a bill of lading
4 to which or to whose order the bill promises delivery.

5 [~~(4)~~] "Consignor" means a person named in a bill of lading
6 as the person from which the goods have been received for
7 shipment.

8 [~~(5)~~] "Delivery order" means a record that contains an
9 order to deliver goods directed to a warehouse, carrier, or
10 other person that in the ordinary course of business issues
11 warehouse receipts or bills of lading.

12 [~~(6)~~] "Good faith" means honesty in fact and the observance
13 of reasonable commercial standards of fair dealing.

14 [~~(7)~~] "Goods" means all things that are treated as movable
15 for the purposes of a contract for storage or transportation.

16 [~~(8)~~] "Issuer" means a bailee that issues a document of
17 title or, in the case of an unaccepted delivery order, the
18 person that orders the possessor of goods to deliver. [~~The~~
19 ~~term~~] "Issuer" includes a person for which an agent or employee
20 purports to act in issuing a document if the agent or employee
21 has real or apparent authority to issue documents, even if the



1 issuer did not receive any goods, the goods were misdescribed,
2 or in any other respect the agent or employee violated the
3 issuer's instructions.

4 ~~[(9)]~~ "Person entitled under the document" means the
5 holder, in the case of a negotiable document of title, or the
6 person to which delivery of the goods is to be made by the terms
7 of, or pursuant to instructions in a record under, a
8 nonnegotiable document of title.

9 ~~[(10)]~~ ~~"Record" means information that is inscribed on a~~
10 ~~tangible medium or that is stored in an electronic or other~~
11 ~~medium and is retrievable in perceivable form.~~

12 ~~[(11)]~~ "Shipper" means a person that enters into a contract
13 of transportation with a carrier.

14 ~~[(12)]~~ ~~"Sign" means, with present intent to authenticate or~~
15 ~~adopt a record:~~

16 ~~(A) To execute or adopt a tangible symbol; or~~

17 ~~(B) To attach to or logically associate with the~~
18 ~~record an electronic sound, symbol, or process.~~

19 ~~[(13)]~~ "Warehouse" means a person engaged in the business of
20 storing goods for hire."



1 SECTION 29. Section 490:7-106, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§490:7-106 Control of electronic document of title. (a)**

4 A person [~~has~~] shall be deemed to have control of an electronic
5 document of title if a system employed for evidencing the
6 transfer of interests in the electronic document reliably
7 establishes that person as the person to which the electronic
8 document was issued or transferred.

9 (b) A system [~~satisfies~~] shall be deemed to satisfy
10 subsection (a), and a person [~~is~~] shall be deemed to have
11 control of an electronic document of title, if the document is
12 created, stored, and [~~assigned~~] transferred in [~~such~~] a manner
13 that:

14 (1) A single authoritative copy of the document exists
15 that is unique, identifiable, and, except as otherwise
16 provided in paragraphs (4), (5), and (6), unalterable;

17 (2) The authoritative copy identifies the person asserting
18 control as:

19 (A) The person to which the document was issued; or



- 1 (B) If the authoritative copy indicates that the
2 document has been transferred, the person to
3 which the document was most recently transferred;
- 4 (3) The authoritative copy is communicated to and
5 maintained by the person asserting control or its
6 designated custodian;
- 7 (4) Copies or amendments that add or change an identified
8 [assignee] transferee of the authoritative copy can be
9 made only with the consent of the person asserting
10 control;
- 11 (5) Each copy of the authoritative copy and any copy of a
12 copy is readily identifiable as a copy that is not the
13 authoritative copy; and
- 14 (6) Any amendment of the authoritative copy is readily
15 identifiable as authorized or unauthorized.
- 16 (c) A system shall be deemed to satisfy subsection (a),
17 and a person shall be deemed to have control of an electronic
18 document of title, if an authoritative electronic copy of the
19 document; a record attached to, or logically associated with,
20 the electronic copy; or a system in which the electronic copy is
21 recorded:



1 (1) Enables the person to readily identify each electronic
2 copy as either an authoritative copy or a
3 nonauthoritative copy;

4 (2) Enables the person to be readily identified in any
5 way, including by name, identifying number,
6 cryptographic key, office, or account number, as the
7 person to which each authoritative electronic copy was
8 issued or transferred; and

9 (3) Gives the person exclusive power, subject to
10 subsection (d), to:

11 (A) Prevent others from adding or changing the person
12 to which each authoritative electronic copy has
13 been issued or transferred; and

14 (B) Transfer control of each authoritative electronic
15 copy.

16 (d) Subject to subsection (e), a power shall be deemed
17 exclusive under subsection (c) (3) (A) and (B) regardless of
18 whether:

19 (1) The authoritative electronic copy; a record attached
20 to, or logically associated with, the authoritative
21 electronic copy; or a system in which the



1 authoritative electronic copy is recorded limits the
2 use of the document of title or has a protocol that is
3 programmed to cause a change, including a transfer or
4 loss of control; or

5 (2) The power is shared with another person.

6 (e) A power of a person shall not be deemed to be shared
7 with another person under subsection (d) (2) and the person's
8 power shall not be deemed exclusive if:

9 (1) The person may exercise the power only if the power is
10 exercised by the other person; and

11 (2) The other person:

12 (A) May exercise the power without exercise of the
13 power by the person; or

14 (B) Is the transferor to the person of an interest in
15 the document of title.

16 (f) If a person has the powers specified in subsection
17 (c) (3) (A) and (B), the powers shall be presumed to be exclusive.

18 (g) A person shall be deemed to have control of an
19 electronic document of title if another person, other than the
20 transferor to the person of an interest in the document:



1 (1) Has control of the document and acknowledges that it
2 has control on behalf of the person; or

3 (2) Obtains control of the document after having
4 acknowledged that it will obtain control of the
5 document on behalf of the person.

6 (h) A person that has control under this section shall not
7 be required to acknowledge that it has control on behalf of
8 another person.

9 (i) If a person acknowledges that it has or will obtain
10 control on behalf of another person, unless the person otherwise
11 agrees or any law other than this article or article 9 otherwise
12 provides, the person shall not owe any duty to the other person
13 and shall not be required to confirm the acknowledgment to any
14 other person."

15 SECTION 30. Section 490:8-102, Hawaii Revised Statutes, is
16 amended by amending subsections (a) and (b) to read as follows:

17 "(a) In this article:

18 "Adverse claim" means a claim that a claimant has a
19 property interest in a financial asset and that it is a
20 violation of the rights of the claimant for another person to
21 hold, transfer, or deal with the financial asset.



1 "Bearer form", as applied to a certificated security, means
2 a form in which the security is payable to the bearer of the
3 security certificate according to its terms but not by reason of
4 an indorsement.

5 "Broker" means a person defined as a broker or dealer under
6 the federal securities laws, but without excluding a bank acting
7 in that capacity.

8 "Certificated security" means a security that is
9 represented by a certificate.

10 "Clearing corporation" means:

- 11 (1) A person that is registered as a "clearing agency"
12 under the federal securities laws;
- 13 (2) A federal reserve bank; or
- 14 (3) Any other person that provides clearance or settlement
15 services with respect to financial assets that would
16 require it to register as a clearing agency under the
17 federal securities laws but for an exclusion or
18 exemption from the registration requirement, if its
19 activities as a clearing corporation, including
20 promulgation of rules, are subject to regulation by a
21 federal or state governmental authority.



1 "Communicate" means to:

2 (1) Send a signed [~~writing,~~] record; or

3 (2) Transmit information by any mechanism agreed upon by
4 the persons transmitting and receiving the
5 information.

6 "Entitlement holder" means a person identified in the
7 records of a securities intermediary as the person having a
8 security entitlement against the securities intermediary. If a
9 person acquires a security entitlement by virtue of section
10 490:8-501(b) (2) or (3), that person [~~is~~] shall be deemed to be
11 the entitlement holder.

12 "Entitlement order" means a notification communicated to a
13 securities intermediary directing transfer or redemption of a
14 financial asset to which the entitlement holder has a security
15 entitlement.

16 "Financial asset", except as otherwise provided in section
17 490:8-103, means:

18 (1) A security;

19 (2) An obligation of a person or a share, participation,
20 or other interest in a person or in property or an
21 enterprise of a person, which is, or is of a type,



1 dealt in or traded on financial markets, or which is
2 recognized in any area in which it is issued or dealt
3 in as a medium for investment; or

4 (3) Any property that is held by a securities intermediary
5 for another person in a securities account if the
6 securities intermediary has expressly agreed with the
7 other person that the property is to be treated as a
8 financial asset under this article.

9 As the context requires, [~~the term~~] "financial asset" means
10 either the interest itself or the means by which a person's
11 claim to it is evidenced, including a certificated or
12 uncertificated security, a security certificate, or a security
13 entitlement.

14 "Good faith", for purposes of the obligation of good faith
15 in the performance or enforcement of contracts or duties within
16 this article, means honesty in fact and the observance of
17 reasonable commercial standards of fair dealing.

18 "Indorsement" means a signature that alone or accompanied
19 by other words is made on a security certificate in registered
20 form or on a separate document for the purpose of assigning,



1 transferring, or redeeming the security or granting a power to
2 assign, transfer, or redeem it.

3 "Instruction" means a notification communicated to the
4 issuer of an uncertificated security [~~which~~] that directs that
5 the transfer of the security be registered or that the security
6 be redeemed.

7 "Registered form", as applied to a certificated security,
8 means a form in which:

- 9 (1) The security certificate specifies a person entitled
10 to the security; and
11 (2) A transfer of the security may be registered upon
12 books maintained for that purpose by or on behalf of
13 the issuer, or the security certificate so states.

14 "Securities intermediary" means:

- 15 (1) A clearing corporation; or
16 (2) A person, including a bank or broker, that in the
17 ordinary course of its business maintains securities
18 accounts for others and is acting in that capacity.

19 "Security", except as otherwise provided in section
20 490:8-103, means an obligation of an issuer or a share,



1 participation, or other interest in an issuer or in property or
2 an enterprise of an issuer:

3 (1) [~~Which~~] That is represented by a security certificate
4 in bearer or registered form, or the transfer of which
5 may be registered upon books maintained for that
6 purpose by or on behalf of the issuer;

7 (2) [~~Which~~] That is one of a class or series or by its
8 terms is divisible into a class or series of shares,
9 participations, interests, or obligations; and

10 (3) [~~Which:~~] That:

11 (A) Is, or is of a type, dealt in or traded on
12 securities exchanges or securities markets; or

13 (B) Is a medium for investment and by its terms
14 expressly provides that it is a security governed
15 by this article.

16 "Security certificate" means a certificate representing a
17 security.

18 "Security entitlement" means the rights and property
19 interest of an entitlement holder with respect to a financial
20 asset specified in part 5.



1 "Uncertificated security" means a security that is not
2 represented by a certificate.

3 (b) [~~Other~~] The following definitions [applying to] in
4 this article and [~~the sections in which they appear are:~~] other
5 articles of this chapter shall apply to this article:

6 "Appropriate person". Section 490:8-107.

7 "Control". Section 490:8-106.

8 "Controllable account". Section 490:9-102.

9 "Controllable electronic record". Section 490:A-102.

10 "Controllable payment intangible". Section 490:9-102.

11 "Delivery". Section 490:8-301.

12 "Investment company security". Section 490:8-103.

13 "Issuer". Section 490:8-201.

14 "Overissue". Section 490:8-210.

15 "Protected purchaser". Section 490:8-303.

16 "Securities account". Section 490:8-501."

17 SECTION 31. Section 490:8-103, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§490:8-103 Rules for determining whether certain**
20 **obligations and interests are securities or financial assets.**

21 (a) A share or similar equity interest issued by a corporation,



1 business trust, joint stock company, or similar entity [~~is~~]
2 shall be deemed a security.

3 (b) An "investment company security" is a security.

4 "Investment company security" means a share or similar equity
5 interest issued by an entity that is registered as an investment
6 company under the federal investment company laws, an interest
7 in a unit investment trust that is so registered, or a face-
8 amount certificate issued by a face-amount certificate company
9 that is so registered. [~~Investment company security~~]

10 "Investment company security" does not include an insurance
11 policy or endowment policy or annuity contract issued by an
12 insurance company.

13 (c) An interest in a partnership or limited liability
14 company [~~is~~] shall not be deemed a security unless it is dealt
15 in or traded on securities exchanges or in securities markets,
16 its terms expressly provide that it is a security governed by
17 this article, or it is an investment company security. However,
18 an interest in a partnership or limited liability company [~~is~~]
19 shall be deemed a financial asset if it is held in a securities
20 account.



1 (d) A writing that is a security certificate [~~is~~] shall be
2 governed by this article and not by article 3, even though it
3 also meets the requirements of that article. However, a
4 negotiable instrument governed by article 3 [~~is~~] shall be deemed
5 a financial asset if it is held in a securities account.

6 (e) An option or similar obligation issued by a clearing
7 corporation to its participants [~~is~~] shall not be deemed a
8 security, but [~~is~~] shall be deemed a financial asset.

9 (f) A commodity contract, as defined in section
10 490:9-102(a), [~~is~~] shall not be deemed a security or a financial
11 asset.

12 (g) A controllable account, controllable electronic
13 record, or controllable payment intangible shall not be deemed a
14 financial asset unless the controllable account, controllable
15 electronic record, or controllable payment intangible is a
16 property that is held by a securities intermediary for another
17 person in a securities account and the securities intermediary
18 has expressly agreed with the other person that the property is
19 to be treated as a financial asset under this article."

20 SECTION 32. Section 490:8-106, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§490:8-106 Control.** (a) A purchaser [~~has~~] shall be
2 deemed to have "control" of a certificated security in bearer
3 form if the certificated security is delivered to the purchaser.

4 (b) A purchaser [~~has~~] shall be deemed to have "control" of
5 a certificated security in registered form if the certificated
6 security is delivered to the purchaser, and:

7 (1) The certificate is indorsed to the purchaser or in
8 blank by an effective indorsement; or

9 (2) The certificate is registered in the name of the
10 purchaser, upon original issue or registration of
11 transfer by the issuer.

12 (c) A purchaser [~~has~~] shall be deemed to have "control" of
13 an uncertificated security if:

14 (1) The uncertificated security is delivered to the
15 purchaser; or

16 (2) The issuer has agreed that it will comply with
17 instructions originated by the purchaser without
18 further consent by the registered owner.

19 (d) A purchaser [~~has~~] shall be deemed to have "control" of
20 a security entitlement if:

21 (1) The purchaser becomes the entitlement holder;



1 (2) The securities intermediary has agreed that it will
2 comply with entitlement orders originated by the
3 purchaser without further consent by the entitlement
4 holder; or

5 (3) Another person [~~has control of the security~~
6 ~~entitlement on behalf of the purchaser or, having~~
7 ~~previously acquired control of the security~~
8 ~~entitlement, acknowledges that it has control on~~
9 ~~behalf of the purchaser.], other than the transferor
10 to the purchaser of an interest in the security
11 entitlement:~~

12 (A) Has control of the security entitlement and
13 acknowledges that it has control on behalf of the
14 purchaser; or

15 (B) Obtains control of the security entitlement after
16 having acknowledged that it will obtain control
17 of the security entitlement on behalf of the
18 purchaser.

19 (e) If an interest in a security entitlement is granted by
20 the entitlement holder to the entitlement holder's own



1 securities intermediary, the securities intermediary [~~has~~] shall
2 be deemed to have control.

3 (f) A purchaser who has satisfied the requirements of
4 subsection (c) or (d) [~~has~~] shall be deemed to have control,
5 even if the registered owner in the case of subsection (c) or
6 the entitlement holder in the case of subsection (d) retains the
7 right to make substitutions for the uncertificated security or
8 security entitlement, to originate instructions or entitlement
9 orders to the issuer or securities intermediary, or otherwise to
10 deal with the uncertificated security or security entitlement.

11 (g) An issuer or a securities intermediary [~~may~~] shall not
12 enter into an agreement of the kind described in subsection
13 (c) (2) or (d) (2) without the consent of the registered owner or
14 entitlement holder, but an issuer or a securities intermediary
15 [~~is~~] shall not be required to enter into [~~such~~] an agreement of
16 the kind described in subsection (c) (2) or (d) (2) even though
17 the registered owner or entitlement holder so directs. An
18 issuer or securities intermediary that has entered into [~~such~~]
19 an agreement [~~is~~] of the kind described in subsection (c) (2) or
20 (d) (2) shall not be required to confirm the existence of the



1 agreement to another party unless requested to do so by the
2 registered owner or entitlement holder.

3 (h) A person that has control under this section shall not
4 be required to acknowledge that it has control on behalf of a
5 purchaser.

6 (i) If a person acknowledges that it has or will obtain
7 control on behalf of a purchaser, unless the person otherwise
8 agrees or law other than this article or article 9 otherwise
9 provides, the person shall not owe any duty to the purchaser and
10 shall not be required to confirm the acknowledgment to any other
11 person."

12 SECTION 33. Section 490:8-110, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§490:8-110 Applicability; choice of law.** (a) The local
15 law of the issuer's jurisdiction, as specified in subsection
16 (d), [~~governs:~~] shall govern:

- 17 (1) The validity of a security;
18 (2) The rights and duties of the issuer with respect to
19 registration of transfer;
20 (3) The effectiveness of registration of transfer by the
21 issuer;



1 (4) Whether the issuer owes any duties to an adverse
2 claimant to a security; and

3 (5) Whether an adverse claim can be asserted against a
4 person to whom transfer of a certificated or
5 uncertificated security is registered or a person who
6 obtains control of an uncertificated security.

7 (b) The local law of the securities intermediary's
8 jurisdiction, as specified in subsection (e), [~~governs:~~] shall
9 govern:

10 (1) Acquisition of a security entitlement from the
11 securities intermediary;

12 (2) The rights and duties of the securities intermediary
13 and entitlement holder arising out of a security
14 entitlement;

15 (3) Whether the securities intermediary owes any duties to
16 an adverse claimant to a security entitlement; and

17 (4) Whether an adverse claim can be asserted against a
18 person who acquires a security entitlement from the
19 securities intermediary or a person who purchases a
20 security entitlement or interest therein from an
21 entitlement holder.



1 (c) The local law of the jurisdiction in which a security
2 certificate is located at the time of delivery [~~governs~~] shall
3 govern whether an adverse claim can be asserted against a person
4 to whom the security certificate is delivered.

5 (d) "Issuer's jurisdiction" means the jurisdiction under
6 which the issuer of the security is organized or, if permitted
7 by the law of that jurisdiction, the law of another jurisdiction
8 specified by the issuer. An issuer organized under the law of
9 this State may specify the law of another jurisdiction as the
10 law governing the matters specified in subsection (a) (2) to (5).

11 (e) The following rules determine a "securities
12 intermediary's jurisdiction" for purposes of this section:

13 (1) If an agreement between the securities intermediary
14 and its entitlement holder governing the securities
15 account expressly provides that a particular
16 jurisdiction is the securities intermediary's
17 jurisdiction for purposes of this part, this article,
18 or this chapter, that jurisdiction [~~is~~] shall be the
19 securities intermediary's jurisdiction[~~+~~];

20 (2) If paragraph (1) does not apply and an agreement
21 between the securities intermediary and its



1 entitlement holder governing the securities account
2 expressly provides that the agreement is governed by
3 the law of a particular jurisdiction, that
4 jurisdiction [~~is~~] shall be the securities
5 intermediary's jurisdiction[~~-~~];

6 (3) If neither paragraph (1) nor paragraph (2) applies and
7 an agreement between the securities intermediary and
8 its entitlement holder governing the securities
9 account expressly provides that the securities account
10 is maintained at an office in a particular
11 jurisdiction, that jurisdiction [~~is~~] shall be the
12 securities intermediary's jurisdiction[~~-~~];

13 (4) If none of the preceding paragraphs applies, the
14 securities intermediary's jurisdiction [~~is~~] shall be
15 the jurisdiction in which the office identified in an
16 account statement as the office serving the
17 entitlement holder's account is located[~~-~~]; and

18 (5) If none of the preceding paragraphs applies, the
19 securities intermediary's jurisdiction [~~is~~] shall be
20 the jurisdiction in which the chief executive office
21 of the securities intermediary is located.



1 (f) A securities intermediary's jurisdiction [~~is~~] shall
2 not be determined by the physical location of certificates
3 representing financial assets, or by the jurisdiction in which
4 is organized the issuer of the financial asset with respect to
5 which an entitlement holder has a security entitlement, or by
6 the location of facilities for data processing or other
7 recordkeeping concerning the account.

8 (g) The local law of the issuer's jurisdiction or the
9 securities intermediary's jurisdiction shall govern a matter or
10 transaction specified in subsection (a) or (b) regardless of
11 whether the matter or transaction bears any relation to the
12 jurisdiction."

13 SECTION 34. Section 490:8-303, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) [~~In addition to acquiring the rights of a~~] A
16 purchaser, a protected purchaser also acquires its interest in
17 the security free of any adverse claim."

18 SECTION 35. Section 490:9-102, Hawaii Revised Statutes, is
19 amended by amending subsections (a) and (b) to read as follows:

20 "(a) In this [~~+~~]article[~~+~~]:



1 "Accession" means goods that are physically united with
2 other goods in [~~such~~] a manner [~~that~~] in which the identity of
3 the original goods is not lost.

4 "Account", except as used in "account for" [+], "account
5 statement", "account to", "customer's account", "on account of",
6 "statement of account", "commodity account" and "deposit
7 account":

8 (1) Means a right to payment of a monetary obligation,
9 whether or not earned by performance:

10 (A) For property that has been or is to be sold,
11 leased, licensed, assigned, or otherwise disposed
12 of;

13 (B) For services rendered or to be rendered;

14 (C) For a policy of insurance issued or to be issued;

15 (D) For a secondary obligation incurred or to be
16 incurred;

17 (E) For energy provided or to be provided;

18 (F) For the use or hire of a vessel under a charter
19 or other contract;



- 1 (G) Arising out of the use of a credit or charge card
2 or information contained on or for use with the
3 card; or
- 4 (H) As winnings in a lottery or other game of chance
5 operated or sponsored by a state, governmental
6 unit of a state, or person licensed or authorized
7 to operate the game by a state or governmental
8 unit of a state [~~— The term includes~~];
- 9 (2) Includes controllable accounts and health-care-
10 insurance receivables[-]; and
- 11 [~~+2~~] (3) Does not include:
- 12 (A) [~~Rights to payment evidenced by chattel paper or~~
13 ~~an instrument;~~] Chattel paper;
- 14 (B) Commercial tort claims;
- 15 (C) Deposit accounts;
- 16 (D) Investment property;
- 17 (E) Letter-of-credit rights or letters of credit;
18 [~~or~~]
- 19 (F) Rights to payment for money or funds advanced or
20 sold, other than rights arising out of the use of



1 a credit or charge card or information contained
2 on or for use with the card~~[=]~~; or

3 (G) Rights to payment evidenced by an instrument.

4 "Account debtor" means a person obligated on an account,
5 chattel paper, or general intangible. [~~The term~~] "Account
6 debtor" does not include persons obligated to pay a negotiable
7 instrument, even if the negotiable instrument [~~constitutes part~~
8 ~~of~~] evidences chattel paper.

9 "Accounting", except as used in "accounting for", means a
10 record:

- 11 (1) [~~Authenticated~~] Signed by a secured party;
- 12 (2) Indicating the aggregate unpaid secured obligations as
- 13 of a date not more than thirty-five days earlier or
- 14 thirty-five days later than the date of the record;
- 15 and
- 16 (3) Identifying the components of the obligations in
- 17 reasonable detail.

18 "Agricultural lien" means an interest in farm products:

- 19 (1) [~~Which~~] That secures payment or performance of an
- 20 obligation for:



1 (A) Goods or services furnished in connection with a
2 debtor's farming operation; or

3 (B) Rent on real property leased by a debtor in
4 connection with its farming operation;

5 (2) [~~Which~~] That is created by statute in favor of a
6 person that:

7 (A) In the ordinary course of its business furnished
8 goods or services to a debtor in connection with
9 a debtor's farming operation; or

10 (B) Leased real property to a debtor in connection
11 with the debtor's farming operation; and

12 (3) Whose effectiveness does not depend on the person's
13 possession of the personal property.

14 "As-extracted collateral" means:

15 (1) Oil, gas, or other minerals that are subject to a
16 security interest that:

17 (A) Is created by a debtor having an interest in the
18 minerals before extraction; and

19 (B) Attaches to the minerals as extracted; or



1 (2) Accounts arising out of the sale at the wellhead or
2 minehead of oil, gas, or other minerals in which the
3 debtor had an interest before extraction.

4 [~~"Authenticate" means:~~

5 ~~(1) To sign; or~~

6 ~~(2) With present intent to adopt or accept a record, to~~
7 ~~attach or to logically associate with the record an~~
8 ~~electronic sound, symbol, or process.]~~

9 "Assignee", except as used in "assignee for benefit of
10 creditors", means a person:

11 (1) In whose favor a security interest that secures an
12 obligation is created or provided for under a security
13 agreement, regardless of whether the obligation is
14 outstanding; or

15 (2) To which an account, chattel paper, payment
16 intangible, or promissory note has been sold.

17 "Assignee" includes a person to which a security interest has
18 been transferred by a secured party.

19 "Assignor" means a person that:

20 (1) Under a security agreement creates or provides for a
21 security interest that secures an obligation; or



1 (2) Sells an account, chattel paper, payment intangible,
2 or promissory note.

3 "Assignor" includes a secured party that has transferred a
4 security interest to another person.

5 "Bank" means an organization that is engaged in the
6 business of banking. [~~The term~~] "Bank" includes savings banks,
7 savings and loan associations, credit unions, and trust
8 companies.

9 "Cash proceeds" means proceeds that are money, checks,
10 deposit accounts, or the like.

11 "Certificate of title" means a certificate of title with
12 respect to which a statute provides for the security interest in
13 question to be indicated on the certificate as a condition or
14 result of the security interest's obtaining priority over the
15 rights of a lien creditor with respect to the collateral. [~~The~~
16 ~~term~~] "Certificate of title" includes another record maintained
17 as an alternative to a certificate of title by the governmental
18 unit that issues certificates of title if a statute permits the
19 security interest in question to be indicated on the record as a
20 condition or result of the security interest's obtaining



1 priority over the rights of a lien creditor with respect to the
2 collateral.

3 "Chattel paper" means [~~a record or records that evidence~~
4 ~~both a monetary obligation and a security interest in specific~~
5 ~~goods, a security interest in specific goods and software used~~
6 ~~in the goods, a security interest in specific goods and license~~
7 ~~of software used in the goods, a lease of specific goods, or a~~
8 ~~lease of specific goods and license of software used in the~~
9 ~~goods. In this paragraph, "monetary obligation" means a~~
10 ~~monetary obligation secured by the goods or owed under a lease~~
11 ~~of the goods and includes a monetary obligation with respect to~~
12 ~~software used in the goods.] a right to payment of a monetary
13 obligation that is either:~~

14 (1) Secured by specific goods, if the right to payment and
15 security agreement are evidenced by a record; or

16 (2) Owed by a lessee under a lease agreement with respect
17 to specific goods and a monetary obligation owed by
18 the lessee in connection with the transaction giving
19 rise to the lease, if:

20 (A) The right to payment and lease agreement are
21 evidenced by a record; and



1 (B) The predominant purpose of the transaction giving
2 rise to the lease was to give the lessee the
3 right to possession and use of the goods.

4 ~~[The term]~~ "Chattel paper" does not include[+]

5 (1) ~~Charters or other contracts involving the use or hire~~
6 ~~of a vessel; or~~

7 (2) ~~Records that evidence]~~ a right to payment arising out
8 of a charter or other contract involving the use or
9 hire of a vessel or a right to payment arising out of
10 the use of a credit or charge card or information
11 contained on or for use with the card. [~~If a~~
12 ~~transaction is evidenced by records that include an~~
13 ~~instrument or series of instruments, the group of~~
14 ~~records taken together constitutes chattel paper.]~~

15 "Collateral" means the property subject to a security
16 interest or agricultural lien. ~~[The term]~~ "Collateral"
17 includes:

- 18 (1) Proceeds to which a security interest attaches;
19 (2) Accounts, chattel paper, payment intangibles, and
20 promissory notes that have been sold; and
21 (3) Goods that are the subject of a consignment.



1 "Commercial tort claim" means a claim arising in tort with
2 respect to which:

3 (1) The claimant is an organization; or

4 (2) The claimant is an individual and the claim:

5 (A) Arose in the course of the claimant's business or
6 profession; and

7 (B) Does not include damages arising out of personal
8 injury to or the death of an individual.

9 "Commodity account" means an account maintained by a
10 commodity intermediary in which a commodity contract is carried
11 for a commodity customer.

12 "Commodity contract" means a commodity futures contract, an
13 option on a commodity futures contract, a commodity option, or
14 another contract if the contract or option is:

15 (1) Traded on or subject to the rules of a board of trade
16 that has been designated as a contract market for
17 ~~[such a contract]~~ these types of contracts pursuant to
18 federal commodities laws; or

19 (2) Traded on a foreign commodity board of trade,
20 exchange, or market, and is carried on the books of a
21 commodity intermediary for a commodity customer.



1 "Commodity customer" means a person for which a commodity
2 intermediary carries a commodity contract on its books.

3 "Commodity intermediary" means a person that:

- 4 (1) Is registered as a futures commission merchant under
5 federal commodities law; or
6 (2) In the ordinary course of its business provides
7 clearance or settlement services for a board of trade
8 that has been designated as a contract market pursuant
9 to federal commodities law.

10 "Communicate" means:

- 11 (1) To send a written or other tangible record;
12 (2) To transmit a record by any means agreed upon by the
13 persons sending and receiving the record; or
14 (3) In the case of transmission of a record to or by a
15 filing office, to transmit a record by any means
16 prescribed by filing-office rule.

17 "Consignee" means a merchant to which goods are delivered
18 in a consignment.

19 "Consignment" means a transaction, regardless of its form,
20 in which a person delivers goods to a merchant for the purpose
21 of sale and:



- 1 (1) The merchant:
- 2 (A) Deals in goods of that kind under a name other
- 3 than the name of the person making delivery;
- 4 (B) Is not an auctioneer; and
- 5 (C) Is not generally known by its creditors to be
- 6 substantially engaged in selling the goods of
- 7 others;
- 8 (2) With respect to each delivery, the aggregate value of
- 9 the goods is \$1,000 or more at the time of delivery;
- 10 (3) The goods are not consumer goods immediately before
- 11 delivery; and
- 12 (4) The transaction does not create a security interest
- 13 that secures an obligation.
- 14 "Consignor" means a person that delivers goods to a
- 15 consignee in a consignment.
- 16 "Consumer debtor" means a debtor in a consumer transaction.
- 17 "Consumer goods" means goods that are used or bought for
- 18 use primarily for personal, family, or household purposes.
- 19 "Consumer-goods transaction" means a consumer transaction
- 20 in which:



1 (1) An individual incurs an obligation primarily for
2 personal, family, or household purposes; and

3 (2) A security interest in consumer goods secures the
4 obligation.

5 "Consumer obligor" means an obligor who is an individual
6 and who incurred the obligation as part of a transaction entered
7 into primarily for personal, family, or household purposes.

8 "Consumer transaction" means a transaction in which:

9 (1) An individual incurs an obligation primarily for
10 personal, family, or household purposes[~~τ~~];

11 (2) A security interest secures the obligation[~~τ~~]; and

12 (3) The collateral is held or acquired primarily for
13 personal, family, or household purposes.

14 [~~The term~~] "Consumer transaction" includes consumer-goods
15 transactions.

16 "Continuation statement" means an amendment of a financing
17 statement which:

18 (1) Identifies, by its file number, the initial financing
19 statement to which it relates; and



1 (2) Indicates that it is a continuation statement for, or
2 that it is filed to continue the effectiveness of, the
3 identified financing statement.

4 "Controllable account" means an account evidenced by a
5 controllable electronic record that provides that the account
6 debtor undertakes to pay the person that has control under
7 section 490:A-105 of the controllable electronic record.

8 "Controllable payment intangible" means a payment
9 intangible evidenced by a controllable electronic record that
10 provides that the account debtor undertakes to pay the person
11 that has control under section 490:A-105 of the controllable
12 electronic record.

13 "Debtor" means:

14 (1) A person having an interest, other than a security
15 interest or other lien, in the collateral, whether or
16 not the person is an obligor;

17 (2) A seller of accounts, chattel paper, payment
18 intangibles, or promissory notes; or

19 (3) A consignee.

20 "Deposit account" means a demand, time, savings, passbook,
21 or similar account maintained with a bank. [~~The term~~] "Deposit



1 account" does not include investment property or accounts
2 evidenced by an instrument.

3 "Document" means a document of title or a receipt of the
4 type described in section 490:7-201(b).

5 "Electronic [~~chattel paper~~" means ~~chattel paper evidenced~~
6 ~~by a record or records consisting of information stored in an~~
7 ~~electronic medium.~~] money" means money in an electronic form.

8 "Encumbrance" means a right, other than an ownership
9 interest, in real property. [~~The term~~] "Encumbrance" includes
10 mortgages and other liens on real property.

11 "Equipment" means goods other than inventory, farm
12 products, or consumer goods.

13 "Farming operation" means raising, cultivating,
14 propagating, fattening, grazing, or any other farming,
15 livestock, or aquacultural operation.

16 "Farm products" means goods, other than standing timber,
17 with respect to which the debtor is engaged in a farming
18 operation and [~~which~~] that are:

19 (1) Crops grown, growing, or to be grown, including:

20 (A) Crops produced on trees, vines, and bushes; and



- 1 (B) Aquatic goods produced in aquacultural
2 operations;
- 3 (2) Livestock, born or unborn, including aquatic goods
4 produced in aquacultural operations;
- 5 (3) Supplies used or produced in a farming operation; or
6 (4) Products of crops or livestock in their unmanufactured
7 states.

8 "File number" means the number assigned to an initial
9 financing statement pursuant to section 490:9-519(a).

10 "Filing office" means an office designated in section
11 490:9-501 as the place to file a financing statement.

12 "Filing-office rule" means a rule adopted pursuant to
13 section 490:9-526.

14 "Financing statement" means a record or records composed of
15 an initial financing statement and any filed record relating to
16 the initial financing statement.

17 "Fixture filing" means the filing of a financing statement
18 covering goods that are or are to become fixtures and satisfying
19 section 490:9-502(a) and (b). [~~The term~~] "Fixture filing"
20 includes the filing of a financing statement covering goods of a
21 transmitting utility [~~which~~] that are or are to become fixtures.



1 "Fixtures" means goods that have become so related to
2 particular real property that an interest in them arises under
3 real property law.

4 "General intangible" means any personal property, including
5 things in action, other than accounts, chattel paper, commercial
6 tort claims, deposit accounts, documents, goods, instruments,
7 investment property, letter-of-credit rights, letters of credit,
8 money, and oil, gas, or other minerals before extraction. [~~The~~
9 ~~term~~] "General intangible" includes controllable electronic
10 records, payment intangibles, and software.

11 "Good faith" means honesty in fact and the observance of
12 reasonable commercial standards of fair dealing.

13 "Goods" means all things that are movable when a security
14 interest attaches. [~~The term~~] "Goods" includes:

- 15 (1) Fixtures[~~τ~~];
16 (2) Standing timber that is to be cut and removed under a
17 conveyance or contract for sale[~~τ~~];
18 (3) The unborn young of animals[~~τ~~];
19 (4) Crops grown, growing, or to be grown, even if the
20 crops are produced on trees, vines, or bushes; [~~and~~]
21 (5) Manufactured homes[~~τ~~];



1 ~~[The term also includes a]~~ (6) A computer program embedded
2 in goods and any supporting information provided in
3 connection with a transaction relating to the program
4 if ~~[(i) the]~~:

5 (A) The program is associated with the goods in
6 ~~[such]~~ a manner ~~[that]~~ in which it is customarily
7 ~~[is]~~ considered part of the goods~~[,]~~; or ~~[(ii)~~
8 ~~by]~~

9 (B) By becoming the owner of the goods, a person
10 acquires a right to use the program in connection
11 with the goods.

12 ~~[The term]~~ "Goods" does not include ~~[a]~~:

13 (1) A computer program embedded in goods that consist
14 solely of the medium in which the program is
15 embedded~~[. The term also does not include accounts,]~~;
16 and

17 (2) Accounts, chattel paper, commercial tort claims,
18 deposit accounts, documents, general intangibles,
19 instruments, investment property, letter-of-credit
20 rights, letters of credit, money, or oil, gas, or
21 other minerals before extraction.



1 "Governmental unit" means a subdivision, agency,
2 department, county, parish, municipality, or other unit of the
3 government of the United States, a state, or a foreign country.
4 [~~The term~~] "Governmental unit" includes an organization having a
5 separate corporate existence if the organization is eligible to
6 issue debt on which interest is exempt from income taxation
7 under the laws of the United States.

8 "Health-care-insurance receivable" means an interest in or
9 claim under a policy of insurance that is a right to payment of
10 a monetary obligation for health-care goods or services provided
11 or to be provided.

12 "Instrument" means a negotiable instrument or any other
13 writing that evidences a right to the payment of a monetary
14 obligation, is not itself a security agreement or lease, and is
15 of a type that in ordinary course of business is transferred by
16 delivery with any necessary indorsement or assignment. [~~The~~
17 ~~term~~] "Instrument" does not include:

- 18 (1) Investment property;
19 (2) Letters of credit; [~~or~~]



1 (3) Writings that evidence a right to payment arising out
2 of the use of a credit or charge card or information
3 contained on or for use with the card[-]; or

4 (4) Writings that evidence chattel paper.

5 "Inventory" means goods, other than farm products, [~~which-~~]
6 that:

7 (1) Are leased by a person as lessor;

8 (2) Are held by a person for sale or lease or to be
9 furnished under a contract of service;

10 (3) Are furnished by a person under a contract of service;
11 or

12 (4) Consist of raw materials, work in process, or
13 materials used or consumed in a business.

14 "Investment property" means a security, whether
15 certificated or uncertificated, security entitlement, securities
16 account, commodity contract, or commodity account.

17 "Jurisdiction of organization", with respect to a
18 registered organization, means the jurisdiction under whose law
19 the organization is formed or organized.

20 "Letter-of-credit right" means a right to payment or
21 performance under a letter of credit, whether or not the



1 beneficiary has demanded or is at the time entitled to demand
2 payment or performance. [~~The term~~] "Letter-of-credit right"
3 does not include the right of a beneficiary to demand payment or
4 performance under a letter of credit.

5 "Lien creditor" means:

- 6 (1) A creditor that has acquired a lien on the property
7 involved by attachment, levy, or the like;
8 (2) An assignee for benefit of creditors from the time of
9 assignment;
10 (3) A trustee in bankruptcy from the date of the filing of
11 the petition; or
12 (4) A receiver in equity from the time of appointment.

13 "Manufactured home" means a structure, transportable in one
14 or more sections, [~~which,~~] that, in the traveling mode, is eight
15 body feet or more in width or forty body feet or more in length,
16 or, when erected on site, is three hundred twenty or more square
17 feet, and [~~which~~] that is built on a permanent chassis and
18 designed to be used as a dwelling with or without a permanent
19 foundation when connected to the required utilities, and
20 includes the plumbing, heating, air-conditioning, and electrical
21 systems contained therein. [~~The term~~] "Manufactured home"



1 includes any structure that meets all of the requirements of
2 this [~~paragraph~~] definition except the size requirements and
3 with respect to which the manufacturer voluntarily files a
4 certification required by the United States Secretary of Housing
5 and Urban Development and complies with the standards
6 established under [~~Title~~] title 42 of the United States Code.

7 "Manufactured-home transaction" means a secured
8 transaction:

- 9 (1) That creates a purchase-money security interest in a
10 manufactured home, other than a manufactured home held
11 as inventory; or
12 (2) In which a manufactured home, other than a
13 manufactured home held as inventory, is the primary
14 collateral.

15 "Money" has the meaning as in section 490:1-201(b), but
16 does not include:

- 17 (1) A deposit account; or
18 (2) Money in an electronic form that cannot be subjected
19 to control under section 490:9-A.



1 "Mortgage" means a consensual interest in real property,
2 including fixtures, [~~which~~] that secures payment or performance
3 of an obligation.

4 "New debtor" means a person that becomes bound as debtor
5 under section 490:9-203(d) by a security agreement previously
6 entered into by another person.

7 "New value" means:

- 8 (1) Money;
- 9 (2) Money's worth in property, services, or new credit; or
- 10 (3) Release by a transferee of an interest in property
11 previously transferred to the transferee.

12 [~~The term~~] "New value" does not include an obligation
13 substituted for another obligation.

14 "Noncash proceeds" means proceeds other than cash proceeds.

15 "Obligor" means a person that, with respect to an
16 obligation secured by a security interest in or an agricultural
17 lien on the collateral:

- 18 (1) Owes payment or other performance of the obligation;
- 19 (2) Has provided property other than the collateral to
20 secure payment or other performance of the obligation;
- 21 or



1 (3) Is otherwise accountable in whole or in part for
2 payment or other performance of the obligation.
3 [~~The term~~] "Obligor" does not include issuers or nominated
4 persons under a letter of credit.

5 "Original debtor", except as used in section 490:9-310(c),
6 means a person that, as debtor, entered into a security
7 agreement to which a new debtor has become bound under section
8 490:9-203(d).

9 "Payment intangible" means a general intangible under which
10 the account debtor's principal obligation is a monetary
11 obligation. "Payment intangible" includes a controllable
12 payment intangible.

13 "Person related to", with respect to an individual, means:

- 14 (1) The spouse of the individual;
15 (2) A brother, brother-in-law, sister, or sister-in-law of
16 the individual;
17 (3) An ancestor or lineal descendant of the individual or
18 the individual's spouse; or
19 (4) Any other relative, by blood or marriage, of the
20 individual or the individual's spouse who shares the
21 same home with the individual.



1 "Person related to", with respect to an organization,

2 means:

3 (1) A person directly or indirectly controlling,
4 controlled by, or under common control with the
5 organization;

6 (2) An officer or director of, or a person performing
7 similar functions with respect to, the organization;

8 (3) An officer or director of, or a person performing
9 similar functions with respect to, a person described
10 in paragraph (1);

11 (4) The spouse of an individual described in paragraph
12 (1), (2), or (3); or

13 (5) An individual who is related by blood or marriage to
14 an individual described in paragraph (1), (2), (3), or
15 (4) and shares the same home with the individual.

16 "Proceeds", except as used in section 490:9-609(b), means
17 the following property:

18 (1) Whatever is acquired upon the sale, lease, license,
19 exchange, or other disposition of collateral;

20 (2) Whatever is collected on, or distributed on account
21 of, collateral;



- 1 (3) Rights arising out of collateral;
- 2 (4) To the extent of the value of collateral, claims
3 arising out of the loss, nonconformity, or
4 interference with the use of, defects or infringement
5 of rights in, or damage to, the collateral; or
- 6 (5) To the extent of the value of collateral and to the
7 extent payable to the debtor or the secured party,
8 insurance payable by reason of the loss or
9 nonconformity of, defects or infringement of rights
10 in, or damage to, the collateral.

11 "Promissory note" means an instrument that evidences a
12 promise to pay a monetary obligation, does not evidence an order
13 to pay, and does not contain an acknowledgment by a bank that
14 the bank has received for deposit a sum of money or funds.

15 "Proposal" means a record [~~authenticated~~] signed by a
16 secured party [~~which~~] that includes the terms on which the
17 secured party is willing to accept collateral in full or partial
18 satisfaction of the obligation it secures pursuant to sections
19 490:9-620, 490:9-621, and 490:9-622.

20 "Public-finance transaction" means a secured transaction in
21 connection with which:



- 1 (1) Debt securities are issued;
- 2 (2) All or a portion of the securities issued have an
3 initial stated maturity of at least twenty years; and
- 4 (3) The debtor, obligor, secured party, account debtor or
5 other person obligated on collateral, assignor or
6 assignee of a secured obligation, or assignor or
7 assignee of a security interest is a state or a
8 governmental unit of a state.

9 "Public organic record" means a record that is available to
10 the public for inspection and is:

- 11 (1) A record consisting of the record initially filed with
12 or issued by a state or the United States to form or
13 organize an organization and any record filed with or
14 issued by the state or the United States that amends
15 or restates the initial record;
- 16 (2) An organic record of a business trust consisting of
17 the record initially filed with a state and any record
18 filed with the state that amends or restates the
19 initial record, if a statute of the state governing
20 business trusts requires that the record be filed with
21 the state; or



1 (3) A record consisting of legislation enacted by the
 2 legislature of a state or the Congress of the United
 3 States that forms or organizes an organization, any
 4 record amending the legislation, and any record filed
 5 with or issued by the state or the United States that
 6 amends or restates the name of the organization.

7 "Pursuant to commitment", with respect to an advance made
 8 or other value given by a secured party, means pursuant to the
 9 secured party's obligation, whether or not a subsequent event of
 10 default or other event not within the secured party's control
 11 has relieved or may relieve the secured party from its
 12 obligation.

13 "Record", except as used in "for record", "of record",
 14 "record or legal title", and "record owner", means information
 15 that is inscribed on a tangible medium or ~~which~~ that is stored
 16 in an electronic or other medium and is retrievable in
 17 perceivable form.

18 "Registered organization" means an organization formed or
 19 organized solely under the law of a single state or the United
 20 States by the filing of a public organic record with, the
 21 issuance of a public organic record by, or the enactment of



1 legislation by the state or the United States. [~~The term~~]
2 "Registered organization" includes a business trust that is
3 formed or organized under the law of a single state if a statute
4 of the state governing business trusts requires that the
5 business trust's organic record be filed with the state.

6 "Secondary obligor" means an obligor to the extent that:

- 7 (1) The obligor's obligation is secondary; or
- 8 (2) The obligor has a right of recourse with respect to an
9 obligation secured by collateral against the debtor,
10 another obligor, or property of either.

11 "Secured party" means:

- 12 (1) A person in whose favor a security interest is created
13 or provided for under a security agreement, whether or
14 not any obligation to be secured is outstanding;
- 15 (2) A person that holds an agricultural lien;
- 16 (3) A consignor;
- 17 (4) A person to which accounts, chattel paper, payment
18 intangibles, or promissory notes have been sold;
- 19 (5) A trustee, indenture trustee, agent, collateral agent,
20 or other representative in whose favor a security



1 interest or agricultural lien is created or provided
2 for; or

3 (6) A person that holds a security interest arising under
4 section 490:2-401, 490:2-505, 490:2-711(3), 490:2A-
5 508(e), 490:4-210, or 490:5-118.

6 "Security agreement" means an agreement that creates or
7 provides for a security interest.

8 [~~"Send", in connection with a record or notification,~~

9 means:

10 ~~(1) To deposit in the mail, deliver for transmission, or~~
11 ~~transmit by any other usual means of communication,~~
12 ~~with postage or cost of transmission provided for,~~
13 ~~addressed to any address reasonable under the~~
14 ~~circumstances; or~~

15 ~~(2) To cause the record or notification to be received~~
16 ~~within the time that it would have been received if~~
17 ~~properly sent under paragraph (1).]~~

18 "Software" means a computer program and any supporting
19 information provided in connection with a transaction relating
20 to the program. [~~The term~~] "Software" does not include a
21 computer program that is included in the definition of goods.



1 "State" means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, or any
3 territory or insular possession subject to the jurisdiction of
4 the United States.

5 "Supporting obligation" means a letter-of-credit right or
6 secondary obligation that supports the payment or performance of
7 an account, chattel paper, a document, a general intangible, an
8 instrument, or investment property.

9 "~~Tangible [chattel paper" means chattel paper evidenced by~~
10 ~~a record or records consisting of information that is inscribed~~
11 ~~on a tangible medium.]~~ money" means money in a tangible form.

12 "Termination statement" means an amendment of a financing
13 statement which:

- 14 (1) Identifies, by its file number, the initial financing
15 statement to which it relates; and
- 16 (2) Indicates either that it is a termination statement or
17 that the identified financing statement is no longer
18 effective.

19 "Transmitting utility" means a person primarily engaged in
20 the business of:



- 1 (1) Operating a railroad, subway, street railway, or
- 2 trolley bus;
- 3 (2) Transmitting communications electrically,
- 4 electromagnetically, or by light;
- 5 (3) Transmitting goods by pipeline or sewer; or
- 6 (4) Transmitting or producing and transmitting
- 7 electricity, steam, gas, or water.
- 8 (b) The following definitions in other articles apply to
- 9 this article:
- 10 "Applicant". Section 490:5-102.
- 11 "Beneficiary". Section 490:5-102.
- 12 "Broker". Section 490:8-102.
- 13 "Certificated security". Section 490:8-102.
- 14 "Check". Section 490:3-104.
- 15 "Clearing corporation". Section 490:8-102.
- 16 "Contract for sale". Section 490:2-106.
- 17 "Control". Section 490:7-106.
- 18 "Controllable electronic record". Section 490:A-102.
- 19 "Customer". Section 490:4-104.
- 20 "Entitlement holder". Section 490:8-102.
- 21 "Financial asset". Section 490:8-102.



- 1 "Holder in due course". Section 490:3-302.
- 2 "Issuer" (with respect to a letter of credit or letter-of-
3 credit right). Section 490:5-102.
- 4 "Issuer" (with respect to a security). Section 490:8-201.
- 5 "Issuer" (with respect to documents of title). Section
6 490:7-102.
- 7 "Lease". Section 490:2A-103.
- 8 "Lease agreement". Section 490:2A-103.
- 9 "Lease contract". Section 490:2A-103.
- 10 "Leasehold interest". Section 490:2A-103.
- 11 "Lessee". Section 490:2A-103.
- 12 "Lessee in ordinary course of business". Section
13 490:2A-103.
- 14 "Lessor". Section 490:2A-103.
- 15 "Lessor's residual interest". Section 490:2A-103.
- 16 "Letter of credit". Section 490:5-102.
- 17 "Merchant". Section 490:2-104.
- 18 "Negotiable instrument". Section 490:3-104.
- 19 "Nominated person". Section 490:5-102.
- 20 "Note". Section 490:3-104.
- 21 "Proceeds of a letter of credit". Section 490:5-114.



1 "Protected purchaser". Section 490:8-303.

2 "Prove". Section 490:3-103.

3 "Qualifying purchaser". Section 490:A-102.

4 "Sale". Section 490:2-106.

5 "Securities account". Section 490:8-501.

6 "Securities intermediary". Section 490:8-102.

7 "Security". Section 490:8-102.

8 "Security certificate". Section 490:8-102.

9 "Security entitlement". Section 490:8-102.

10 "Uncertificated security". Section 490:8-102."

11 SECTION 36. Section 490:9-104, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) A secured party [~~has~~] shall be deemed to have control
14 of a deposit account if:

15 (1) The secured party is the bank with which the deposit
16 account is maintained;

17 (2) The debtor, secured party, and bank have agreed in [~~an~~
18 ~~authenticated~~] a signed record that the bank will
19 comply with instructions originated by the secured
20 party directing disposition of the funds in the



1 deposit account without further consent by the debtor;

2 [~~or~~]

3 (3) The secured party becomes the bank's customer with
4 respect to the deposit account[~~or~~]; or

5 (4) Another person, other than the debtor:

6 (A) Has control of the deposit account and
7 acknowledges that it has control on behalf of the
8 secured party; or

9 (B) Obtains control of the deposit account after
10 having acknowledged that it will obtain control
11 of the deposit account on behalf of the secured
12 party."

13 SECTION 37. Section 490:9-105, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§490:9-105 Control of electronic copy of record**

16 **evidencing chattel paper.** (a) A [~~secured party has~~] purchaser
17 shall be deemed to have control of [electronic] an authoritative
18 electronic copy of a record evidencing chattel paper if a system
19 employed for evidencing the [~~transfer~~] assignment of interests
20 in the chattel paper reliably establishes the [~~secured party~~]



1 purchaser as the person to which [~~the chattel paper~~] the
2 authoritative electronic copy was assigned.

3 (b) A system [~~satisfies~~] shall be deemed to satisfy
4 subsection (a) if the record [~~or records comprising~~] evidencing
5 the chattel paper are created, stored, and assigned in [~~such~~] a
6 manner that:

7 (1) A single authoritative copy of the record [~~or records~~]
8 exists which is unique, identifiable, and, except as
9 otherwise provided in paragraphs (4), (5), and (6),
10 unalterable;

11 (2) The authoritative copy identifies the [~~secured party~~]
12 purchaser as the assignee of the record [~~or records~~];

13 (3) The authoritative copy is communicated to, and
14 maintained by, the [~~secured party~~] purchaser or its
15 designated custodian;

16 (4) Copies or amendments that add or change an identified
17 assignee of the authoritative copy can be made only
18 with the consent of the [~~secured party~~] purchaser;

19 (5) Each copy of the authoritative copy and any copy of a
20 copy is readily identifiable as a copy that is not the
21 authoritative copy; and



1 (6) Any amendment of the authoritative copy is readily
2 identifiable as authorized or unauthorized.

3 (c) A system shall be deemed to satisfy subsection (a),
4 and a purchaser shall be deemed to have control of an
5 authoritative electronic copy of a record evidencing chattel
6 paper, if the electronic copy, a record attached to, or
7 logically associated with, the electronic copy, or a system in
8 which the electronic copy is recorded:

9 (1) Enables the purchaser to readily identify each
10 electronic copy as either an authoritative copy or a
11 nonauthoritative copy;

12 (2) Enables the purchaser to readily identify itself in
13 any way, including by name, identifying number,
14 cryptographic key, office, or account number, as the
15 assignee of the authoritative electronic copy; and

16 (3) Gives the purchaser exclusive power, subject to
17 subsection (d), to:

18 (A) Prevent others from adding or changing an
19 identified assignee of the authoritative
20 electronic copy; and



1 (B) Transfer control of the authoritative electronic
2 copy.

3 (d) Subject to subsection (e), a power shall be deemed
4 exclusive under subsection (c) (3) (A) and (B), regardless of
5 whether:

6 (1) The authoritative electronic copy, a record attached
7 to, or logically associated with, the authoritative
8 electronic copy, or a system in which the
9 authoritative electronic copy is recorded limits the
10 use of the authoritative electronic copy or has a
11 protocol programmed to cause a change, including a
12 transfer or loss of control; or

13 (2) The power is shared with another person.

14 (e) A power of a purchaser shall not be deemed to be
15 shared with another person under subsection (d) (2) and the
16 purchaser's power shall not be deemed exclusive if:

17 (1) The purchaser may exercise the power only if the power
18 is also exercised by the other person; and

19 (2) The other person:

20 (A) May exercise the power without exercise of the
21 power by the purchaser; or



1 (B) Is the transferor to the purchaser of an interest
2 in the chattel paper.

3 (f) If a purchaser has the powers specified in subsection
4 (c) (3) (A) and (B), the powers shall be presumed to be exclusive.

5 (g) A purchaser shall be deemed to have control of an
6 authoritative electronic copy of a record evidencing chattel
7 paper if another person, other than the transferor to the
8 purchaser of an interest in the chattel paper:

9 (1) Has control of the authoritative electronic copy and
10 acknowledges that it has control on behalf of the
11 purchaser; or

12 (2) Obtains control of the authoritative electronic copy
13 after having acknowledged that it will obtain control
14 of the electronic copy on behalf of the purchaser."

15 SECTION 38. Section 490:9-203, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) Except as otherwise provided in subsections (c)
18 through (i), a security interest is enforceable against the
19 debtor and third parties with respect to the collateral only if:

20 (1) Value has been given;



1 (2) The debtor has rights in the collateral or the power
2 to transfer rights in the collateral to a secured
3 party; and

4 (3) One of the following conditions is met:

5 (A) The debtor has [~~authenticated~~] signed a security
6 agreement that provides a description of the
7 collateral and, if the security interest covers
8 timber to be cut, a description of the land
9 concerned;

10 (B) The collateral is not a certificated security and
11 is in the possession of the secured party under
12 section 490:9-313 pursuant to the debtor's
13 security agreement;

14 (C) The collateral is a certificated security in
15 registered form and the security certificate has
16 been delivered to the secured party under section
17 490:8-301 pursuant to the debtor's security
18 agreement; [~~or~~]

19 (D) The collateral is controllable accounts,
20 controllable electronic records, controllable
21 payment intangibles, deposit accounts, electronic



1 ~~[chattel paper,~~ documents, electronic money,
2 investment property, or letter-of-credit rights,
3 ~~[or electronic documents,~~ and the secured party
4 has control under section 490:7-106, 490:9-104,
5 ~~[490:9-105,~~ 490:9-A, 490:9-106, [or] 490:9-107,
6 or 490:9-B pursuant to the debtor's security
7 agreement~~[-]~~; or

8 (E) The collateral is chattel paper and the secured
9 party has possession and control under section
10 490:9-F pursuant to the debtor's security
11 agreement."

12 SECTION 39. Section 490:9-204, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§490:9-204 After-acquired property; future advances.** (a)

15 Except as otherwise provided in subsection (b), a security
16 agreement may create or provide for a security interest in
17 after-acquired collateral.

18 (b) [A] Subject to subsection (d), a security interest
19 does not attach under a term constituting an after-acquired
20 property clause to:



1 (1) Consumer goods, other than an accession when given as
2 additional security, unless the debtor acquires rights
3 in them within ten days after the secured party gives
4 value; or

5 (2) A commercial tort claim.

6 (c) A security agreement may provide that collateral
7 secures, or that accounts, chattel paper, payment intangibles,
8 or promissory notes are sold in connection with, future advances
9 or other value, whether or not the advances or value are given
10 pursuant to commitment.

11 (d) Nothing in subsection (b) shall prevent a security
12 interest from attaching:

13 (1) To consumer goods as proceeds under section
14 490:9-315(a) or commingled goods under section
15 490:9-336(c);

16 (2) To a commercial tort claim as proceeds under section
17 490:9-315(a); or

18 (3) Under an after-acquired property clause to property
19 that is proceeds of consumer goods or a commercial
20 tort claim."



1 SECTION 40. Section 490:9-207, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Except as otherwise provided in subsection (d), a
4 secured party having possession of collateral or control of
5 collateral under section 490:7-106, 490:9-104, 490:9-105,
6 490:9-A, 490:9-106, [or] 490:9-107[+], or 490:9-B:

7 (1) May hold as additional security any proceeds, except
8 money or funds, received from the collateral;

9 (2) Shall apply money or funds received from the
10 collateral to reduce the secured obligation, unless
11 remitted to the debtor; and

12 (3) May create a security interest in the collateral."

13 SECTION 41. Section 490:9-208, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) Within ten days after receiving [~~an authenticated~~] a
16 signed demand by the debtor:

17 (1) A secured party having control of a deposit account
18 under section 490:9-104(a)(2) shall send to the bank
19 with which the deposit account is maintained [~~an~~
20 ~~authenticated statement~~] a signed record that releases



1 the bank from any further obligation to comply with
2 instructions originated by the secured party;

3 (2) A secured party having control of a deposit account
4 under section 490:9-104(a) (3) shall:

5 (A) Pay the debtor the balance on deposit in the
6 deposit account; or

7 (B) Transfer the balance on deposit into a deposit
8 account in the debtor's name;

9 (3) A secured party, other than a buyer, having control
10 [~~of electronic chattel paper~~] under section 490:9-105
11 [~~shall:~~

12 ~~(A) Communicate the~~ of an authoritative electronic
13 copy of [the electronic] a record evidencing
14 chattel paper shall transfer control of the
15 electronic copy to the debtor or [its] a person
16 designated [custodian];

17 ~~(B) If] by the debtor [designates a custodian that is~~
18 ~~the designated custodian with which the~~
19 ~~authoritative copy of the electronic chattel~~
20 ~~paper is maintained for the secured party,~~
21 ~~communicate to the custodian an authenticated~~



- 1 ~~record releasing the designated custodian from~~
2 ~~any further obligation to comply with~~
3 ~~instructions originated by the secured party and~~
4 ~~instructing the custodian to comply with~~
5 ~~instructions originated by the debtor; and~~
6 ~~(C) Take appropriate action to enable the debtor or~~
7 ~~its designated custodian to make copies of or~~
8 ~~revisions to the authoritative copy which add or~~
9 ~~change an identified assignee of the~~
10 ~~authoritative copy without the consent of the~~
11 ~~secured party];~~
- 12 (4) A secured party having control of investment property
13 under section 490:8-106(d) (2) or 490:9-106(b) shall
14 send to the securities intermediary or commodity
15 intermediary with which the security entitlement or
16 commodity contract is maintained [~~an authenticated~~] a
17 signed record that releases the securities
18 intermediary or commodity intermediary from any
19 further obligation to comply with entitlement orders
20 or directions originated by the secured party;



1 (5) A secured party having control of a letter-of-credit
2 right under section 490:9-107 shall send to each
3 person having an unfulfilled obligation to pay or
4 deliver proceeds of the letter of credit to the
5 secured party [~~an authenticated~~] a signed release from
6 any further obligation to pay or deliver proceeds of
7 the letter of credit to the secured party; [~~and~~]

8 (6) A secured party having control under section 490:7-106
9 of an authoritative electronic copy of an electronic
10 document shall[+]

11 ~~(A) Give~~] transfer control of the electronic
12 [~~document~~] copy to the debtor or [~~its~~] a person
13 designated [~~custodian~~;

14 ~~(B) If~~] by the debtor [~~designates a custodian that is~~
15 ~~the designated custodian with which the~~
16 ~~authoritative copy of the electronic document is~~
17 ~~maintained for the secured party, communicate to~~
18 ~~the custodian an authenticated record releasing~~
19 ~~the designated custodian from any further~~
20 ~~obligation to comply with instructions originated~~
21 ~~by the secured party and instructing the~~



1 ~~eustodian to comply with instructions originated~~
 2 ~~by the debtor; and~~
 3 ~~(C) Take appropriate action to enable the debtor or~~
 4 ~~its designated custodian to make copies of or~~
 5 ~~revisions to the authoritative copy that add or~~
 6 ~~change an identified assignee of the~~
 7 ~~authoritative copy without the consent of the~~
 8 ~~secured party.]~~i

9 (7) A secured party having control under section 490:9-A
 10 of electronic money shall transfer control of the
 11 electronic money to the debtor or a person designated
 12 by the debtor; and

13 (8) A secured party having control under section 490:A-105
 14 of a controllable electronic record, other than a
 15 buyer of a controllable account or controllable
 16 payment intangible evidenced by the controllable
 17 electronic record, shall transfer control of the
 18 controllable electronic record to the debtor or a
 19 person designated by the debtor."

20 SECTION 42. Section 490:9-209, Hawaii Revised Statutes, is
 21 amended by amending subsection (b) to read as follows:



1 "(b) Within ten days after receiving [~~an authenticated~~] a
2 signed demand by the debtor, a secured party shall send to an
3 account debtor that has received notification under section
4 490:9-406(a) or 490:A-106(b) of an assignment to the secured
5 party as assignee [~~under section 490:9-406(a) an authenticated~~]
6 a signed record that releases the account debtor from any
7 further obligation to the secured party."

8 SECTION 43. Section 490:9-301, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§490:9-301 Law governing perfection and priority of**
11 **security interests.** Except as otherwise provided in sections
12 490:9-303 through [~~490:9-306,~~] 490:9-E, the following rules
13 shall determine the law governing perfection, the effect of
14 perfection or nonperfection, and the priority of a security
15 interest in collateral:

16 (1) Except as otherwise provided in this section, while a
17 debtor is located in a jurisdiction, the local law of
18 that jurisdiction [~~governs~~] shall govern perfection,
19 the effect of perfection or nonperfection, and the
20 priority of a security interest in collateral[~~;~~];



- 1 (2) While collateral is located in a jurisdiction, the
2 local law of that jurisdiction [~~governs~~] shall govern
3 perfection, the effect of perfection or nonperfection,
4 and the priority of a possessory security interest in
5 that collateral[~~-~~];
- 6 (3) Except as otherwise provided in paragraph (4), while
7 [~~tangible~~] negotiable tangible documents, goods,
8 instruments, or tangible money[, ~~or tangible chattel~~
9 ~~paper~~] is located in a jurisdiction, the local law of
10 that jurisdiction [~~governs~~] shall govern:
- 11 (A) Perfection of a security interest in the goods by
12 filing a fixture filing;
- 13 (B) Perfection of a security interest in timber to be
14 cut; and
- 15 (C) The effect of perfection or nonperfection and the
16 priority of a nonpossessory security interest in
17 the collateral[~~-~~]; and
- 18 (4) The local law of the jurisdiction in which the
19 wellhead or minehead is located [~~governs~~] shall govern
20 perfection, the effect of perfection or nonperfection,



1 and the priority of a security interest in as-
2 extracted collateral."

3 SECTION 44. Section 490:9-304, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The local law of a bank's jurisdiction [~~governs~~]
6 shall govern perfection, the effect of perfection or
7 nonperfection, and the priority of a security interest in a
8 deposit account maintained with that bank[~~-~~] even if the
9 transaction does not bear any relation to the bank's
10 jurisdiction."

11 SECTION 45. Section 490:9-305, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Except as otherwise provided in subsection (c), the
14 following rules apply:

15 (1) While a security certificate is located in a
16 jurisdiction, the local law of that jurisdiction
17 [~~governs~~] shall govern perfection, the effect of
18 perfection or nonperfection, and the priority of a
19 security interest in the certificated security
20 represented thereby[~~-~~];



1 (2) The local law of the issuer's jurisdiction as
2 specified in section 490:8-110(d) [~~governs~~] shall
3 govern perfection, the effect of perfection or
4 nonperfection, and the priority of a security interest
5 in an uncertificated security[~~-~~];

6 (3) The local law of the securities intermediary's
7 jurisdiction as specified in section 490:8-110(e)
8 [~~governs~~] shall govern perfection, the effect of
9 perfection or nonperfection, and the priority of a
10 security interest in a security entitlement or
11 securities account[~~-~~];

12 (4) The local law of the commodity intermediary's
13 jurisdiction [~~governs~~] shall govern perfection, the
14 effect of perfection or nonperfection, and the
15 priority of a security interest in a commodity
16 contract or commodity account[~~-~~]; and

17 (5) Paragraphs (2), (3), and (4) shall apply regardless of
18 whether the transaction bears any relation to the
19 jurisdiction."

20 SECTION 46. Section 490:9-310, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



- 1 "(b) The filing of a financing statement [~~is~~] shall not be
2 necessary to perfect a security interest:
- 3 (1) That is perfected under section 490:9-308(d), (e),
4 (f), or (g);
- 5 (2) That is perfected under section 490:9-309 when it
6 attaches;
- 7 (3) In property subject to a statute, regulation, or
8 treaty described in section 490:9-311(a);
- 9 (4) In goods in possession of a bailee [~~which is~~]
10 perfected under section 490:9-312(d)(1) or (2);
- 11 (5) In certificated securities, documents, goods, or
12 instruments [~~which is~~] perfected without filing,
13 control, or possession under section 490:9-312(e),
14 (f), or (g);
- 15 (6) In collateral in the secured party's possession under
16 section 490:9-313;
- 17 (7) In a certificated security [~~which is~~] perfected by
18 delivery of the security certificate to the secured
19 party under section 490:9-313;
- 20 (8) In controllable accounts, controllable electronic
21 records, controllable payment intangibles, deposit



1 accounts, [~~electronic chattel paper,~~] electronic
2 documents, investment property, or letter-of-credit
3 rights [~~which is~~] perfected by control under section
4 490:9-314;

5 (9) In chattel paper perfected by possession and control
6 under section 490:9-F;

7 (10) In proceeds [~~which is~~] perfected under section
8 490:9-315; or

9 [~~(10)~~] (11) That is perfected under section 490:9-316."

10 SECTION 47. Section 490:9-312, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By amending its title and subsections (a) and (b) to
13 read:

14 "**§490:9-312 Perfection of security interests in chattel**
15 **paper, controllable accounts, controllable electronic records,**
16 **controllable payment intangibles, deposit accounts, documents,**
17 **goods covered by documents, instruments, investment property,**
18 **letter-of-credit rights, and money; perfection by permissive**
19 **filing; temporary perfection without filing or transfer of**
20 **possession. (a) A security interest in chattel paper,**
21 [~~negotiable documents,~~] controllable accounts, controllable



1 electronic records, controllable payment intangibles,
2 instruments, [~~or~~] investment property, or negotiable documents
3 may be perfected by filing.

4 (b) Except as otherwise provided in section 490:9-315(c)
5 and (d) for proceeds:

6 (1) A security interest in a deposit account may be
7 perfected only by control under section 490:9-314;

8 (2) And except as otherwise provided in section
9 490:9-308(d), a security interest in a letter-of-
10 credit right may be perfected only by control under
11 section 490:9-314; [~~and~~]

12 (3) A security interest in tangible money may be perfected
13 only by the secured party's taking possession under
14 section 490:9-313[~~-~~]; and

15 (4) A security interest in electronic money may be
16 perfected only by control under section 490:9-314."

17 2. By amending subsection (e) to read:

18 "(e) A security interest in certificated securities,
19 negotiable documents, or instruments [~~is~~] shall be deemed to be
20 perfected without filing or the taking of possession or control
21 for a period of twenty days from the time it attaches to the



1 extent that it arises for new value given under [~~an~~
2 ~~authenticated~~] a signed security agreement."

3 SECTION 48. Section 490:9-313, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) Except as otherwise provided in subsection (b), a
7 secured party may perfect a security interest in [~~tangible~~
8 ~~negotiable documents,~~] goods, instruments, negotiable tangible
9 documents, or tangible money[~~, or tangible chattel paper~~] by
10 taking possession of the collateral. A secured party may
11 perfect a security interest in certificated securities by taking
12 delivery of the certificated securities under section
13 490:8-301."

14 2. By amending subsection (c) to read:

15 "(c) With respect to collateral other than certificated
16 securities and goods covered by a document, a secured party
17 takes possession of collateral in the possession of a person
18 other than the debtor, the secured party, or a lessee of the
19 collateral from the debtor in the ordinary course of the
20 debtor's business, when:



1 (1) The person in possession [~~authenticates~~] signs a
2 record acknowledging that it holds possession of the
3 collateral for the secured party's benefit; or

4 (2) The person takes possession of the collateral after
5 having [~~authenticated~~] signed a record acknowledging
6 that it will hold possession of the collateral for the
7 secured party's benefit."

8 SECTION 49. Section 490:9-314, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§490:9-314 Perfection by control.** (a) A security
11 interest in [~~investment property, deposit accounts, letter-of-~~
12 ~~credit rights, electronic chattel paper, or electronic~~
13 ~~documents~~] controllable accounts, controllable electronic
14 records, controllable payment intangibles, deposit accounts,
15 electronic documents, electronic money, investment property, or
16 letter-of-credit rights may be perfected by control of the
17 collateral under section 490:7-106, 490:9-104, [~~490:9-105,~~
18 490:9-A, 490:9-106, [ex] 490:9-107[-], or 490:9-B.

19 (b) A security interest in [~~deposit accounts, electronic~~
20 ~~chattel paper, letter-of-credit rights, or electronic documents~~
21 ~~is~~] controllable accounts, controllable electronic records,



1 controllable payment intangibles, deposit accounts, electronic
2 documents, electronic money, or letter-of-credit rights shall be
3 deemed perfected by control under section 490:7-106, 490:9-104,
4 [490:9-105, or] 490:9-A, 490:9-107 [when], or 490:9-B no earlier
5 than the time the secured party obtains control and [~~remains~~]
6 shall be deemed to remain perfected by control only while the
7 secured party retains control.

8 (c) A security interest in investment property [~~is~~] shall
9 be deemed perfected by control under section 490:9-106 [~~from~~] no
10 earlier than the time the secured party obtains control and
11 [~~remains~~] shall be deemed to remain perfected by control until:

12 (1) The secured party does not have control; and

13 (2) One of the following occurs:

14 (A) If the collateral is a certificated security, the
15 debtor has or acquires possession of the security
16 certificate;

17 (B) If the collateral is an uncertificated security,
18 the issuer has registered or registers the debtor
19 as the registered owner; or

20 (C) If the collateral is a security entitlement, the
21 debtor is or becomes the entitlement holder."



1 SECTION 50. Section 490:9-316, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) A security interest perfected pursuant to the law of
5 the jurisdiction designated in section 490:9-301(1) [~~or~~],
6 490:9-305(c) [~~remains~~], 490:9-D(d), or 490:9-E(b) shall be
7 deemed to remain perfected until the earliest of:

8 (1) The time perfection would have ceased under the law of
9 that jurisdiction;

10 (2) The expiration of four months after a change of the
11 debtor's location to another jurisdiction; or

12 (3) The expiration of one year after a transfer of
13 collateral to a person that thereby becomes a debtor
14 and is located in another jurisdiction."

15 2. By amending subsection (f) to read:

16 "(f) A security interest in chattel paper, controllable
17 accounts, controllable electronic records, controllable payment
18 intangibles, deposit accounts, letter-of-credit rights, or
19 investment property [~~which~~] that is perfected under the law of
20 the chattel paper's jurisdiction, the controllable electronic
21 record's jurisdiction, the bank's jurisdiction, the issuer's



1 jurisdiction, a nominated person's jurisdiction, the securities
2 intermediary's jurisdiction, or the commodity intermediary's
3 jurisdiction, as applicable, [~~remains~~] shall be deemed to remain
4 perfected until the earlier of:

- 5 (1) The time the security interest would have become
6 unperfected under the law of that jurisdiction; or
7 (2) The expiration of four months after a change of the
8 applicable jurisdiction to another jurisdiction."

9 SECTION 51. Section 490:9-317, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§490:9-317 Interests that take priority over or take free**
12 **of security interest or agricultural lien.** (a) A security
13 interest or agricultural lien [~~is~~] shall be subordinate to the
14 rights of:

15 (1) A person entitled to priority under section 490:9-322;
16 and

17 (2) Except as otherwise provided in subsection (e), a
18 person that becomes a lien creditor before the earlier
19 of the time:

20 (A) The security interest or agricultural lien is
21 perfected; or



1 (B) One of the conditions specified in section
2 490:9-203(b)(3) is met and a financing statement
3 covering the collateral is filed.

4 (b) Except as otherwise provided in subsection (e), a
5 buyer, other than a secured party, of [~~tangible chattel paper,~~
6 ~~tangible documents,~~] goods, instruments, tangible document, or
7 certificated security takes free of a security interest or
8 agricultural lien if the buyer gives value and receives delivery
9 of the collateral without knowledge of the security interest or
10 agricultural lien and before it is perfected.

11 (c) Except as otherwise provided in subsection (e), a
12 lessee of goods takes free of a security interest or
13 agricultural lien if the lessee gives value and receives
14 delivery of the collateral without knowledge of the security
15 interest or agricultural lien and before it is perfected.

16 (d) [A] Subject to subsections (f) through (i), a licensee
17 of a general intangible or a buyer, other than a secured party,
18 of collateral other than [~~tangible chattel paper, tangible~~
19 ~~documents,~~] electronic money, goods, instruments, tangible
20 documents, or a certificated security takes free of a security



1 interest if the licensee or buyer gives value without knowledge
2 of the security interest and before it is perfected.

3 (e) Except as otherwise provided in sections 490:9-320 and
4 490:9-321, if a person files a financing statement with respect
5 to a purchase-money security interest before or within twenty
6 days after the debtor receives delivery of the collateral, the
7 security interest takes priority over the rights of a buyer,
8 lessee, or lien creditor which arise between the time the
9 security interest attaches and the time of filing.

10 (f) A buyer, other than a secured party, of chattel paper
11 takes free of a security interest if, without knowledge of the
12 security interest and before it is perfected, the buyer gives
13 value and:

14 (1) Receives delivery of each authoritative tangible copy
15 of the record evidencing the chattel paper; and

16 (2) If each authoritative electronic copy of the record
17 evidencing the chattel paper may be subjected to
18 control under section 490:9-105, obtains control of
19 each authoritative electronic copy.

20 (g) A buyer of an electronic document takes free of a
21 security interest if, without knowledge of the security interest



1 and before it is perfected, the buyer gives value and, if each
2 authoritative electronic copy of the document may be subjected
3 to control under section 490:7-106, obtains control of each
4 authoritative electronic copy.

5 (h) A buyer of a controllable electronic record takes free
6 of a security interest if, without knowledge of the security
7 interest and before it is perfected, the buyer gives value and
8 obtains control of the controllable electronic record.

9 (i) A buyer, other than a secured party, of a controllable
10 account or a controllable payment intangible takes free of a
11 security interest if, without knowledge of the security interest
12 and before it is perfected, the buyer gives value and obtains
13 control of the controllable account or controllable payment
14 intangible."

15 SECTION 52. Section 490:9-323, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (d) to read:

18 "(d) Except as otherwise provided in subsection (e), a
19 buyer of goods [~~other than a buyer in ordinary course of~~
20 ~~business~~] takes free of a security interest to the extent that
21 it secures advances made after the earlier of:



1 (1) The time the secured party acquires knowledge of the
2 buyer's purchase; or

3 (2) Forty-five days after the purchase."

4 2. By amending subsection (f) to read:

5 "(f) Except as otherwise provided in subsection (g), a
6 lessee of goods [~~, other than a lessee in ordinary course of~~
7 ~~business,~~] takes the leasehold interest free of a security
8 interest to the extent that it secures advances made after the
9 earlier of:

10 (1) The time the secured party acquires knowledge of the
11 lease; or

12 (2) Forty-five days after the lease contract becomes
13 enforceable."

14 SECTION 53. Section 490:9-330, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsections (a) and (b) to read:

17 "(a) A purchaser of chattel paper [~~has~~] shall have
18 priority over a security interest in the chattel paper [~~which~~]
19 that is claimed merely as proceeds of inventory subject to a
20 security interest if:



- 1 (1) In good faith and in the ordinary course of the
2 purchaser's business, the purchaser gives new value
3 [~~and~~], takes possession of each authoritative tangible
4 copy of the record evidencing the chattel paper [e#],
5 and obtains control [e#] under section 490:9-105 of
6 each authoritative electronic copy of the record
7 evidencing the chattel paper [under section
8 490:9-105]; and
- 9 (2) The [~~chattel paper does~~] authoritative copies of the
10 record evidencing the chattel paper do not indicate
11 that [it] the chattel paper has been assigned to an
12 identified assignee other than the purchaser.
- 13 (b) A purchaser of chattel paper [~~has~~] shall have priority
14 over a security interest in the chattel paper [which] that is
15 claimed other than merely as proceeds of inventory subject to a
16 security interest if the purchaser gives new value [and], takes
17 possession of each authoritative tangible copy of the record
18 evidencing the chattel paper [e#], and obtains control [e#]
19 under section 490:9-105 of each authoritative electronic copy of
20 the record evidencing the chattel paper [under section
21 490:9-105] in good faith, in the ordinary course of the



1 purchaser's business, and without knowledge that the purchase
2 violates the rights of the secured party."

3 2. By amending subsection (f) to read:

4 "(f) For purposes of subsections (b) and (d), if the
5 authoritative copies of the record evidencing chattel paper or
6 an instrument [indicates] indicate that [~~it~~] the chattel paper
7 or instrument has been assigned to an identified secured party
8 other than the purchaser, a purchaser of the chattel paper or
9 instrument has knowledge that the purchase violates the rights
10 of the secured party."

11 SECTION 54. Section 490:9-331, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§490:9-331 Priority of rights of purchasers of**
14 **[instruments,] controllable accounts, controllable electronic**
15 **records, controllable payment intangibles, documents,**
16 **instruments, and securities under other articles; priority of**
17 **interests in financial assets and security entitlements and**
18 **protection against assertion of claim under [article] articles**
19 **8[-] and A.** (a) This article does not limit the rights of a
20 holder in due course of a negotiable instrument, a holder to
21 which a negotiable document of title has been duly negotiated,



1 ~~or~~ a protected purchaser of a security~~[-]~~, or a qualifying
2 purchaser of a controllable account, controllable electronic
3 record, or controllable payment intangible. These holders or
4 purchasers take priority over an earlier security interest, even
5 if perfected, to the extent provided in articles 3, 7, ~~and~~
6 8~~[-]~~, and A.

7 (b) This article does not limit the rights of or impose
8 liability on a person to the extent that the person is protected
9 against the assertion of a claim under article 8~~[-]~~ or A.

10 (c) Filing under this article does not constitute notice
11 of a claim or defense to the holders, or purchasers, or persons
12 described in subsections (a) and (b)."

13 SECTION 55. Section 490:9-332, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§490:9-332 Transfer of money; transfer of funds from**
16 **deposit account.** (a) A transferee of tangible money takes the
17 money free of a security interest ~~[unless the transferee acts]~~
18 if the transferee receives possession of the money without
19 acting in collusion with the debtor in violating the rights of
20 the secured party.



1 (b) A transferee of funds from a deposit account takes the
2 funds free of a security interest in the deposit account [~~unless~~
3 ~~the transferee acts~~] if the transferee receives the funds
4 without acting in collusion with the debtor in violating the
5 rights of the secured party.

6 (c) A transferee of electronic money takes the money free
7 of a security interest if the transferee obtains control of the
8 money without acting in collusion with the debtor in violating
9 the rights of the secured party."

10 SECTION 56. Section 490:9-406, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§490:9-406 Discharge of account debtor; notification of**
13 **assignment; identification and proof of assignment; restrictions**
14 **on assignment of accounts, chattel paper, payment intangibles,**
15 **and promissory notes ineffective.** (a) Subject to subsections
16 (b) through [~~(i)~~], (j), an account debtor on an account, chattel
17 paper, or a payment intangible may discharge its obligation by
18 paying the assignor until, but not after, the account debtor
19 receives a notification, [~~authenticated~~] signed by the assignor
20 or the assignee, that the amount due or to become due has been
21 assigned and that payment is to be made to the assignee. After



1 receipt of the notification, the account debtor may discharge
2 its obligation by paying the assignee and may not discharge the
3 obligation by paying the assignor.

4 (b) Subject to [~~subsection~~] subsections (h) [~~r~~] and (j),
5 notification [~~is~~] shall be deemed ineffective under subsection

6 (a):

7 (1) If it does not reasonably identify the rights
8 assigned;

9 (2) To the extent that an agreement between an account
10 debtor and a seller of a payment intangible limits the
11 account debtor's duty to pay a person other than the
12 seller and the limitation is effective under law other
13 than this article; or

14 (3) At the option of an account debtor, if the
15 notification notifies the account debtor to make less
16 than the full amount of any installment or other
17 periodic payment to the assignee, even if:

18 (A) Only a portion of the account, chattel paper, or
19 payment intangible has been assigned to that
20 assignee;



1 (B) A portion has been assigned to another assignee;
2 or

3 (C) The account debtor knows that the assignment to
4 that assignee is limited.

5 (c) Subject to [~~subsection~~] subsections (h) [~~7~~] and (j), if
6 requested by the account debtor, an assignee shall seasonably
7 furnish reasonable proof that the assignment has been made.
8 Unless the assignee complies, the account debtor may discharge
9 its obligation by paying the assignor, even if the account
10 debtor has received a notification under subsection (a).

11 (d) In this subsection, "promissory note" includes a
12 negotiable instrument that evidences chattel paper. Except as
13 otherwise provided in subsection (e) and sections 490:2A-303 and
14 490:9-407, and subject to subsection (h), a term in an agreement
15 between an account debtor and an assignor or in a promissory
16 note [~~is~~] shall be deemed ineffective to the extent that it:

17 (1) Prohibits, restricts, or requires the consent of the
18 account debtor or person obligated on the promissory
19 note to the assignment or transfer of, or the
20 creation, attachment, perfection, or enforcement of a



1 security interest in, the account, chattel paper,
2 payment intangible, or promissory note; or

3 (2) Provides that the assignment or transfer or the
4 creation, attachment, perfection, or enforcement of
5 the security interest may give rise to a default,
6 breach, right of recoupment, claim, defense,
7 termination, right of termination, or remedy under the
8 account, chattel paper, payment intangible, or
9 promissory note.

10 (e) Subsection (d) does not apply to the sale of a payment
11 intangible or promissory note, other than a sale pursuant to a
12 disposition under section 490:9-610 or an acceptance of
13 collateral under section 490:9-620.

14 (f) Except as otherwise provided in sections 490:2A-303
15 and 490:9-407, and subject to subsections (h) and (i), a rule of
16 law, statute, or regulation, that prohibits, restricts, or
17 requires the consent of a government, governmental body or
18 official, or account debtor to the assignment or transfer of, or
19 creation of a security interest in, an account or chattel paper
20 [~~is~~] shall be ineffective to the extent that the rule of law,
21 statute, or regulation:



1 (1) Prohibits, restricts, or requires the consent of the
2 government, governmental body or official, or account
3 debtor to the assignment or transfer of, or the
4 creation, attachment, perfection, or enforcement of a
5 security interest in, the account or chattel paper; or

6 (2) Provides that the assignment or transfer or the
7 creation, attachment, perfection, or enforcement of
8 the security interest may give rise to a default,
9 breach, right of recoupment, claim, defense,
10 termination, right of termination, or remedy under the
11 account or chattel paper.

12 (g) Subject to ~~[subsection]~~ subsections (h) ~~[r]~~ and (j), an
13 account debtor may not waive or vary its option under subsection
14 (b) (3).

15 (h) This section is subject to law other than this article
16 ~~[which]~~ that establishes a different rule for an account debtor
17 who is an individual and who incurred the obligation primarily
18 for personal, family, or household purposes.

19 (i) This section does not apply to an assignment of a
20 health-care-insurance receivable.



1 (j) Subsections (a), (b), (c), and (g) shall not apply to
2 a controllable account or controllable payment intangible."

3 SECTION 57. Section 490:9-408, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§490:9-408 Restrictions on assignment of promissory**
6 **notes, health-care-insurance receivables, and certain general**
7 **intangibles ineffective.** (a) Except as otherwise provided in
8 subsection (b), a term in a promissory note or in an agreement
9 between an account debtor and a debtor [~~which~~] that relates to a
10 health-care-insurance receivable or a general intangible,
11 including a contract, permit, license, or franchise, [~~and which~~
12 ~~term~~] that prohibits, restricts, or requires the consent of the
13 person obligated on the promissory note or the account debtor
14 to, the assignment or transfer of, or creation, attachment, or
15 perfection of a security interest in, the promissory note,
16 health-care-insurance receivable, or general intangible, [~~is~~]
17 shall be deemed ineffective to the extent that the term:

- 18 (1) Would impair the creation, attachment, or perfection
19 of a security interest; or
20 (2) Provides that the assignment or transfer or the
21 creation, attachment, or perfection of the security



1 interest may give rise to a default, breach, right of
2 recoupment, claim, defense, termination, right of
3 termination, or remedy under the promissory note,
4 health-care-insurance receivable, or general
5 intangible.

6 (b) Subsection (a) [~~applies~~] shall apply to a security
7 interest in a payment intangible or promissory note only if the
8 security interest arises out of a sale of the payment intangible
9 or promissory note, other than a sale pursuant to a disposition
10 under section 490:9-610 or an acceptance of collateral under
11 section 490:9-620.

12 (c) A rule of law, statute, or regulation[~~7~~] that
13 prohibits, restricts, or requires the consent of a government,
14 governmental body or official, person obligated on a promissory
15 note, or account debtor to the assignment or transfer of, or
16 creation of a security interest in, a promissory note, health-
17 care-insurance receivable, or general intangible, including a
18 contract, permit, license, or franchise between an account
19 debtor and a debtor, [~~is~~] shall be deemed ineffective to the
20 extent that the rule of law, statute, or regulation:



1 (1) Would impair the creation, attachment, or perfection
2 of a security interest; or

3 (2) Provides that the assignment or transfer or the
4 creation, attachment, or perfection of the security
5 interest may give rise to a default, breach, right of
6 recoupment, claim, defense, termination, right of
7 termination, or remedy under the promissory note,
8 health-care-insurance receivable, or general
9 intangible.

10 (d) To the extent that a term in a promissory note or in
11 an agreement between an account debtor and a debtor [~~which~~] that
12 relates to a health-care-insurance receivable or general
13 intangible or a rule of law, statute, or regulation described in
14 subsection (c) would be effective under law other than this
15 article but is ineffective under subsection (a) or (c), the
16 creation, attachment, or perfection of a security interest in
17 the promissory note, health-care-insurance receivable, or
18 general intangible:

19 (1) [~~It~~] Shall not enforceable against the person
20 obligated on the promissory note or the account
21 debtor;



- 1 (2) [~~Does~~] Shall not impose a duty or obligation on the
2 person obligated on the promissory note or the account
3 debtor;
- 4 (3) [~~Does~~] Shall not require the person obligated on the
5 promissory note or the account debtor to recognize the
6 security interest, pay or render performance to the
7 secured party, or accept payment or performance from
8 the secured party;
- 9 (4) [~~Does~~] Shall not entitle the secured party to use or
10 assign the debtor's rights under the promissory note,
11 health-care-insurance receivable, or general
12 intangible, including any related information or
13 materials furnished to the debtor in the transaction
14 giving rise to the promissory note, health-care-
15 insurance receivable, or general intangible;
- 16 (5) [~~Does~~] Shall not entitle the secured party to use,
17 assign, possess, or have access to any trade secrets
18 or confidential information of the person obligated on
19 the promissory note or the account debtor; and



1 (6) [~~Does~~] Shall not entitle the secured party to enforce
2 the security interest in the promissory note, health-
3 care-insurance receivable, or general intangible.

4 (e) In this section, "promissory note" includes a
5 negotiable instrument that evidences chattel paper."

6 SECTION 58. Section 490:9-601, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) A secured party in possession of collateral or
9 control of collateral under section 490:7-106, 490:9-104,
10 490:9-105, 490:9-A, 490:9-106, [~~or~~] 490:9-107 [~~has~~], or 490:9-B
11 shall have the rights and duties provided in section 490:9-207."

12 SECTION 59. Section 490:9-605, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§490:9-605 Unknown debtor or secondary obligor.** [~~A~~] (a)
15 Except as provided in subsection (b), a secured party [~~does~~]
16 shall not owe a duty based on its status as secured party:

17 (1) To a person that is a debtor or obligor, unless the
18 secured party knows:

19 (A) That the person is a debtor or obligor;

20 (B) The identity of the person; and

21 (C) How to communicate with the person; or



1 (2) To a secured party or lienholder that has filed a
2 financing statement against a person, unless the
3 secured party knows:

4 (A) That the person is a debtor; and

5 (B) The identity of the person.

6 (b) A secured party shall be deemed to owe a duty based on
7 its status as a secured party to a person if, at the time the
8 secured party obtains control of collateral that is a
9 controllable account, controllable electronic record, or
10 controllable payment intangible or at the time the security
11 interest attaches to the collateral, whichever is later:

12 (1) The person is a debtor or obligor; and

13 (2) The secured party knows that the information in
14 subsection (a) (1) relating to the person is not
15 provided by the collateral; a record attached to, or
16 logically associated with, the collateral; or the
17 system in which the collateral is recorded."

18 SECTION 60. Section 490:9-613, Hawaii Revised Statutes, is
19 amended to read as follows:



1 "§490:9-613 **Contents and form of notification before**

2 **disposition of collateral: general.** (a) Except in a
3 consumer-goods transaction, the following rules shall apply:

4 (1) The contents of a notification of disposition are
5 sufficient if the notification:

6 (A) Describes the debtor and the secured party;

7 (B) Describes the collateral that is the subject of
8 the intended disposition;

9 (C) States the method of intended disposition;

10 (D) States that the debtor is entitled to an
11 accounting of the unpaid indebtedness and states
12 the charge, if any, for an accounting; and

13 (E) States the time and place of a public disposition
14 or the time after which any other disposition is
15 to be made[-];

16 (2) Whether the contents of a notification that lacks any
17 of the information specified in paragraph (1) are
18 nevertheless sufficient is a question of fact[-];

19 (3) The contents of a notification providing substantially
20 the information specified in paragraph (1) are
21 sufficient, even if the notification includes:



- 1 (A) Information not specified by that paragraph; or
- 2 (B) Minor errors that are not seriously
- 3 misleading~~[]~~;
- 4 (4) A particular phrasing of the notification is not
- 5 required~~[]~~; and
- 6 (5) The following form of notification and the form
- 7 appearing in section ~~[490:9-614(3)]~~ 490:9-614(a)(3),
- 8 when completed~~[]~~ in accordance with the instructions
- 9 in subsection (b) and section 490:9-614(b), each
- 10 provides sufficient information:

~~[NOTIFICATION OF DISPOSITION OF COLLATERAL~~

13 To: ~~_____ [Name of debtor, obligor, or other~~
14 ~~person to which the notification is sent]~~

15 From: ~~_____ [Name, address, and telephone number of~~
16 ~~secured party]~~

17 Name of Debtor(s): ~~_____ [Include only if debtor(s)~~
18 ~~are not an addressee]~~

19 ~~{For a public disposition:}~~



1 ~~We will sell [or lease or license, as applicable]~~
2 ~~the _____ [describe collateral] _____ [to the highest~~
3 ~~qualified bidder] in public as follows:~~

4 ~~Day and Date: _____~~

5 ~~Time: _____~~

6 ~~Place: _____~~

7 ~~[For a private disposition:]~~

8 ~~We will sell [or lease or license, as applicable]~~
9 ~~the _____ [describe collateral] _____ privately sometime~~
10 ~~after _____ [day and date] _____.~~

11 ~~You are entitled to an accounting of the unpaid~~
12 ~~indebtedness secured by the property that we intend to~~
13 ~~sell [or lease or license, as applicable] [for a~~
14 ~~charge of \$ _____]. You may request an accounting~~
15 ~~by calling us at _____ [telephone number] _____.]~~

16 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

17 ~~To: _____ (Name of debtor, obligor, or other person to which the~~
18 ~~notification is sent)~~

19 ~~From: _____ (Name, address, and telephone number of secured~~
20 ~~party)~~



1 (1) Name of any debtor that is not an addressee:

2 (Name of each debtor)

3 (2) We will sell (describe collateral) (to the
4 highest qualified bidder) at public sale. A sale
5 could include a lease or license. The sale will be
6 held as follows:

7 (Date)

8 (Time)

9 (Place)

10 (3) We will sell (describe collateral) at
11 private sale sometime after (date). A sale could
12 include a lease or license.

13 (4) You are entitled to an accounting of the
14 unpaid indebtedness secured by the property that we
15 intend to sell or, as applicable, lease or license.

16 (5) If you request an accounting you must pay a
17 charge of \$ (amount).

18 (6) You may request an accounting by calling us
19 at (telephone number).

20



1 (b) The following instructions shall apply to the form of
2 notification in subsection (a) (5):

3 (1) The instructions in this subsection refer to the
4 numbers in parentheses before items in the form of
5 notification in subsection (a) (5). Do not include the
6 numbers or parentheses in the notification. The
7 numbers and parentheses are used only for the purpose
8 of these instructions;

9 (2) Include and complete item (1) only if there is a
10 debtor that is not an addressee of the notification
11 and list the name or names;

12 (3) Include and complete either item (2), if the
13 notification relates to a public disposition of the
14 collateral, or item (3), if the notification relates
15 to a private disposition of the collateral. If item
16 (2) is included, include the words "to the highest
17 qualified bidder" only if applicable;

18 (4) Include and complete items (4) and (6); and

19 (5) Include and complete item (5) only if the sender will
20 charge the recipient for an accounting."



1 SECTION 61. Section 490:9-614, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§490:9-614 Contents and form of notification before**
4 **disposition of collateral: consumer-goods transaction. (a)** In
5 a consumer-goods transaction, the following rules shall apply:

6 (1) A notification of disposition must provide the
7 following information:

8 (A) The information specified in section

9 ~~[490:9-613(1);]~~ 490:9-613(a)(1);

10 (B) A description of any liability for a deficiency
11 of the person to which the notification is sent;

12 (C) A telephone number from which the amount that
13 must be paid to the secured party to redeem the
14 collateral under section 490:9-623 is available;
15 and

16 (D) A telephone number or mailing address from which
17 additional information concerning the disposition
18 and the obligation secured is available~~[+]~~;

19 (2) A particular phrasing of the notification is not
20 required~~[+]~~;



1 (3) The following form of notification, when completed[7]
2 in accordance with the instructions in subsection (b),
3 provides sufficient information:

4 [~~_____ [Name and address of secured party]~~
5 ~~_____ [Date]~~

6 ~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

7 ~~_____ [Name and address of any obligor who is also a~~
8 ~~debtor]~~

9 Subject: ~~_____ [Identification of Transaction]~~

10 We have your ~~_____ [describe collateral]~~,
11 because you broke promises in our agreement.
12 ~~[For a public disposition:]~~

13 We will sell ~~_____ [describe collateral]~~ at
14 public sale sometime after ~~_____ [date]~~. A sale
15 could include a lease or license.

16 The sale will be held as follows:

17 Day and Date: _____

18 Time: _____

19 Place: _____

20 You may attend the sale and bring bidders if you
21 want.



1 ~~{For a private disposition:}~~

2 We will sell _____ [describe collateral] _____ at
3 private sale sometime after _____ [date] _____. A sale
4 could include a lease or license.

5 The money that we get from the sale (after paying
6 our costs) will reduce the amount you owe. If we get
7 less money than you owe, you _____ [will or will not,
8 as applicable] _____ still owe us the difference. If
9 we get more money than you owe, you will get the extra
10 money, unless we must pay it to someone else.

11 You can get the property back at any time before
12 we sell it by paying us the full amount you owe (not
13 just the past due payments), including our expenses.
14 To learn the exact amount you must pay, call us
15 at _____ [telephone number] _____.

16 If you want us to explain to you in writing how
17 we have figured the amount that you owe us, you may
18 call us at _____ [telephone number] _____ [or write us
19 at _____ [secured party's address] _____] and request a
20 written explanation. [We will charge you
21 \$ _____ for the explanation if we sent you another



1 ~~written explanation of the amount you owe us within~~
2 ~~the last six months.]~~

3 ~~If you need more information about the sale call~~
4 ~~us at _____ [telephone number] _____ [or write us~~
5 ~~at _____ [secured party's address] _____].~~

6 ~~We are sending this notice to the following other~~
7 ~~people who have an interest in _____ [describe~~
8 ~~collateral] _____ or who owe money under your~~
9 ~~agreement:~~

10 ~~_____ [Names of all other debtors and obligors, if~~
11 ~~any] _____.]~~

12 (Name and address of secured party)

13 (Date)

14 **NOTICE OF OUR PLAN TO SELL PROPERTY**

15 (Name and address of any obligor who is also a debtor)

16 Subject: (Identify transaction)

17 We have your (describe collateral) because you
18 broke promises in our agreement.

19 (1) We will sell (describe collateral) at public
20 sale. A sale could include a lease or license. The
21 sale will be held as follows:



1 (Date)

2 (Time)

3 (Place)

4 You may attend the sale and bring bidders if you
5 want.

6 (2) We will sell (describe collateral) at
7 private sale sometime after (date). A sale could
8 include a lease or license.

9 (3) The money that we get from the sale, after
10 paying our costs, will reduce the amount you owe. If
11 we get less money than you owe, you (will or will not,
12 as applicable) still owe us the difference. If we get
13 more money than you owe, you will get the extra money,
14 unless we must pay it to someone else.

15 (4) You can get the property back at any time
16 before we sell it by paying us the full amount you
17 owe, not just the past due payments, including our
18 expenses. To learn the exact amount you must pay,
19 call us at (telephone number).

20 (5) If you want us to explain to you in
21 (writing) (writing or in (description of electronic



1 record)) (description of electronic record) how we
 2 have figured the amount that you owe us, (6) call us
 3 at (telephone number) (or) (write us at (secured
 4 party's address)) (or contact us by (description of
 5 electronic communication method)) (7) and request (a
 6 written explanation) (a written explanation or an
 7 explanation in (description of electronic record)) (an
 8 explanation in (description of electronic record)).

9 (8) We will charge you \$ (amount) for the
 10 explanation if we sent you another written explanation
 11 of the amount you owe us within the last six months.

12 (9) If you need more information about the sale
 13 (call us at (telephone number)) (or) (write us at
 14 (secured party's address)) (or contact us by
 15 (description of electronic communication method)).

16 (10) We are sending this notice to the following
 17 other people who have an interest in (describe
 18 collateral) or who owe money under your agreement:
 19 (Names of all other debtors and obligors, if any)

20



1 (4) A notification in the form of paragraph (3) is
2 sufficient, even if additional information appears at
3 the end of the form[-];

4 (5) A notification in the form of paragraph (3) is
5 sufficient, even if it includes errors in information
6 not required by paragraph (1), unless the error is
7 misleading with respect to rights arising under this
8 article[-]; and

9 (6) If a notification under this section is not in the
10 form of paragraph (3), law other than this article
11 determines the effect of including information not
12 required by paragraph (1).

13 (b) The following instructions shall apply to the form of
14 notification in subsection (a) (3):

15 (1) The instructions in this subsection refer to the
16 numbers in parentheses before items in the form of
17 notification in subsection (a) (3). Do not include the
18 numbers or parentheses in the notification. The
19 numbers and parentheses are used only for the purpose
20 of these instructions;



- 1 (2) Include and complete either item (1), if the
2 notification relates to a public disposition of the
3 collateral, or item (2), if the notification relates
4 to a private disposition of the collateral;
- 5 (3) Include and complete items (3), (4), (5), (6), and
6 (7);
- 7 (4) In item (5), include and complete any one of the three
8 alternative methods for the explanation--writing,
9 writing or electronic record, or electronic record;
- 10 (5) In item (6), include the telephone number. In
11 addition, the sender may include and complete either
12 or both of the two additional alternative methods of
13 communication--writing or electronic communication--
14 for the recipient of the notification to communicate
15 with the sender. Neither of the two additional
16 methods of communication is required to be included;
- 17 (6) In item (7), include and complete the method or
18 methods for the explanation--writing, writing or
19 electronic record, or electronic record--included in
20 item (5);



- 1 (7) Include and complete item (8) only if a written
- 2 explanation is included in item (5) as a method for
- 3 communicating the explanation and the sender shall
- 4 charge the recipient for another written explanation;
- 5 (8) In item (9), include either the telephone number or
- 6 the address, or both. In addition, the sender may
- 7 include and complete the additional method of
- 8 communication--electronic communication--for the
- 9 recipient of the notification to communicate with the
- 10 sender. The additional method of electronic
- 11 communication is not required to be included; and
- 12 (9) If item (10) does not apply, insert "None" after
- 13 "agreement: "."

14 SECTION 62. Section 490:9-616, Hawaii Revised Statutes, is

15 amended by amending subsections (a) through (c) to read as

16 follows:

- 17 "(a) In this section:
- 18 (1) "Explanation" means a [~~writing~~] record that:
- 19 (A) States the amount of the surplus or deficiency;



- 1 (B) Provides an explanation in accordance with
- 2 subsection (c) of how the secured party
- 3 calculated the surplus or deficiency;
- 4 (C) States, if applicable, that future debits,
- 5 credits, charges, including additional credit
- 6 service charges or interest, rebates, and
- 7 expenses may affect the amount of the surplus or
- 8 deficiency; and
- 9 (D) Provides a telephone number or mailing address
- 10 from which additional information concerning the
- 11 transaction is available.

12 (2) "Request" means a record:

- 13 (A) [~~Authenticated~~] Signed by a debtor or consumer
- 14 obligor;
- 15 (B) Requesting that the recipient provide an
- 16 explanation; and
- 17 (C) Sent after disposition of the collateral under
- 18 section 490:9-610.

19 (b) In a consumer-goods transaction in which the debtor is
20 entitled to a surplus or a consumer obligor is liable for a
21 deficiency under section 490:9-615, the secured party shall:



- 1 (1) Send an explanation to the debtor or consumer obligor,
2 as applicable, after the disposition and:
- 3 (A) Before or when the secured party accounts to the
4 debtor and pays any surplus or first makes
5 ~~written~~ a demand in a record on the consumer
6 obligor after the disposition for payment of the
7 deficiency; and
- 8 (B) Within fourteen days after receipt of a request;
9 or
- 10 (2) In the case of a consumer obligor who is liable for a
11 deficiency, within fourteen days after receipt of a
12 request, send to the consumer obligor a record waiving
13 the secured party's right to a deficiency.
- 14 (c) To comply with subsection (a) (1) (B), [~~a writing must~~]
15 an explanation shall provide the following information in the
16 following order:
- 17 (1) The aggregate amount of obligations secured by the
18 security interest under which the disposition was
19 made, and, if the amount reflects a rebate of unearned
20 interest or credit service charge, an indication of
21 that fact, calculated as of a specified date:



- 1 (A) If the secured party takes or receives possession
- 2 of the collateral after default, not more than
- 3 thirty-five days before the secured party takes
- 4 or receives possession; or
- 5 (B) If the secured party takes or receives possession
- 6 of the collateral before default or does not take
- 7 possession of the collateral, not more than
- 8 thirty-five days before the disposition;
- 9 (2) The amount of proceeds of the disposition;
- 10 (3) The aggregate amount of the obligations after
- 11 deducting the amount of proceeds;
- 12 (4) The amount, in the aggregate or by type, and types of
- 13 expenses, including expenses of retaking, holding,
- 14 preparing for disposition, processing, and disposing
- 15 of the collateral, and attorney's fees secured by the
- 16 collateral [~~which~~] that are known to the secured party
- 17 and relate to the current disposition;
- 18 (5) The amount, in the aggregate or by type, and types of
- 19 credits, including rebates of interest or credit
- 20 service charges, to which the obligor is known to be



1 entitled and [~~which~~] that are not reflected in the
2 amount in paragraph (1); and

3 (6) The amount of the surplus or deficiency."

4 SECTION 63. Section 490:9-628, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§490:9-628 Nonliability and limitation on liability of**
7 **secured party; liability of secondary obligor.** (a) [~~Unless~~]

8 Subject to subsection (f), unless a secured party knows that a
9 person is a debtor or obligor, knows the identity of the person,
10 and knows how to communicate with the person:

11 (1) The secured party [~~is~~] shall not be liable to the
12 person, or to a secured party or lienholder that has
13 filed a financing statement against the person, for
14 failure to comply with this article; and

15 (2) The secured party's failure to comply with this
16 article [~~does~~] shall not affect the liability of the
17 person for a deficiency.

18 (b) [A] Subject to subsection (f), a secured party [~~is~~]
19 shall not be liable because of its the status as secured party:

20 (1) To a person that is a debtor or obligor, unless the
21 secured party knows:



- 1 (A) That the person is a debtor or obligor;
- 2 (B) The identity of the person; and
- 3 (C) How to communicate with the person; or
- 4 (2) To a secured party or lienholder that has filed a
- 5 financing statement against a person, unless the
- 6 secured party knows:
- 7 (A) That the person is a debtor; and
- 8 (B) The identity of the person.
- 9 (c) A secured party [~~is~~] shall not be liable to any
- 10 person, and a person's liability for a deficiency [~~is~~] shall not
- 11 be affected, because of any act or omission arising out of the
- 12 secured party's reasonable belief that a transaction is not a
- 13 consumer-goods transaction or a consumer transaction or that
- 14 goods are not consumer goods, if the secured party's belief is
- 15 based on its the reasonable reliance on:
- 16 (1) A debtor's representation concerning the purpose for
- 17 which collateral was to be used, acquired, or held; or
- 18 (2) An obligor's representation concerning the purpose for
- 19 which a secured obligation was incurred.



1 (d) A secured party [~~is~~] shall not be liable to any person
2 under section 490:9-625(c) (2) for its failure to comply with
3 section 490:9-616.

4 (e) A secured party [~~is~~] shall not be liable under section
5 490:9-625(c) (2) more than once with respect to any one secured
6 obligation.

7 (f) Subsections (a) and (b) shall not apply to limit the
8 liability of a secured party to a person if, at the time the
9 secured party obtains control of collateral that is a
10 controllable account, controllable electronic record, or
11 controllable payment intangible or at the time the security
12 interest attaches to the collateral, whichever is later:

13 (1) The person is a debtor or obligor; and

14 (2) The secured party knows that the information in
15 subsection (b) (1) relating to the person is not
16 provided by the collateral; a record attached to, or
17 logically associated with, the collateral; or the
18 system in which the collateral is recorded."

19 SECTION 64. (a) Sections 490:2-203, 490:2-205,
20 490:2A-201, 490:2A-203, 490:2A-205, 490:2A-208, 490:4A-207, and



1 490:4A-208, Hawaii Revised Statutes, are amended by substituting
2 the phrase "record" wherever the phrase "writing" appears.

3 (b) Sections 490:9-210, 490:9-324, 490:9-334, 490:9-341,
4 490:9-404, 490:9-509, 490:9-513, 490:9-608, 490:9-611,
5 490:9-615, 490:9-619, 490:9-620, 490:9-621, and 490:9-624,
6 Hawaii Revised Statutes, are amended by substituting the phrases
7 "signed" or "signing" wherever the phrase "authenticated" or
8 "authenticating" appears.

9 SECTION 65. This Act does not affect rights and duties
10 that matured, penalties that were incurred, and proceedings that
11 were begun before its effective date.

12 SECTION 66. In codifying the new sections added by section
13 1 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 67. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 68. This Act shall take effect June 30, 3000.

19



Report Title:

Uniform Commercial Code

Description:

Implements the 2022 Uniform Commercial Code Amendments set forth by the Uniform Law Commission. Effective 6/30/3000. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

