



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) regardless of whether:
  - 19 (1) The controllable electronic record; a record attached
  - 20 to, or logically associated with, the electronic
  - 21 record; or a system in which the electronic record is



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

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

6 (c) A power of a person shall not be deemed to be shared  
7 with another person under subsection (b) (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  
10 also is 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 controllable electronic record or a  
16 controllable account or controllable payment  
17 intangible evidenced by the controllable  
18 electronic record.

19 (d) If a person has the powers specified in subsection  
20 (a) (1) (B), the powers shall be presumed to be exclusive.



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

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

9 (2) Obtains control of the electronic record after having  
10 acknowledged that it will obtain control of the  
11 electronic record on behalf of the person.

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

15 (g) If a person acknowledges that it has or will obtain  
16 control on behalf of another person, unless the person otherwise  
17 agrees or law other than this article or article 9 otherwise  
18 provides, the person shall not owe any duty to the other person  
19 and shall not be required to confirm the acknowledgment to any  
20 other person.



1           **§490:A-106 Discharge of account debtor on controllable**  
2 **account or controllable payment intangible.** (a) An account  
3 debtor on a controllable account or controllable payment  
4 intangible may discharge its obligation by paying:

- 5           (1) The person having control of the controllable  
6           electronic record that evidences the controllable  
7           account or controllable payment intangible; or  
8           (2) Except as provided in subsection (b), a person that  
9           formerly had control of the controllable electronic  
10          record.

11          (b) Subject to subsection (d), the account debtor shall  
12 not discharge its obligation by paying a person that formerly  
13 had control of the controllable electronic record if the account  
14 debtor receives a notification that:

- 15          (1) Is signed by a person that formerly had control or the  
16          person to which control was transferred;  
17          (2) Reasonably identifies the controllable account or  
18          controllable payment intangible;  
19          (3) Notifies the account debtor that control of the  
20          controllable electronic record that evidences the

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



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

6 (3) At the option of the account debtor if the  
7 notification notifies the account debtor to:

8 (A) Divide a payment;

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

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

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



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

6 (1) Avail itself of substantially all the benefit from the  
7 controllable electronic record;

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

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

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

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

20 **§490:A-107 Governing law.** (a) Except as provided in  
21 subsection (b), the local law of a controllable electronic



1 record's jurisdiction shall govern a matter covered by this  
2 article.

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

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

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

19 (2) If paragraph (1) does not apply and the rules of the  
20 system in which the controllable electronic record is  
21 recorded are readily available for review and



1 expressly provide that a particular jurisdiction is  
2 the controllable electronic record's jurisdiction for  
3 purposes of this chapter or article, that jurisdiction  
4 shall be the controllable electronic record's  
5 jurisdiction;

6 (3) If paragraphs (1) and (2) do not apply and the  
7 controllable electronic record, or a record attached  
8 to, or logically associated with, the controllable  
9 electronic record and readily available for review,  
10 expressly provides that the controllable electronic  
11 record is governed by the law of a particular  
12 jurisdiction, that jurisdiction shall be the  
13 controllable electronic record's jurisdiction;

14 (4) If paragraphs (1), (2), and (3) do not apply and the  
15 rules of the system in which the controllable  
16 electronic record is recorded are readily available  
17 for review and expressly provide that the controllable  
18 electronic record or the system is governed by the law  
19 of a particular jurisdiction, that jurisdiction shall  
20 be the controllable electronic record's jurisdiction;  
21 and



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

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

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

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

20

**ARTICLE B**



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

4 **PART 2. GENERAL TRANSITIONAL PROVISION**

5 **§490:B-201 Savings clause.** Except as provided in part 3,  
6 a transaction validly entered into before the effective date of  
7 this article and the rights, duties, and interests flowing from  
8 the transaction shall remain valid thereafter and may be  
9 terminated, completed, consummated, or enforced as required or  
10 permitted by law other than this chapter or, if applicable, this  
11 chapter, as though this article had not taken effect.

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

13 **§490:B-301 Savings clause.** (a) Except as provided in  
14 this part, article 9 as amended by Act , Session Laws of  
15 Hawaii 2023, and article A shall apply to a transaction, lien,  
16 or other interest in property, regardless of whether the  
17 transaction, lien, or interest was entered into, created, or  
18 acquired before the effective date of this article.

19 (b) Except as provided in subsection (c) and sections  
20 490:B-302 through 490:B-306:



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

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

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

18 **§490:B-302 Security interest perfected before the**  
19 **effective date.** (a) A security interest that is enforceable  
20 and perfected immediately before the effective date of this  
21 article shall be a perfected security interest under this



1 article if, on the effective date of this article, the  
2 requirements for enforceability and perfection under this  
3 article are satisfied without further action.

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

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

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

18 (3) Remain perfected thereafter only if the requirements  
19 for perfection under this article are satisfied before  
20 the time specified in paragraph (1).



1           **§490:B-303 Security interest unperfected before the**  
2 **effective date.** A security interest that is enforceable  
3 immediately before the effective date of this article but is  
4 unperfected at that time shall:

- 5           (1) Remain an enforceable security interest until the  
6                 adjustment date;
- 7           (2) Remain enforceable thereafter if the security interest  
8                 becomes enforceable under section 490:9-203, as  
9                 amended by Act       , Session Laws of Hawaii 2023, on  
10                the effective date of this article or before the  
11                adjustment date; and
- 12           (3) Become perfected:
- 13                (A) Without further action, on the effective date of  
14                this article if the requirements for perfection  
15                under this article are satisfied before or at  
16                that time; or
- 17                (B) When the requirements for perfection are  
18                satisfied if the requirements are satisfied after  
19                that time.

20           **§490:B-304 Effectiveness of actions taken before the**  
21 **effective date.** (a) If action, other than the filing of a



1 financing statement, is taken before the effective date of this  
2 article and the action would have resulted in perfection of the  
3 security interest had the security interest become enforceable  
4 before the effective date of this article, the action shall be  
5 effective to perfect a security interest that attaches under  
6 this article before the adjustment date. An attached security  
7 interest shall become unperfected on the adjustment date unless  
8 the security interest becomes a perfected security interest  
9 under this article before the adjustment date.

10 (b) The filing of a financing statement before the  
11 effective date of this article shall be effective to perfect a  
12 security interest on the effective date of this article to the  
13 extent that the filing would satisfy the requirements for  
14 perfection under this article.

15 (c) The taking of an action before the effective date of  
16 this article shall be sufficient for the enforceability of a  
17 security interest on the effective date of this article if the  
18 action would satisfy the requirements for enforceability under  
19 this article.



1           **§490:B-305 Priority.** (a) Subject to subsections (b) and  
2 (c), this article shall determine the priority of conflicting  
3 claims to collateral.

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

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

14           **§490:B-306 Priority of claims when priority rules of**  
15 **article 9 do not apply.** (a) Subject to subsections (b) and  
16 (c), article A shall determine the priority of conflicting  
17 claims to article A property when the priority rules of article  
18 9, as amended by Act       , Session Laws of Hawaii 2023, do not  
19 apply.

20           (b) Subject to subsection (c), when the priority rules of  
21 article 9, as amended by Act       , Session Laws of Hawaii 2023,



1 do not apply and the priorities of claims to article A property  
2 were established before the effective date of this article, law  
3 other than article A shall determine priority.

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

11 **PART 4. EFFECTIVE DATE**

12 **§490:B-401 Effective date.** This article shall take effect  
13 on the effective date of this Act."

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

16 "§490:9-A Control of electronic money. (a) A person  
17 shall be deemed to have control of electronic money if the  
18 electronic money; a record attached to, or logically associated  
19 with, the electronic money; or a system in which the electronic  
20 money is recorded:

21 (1) Gives the person:



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



1           protocol programmed to cause a change, including a  
2           transfer or loss of control; or

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

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

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

9           (2) The other person:

10           (A) May exercise the power without exercise of the  
11           power by the person; or

12           (B) Is the transferor to the person of an interest in  
13           the electronic money.

14           (d) If a person has the powers specified in subsection  
15 (a) (1) (B), the powers shall be presumed to be exclusive.

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

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



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

4       §490:9-B Control of controllable electronic record,  
5 controllable account, or controllable payment intangible. (a)

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

8       (b) A secured party shall be deemed to have control of a  
9 controllable account or controllable payment intangible if the  
10 secured party has control of the controllable electronic record  
11 that evidences the controllable account or controllable payment  
12 intangible.

13       §490:9-C No requirement to acknowledge or confirm; no  
14 duties. (a) A person having control under section 490:9-104,  
15 490:9-105, or 490:9-A shall not be required to acknowledge that  
16 it has control on behalf of another person.

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



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

3 "§490:9-D Law governing perfection and priority of  
4 security interests in chattel paper. (a) Except as provided in  
5 subsection (d), if chattel paper is evidenced only by an  
6 authoritative electronic copy of the chattel paper or is  
7 evidenced by an authoritative electronic copy and an  
8 authoritative tangible copy, the local law of the chattel  
9 paper's jurisdiction shall govern perfection, the effect of  
10 perfection or nonperfection, and the priority of a security  
11 interest in the chattel paper, regardless of whether the  
12 transaction bears any relation to the chattel paper's  
13 jurisdiction.

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

16 (1) If the authoritative electronic copy of the record  
17 evidencing chattel paper, or a record attached to, or  
18 logically associated with, the electronic copy and  
19 readily available for review, expressly provides that  
20 a particular jurisdiction is the chattel paper's  
21 jurisdiction for purposes of this chapter, article, or



1           part, that jurisdiction shall be the chattel paper's  
2           jurisdiction;

3           (2) If paragraph (1) does not apply and the rules of the  
4           system in which the authoritative electronic copy is  
5           recorded are readily available for review and  
6           expressly provide that a particular jurisdiction is  
7           the chattel paper's jurisdiction for purposes of this  
8           chapter, article, or part, that jurisdiction shall be  
9           the chattel paper's jurisdiction;

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

17          (4) If paragraphs (1), (2), and (3) do not apply and the  
18          rules of the system in which the authoritative  
19          electronic copy is recorded are readily available for  
20          review and expressly provide that the chattel paper or  
21          the system is governed by the law of a particular



1           jurisdiction, that jurisdiction shall be the chattel  
2           paper's jurisdiction; and  
3           (5) If paragraphs (1) through (4) do not apply, the  
4           chattel paper's jurisdiction shall be the jurisdiction  
5           in which the debtor is located.  
6           (c) If an authoritative tangible copy of a record  
7           evidences chattel paper and the chattel paper is not evidenced  
8           by an authoritative electronic copy, while the authoritative  
9           tangible copy of the record evidencing chattel paper is located  
10           in a jurisdiction, the local law of that jurisdiction shall  
11           govern:  
12           (1) Perfection of a security interest in the chattel paper  
13           by possession under section 490:9-F; and  
14           (2) The effect of perfection or nonperfection and the  
15           priority of a security interest in the chattel paper.  
16           (d) The local law of the jurisdiction in which the debtor  
17           is located shall govern perfection of a security interest in  
18           chattel paper by filing.  
19           §490:9-E Law governing perfection and priority of security  
20           interests in controllable accounts, controllable electronic  
21           records, and controllable payment intangibles. (a) Except as



1 provided in subsection (b), the local law of the controllable  
2 electronic record's jurisdiction specified in sections  
3 490:A-107(c) and (d) shall govern perfection, the effect of  
4 perfection or nonperfection, and the priority of a security  
5 interest in a controllable electronic record and a security  
6 interest in a controllable account or controllable payment  
7 intangible evidenced by the controllable electronic record.

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

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

13 (2) Automatic perfection of a security interest in a  
14 controllable payment intangible created by a sale of  
15 the controllable payment intangible."

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

18 **"§490:9-F Perfection by possession and control of chattel**  
19 **paper.** (a) A secured party may perfect a security interest in  
20 chattel paper by taking possession of each authoritative  
21 tangible copy of the record evidencing the chattel paper and



1 obtaining control of each authoritative electronic copy of the  
2 electronic record evidencing the chattel paper.

3 (b) A security interest shall be deemed perfected under  
4 subsection (a) no earlier than the time the secured party takes  
5 possession and obtains control and shall be deemed to remain  
6 perfected under subsection (a) only while the secured party  
7 retains possession and control.

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

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

13 **"§490:9-G Priority of security interest in controllable**  
14 **account, controllable electronic record, and controllable**  
15 **payment intangible.** A security interest in a controllable  
16 account, controllable electronic record, or controllable payment  
17 intangible held by a secured party having control of the  
18 account, electronic record, or payment intangible shall have  
19 priority over a conflicting security interest held by a secured  
20 party that does not have control."



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

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

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

8 "Aggrieved party" means a party entitled to pursue a  
9 remedy.

10 "Agreement", as distinguished from "contract", means the  
11 bargain of the parties in fact, as found in their language or  
12 inferred from other circumstances, including course of  
13 performance, course of dealing, or usage of trade as provided in  
14 section 490:1-303.

15 "Bank" means a person engaged in the business of banking  
16 and includes a savings bank, savings and loan association,  
17 credit union, financial services loan company, and trust  
18 company.

19 "Bearer" means a person in control of a negotiable  
20 electronic document of title or a person in possession of a  
21 negotiable instrument, negotiable tangible document of title, or



1 certificated security that is payable to bearer or indorsed in  
2 blank.

3 "Bill of lading" means a document of title evidencing the  
4 receipt of goods for shipment issued by a person engaged in the  
5 business of directly or indirectly transporting or forwarding  
6 goods. [~~The term~~] "Bill of lading" does not include a warehouse  
7 receipt.

8 "Branch" includes a separately incorporated foreign branch  
9 of a bank.

10 "Burden of establishing" a fact means the burden of  
11 persuading the trier of fact that the existence of the fact is  
12 more probable than its nonexistence.

13 "Buyer in ordinary course of business" means a person that  
14 buys goods in good faith, without knowledge that the sale  
15 violates the rights of another person in the goods, and in the  
16 ordinary course from a person, other than a pawnbroker, in the  
17 business of selling goods of that kind. A person buys goods in  
18 the ordinary course if the sale to the person comports with the  
19 usual or customary practices in the kind of business in which  
20 the seller is engaged or with the seller's own usual or  
21 customary practices. A person that sells oil, gas, or other



1 minerals at the wellhead or minehead is a person in the business  
2 of selling goods of that kind. A buyer in ordinary course of  
3 business may buy for cash, by exchange of other property, or on  
4 secured or unsecured credit, and may acquire goods or documents  
5 of title under a preexisting contract for sale. Only a buyer  
6 that takes possession of the goods or has a right to recover the  
7 goods from the seller under article 2 may be a buyer in ordinary  
8 course of business. "Buyer in the ordinary course of business"  
9 does not include a person that acquires goods in a transfer in  
10 bulk or as security for or in total or partial satisfaction of a  
11 money debt.

12 "Conspicuous", with reference to a term, means so written,  
13 displayed, or presented that, based on the totality of the  
14 circumstances, a reasonable person against which it is to  
15 operate ought to have noticed it. Whether a term is  
16 "conspicuous" or not is a decision for the court. [~~Conspicuous~~  
17 ~~terms include the following:~~

18 ~~(1) A heading in capitals equal to or greater in size than~~  
19 ~~the surrounding text, or in contrasting type, font, or~~  
20 ~~color to the surrounding text of the same or lesser~~  
21 ~~size; and~~



1       ~~(2) Language in the body of a record or display in larger~~  
2       ~~type than the surrounding text, or in contrasting~~  
3       ~~type, font, or color to the surrounding text of the~~  
4       ~~same size, or set off from surrounding text of the~~  
5       ~~same size by symbols or other marks that call~~  
6       ~~attention to the language.]~~

7       "Consumer" means an individual who enters into a  
8 transaction primarily for personal, family, or household  
9 purposes.

10       "Contract", as distinguished from "agreement", means the  
11 total legal obligation that results from the parties' agreement  
12 as determined by this chapter and as supplemented by any other  
13 applicable law.

14       "Creditor" includes a general creditor, a secured creditor,  
15 a lien creditor, and any representative of creditors, including  
16 an assignee for the benefit of creditors, a trustee in  
17 bankruptcy, a receiver in equity, and an executor or  
18 administrator of an insolvent debtor's or assignor's estate.

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



1 "Delivery", with respect to an electronic document of  
2 title, means voluntary transfer of control~~[7]~~ and, with respect  
3 to an instrument, a tangible document of title, or an  
4 authoritative tangible copy of a record evidencing chattel  
5 paper, means voluntary transfer of possession.

6 "Document of title" means a record~~[+]~~ that:

- 7 (1) ~~[That in]~~ In the regular course of business or  
8 financing is treated as adequately evidencing that the  
9 person in possession or control of the record is  
10 entitled to receive, control, hold, and dispose of the  
11 record and the goods the record covers; and
- 12 (2) ~~[That purports]~~ Purports to be issued by or addressed  
13 to a bailee and to cover goods in the bailee's  
14 possession which are either identified or are fungible  
15 portions of an identified mass.

16 ~~[The term]~~ "Document of title" includes a bill of lading,  
17 transport document, dock warrant, dock receipt, warehouse  
18 receipt, and order for delivery of goods. An electronic  
19 document of title means a document of title evidenced by a  
20 record consisting of information stored in an electronic medium.  
21 A tangible document of title means a document of title evidenced



1 by a record consisting of information that is inscribed on a  
2 tangible medium.

3 "Electronic" means relating to technology having  
4 electrical, digital, magnetic, wireless, optical,  
5 electromagnetic, or similar capabilities.

6 "Fault" means a default, breach, or wrongful act or  
7 omission.

8 "Fungible goods" means[+] goods that:

- 9 (1) [~~Goods that any~~] Any unit, by nature or usage of  
10 trade, is the equivalent of any other like unit; or  
11 (2) [~~Goods that by~~] By agreement are treated as  
12 equivalent.

13 "Genuine" means free of forgery or counterfeiting.

14 "Good faith" means honesty in fact.

15 "Holder" means[+] the person in:

- 16 (1) [~~The person in possession~~] Possession of a negotiable  
17 instrument that is payable either to bearer or to an  
18 identified person that is the person in possession;  
19 (2) [~~The person in possession~~] Possession of a negotiable  
20 tangible document of title if the goods are



1 deliverable either to bearer or to the order of the  
2 person in possession; or

3 (3) [~~The person in control~~] Control, other than pursuant  
4 to section 490:7-106(g), of a negotiable electronic  
5 document of title.

6 "Insolvency proceeding" includes an assignment for the  
7 benefit of creditors or other proceeding intended to liquidate  
8 or rehabilitate the estate of the person involved.

9 "Insolvent" means:

10 (1) Having generally ceased to pay debts in the ordinary  
11 course of business other than as a result of bona fide  
12 dispute;

13 (2) Being unable to pay debts as they become due; or

14 (3) Being insolvent within the meaning of federal  
15 bankruptcy law.

16 "Money" means a medium of exchange that is currently  
17 authorized or adopted by a domestic or foreign government. [~~The~~  
18 ~~term~~] "Money" includes a monetary unit of account established by  
19 an intergovernmental organization or by agreement between two or  
20 more countries. "Money" does not include an electronic record  
21 that is a medium of exchange recorded and transferable in a



1 system that existed and operated for the medium of exchange  
2 before the medium of exchange was authorized or adopted by the  
3 government.

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

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

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

19 "Present value" means the amount as of a date certain of  
20 one or more sums payable in the future, discounted to the date  
21 certain by use of either an interest rate specified by the



1 parties if that rate is not manifestly unreasonable at the time  
2 the transaction is entered into or, if an interest rate is not  
3 so specified, a commercially reasonable rate that takes into  
4 account the facts and circumstances at the time the transaction  
5 is entered into.

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

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

11 "Record" means information that is inscribed on a tangible  
12 medium or that is stored in an electronic or other medium and is  
13 retrievable in perceivable form.

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

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

20 "Right" includes remedy.



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

20 "Send", in connection with a [writing~~7~~] record[~~7~~] or  
21 [~~notice~~] notification, means[+] to:



1 (1) ~~[To deposit]~~ Deposit in the mail ~~[or]~~, deliver for  
2 transmission, or transmit by any other usual means of  
3 communication, with postage or cost of transmission  
4 provided for ~~[and properly addressed and, in the case~~  
5 ~~of an instrument, to an address specified thereon or~~  
6 ~~otherwise agreed, or if there be none]~~, addressed to  
7 any address reasonable under the circumstances; or

8 (2) ~~[In any other way to cause to be received any record~~  
9 ~~or notice within the time it would have arrived if~~  
10 ~~properly sent.]~~ Cause the record or notification to be  
11 received within the time it would have been received  
12 if properly sent under paragraph (1).

13 "Signed" ~~[includes any symbol executed or adopted with~~  
14 ~~present intention to adopt or accept a writing.]~~, "sign",  
15 "signing", or "signature" means, with present intent to  
16 authenticate or adopt a record:

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

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

20 "State" means a state of the United States, the District of  
21 Columbia, Puerto Rico, the United States Virgin Islands, or any



1 territory or insular possession subject to the jurisdiction of  
2 the United States.

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

4 "Term" means a portion of an agreement that relates to a  
5 particular matter.

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

8 "Unauthorized signature" includes a forgery.

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

11 "Writing" includes printing, typewriting, or any other  
12 intentional reduction to tangible form. "Written" has a  
13 corresponding meaning."

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

16 "**§490:1-204 Value.** Except as otherwise provided in  
17 articles 3, 4, [~~and~~] 5, and A, a person gives value for rights  
18 if the person acquires them:

19 (1) In return for a binding commitment to extend credit or  
20 for the extension of immediately available credit,  
21 whether or not drawn upon and whether or not a



- 1 charge-back is provided for in the event of  
2 difficulties in collection;
- 3 (2) As security for, or in total or partial satisfaction  
4 of, a preexisting claim;
- 5 (3) By accepting delivery under a preexisting contract for  
6 purchase; or
- 7 (4) In return for any consideration sufficient to support  
8 a simple contract."

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

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

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



1       (8) Section 490:A-107."

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

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

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

11       "**§490:2-102 Scope; certain security and other transactions**  
12 **excluded from this article.** (1) Unless the context otherwise  
13 requires, and except as provided in subsection (3), this article  
14 [~~applies~~] shall apply to transactions in goods[~~; it does not~~  
15 ~~apply to any transaction which although in the form of an~~  
16 ~~unconditional contract to sell or present sale is intended to~~  
17 ~~operate only as a security transaction nor does this article~~  
18 ~~impair or repeal any statute regulating sales to consumers,~~  
19 ~~farmers or other specified classes of buyers.] and, in the case  
20 of a hybrid transaction, to the extent provided in subsection  
21 (2).~~



- 1       (2) In a hybrid transaction, if the sale-of-goods aspects:
- 2       (a) Do not predominate, only the provisions of this
- 3       article that relate primarily to the sale-of-goods
- 4       aspects of the transaction shall apply, and the
- 5       provisions that relate primarily to the transaction as
- 6       a whole shall not apply; and
- 7       (b) Predominate, this article shall apply to the
- 8       transaction but shall not preclude application in
- 9       appropriate circumstances of other law to aspects of
- 10       the transaction that do not relate to the sale of
- 11       goods.
- 12       (3) This article shall not:
- 13       (a) Apply to a transaction that, even though in the form
- 14       of an unconditional contract to sell or present sale,
- 15       operates only to create a security interest; or
- 16       (b) Impair or repeal any statute regulating sales to
- 17       consumers, farmers, or other specified classes of
- 18       buyers."

19       SECTION 7. Section 490:2-106, Hawaii Revised Statutes, is

20       amended to read as follows:



1           "§490:2-106 Definitions: "contract"; "agreement";  
2 "contract for sale"; "sale"; "present sale"; "conforming" to  
3 contract; "termination"; "cancellation" [-]; "hybrid  
4 transaction". (1) In this article unless the context otherwise  
5 requires "contract" and "agreement" are limited to those  
6 relating to the present or future sale of goods. "Contract for  
7 sale" includes both a present sale of goods and a contract to  
8 sell goods at a future time. A "sale" consists in the passing  
9 of title from the seller to the buyer for a price (section  
10 490:2-401). A "present sale" means a sale which is accomplished  
11 by the making of the contract.

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

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

20           (4) "Cancellation" occurs when either party puts an end to  
21 the contract for breach by the other and its effect is the same



1 as that of "termination" except that the cancelling party also  
2 retains any remedy for breach of the whole contract or any  
3 unperformed balance.

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

6 (a) The provision of services;

7 (b) The lease of other goods; or

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

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

12 **"§490:2-201 Formal requirements; statute of frauds. (1)**

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

7 (c) With respect to goods for which payment has been made  
 8 and accepted or [~~which~~] that have been received and  
 9 accepted (section 490:2-606)."

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

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

20 (a) Course of performance, course of dealing, or usage of  
 21 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) ~~[, 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~~[, 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[~~r~~  
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~~[+]~~ by:

- 5 (1) ~~[By course]~~ Course of dealing or usage of trade or by  
6 course of performance; and  
7 (2) ~~[By evidence]~~ Evidence of consistent additional terms  
8 unless the court finds the ~~[writing]~~ record to have  
9 been intended also as a complete and exclusive  
10 statement of the 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 [~~or~~], 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 [~~is~~] 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) regardless of whether:
- 18       (1) The authoritative electronic copy; a record attached
- 19       to, or logically associated with, the authoritative
- 20       electronic copy; or a system in which the
- 21       authoritative electronic copy is recorded limits the



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

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

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

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

10          (2) The other person:

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

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

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

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

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



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

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

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

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

15       "(a) In this article:

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

20       "Bearer form", as applied to a certificated security, means  
21 a form in which the security is payable to the bearer of the



1 security certificate according to its terms but not by reason of  
2 an indorsement.

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

6 "Certificated security" means a security that is  
7 represented by a certificate.

8 "Clearing corporation" means:

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

20 "Communicate" means to:

- 21 (1) Send a signed [~~writing~~] record; or



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

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

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

14          "Financial asset", except as otherwise provided in section  
15 490:8-103, means:

- 16          (1) A security;
- 17          (2) An obligation of a person or a share, participation,  
18                or other interest in a person or in property or an  
19                enterprise of a person, which is, or is of a type,  
20                dealt in or traded on financial markets, or which is



1 recognized in any area in which it is issued or dealt  
2 in as a medium for investment; or  
3 (3) Any property that is held by a securities intermediary  
4 for another person in a securities account if the  
5 securities intermediary has expressly agreed with the  
6 other person that the property is to be treated as a  
7 financial asset under this article.

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

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

17 "Indorsement" means a signature that alone or accompanied  
18 by other words is made on a security certificate in registered  
19 form or on a separate document for the purpose of assigning,  
20 transferring, or redeeming the security or granting a power to  
21 assign, transfer, or redeem it.



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

5 "Registered form", as applied to a certificated security,  
6 means a form in which:

7 (1) The security certificate specifies a person entitled  
8 to the security; and

9 (2) A transfer of the security may be registered upon  
10 books maintained for that purpose by or on behalf of  
11 the issuer, or the security certificate so states.

12 "Securities intermediary" means:

13 (1) A clearing corporation; or

14 (2) A person, including a bank or broker, that in the  
15 ordinary course of its business maintains securities  
16 accounts for others and is acting in that capacity.

17 "Security", except as otherwise provided in section  
18 490:8-103, means an obligation of an issuer or a share,  
19 participation, or other interest in an issuer or in property or  
20 an enterprise of an issuer:



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

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

8           (3) [~~Which:~~] That:

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

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

14           "Security certificate" means a certificate representing a  
15 security.

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

19           "Uncertificated security" means a security that is not  
20 represented by a certificate.



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

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

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

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

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

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

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

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

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

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

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

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

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

17 "**§490:8-103 Rules for determining whether certain**  
18 **obligations and interests are securities or financial assets.**

19 (a) A share or similar equity interest issued by a corporation,  
20 business trust, joint stock company, or similar entity [~~is~~]  
21 shall be deemed a security.



1 (b) An "investment company security" is a security.  
2 "Investment company security" means a share or similar equity  
3 interest issued by an entity that is registered as an investment  
4 company under the federal investment company laws, an interest  
5 in a unit investment trust that is so registered, or a face-  
6 amount certificate issued by a face-amount certificate company  
7 that is so registered. [~~Investment company security~~]  
8 "Investment company security" does not include an insurance  
9 policy or endowment policy or annuity contract issued by an  
10 insurance company.

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

19 (d) A writing that is a security certificate [~~is~~] shall be  
20 governed by this article and not by article 3, even though it  
21 also meets the requirements of that article. However, a



1 negotiable instrument governed by article 3 [~~is~~] shall be deemed  
2 a financial asset if it is held in a securities account.

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

6 (f) A commodity contract, as defined in section  
7 490:9-102(a), [~~is~~] shall not be deemed a security or a financial  
8 asset.

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

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

19 "**§490:8-106 Control.** (a) A purchaser [~~has~~] shall be  
20 deemed to have "control" of a certificated security in bearer  
21 form if the certificated security is delivered to the purchaser.



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

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

6 (2) The certificate is registered in the name of the  
7 purchaser, upon original issue or registration of  
8 transfer by the issuer.

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

11 (1) The uncertificated security is delivered to the  
12 purchaser; or

13 (2) The issuer has agreed that it will comply with  
14 instructions originated by the purchaser without  
15 further consent by the registered owner.

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

18 (1) The purchaser becomes the entitlement holder;

19 (2) The securities intermediary has agreed that it will  
20 comply with entitlement orders originated by the



1 purchaser without further consent by the entitlement  
2 holder; or

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

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

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

17 (e) If an interest in a security entitlement is granted by  
18 the entitlement holder to the entitlement holder's own  
19 securities intermediary, the securities intermediary [~~has~~] shall  
20 be deemed to have control.



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

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



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

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

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

12       "**§490:8-110 Applicability; choice of law.** (a) The local  
13 law of the issuer's jurisdiction, as specified in subsection  
14 (d), [~~governs+~~] shall govern:

- 15       (1) The validity of a security;
- 16       (2) The rights and duties of the issuer with respect to  
17 registration of transfer;
- 18       (3) The effectiveness of registration of transfer by the  
19 issuer;
- 20       (4) Whether the issuer owes any duties to an adverse  
21 claimant to a security; and



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

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

8 (1) Acquisition of a security entitlement from the  
9 securities intermediary;

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

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

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

20 (c) The local law of the jurisdiction in which a security  
21 certificate is located at the time of delivery [~~governs~~] shall



1 govern whether an adverse claim can be asserted against a person  
2 to whom the security certificate is delivered.

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

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

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

18 (2) If paragraph (1) does not apply and an agreement  
19 between the securities intermediary and its  
20 entitlement holder governing the securities account  
21 expressly provides that the agreement is governed by



- 1 the law of a particular jurisdiction, that  
2 jurisdiction [~~is~~] shall be the securities  
3 intermediary's jurisdiction[~~-~~];
- 4 (3) If neither paragraph (1) nor paragraph (2) applies and  
5 an agreement between the securities intermediary and  
6 its entitlement holder governing the securities  
7 account expressly provides that the securities account  
8 is maintained at an office in a particular  
9 jurisdiction, that jurisdiction [~~is~~] shall be the  
10 securities intermediary's jurisdiction[~~-~~];
- 11 (4) If none of the preceding paragraphs applies, the  
12 securities intermediary's jurisdiction [~~is~~] shall be  
13 the jurisdiction in which the office identified in an  
14 account statement as the office serving the  
15 entitlement holder's account is located[~~-~~]; and
- 16 (5) If none of the preceding paragraphs applies, the  
17 securities intermediary's jurisdiction [~~is~~] shall be  
18 the jurisdiction in which the chief executive office  
19 of the securities intermediary is located.
- 20 (f) A securities intermediary's jurisdiction [~~is~~] shall  
21 not be determined by the physical location of certificates



1 representing financial assets, or by the jurisdiction in which  
2 is organized the issuer of the financial asset with respect to  
3 which an entitlement holder has a security entitlement, or by  
4 the location of facilities for data processing or other  
5 recordkeeping concerning the account.

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

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

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

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

18 "(a) In this [+]article[+]:

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



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

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

7 (A) For property that has been or is to be sold,  
8 leased, licensed, assigned, or otherwise disposed  
9 of;

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

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

12 (D) For a secondary obligation incurred or to be  
13 incurred;

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

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

17 (G) Arising out of the use of a credit or charge card  
18 or information contained on or for use with the  
19 card; or

20 (H) As winnings in a lottery or other game of chance  
21 operated or sponsored by a state, governmental



1 unit of a state, or person licensed or authorized  
2 to operate the game by a state or governmental  
3 unit of a state[~~—The term includes~~];

4 (2) Includes controllable accounts and health-care-  
5 insurance receivables[~~—~~]; and

6 [~~+2~~] (3) Does not include:

7 (A) [~~Rights to payment evidenced by chattel paper or~~  
8 ~~an instrument;~~] Chattel paper;

9 (B) Commercial tort claims;

10 (C) Deposit accounts;

11 (D) Investment property;

12 (E) Letter-of-credit rights or letters of credit;

13 [~~or~~]

14 (F) Rights to payment for money or funds advanced or  
15 sold, other than rights arising out of the use of  
16 a credit or charge card or information contained  
17 on or for use with the card[~~—~~]; or

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

19 "Account debtor" means a person obligated on an account,  
20 chattel paper, or general intangible. [~~The term~~] "Account  
21 debtor" does not include persons obligated to pay a negotiable



1 instrument, even if the negotiable instrument [~~constitutes part~~  
2 ~~of~~] evidences chattel paper.

3 "Accounting", except as used in "accounting for", means a  
4 record:

- 5 (1) [~~Authenticated~~] Signed by a secured party;  
6 (2) Indicating the aggregate unpaid secured obligations as  
7 of a date [~~not~~] no more than thirty-five days earlier  
8 or thirty-five days later than the date of the record;  
9 and  
10 (3) Identifying the components of the obligations in  
11 reasonable detail.

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

- 13 (1) [~~Which~~] That secures payment or performance of an  
14 obligation for:  
15 (A) Goods or services furnished in connection with a  
16 debtor's farming operation; or  
17 (B) Rent on real property leased by a debtor in  
18 connection with its farming operation;  
19 (2) [~~Which~~] That is created by statute in favor of a  
20 person that:



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

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

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

8 "As-extracted collateral" means:

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

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

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

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

17 [~~"Authenticate" means:~~

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

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



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

3 (1) In whose favor a security interest that secures an  
4 obligation is created or provided for under a security  
5 agreement, regardless of whether the obligation is  
6 outstanding; or

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

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

11 "Assignor" means a person that:

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

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

16 "Assignor" includes a secured party that has transferred a  
17 security interest to another person.

18 "Bank" means an organization that is engaged in the  
19 business of banking. [~~The term~~] "Bank" includes savings banks,  
20 savings and loan associations, credit unions, and trust  
21 companies.



1 "Cash proceeds" means proceeds that are money, checks,  
2 deposit accounts, or the like.

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

15 "Chattel paper" means [~~a record or records that evidence~~  
16 ~~both a monetary obligation and a security interest in specific~~  
17 ~~goods, a security interest in specific goods and software used~~  
18 ~~in the goods, a security interest in specific goods and license~~  
19 ~~of software used in the goods, a lease of specific goods, or a~~  
20 ~~lease of specific goods and license of software used in the~~  
21 ~~goods. In this paragraph, "monetary obligation" means a~~



1 ~~monetary obligation secured by the goods or owed under a lease~~  
2 ~~of the goods and includes a monetary obligation with respect to~~  
3 ~~software used in the goods.] a right to payment of a monetary  
4 obligation that is either:~~

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

7 (2) Owed by a lessee under a lease agreement with respect  
8 to specific goods and a monetary obligation owed by  
9 the lessee in connection with the transaction giving  
10 rise to the lease, if:

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

13 (B) The predominant purpose of the transaction giving  
14 rise to the lease was to give the lessee the  
15 right to possession and use of the goods.

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

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

19 ~~(2) Records that evidence]~~ a right to payment arising out  
20 of a charter or other contract involving the use or  
21 hire of a vessel or a right to payment arising out of



1 the use of a credit or charge card or information  
2 contained on or for use with the card. [~~If a~~  
3 ~~transaction is evidenced by records that include an~~  
4 ~~instrument or series of instruments, the group of~~  
5 ~~records taken together constitutes chattel paper.~~]

6 "Collateral" means the property subject to a security  
7 interest or agricultural lien. [~~The term~~] "Collateral"  
8 includes:

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

13 "Commercial tort claim" means a claim arising in tort with  
14 respect to which[+] the claimant is:

- 15 (1) [~~The claimant is an~~] An organization; or
- 16 (2) [~~The claimant is an~~] An individual and the claim:
  - 17 (A) Arose in the course of the claimant's business or  
18 profession; and
  - 19 (B) Does not include damages arising out of personal  
20 injury to or the death of an individual.



1 "Commodity account" means an account maintained by a  
2 commodity intermediary in which a commodity contract is carried  
3 for a commodity customer.

4 "Commodity contract" means a commodity futures contract, an  
5 option on a commodity futures contract, a commodity option, or  
6 another contract if the contract or option is:

- 7 (1) Traded on or subject to the rules of a board of trade  
8 that has been designated as a contract market for  
9 ~~[such a contract]~~ these types of contracts pursuant to  
10 federal commodities laws; or  
11 (2) Traded on a foreign commodity board of trade,  
12 exchange, or market, and is carried on the books of a  
13 commodity intermediary for a commodity customer.

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

16 "Commodity intermediary" means a person that:

- 17 (1) Is registered as a futures commission merchant under  
18 federal commodities law; or  
19 (2) In the ordinary course of its business provides  
20 clearance or settlement services for a board of trade



1           that has been designated as a contract market pursuant  
2           to federal commodities law.

3           "Communicate" means:

- 4           (1) To send a written or other tangible record;
- 5           (2) To transmit a record by any means agreed upon by the  
6           persons sending and receiving the record; or
- 7           (3) In the case of transmission of a record to or by a  
8           filing office, to transmit a record by any means  
9           prescribed by filing-office rule.

10          "Consignee" means a merchant to which goods are delivered  
11 in a consignment.

12          "Consignment" means a transaction, regardless of its form,  
13 in which a person delivers goods to a merchant for the purpose  
14 of sale and:

- 15          (1) The merchant:
  - 16               (A) Deals in goods of that kind under a name other  
17               than the name of the person making delivery;
  - 18               (B) Is not an auctioneer; and
  - 19               (C) Is not generally known by its creditors to be  
20               substantially engaged in selling the goods of  
21               others;



1 (2) With respect to each delivery, the aggregate value of  
2 the goods is \$1,000 or more at the time of delivery;

3 (3) The goods are not consumer goods immediately before  
4 delivery; and

5 (4) The transaction does not create a security interest  
6 that secures an obligation.

7 "Consignor" means a person that delivers goods to a  
8 consignee in a consignment.

9 "Consumer debtor" means a debtor in a consumer transaction.

10 "Consumer goods" means goods that are used or bought for  
11 use primarily for personal, family, or household purposes.

12 "Consumer-goods transaction" means a consumer transaction  
13 in which:

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

16 (2) A security interest in consumer goods secures the  
17 obligation.

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

21 "Consumer transaction" means a transaction in which:



- 1 (1) An individual incurs an obligation primarily for
- 2 personal, family, or household purposes[~~7~~];
- 3 (2) A security interest secures the obligation[~~7~~]; and
- 4 (3) The collateral is held or acquired primarily for
- 5 personal, family, or household purposes.

6 [~~The term~~] "Consumer transaction" includes consumer-goods  
7 transactions.

8 "Continuation statement" means an amendment of a financing  
9 statement which:

- 10 (1) Identifies, by its file number, the initial financing
- 11 statement to which it relates; and
- 12 (2) Indicates that it is a continuation statement for, or
- 13 that it is filed to continue the effectiveness of, the
- 14 identified financing statement.

15 "Controllable account" means an account evidenced by a  
16 controllable electronic record that provides that the account  
17 debtor undertakes to pay the person that has control under  
18 section 490:A-105 of the controllable electronic record.

19 "Controllable payment intangible" means a payment  
20 intangible evidenced by a controllable electronic record that  
21 provides that the account debtor undertakes to pay the person



1 that has control under section 490:A-105 of the controllable  
2 electronic record.

3 "Debtor" means:

4 (1) A person having an interest, other than a security  
5 interest or other lien, in the collateral, whether or  
6 not the person is an obligor;

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

9 (3) A consignee.

10 "Deposit account" means a demand, time, savings, passbook,  
11 or similar account maintained with a bank. [~~The term~~] "Deposit  
12 account" does not include investment property or accounts  
13 evidenced by an instrument.

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

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

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



1 "Equipment" means goods other than inventory, farm  
2 products, or consumer goods.

3 "Farming operation" means raising, cultivating,  
4 propagating, fattening, grazing, or any other farming,  
5 livestock, or aquacultural operation.

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

- 9 (1) Crops grown, growing, or to be grown, including:  
10 (A) Crops produced on trees, vines, and bushes; and  
11 (B) Aquatic goods produced in aquacultural  
12 operations;  
13 (2) Livestock, born or unborn, including aquatic goods  
14 produced in aquacultural operations;  
15 (3) Supplies used or produced in a farming operation; or  
16 (4) Products of crops or livestock in their unmanufactured  
17 states.

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

20 "Filing office" means an office designated in section  
21 490:9-501 as the place to file a financing statement.



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

3 "Financing statement" means a record or records composed of  
4 an initial financing statement and any filed record relating to  
5 the initial financing statement.

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

11 "Fixtures" means goods that have become so related to  
12 particular real property that an interest in them arises under  
13 real property law.

14 "General intangible" means any personal property, including  
15 things in action, other than accounts, chattel paper, commercial  
16 tort claims, deposit accounts, documents, goods, instruments,  
17 investment property, letter-of-credit rights, letters of credit,  
18 money, and oil, gas, or other minerals before extraction. [~~The~~  
19 ~~term~~] "General intangible" includes controllable electronic  
20 records, payment intangibles, and software.



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

3 "Goods" [~~means~~]:

4 (1) Means all things that are movable when a security  
5 interest attaches[~~. The term includes~~];

6 (2) Includes:

7 [~~1~~] (A) Fixtures[~~;~~];

8 [~~2~~] (B) Standing timber that is to be cut and  
9 removed under a conveyance or contract for  
10 sale[~~;~~];

11 [~~3~~] (C) The unborn young of animals[~~;~~];

12 [~~4~~] (D) Crops grown, growing, or to be grown, even  
13 if the crops are produced on trees, vines, or  
14 bushes; [and]

15 [~~5~~] (E) Manufactured homes[~~;~~];

16 [~~The term also includes a~~] (F) A computer program embedded  
17 in goods and any supporting information provided  
18 in connection with a transaction relating to the  
19 program if:

20 (i) [~~the~~] The program is associated with the  
21 goods in [such] a manner [that] in which it



1                    is customarily [~~is~~] considered part of the  
2                    goods[~~r~~]; or

3                    (ii) [~~by~~] By becoming the owner of the goods, a  
4                    person acquires a right to use the program  
5                    in connection with the goods.

6 [~~The term does~~] (3) Does not include [~~a~~]:

7                    (A) A computer program embedded in goods that consist  
8                    solely of the medium in which the program is  
9                    embedded[~~. The term also does not include~~  
10                    accounts,]; and

11                    (B) Accounts, chattel paper, commercial tort claims,  
12                    deposit accounts, documents, general intangibles,  
13                    instruments, investment property, letter-of-  
14                    credit rights, letters of credit, money, or oil,  
15                    gas, or other minerals before extraction.

16                    "Governmental unit" means a subdivision, agency,  
17                    department, county, parish, municipality, or other unit of the  
18                    government of the United States, a state, or a foreign country.

19 [~~The term~~] "Governmental unit" includes an organization having a  
20 separate corporate existence if the organization is eligible to



1 issue debt on which interest is exempt from income taxation  
2 under the laws of the United States.

3 "Health-care-insurance receivable" means an interest in or  
4 claim under a policy of insurance that is a right to payment of  
5 a monetary obligation for health-care goods or services provided  
6 or to be provided.

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

- 13 (1) Investment property;
- 14 (2) Letters of credit; [~~or~~]
- 15 (3) Writings that evidence a right to payment arising out  
16 of the use of a credit or charge card or information  
17 contained on or for use with the card[~~+~~]; or
- 18 (4) Writings that evidence chattel paper.

19 "Inventory" means goods, other than farm products, [~~which+~~]  
20 that:

- 21 (1) Are leased by a person as lessor;



- 1           (2) Are held by a person for sale or lease or to be
- 2                   furnished under a contract of service;
- 3           (3) Are furnished by a person under a contract of service;
- 4                   or
- 5           (4) Consist of raw materials, work in process, or
- 6                   materials used or consumed in a business.

7           "Investment property" means a security, whether  
8           certificated or uncertificated, security entitlement, securities  
9           account, commodity contract, or commodity account.

10           "Jurisdiction of organization", with respect to a  
11           registered organization, means the jurisdiction under whose law  
12           the organization is formed or organized.

13           "Letter-of-credit right" means a right to payment or  
14           performance under a letter of credit, whether or not the  
15           beneficiary has demanded or is at the time entitled to demand  
16           payment or performance. [~~The term~~] "Letter-of-credit right"  
17           does not include the right of a beneficiary to demand payment or  
18           performance under a letter of credit.

19           "Lien creditor" means:

- 20           (1) A creditor that has acquired a lien on the property
- 21                   involved by attachment, levy, or the like;



- 1 (2) An assignee for benefit of creditors from the time of  
2 assignment;
- 3 (3) A trustee in bankruptcy from the date of the filing of  
4 the petition; or
- 5 (4) A receiver in equity from the time of appointment.
- 6 "Manufactured home" means a structure, transportable in one  
7 or more sections, [~~which,~~] that, in the traveling mode, is eight  
8 body feet or more in width or forty body feet or more in length,  
9 or, when erected on site, is three hundred twenty or more square  
10 feet, and [~~which~~] that is built on a permanent chassis and  
11 designed to be used as a dwelling with or without a permanent  
12 foundation when connected to the required utilities, and  
13 includes the plumbing, heating, air-conditioning, and electrical  
14 systems contained therein. [~~The term~~] "Manufactured home"  
15 includes any structure that meets all of the requirements of  
16 this [~~paragraph~~] definition except the size requirements and  
17 with respect to which the manufacturer voluntarily files a  
18 certification required by the United States Secretary of Housing  
19 and Urban Development and complies with the standards  
20 established under [~~Title~~] title 42 of the United States Code.



1 "Manufactured-home transaction" means a secured  
2 transaction:

- 3 (1) That creates a purchase-money security interest in a  
4 manufactured home, other than a manufactured home held  
5 as inventory; or
- 6 (2) In which a manufactured home, other than a  
7 manufactured home held as inventory, is the primary  
8 collateral.

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

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

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

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

20 "New value" means:

- 21 (1) Money;



1 (2) Money's worth in property, services, or new credit; or

2 (3) Release by a transferee of an interest in property  
3 previously transferred to the transferee.

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

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

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

10 (1) Owes payment or other performance of the obligation;

11 (2) Has provided property other than the collateral to  
12 secure payment or other performance of the obligation;  
13 or

14 (3) Is otherwise accountable in whole or in part for  
15 payment or other performance of the obligation.

16 [~~The term~~] "Obligor" does not include issuers or nominated  
17 persons under a letter of credit.

18 "Original debtor", except as used in section 490:9-310(c),  
19 means a person that, as debtor, entered into a security  
20 agreement to which a new debtor has become bound under section  
21 490:9-203(d).



1 "Payment intangible" means a general intangible under which  
2 the account debtor's principal obligation is a monetary  
3 obligation. "Payment intangible" includes a controllable  
4 payment intangible.

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

- 6 (1) The spouse of the individual;  
7 (2) A brother, brother-in-law, sister, or sister-in-law of  
8 the individual;  
9 (3) An ancestor or lineal descendant of the individual or  
10 the individual's spouse; or  
11 (4) Any other relative, by blood or marriage, of the  
12 individual or the individual's spouse who shares the  
13 same home with the individual.

14 "Person related to", with respect to an organization,  
15 means:

- 16 (1) A person directly or indirectly controlling,  
17 controlled by, or under common control with the  
18 organization;  
19 (2) An officer or director of, or a person performing  
20 similar functions with respect to, the organization;



- 1 (3) An officer or director of, or a person performing  
2 similar functions with respect to, a person described  
3 in paragraph (1);
- 4 (4) The spouse of an individual described in paragraph  
5 (1), (2), or (3); or
- 6 (5) An individual who is related by blood or marriage to  
7 an individual described in paragraph (1), (2), (3), or  
8 (4) and shares the same home with the individual.

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

- 11 (1) Whatever is acquired upon the sale, lease, license,  
12 exchange, or other disposition of collateral;
- 13 (2) Whatever is collected on, or distributed on account  
14 of, collateral;
- 15 (3) Rights arising out of collateral;
- 16 (4) To the extent of the value of collateral, claims  
17 arising out of the loss, nonconformity, or  
18 interference with the use of, defects or infringement  
19 of rights in, or damage to, the collateral; or
- 20 (5) To the extent of the value of collateral and to the  
21 extent payable to the debtor or the secured party,



1 insurance payable by reason of the loss or  
2 nonconformity of, defects or infringement of rights  
3 in, or damage to, the collateral.

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

8 "Proposal" means a record [~~authenticated~~] signed by a  
9 secured party [~~which~~] that includes the terms on which the  
10 secured party is willing to accept collateral in full or partial  
11 satisfaction of the obligation it secures pursuant to sections  
12 490:9-620, 490:9-621, and 490:9-622.

13 "Public-finance transaction" means a secured transaction in  
14 connection with which:

- 15 (1) Debt securities are issued;
- 16 (2) All or a portion of the securities issued have an  
17 initial stated maturity of at least twenty years; and
- 18 (3) The debtor, obligor, secured party, account debtor or  
19 other person obligated on collateral, assignor or  
20 assignee of a secured obligation, or assignor or



1 assignee of a security interest is a state or a  
2 governmental unit of a state.

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

- 5 (1) A record consisting of the record initially filed with  
6 or issued by a state or the United States to form or  
7 organize an organization and any record filed with or  
8 issued by the state or the United States that amends  
9 or restates the initial record;
- 10 (2) An organic record of a business trust consisting of  
11 the record initially filed with a state and any record  
12 filed with the state that amends or restates the  
13 initial record, if a statute of the state governing  
14 business trusts requires that the record be filed with  
15 the state; or
- 16 (3) A record consisting of legislation enacted by the  
17 legislature of a state or the Congress of the United  
18 States that forms or organizes an organization, any  
19 record amending the legislation, and any record filed  
20 with or issued by the state or the United States that  
21 amends or restates the name of the organization.



1 "Pursuant to commitment", with respect to an advance made  
2 or other value given by a secured party, means pursuant to the  
3 secured party's obligation, whether or not a subsequent event of  
4 default or other event not within the secured party's control  
5 has relieved or may relieve the secured party from its  
6 obligation.

7 "Record", except as used in "for record", "of record",  
8 "record or legal title", and "record owner", means information  
9 that is inscribed on a tangible medium or ~~[which]~~ that is stored  
10 in an electronic or other medium and is retrievable in  
11 perceivable form.

12 "Registered organization" means an organization formed or  
13 organized solely under the law of a single state or the United  
14 States by the filing of a public organic record with, the  
15 issuance of a public organic record by, or the enactment of  
16 legislation by the state or the United States. ~~[The term]~~

17 "Registered organization" includes a business trust that is  
18 formed or organized under the law of a single state if a statute  
19 of the state governing business trusts requires that the  
20 business trust's organic record be filed with the state.

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



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

5 "Secured party" means:

- 6 (1) A person in whose favor a security interest is created  
7 or provided for under a security agreement, whether or  
8 not any obligation to be secured is outstanding;  
9 (2) A person that holds an agricultural lien;  
10 (3) A consignor;  
11 (4) A person to which accounts, chattel paper, payment  
12 intangibles, or promissory notes have been sold;  
13 (5) A trustee, indenture trustee, agent, collateral agent,  
14 or other representative in whose favor a security  
15 interest or agricultural lien is created or provided  
16 for; or  
17 (6) A person that holds a security interest arising under  
18 section 490:2-401, 490:2-505, 490:2-711(3), 490:2A-  
19 508(e), 490:4-210, or 490:5-118.

20 "Security agreement" means an agreement that creates or  
21 provides for a security interest.



1       ~~["Send", in connection with a record or notification,~~  
2 means:  
3       ~~(1) To deposit in the mail, deliver for transmission, or~~  
4       ~~transmit by any other usual means of communication,~~  
5       ~~with postage or cost of transmission provided for,~~  
6       ~~addressed to any address reasonable under the~~  
7       ~~circumstances; or~~  
8       ~~(2) To cause the record or notification to be received~~  
9       ~~within the time that it would have been received if~~  
10       ~~properly sent under paragraph (1).]~~

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

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

19       "Supporting obligation" means a letter-of-credit right or  
20 secondary obligation that supports the payment or performance of



1 an account, chattel paper, a document, a general intangible, an  
2 instrument, or investment property.

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

6 "Termination statement" means an amendment of a financing  
7 statement which:

- 8 (1) Identifies, by its file number, the initial financing  
9 statement to which it relates; and  
10 (2) Indicates either that it is a termination statement or  
11 that the identified financing statement is no longer  
12 effective.

13 "Transmitting utility" means a person primarily engaged in  
14 the business of:

- 15 (1) Operating a railroad, subway, street railway, or  
16 trolley bus;  
17 (2) Transmitting communications electrically,  
18 electromagnetically, or by light;  
19 (3) Transmitting goods by pipeline or sewer; or  
20 (4) Transmitting or producing and transmitting  
21 electricity, steam, gas, or water.



1 (b) The following definitions in other articles apply to  
2 this article:

3 "Applicant". Section 490:5-102.

4 "Beneficiary". Section 490:5-102.

5 "Broker". Section 490:8-102.

6 "Certificated security". Section 490:8-102.

7 "Check". Section 490:3-104.

8 "Clearing corporation". Section 490:8-102.

9 "Contract for sale". Section 490:2-106.

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

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

12 "Customer". Section 490:4-104.

13 "Entitlement holder". Section 490:8-102.

14 "Financial asset". Section 490:8-102.

15 "Holder in due course". Section 490:3-302.

16 "Issuer" (with respect to a letter of credit or letter-of-  
17 credit right). Section 490:5-102.

18 "Issuer" (with respect to a security). Section 490:8-201.

19 "Issuer" (with respect to documents of title). Section  
20 490:7-102.

21 "Lease". Section 490:2A-103.



1 "Lease agreement". Section 490:2A-103.  
2 "Lease contract". Section 490:2A-103.  
3 "Leasehold interest". Section 490:2A-103.  
4 "Lessee". Section 490:2A-103.  
5 "Lessee in ordinary course of business". Section  
6 490:2A-103.  
7 "Lessor". Section 490:2A-103.  
8 "Lessor's residual interest". Section 490:2A-103.  
9 "Letter of credit". Section 490:5-102.  
10 "Merchant". Section 490:2-104.  
11 "Negotiable instrument". Section 490:3-104.  
12 "Nominated person". Section 490:5-102.  
13 "Note". Section 490:3-104.  
14 "Proceeds of a letter of credit". Section 490:5-114.  
15 "Protected purchaser". Section 490:8-303.  
16 "Prove". Section 490:3-103.  
17 "Qualifying purchaser". Section 490:A-102.  
18 "Sale". Section 490:2-106.  
19 "Securities account". Section 490:8-501.  
20 "Securities intermediary". Section 490:8-102.  
21 "Security". Section 490:8-102.



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

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

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

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

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

8 (1) The secured party is the bank with which the deposit  
9 account is maintained;

10 (2) The debtor, secured party, and bank have agreed in [~~an~~  
11 authenticated] a signed record that the bank will  
12 comply with instructions originated by the secured  
13 party directing disposition of the funds in the  
14 deposit account without further consent by the debtor;  
15 [~~or~~]

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

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

19 (A) Has control of the deposit account and  
20 acknowledges that it has control on behalf of the  
21 secured party; or



1           (B) Obtains control of the deposit account after  
2           having acknowledged that it will obtain control  
3           of the deposit account on behalf of the secured  
4           party."

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

7           "**§490:9-105 Control of electronic copy of record**  
8 **evidencing chattel paper.** (a) A [~~secured party has~~] purchaser  
9 shall be deemed to have control of [electronic] an authoritative  
10 electronic copy of a record evidencing chattel paper if a system  
11 employed for evidencing the [~~transfer~~] assignment of interests  
12 in the chattel paper reliably establishes the [~~secured party~~]  
13 purchaser as the person to which [~~the chattel paper~~] the  
14 authoritative electronic copy was assigned.

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

19           (1) A single authoritative copy of the record [~~or records~~]  
20 exists [~~which~~] that is unique, identifiable, and,



- 1           except as otherwise provided in paragraphs (4), (5),  
2           and (6), unalterable;
- 3           (2) The authoritative copy identifies the [~~secured party~~]  
4           purchaser as the assignee of the record [~~or records~~];
- 5           (3) The authoritative copy is communicated to, and  
6           maintained by, the [~~secured party~~] purchaser or its  
7           designated custodian;
- 8           (4) Copies or amendments that add or change an identified  
9           assignee of the authoritative copy can be made only  
10          with the consent of the [~~secured party,~~] purchaser;
- 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 purchaser shall be deemed to have control of an  
18 authoritative electronic copy of a record evidencing chattel  
19 paper, if the electronic copy, a record attached to, or  
20 logically associated with, the electronic copy, or a system in  
21 which the electronic copy is recorded:



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

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

8       (3) Gives the purchaser exclusive power, subject to  
9       subsection (d), to:

10       (A) Prevent others from adding or changing an  
11       identified assignee of the authoritative  
12       electronic copy; and

13       (B) Transfer control of the authoritative electronic  
14       copy.

15       (d) Subject to subsection (e), a power shall be deemed  
16 exclusive under subsection (c) (3), regardless of whether:

17       (1) The authoritative electronic copy, a record attached  
18       to, or logically associated with, the authoritative  
19       electronic copy, or a system in which the  
20       authoritative electronic copy is recorded limits the  
21       use of the authoritative electronic copy or has a



1 protocol programmed to cause a change, including a  
2 transfer or loss of control; or

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

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

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

9 (2) The other person:

10 (A) May exercise the power without exercise of the  
11 power by the purchaser; or

12 (B) Is the transferor to the purchaser of an interest  
13 in the chattel paper.

14 (f) If a purchaser has the powers specified in subsection  
15 (c) (3), the powers shall be presumed to be exclusive.

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



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

4       (2) Obtains control of the authoritative electronic copy  
5           after having acknowledged that it will obtain control  
6           of the electronic copy on behalf of the purchaser."

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

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

12       (1) Value has been given;

13       (2) The debtor has rights in the collateral or the power  
14           to transfer rights in the collateral to a secured  
15           party; and

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

17       (A) The debtor has [~~authenticated~~] signed a security  
18           agreement that provides a description of the  
19           collateral and, if the security interest covers  
20           timber to be cut, a description of the land  
21           concerned;



- 1 (B) The collateral is not a certificated security and  
2 is in the possession of the secured party under  
3 section 490:9-313 pursuant to the debtor's  
4 security agreement;
- 5 (C) The collateral is a certificated security in  
6 registered form and the security certificate has  
7 been delivered to the secured party under section  
8 490:8-301 pursuant to the debtor's security  
9 agreement; [~~or~~]
- 10 (D) The collateral is controllable accounts,  
11 controllable electronic records, controllable  
12 payment intangibles, deposit accounts, electronic  
13 [~~chattel paper,~~] documents, electronic money,  
14 investment property, or letter-of-credit rights,  
15 [~~or electronic documents,~~] and the secured party  
16 has control under section 490:7-106, 490:9-104,  
17 [~~490:9-105,~~] 490:9-A, 490:9-106, [~~or~~] 490:9-107,  
18 or 490:9-B pursuant to the debtor's security  
19 agreement[~~;~~]; or
- 20 (E) The collateral is chattel paper and the secured  
21 party has possession and control under section



1                   490:9-F pursuant to the debtor's security  
2                   agreement."

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

5           "**§490:9-204 After-acquired property; future advances.** (a)  
6 Except as otherwise provided in subsection (b), a security  
7 agreement may create or provide for a security interest in  
8 after-acquired collateral.

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

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

16           (2) A commercial tort claim.

17           (c) A security agreement may provide that collateral  
18 secures, or that accounts, chattel paper, payment intangibles,  
19 or promissory notes are sold in connection with, future advances  
20 or other value, whether or not the advances or value are given  
21 pursuant to commitment.



1        (d) Nothing in subsection (b) shall prevent a security  
2 interest from attaching:

3        (1) To consumer goods as proceeds under section  
4        490:9-315(a) or commingled goods under section  
5        490:9-336(c);

6        (2) To a commercial tort claim as proceeds under section  
7        490:9-315(a); or

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

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

13       "(c) Except as otherwise provided in subsection (d), a  
14 secured party having possession of collateral or control of  
15 collateral under section 490:7-106, 490:9-104, 490:9-105,  
16 490:9-A, 490:9-106, [~~or~~] 490:9-107[+], or 490:9-B:

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

19       (2) Shall apply money or funds received from the  
20       collateral to reduce the secured obligation, unless  
21       remitted to the debtor; and



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

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

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

6 (1) A secured party having control of a deposit account  
7 under section 490:9-104(a)(2) shall send to the bank  
8 with which the deposit account is maintained [~~an~~  
9 ~~authenticated statement~~] a signed record that releases  
10 the bank from any further obligation to comply with  
11 instructions originated by the secured party;

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

14 (A) Pay the debtor the balance on deposit in the  
15 deposit account; or

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

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



1           ~~(A)~~ ~~Communicate the] of an authoritative electronic~~  
2           ~~copy of [the electronic] a record evidencing~~  
3           ~~chattel paper shall transfer control of the~~  
4           ~~electronic copy to the debtor or [its] a person~~  
5           ~~designated [custodian];~~

6           ~~(B) If] by the debtor [designates a custodian that is~~  
7           ~~the designated custodian with which the~~  
8           ~~authoritative copy of the electronic chattel~~  
9           ~~paper is maintained for the secured party,~~  
10           ~~communicate to the custodian an authenticated~~  
11           ~~record releasing the designated custodian from~~  
12           ~~any further obligation to comply with~~  
13           ~~instructions originated by the secured party and~~  
14           ~~instructing the custodian to comply with~~  
15           ~~instructions originated by the debtor; and~~

16           ~~(C) Take appropriate action to enable the debtor or~~  
17           ~~its designated custodian to make copies of or~~  
18           ~~revisions to the authoritative copy which add or~~  
19           ~~change an identified assignee of the~~  
20           ~~authoritative copy without the consent of the~~  
21           ~~secured party];~~

- 1 (4) A secured party having control of investment property  
2 under section 490:8-106(d) (2) or 490:9-106(b) shall  
3 send to the securities intermediary or commodity  
4 intermediary with which the security entitlement or  
5 commodity contract is maintained [~~an authenticated~~] a  
6 signed record that releases the securities  
7 intermediary or commodity intermediary from any  
8 further obligation to comply with entitlement orders  
9 or directions originated by the secured party;
- 10 (5) A secured party having control of a letter-of-credit  
11 right under section 490:9-107 shall send to each  
12 person having an unfulfilled obligation to pay or  
13 deliver proceeds of the letter of credit to the  
14 secured party [~~an authenticated~~] a signed release from  
15 any further obligation to pay or deliver proceeds of  
16 the letter of credit to the secured party; [~~and~~]
- 17 (6) A secured party having control under section 490:7-106  
18 of an authoritative electronic copy of an electronic  
19 document shall[+]



- 1           ~~(A) Give] transfer control of the electronic~~  
2           ~~[document] copy to the debtor or [its] a person~~  
3           ~~designated [custodian,~~  
4           ~~(B) If] by the debtor [~~designates a custodian that is~~~~  
5           ~~the designated custodian with which the~~  
6           ~~authoritative copy of the electronic document is~~  
7           ~~maintained for the secured party, communicate to~~  
8           ~~the custodian an authenticated record releasing~~  
9           ~~the designated custodian from any further~~  
10           ~~obligation to comply with instructions originated~~  
11           ~~by the secured party and instructing the~~  
12           ~~custodian to comply with instructions originated~~  
13           ~~by the debtor; and~~  
14           ~~(C) Take appropriate action to enable the debtor or~~  
15           ~~its designated custodian to make copies of or~~  
16           ~~revisions to the authoritative copy that add or~~  
17           ~~change an identified assignee of the~~  
18           ~~authoritative copy without the consent of the~~  
19           ~~secured party.];~~

20           (7) A secured party having control under section 490:9-A  
21           of electronic money shall transfer control of the



1           electronic money to the debtor or a person designated  
2           by the debtor; and

3       (8) A secured party having control under section 490:A-105  
4           of a controllable electronic record, other than a  
5           buyer of a controllable account or controllable  
6           payment intangible evidenced by the controllable  
7           electronic record, shall transfer control of the  
8           controllable electronic record to the debtor or a  
9           person designated by the debtor."

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

12           "(b) Within ten days after receiving [~~an authenticated~~] a  
13 signed demand by the debtor, a secured party shall send to an  
14 account debtor that has received notification under section  
15 490:9-406(a) or 490:A-106(b) of an assignment to the secured  
16 party as assignee [~~under section 490:9-406(a) an authenticated~~]  
17 a signed record that releases the account debtor from any  
18 further obligation to the secured party."

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



1           "**§490:9-301 Law governing perfection and priority of**  
2 **security interests.** Except as otherwise provided in sections  
3 490:9-303 through [~~490:9-306,~~] 490:9-E, the following rules  
4 shall determine the law governing perfection, the effect of  
5 perfection or nonperfection, and the priority of a security  
6 interest in collateral:

7           (1) Except as otherwise provided in this section, while a  
8 debtor is located in a jurisdiction, the local law of  
9 that jurisdiction [~~governs~~] shall govern perfection,  
10 the effect of perfection or nonperfection, and the  
11 priority of a security interest in collateral~~[-]~~;

12           (2) While collateral is located in a jurisdiction, the  
13 local law of that jurisdiction [~~governs~~] shall govern  
14 perfection, the effect of perfection or nonperfection,  
15 and the priority of a possessory security interest in  
16 that collateral~~[-]~~;

17           (3) Except as otherwise provided in paragraph (4), while  
18 [~~tangible~~] negotiable tangible documents, goods,  
19 instruments, or tangible money~~[, or tangible chattel~~  
20 ~~paper]~~ is located in a jurisdiction, the local law of  
21 that jurisdiction [~~governs+~~] shall govern:



1 (A) Perfection of a security interest in the goods by  
2 filing a fixture filing;

3 (B) Perfection of a security interest in timber to be  
4 cut; and

5 (C) The effect of perfection or nonperfection and the  
6 priority of a nonpossessory security interest in  
7 the collateral~~[ ]~~; and

8 (4) The local law of the jurisdiction in which the  
9 wellhead or minehead is located [~~governs~~] shall govern  
10 perfection, the effect of perfection or nonperfection,  
11 and the priority of a security interest in as-  
12 extracted collateral."

13 SECTION 44. Section 490:9-304, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) The local law of a bank's jurisdiction [~~governs~~]  
16 shall govern perfection, the effect of perfection or  
17 nonperfection, and the priority of a security interest in a  
18 deposit account maintained with that bank~~[ ]~~ even if the  
19 transaction does not bear any relation to the bank's  
20 jurisdiction."



1 SECTION 45. Section 490:9-305, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Except as otherwise provided in subsection (c), the  
4 following rules apply:

- 5 (1) While a security certificate is located in a  
6 jurisdiction, the local law of that jurisdiction  
7 ~~[governs]~~ shall govern perfection, the effect of  
8 perfection or nonperfection, and the priority of a  
9 security interest in the certificated security  
10 represented thereby~~[-]~~;
- 11 (2) The local law of the issuer's jurisdiction as  
12 specified in section 490:8-110(d) ~~[governs]~~ shall  
13 govern perfection, the effect of perfection or  
14 nonperfection, and the priority of a security interest  
15 in an uncertificated security~~[-]~~;
- 16 (3) The local law of the securities intermediary's  
17 jurisdiction as specified in section 490:8-110(e)  
18 ~~[governs]~~ shall govern perfection, the effect of  
19 perfection or nonperfection, and the priority of a  
20 security interest in a security entitlement or  
21 securities account~~[-]~~;



1 (4) The local law of the commodity intermediary's  
 2 jurisdiction [~~governs~~] shall govern perfection, the  
 3 effect of perfection or nonperfection, and the  
 4 priority of a security interest in a commodity  
 5 contract or commodity account~~[-]~~; and

6 (5) Paragraphs (2), (3), and (4) shall apply regardless of  
 7 whether the transaction bears any relation to the  
 8 jurisdiction."

9 SECTION 46. Section 490:9-310, Hawaii Revised Statutes, is  
 10 amended by amending subsection (b) to read as follows:

11 "(b) The filing of a financing statement [~~is~~] shall not be  
 12 necessary to perfect a security interest:

13 (1) That is perfected under section 490:9-308(d), (e),  
 14 (f), or (g);

15 (2) That is perfected under section 490:9-309 when it  
 16 attaches;

17 (3) In property subject to a statute, regulation, or  
 18 treaty described in section 490:9-311(a);

19 (4) In goods in possession of a bailee [~~which is~~]  
 20 perfected under section 490:9-312(d) (1) or (2);



- 1 (5) In certificated securities, documents, goods, or  
2 instruments [~~which is~~] perfected without filing,  
3 control, or possession under section 490:9-312(e),  
4 (f), or (g);
- 5 (6) In collateral in the secured party's possession under  
6 section 490:9-313;
- 7 (7) In a certificated security [~~which is~~] perfected by  
8 delivery of the security certificate to the secured  
9 party under section 490:9-313;
- 10 (8) In controllable accounts, controllable electronic  
11 records, controllable payment intangibles, deposit  
12 accounts, [~~electronic chattel paper,~~] electronic  
13 documents, investment property, or letter-of-credit  
14 rights [~~which is~~] perfected by control under section  
15 490:9-314;
- 16 (9) In chattel paper perfected by possession and control  
17 under section 490:9-F;
- 18 (10) In proceeds [~~which is~~] perfected under section  
19 490:9-315; or
- 20 [~~(10)~~] (11) That is perfected under section 490:9-316."



1 SECTION 47. Section 490:9-312, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending its title and subsections (a) and (b) to  
4 read:

5 "§490:9-312 Perfection of security interests in chattel  
6 paper, controllable accounts, controllable electronic records,  
7 controllable payment intangibles, deposit accounts, documents,  
8 goods covered by documents, instruments, investment property,  
9 letter-of-credit rights, and money; perfection by permissive  
10 filing; temporary perfection without filing or transfer of  
11 possession. (a) A security interest in chattel paper,  
12 [negotiable documents,] controllable accounts, controllable  
13 electronic records, controllable payment intangibles,  
14 instruments, [or] investment property, or negotiable documents  
15 may be perfected by filing.

16 (b) Except as otherwise provided in section 490:9-315(c)  
17 and (d) for proceeds:

18 (1) A security interest in a deposit account may be  
19 perfected only by control under section 490:9-314;

20 (2) And except as otherwise provided in section  
21 490:9-308(d), a security interest in a letter-of-



1 credit right may be perfected only by control under  
2 section 490:9-314; [~~and~~]

3 (3) A security interest in tangible money may be perfected  
4 only by the secured party's taking possession under  
5 section 490:9-313[~~-~~]; and

6 (4) A security interest in electronic money may be  
7 perfected only by control under section 490:9-314."

8 2. By amending subsection (e) to read:

9 "(e) A security interest in certificated securities,  
10 negotiable documents, or instruments [~~is~~] shall be deemed to be  
11 perfected without filing or the taking of possession or control  
12 for a period of twenty days from the time it attaches to the  
13 extent that it arises for new value given under [~~an~~  
14 authenticated] a signed security agreement."

15 SECTION 48. Section 490:9-313, Hawaii Revised Statutes, is  
16 amended as follows:

17 1. By amending subsection (a) to read:

18 "(a) Except as otherwise provided in subsection (b), a  
19 secured party may perfect a security interest in [~~tangible~~  
20 ~~negotiable documents,~~] goods, instruments, negotiable tangible  
21 documents, or tangible money[~~, or tangible chattel paper~~] by



1 taking possession of the collateral. A secured party may  
2 perfect a security interest in certificated securities by taking  
3 delivery of the certificated securities under section  
4 490:8-301."

5 2. By amending subsection (c) to read:

6 "(c) With respect to collateral other than certificated  
7 securities and goods covered by a document, a secured party  
8 takes possession of collateral in the possession of a person  
9 other than the debtor, the secured party, or a lessee of the  
10 collateral from the debtor in the ordinary course of the  
11 debtor's business, when[+] the person:

12 (1) [~~The person in~~] In possession [~~authenticates~~] signs a  
13 record acknowledging that it holds possession of the  
14 collateral for the secured party's benefit; or

15 (2) [~~The person takes~~] Takes possession of the collateral  
16 after having [~~authenticated~~] signed a record  
17 acknowledging that it will hold possession of the  
18 collateral for the secured party's benefit."

19 SECTION 49. Section 490:9-314, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "**§490:9-314 Perfection by control.** (a) A security  
2 interest in [~~investment property, deposit accounts, letter-of-~~  
3 ~~credit rights, electronic chattel paper, or electronic~~  
4 ~~documents~~] controllable accounts, controllable electronic  
5 records, controllable payment intangibles, deposit accounts,  
6 electronic documents, electronic money, investment property, or  
7 letter-of-credit rights may be perfected by control of the  
8 collateral under section 490:7-106, 490:9-104, [~~490:9-105,~~  
9 490:9-A, 490:9-106, [or] 490:9-107[-], or 490:9-B.

10           (b) A security interest in [~~deposit accounts, electronic~~  
11 ~~chattel paper, letter-of-credit rights, or electronic documents~~  
12 ~~is~~] controllable accounts, controllable electronic records,  
13 controllable payment intangibles, deposit accounts, electronic  
14 documents, electronic money, or letter-of-credit rights shall be  
15 deemed perfected by control under section 490:7-106, 490:9-104,  
16 [~~490:9-105, or~~] 490:9-A, 490:9-107 [when], or 490:9-B no earlier  
17 than the time the secured party obtains control and [~~remains~~]  
18 shall be deemed to remain perfected by control only while the  
19 secured party retains control.

20           (c) A security interest in investment property [~~is~~] shall  
21 be deemed perfected by control under section 490:9-106 [~~from~~] no



1 earlier than the time the secured party obtains control and  
2 ~~[remains]~~ shall be deemed to remain perfected by control until:

- 3 (1) The secured party does not have control; and
- 4 (2) One of the following occurs:
  - 5 (A) If the collateral is a certificated security, the
  - 6 debtor has or acquires possession of the security
  - 7 certificate;
  - 8 (B) If the collateral is an uncertificated security,
  - 9 the issuer has registered or registers the debtor
  - 10 as the registered owner; or
  - 11 (C) If the collateral is a security entitlement, the
  - 12 debtor is or becomes the entitlement holder."

13 SECTION 50. Section 490:9-316, Hawaii Revised Statutes, is  
14 amended as follows:

- 15 1. By amending subsection (a) to read:
- 16 "(a) A security interest perfected pursuant to the law of
- 17 the jurisdiction designated in section 490:9-301(1) ~~[or]~~,
- 18 490:9-305(c) ~~[remains]~~, 490:9-D(d), or 490:9-E(b) shall be
- 19 deemed to remain perfected until the earliest of:
- 20 (1) The time perfection would have ceased under the law of
- 21 that jurisdiction;



1 (2) The expiration of four months after a change of the  
2 debtor's location to another jurisdiction; or

3 (3) The expiration of one year after a transfer of  
4 collateral to a person that thereby becomes a debtor  
5 and is located in another jurisdiction."

6 2. By amending subsection (f) to read:

7 "(f) A security interest in chattel paper, controllable  
8 accounts, controllable electronic records, controllable payment  
9 intangibles, deposit accounts, letter-of-credit rights, or  
10 investment property [~~which~~] that is perfected under the law of  
11 the chattel paper's jurisdiction, the controllable electronic  
12 record's jurisdiction, the bank's jurisdiction, the issuer's  
13 jurisdiction, a nominated person's jurisdiction, the securities  
14 intermediary's jurisdiction, or the commodity intermediary's  
15 jurisdiction, as applicable, [~~remains~~] shall be deemed to remain  
16 perfected until the earlier of:

17 (1) The time the security interest would have become  
18 unperfected under the law of that jurisdiction; or

19 (2) The expiration of four months after a change of the  
20 applicable jurisdiction to another jurisdiction."



1 SECTION 51. Section 490:9-317, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§490:9-317 Interests that take priority over or take free**  
4 **of security interest or agricultural lien.** (a) A security  
5 interest or agricultural lien [~~is~~] shall be subordinate to the  
6 rights of:

7 (1) A person entitled to priority under section 490:9-322;  
8 and

9 (2) Except as otherwise provided in subsection (e), a  
10 person that becomes a lien creditor before the earlier  
11 of the time:

12 (A) The security interest or agricultural lien is  
13 perfected; or

14 (B) One of the conditions specified in section  
15 490:9-203(b) (3) is met and a financing statement  
16 covering the collateral is filed.

17 (b) Except as otherwise provided in subsection (e), a  
18 buyer, other than a secured party, of [~~tangible chattel paper,~~  
19 ~~tangible documents,~~] goods, instruments, tangible document, or  
20 certificated security takes free of a security interest or  
21 agricultural lien if the buyer gives value and receives delivery



1 of the collateral without knowledge of the security interest or  
2 agricultural lien and before it is perfected.

3 (c) Except as otherwise provided in subsection (e), a  
4 lessee of goods takes free of a security interest or  
5 agricultural lien if the lessee gives value and receives  
6 delivery of the collateral without knowledge of the security  
7 interest or agricultural lien and before it is perfected.

8 (d) [A] Subject to subsections (f) through (i), a licensee  
9 of a general intangible or a buyer, other than a secured party,  
10 of collateral other than [~~tangible chattel paper, tangible~~  
11 ~~documents,~~] electronic money, goods, instruments, tangible  
12 documents, or a certificated security takes free of a security  
13 interest if the licensee or buyer gives value without knowledge  
14 of the security interest and before it is perfected.

15 (e) Except as otherwise provided in sections 490:9-320 and  
16 490:9-321, if a person files a financing statement with respect  
17 to a purchase-money security interest before or within twenty  
18 days after the debtor receives delivery of the collateral, the  
19 security interest takes priority over the rights of a buyer,  
20 lessee, or lien creditor which arise between the time the  
21 security interest attaches and the time of filing.



1       (f) A buyer, other than a secured party, of chattel paper  
2 takes free of a security interest if, without knowledge of the  
3 security interest and before it is perfected, the buyer gives  
4 value and:

5       (1) Receives delivery of each authoritative tangible copy  
6 of the record evidencing the chattel paper; and

7       (2) If each authoritative electronic copy of the record  
8 evidencing the chattel paper may be subjected to  
9 control under section 490:9-105, obtains control of  
10 each authoritative electronic copy.

11       (g) A buyer of an electronic document takes free of a  
12 security interest if, without knowledge of the security interest  
13 and before it is perfected, the buyer gives value and, if each  
14 authoritative electronic copy of the document may be subjected  
15 to control under section 490:7-106, obtains control of each  
16 authoritative electronic copy.

17       (h) A buyer of a controllable electronic record takes free  
18 of a security interest if, without knowledge of the security  
19 interest and before it is perfected, the buyer gives value and  
20 obtains control of the controllable electronic record.



1        (i) A buyer, other than a secured party, of a controllable  
2 account or a controllable payment intangible takes free of a  
3 security interest if, without knowledge of the security interest  
4 and before it is perfected, the buyer gives value and obtains  
5 control of the controllable account or controllable payment  
6 intangible."

7        SECTION 52. Section 490:9-323, Hawaii Revised Statutes, is  
8 amended as follows:

9        1. By amending subsection (d) to read:

10        "(d) Except as otherwise provided in subsection (e), a  
11 buyer of goods [~~other than a buyer in ordinary course of~~  
12 ~~business~~] takes free of a security interest to the extent that  
13 it secures advances made after the earlier of:

14        (1) The time the secured party acquires knowledge of the  
15 buyer's purchase; or

16        (2) Forty-five days after the purchase."

17        2. By amending subsection (f) to read:

18        "(f) Except as otherwise provided in subsection (g), a  
19 lessee of goods[~~, other than a lessee in ordinary course of~~  
20 ~~business,~~] takes the leasehold interest free of a security



1 interest to the extent that it secures advances made after the  
2 earlier of:

3 (1) The time the secured party acquires knowledge of the  
4 lease; or

5 (2) Forty-five days after the lease contract becomes  
6 enforceable."

7 SECTION 53. Section 490:9-330, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending subsections (a) and (b) to read:

10 "(a) A purchaser of chattel paper [~~has~~] shall have  
11 priority over a security interest in the chattel paper [~~which~~]  
12 that is claimed merely as proceeds of inventory subject to a  
13 security interest if:

14 (1) In good faith and in the ordinary course of the  
15 purchaser's business, the purchaser gives new value  
16 [~~and~~], takes possession of each authoritative tangible  
17 copy of the record evidencing the chattel paper [~~or~~],  
18 and obtains control [~~of~~] under section 490:9-105 of  
19 each authoritative electronic copy of the record  
20 evidencing the chattel paper [~~under section~~  
21 ~~490:9-105~~]; and



1           (2) The [~~chattel paper does~~] authoritative copies of the  
2           record evidencing the chattel paper do not indicate  
3           that [~~it~~] the chattel paper has been assigned to an  
4           identified assignee other than the purchaser.

5           (b) A purchaser of chattel paper [~~has~~] shall have priority  
6           over a security interest in the chattel paper [~~which~~] that is  
7           claimed other than merely as proceeds of inventory subject to a  
8           security interest if the purchaser gives new value [~~and~~], takes  
9           possession of each authoritative tangible copy of the record  
10          evidencing the chattel paper [~~or~~], and obtains control [~~of~~]  
11          under section 490:9-105 of each authoritative electronic copy of  
12          the record evidencing the chattel paper [~~under section~~  
13          ~~490:9-105~~] in good faith, in the ordinary course of the  
14          purchaser's business, and without knowledge that the purchase  
15          violates the rights of the secured party."

16           2. By amending subsection (f) to read:

17           "(f) For purposes of subsections (b) and (d), if the  
18           authoritative copies of the record evidencing chattel paper or  
19           an instrument [~~indicates~~] indicate that [~~it~~] the chattel paper  
20           or instrument has been assigned to an identified secured party  
21           other than the purchaser, a purchaser of the chattel paper or



1 instrument has knowledge that the purchase violates the rights  
2 of the secured party."

3 SECTION 54. Section 490:9-331, Hawaii Revised Statutes, is  
4 amended by amending its title and subsections (a) and (b) to  
5 read as follows:

6 "§490:9-331 Priority of rights of purchasers of  
7 [instruments,] controllable accounts, controllable electronic  
8 records, controllable payment intangibles, documents,  
9 instruments, and securities under other articles; priority of  
10 interests in financial assets and security entitlements and  
11 protection against assertion of claim under [article] articles  
12 8[-] and A. (a) This article does not limit the rights of a  
13 holder in due course of a negotiable instrument, a holder to  
14 which a negotiable document of title has been duly negotiated,  
15 [or] a protected purchaser of a security[-], or a qualifying  
16 purchaser of a controllable account, controllable electronic  
17 record, or controllable payment intangible. These holders or  
18 purchasers take priority over an earlier security interest, even  
19 if perfected, to the extent provided in articles 3, 7, [and]  
20 8[-], and A.



1 (b) This article does not limit the rights of or impose  
2 liability on a person to the extent that the person is protected  
3 against the assertion of a claim under article 8[-] or A."

4 SECTION 55. Section 490:9-332, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§490:9-332 Transfer of money; transfer of funds from**  
7 **deposit account.** (a) A transferee of tangible money takes the  
8 money free of a security interest [~~unless the transferee acts~~]  
9 if the transferee receives possession of the money without  
10 acting in collusion with the debtor in violating the rights of  
11 the secured party.

12 (b) A transferee of funds from a deposit account takes the  
13 funds free of a security interest in the deposit account [~~unless~~  
14 ~~the transferee acts~~] if the transferee receives the funds  
15 without acting in collusion with the debtor in violating the  
16 rights of the secured party.

17 (c) A transferee of electronic money takes the money free  
18 of a security interest if the transferee obtains control of the  
19 money without acting in collusion with the debtor in violating  
20 the rights of the secured party."



1 SECTION 56. Section 490:9-406, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§490:9-406 Discharge of account debtor; notification of**  
4 **assignment; identification and proof of assignment; restrictions**  
5 **on assignment of accounts, chattel paper, payment intangibles,**  
6 **and promissory notes ineffective.** (a) Subject to subsections  
7 (b) through [~~(i)~~] (j), an account debtor on an account, chattel  
8 paper, or a payment intangible may discharge its obligation by  
9 paying the assignor until, but not after, the account debtor  
10 receives a notification, [~~authenticated~~] signed by the assignor  
11 or the assignee, that the amount due or to become due has been  
12 assigned and that payment is to be made to the assignee. After  
13 receipt of the notification, the account debtor may discharge  
14 its obligation by paying the assignee and may not discharge the  
15 obligation by paying the assignor.

16 (b) Subject to [~~subsection~~] subsections (h) [~~7~~] and (j),  
17 notification [~~is~~] shall be deemed ineffective under subsection  
18 (a):

19 (1) If it does not reasonably identify the rights  
20 assigned;



- 1           (2) To the extent that an agreement between an account  
2           debtor and a seller of a payment intangible limits the  
3           account debtor's duty to pay a person other than the  
4           seller and the limitation is effective under law other  
5           than this article; or
- 6           (3) At the option of an account debtor, if the  
7           notification notifies the account debtor to make less  
8           than the full amount of any installment or other  
9           periodic payment to the assignee, even if:
- 10           (A) Only a portion of the account, chattel paper, or  
11           payment intangible has been assigned to that  
12           assignee;
- 13           (B) A portion has been assigned to another assignee;  
14           or
- 15           (C) The account debtor knows that the assignment to  
16           that assignee is limited.
- 17           (c) Subject to [~~subsection~~] subsections (h) [7] and (j), if  
18 requested by the account debtor, an assignee shall seasonably  
19 furnish reasonable proof that the assignment has been made.  
20 Unless the assignee complies, the account debtor may discharge



1 its obligation by paying the assignor, even if the account  
2 debtor has received a notification under subsection (a).

3 (d) In this subsection, "promissory note" includes a  
4 negotiable instrument that evidences chattel paper. Except as  
5 otherwise provided in subsection (e) and sections 490:2A-303 and  
6 490:9-407, and subject to subsection (h), a term in an agreement  
7 between an account debtor and an assignor or in a promissory  
8 note ~~[is]~~ shall be deemed ineffective to the extent that it:

9 (1) Prohibits, restricts, or requires the consent of the  
10 account debtor or person obligated on the promissory  
11 note to the assignment or transfer of, or the  
12 creation, attachment, perfection, or enforcement of a  
13 security interest in, the account, chattel paper,  
14 payment intangible, or promissory note; or

15 (2) Provides that the assignment or transfer or the  
16 creation, attachment, perfection, or enforcement of  
17 the security interest may give rise to a default,  
18 breach, right of recoupment, claim, defense,  
19 termination, right of termination, or remedy under the  
20 account, chattel paper, payment intangible, or  
21 promissory note.



1 (e) Subsection (d) does not apply to the sale of a payment  
2 intangible or promissory note, other than a sale pursuant to a  
3 disposition under section 490:9-610 or an acceptance of  
4 collateral under section 490:9-620.

5 (f) Except as otherwise provided in sections 490:2A-303  
6 and 490:9-407, and subject to subsections (h) and (i), a rule of  
7 law, statute, or regulation, that prohibits, restricts, or  
8 requires the consent of a government, governmental body or  
9 official, or account debtor to the assignment or transfer of, or  
10 creation of a security interest in, an account or chattel paper  
11 [~~is~~] shall be ineffective to the extent that the rule of law,  
12 statute, or regulation:

13 (1) Prohibits, restricts, or requires the consent of the  
14 government, governmental body or official, or account  
15 debtor to the assignment or transfer of, or the  
16 creation, attachment, perfection, or enforcement of a  
17 security interest in, the account or chattel paper; or

18 (2) Provides that the assignment or transfer or the  
19 creation, attachment, perfection, or enforcement of  
20 the security interest may give rise to a default,  
21 breach, right of recoupment, claim, defense,



1 termination, right of termination, or remedy under the  
2 account or chattel paper.

3 (g) Subject to [~~subsection~~] subsections (h) [~~7~~] and (j), an  
4 account debtor may not waive or vary its option under subsection  
5 (b) (3).

6 (h) This section is subject to law other than this article  
7 [~~which~~] that establishes a different rule for an account debtor  
8 who is an individual and who incurred the obligation primarily  
9 for personal, family, or household purposes.

10 (i) This section does not apply to an assignment of a  
11 health-care-insurance receivable.

12 (j) Subsections (a), (b), (c), and (g) shall not apply to  
13 a controllable account or controllable payment intangible."

14 SECTION 57. Section 490:9-408, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§490:9-408 Restrictions on assignment of promissory**  
17 **notes, health-care-insurance receivables, and certain general**  
18 **intangibles ineffective.** (a) Except as otherwise provided in  
19 subsection (b), a term in a promissory note or in an agreement  
20 between an account debtor and a debtor [~~which~~] that relates to a  
21 health-care-insurance receivable or a general intangible,



1 including a contract, permit, license, or franchise, [~~and which~~  
2 ~~term~~] that prohibits, restricts, or requires the consent of the  
3 person obligated on the promissory note or the account debtor  
4 to, the assignment or transfer of, or creation, attachment, or  
5 perfection of a security interest in, the promissory note,  
6 health-care-insurance receivable, or general intangible, [~~is~~]  
7 shall be deemed ineffective to the extent that the term:

- 8 (1) Would impair the creation, attachment, or perfection  
9 of a security interest; or
- 10 (2) Provides that the assignment or transfer or the  
11 creation, attachment, or perfection of the security  
12 interest may give rise to a default, breach, right of  
13 recoupment, claim, defense, termination, right of  
14 termination, or remedy under the promissory note,  
15 health-care-insurance receivable, or general  
16 intangible.

17 (b) Subsection (a) [~~applies~~] shall apply to a security  
18 interest in a payment intangible or promissory note only if the  
19 security interest arises out of a sale of the payment intangible  
20 or promissory note, other than a sale pursuant to a disposition



1 under section 490:9-610 or an acceptance of collateral under  
2 section 490:9-620.

3 (c) A rule of law, statute, or regulation[~~r~~] that  
4 prohibits, restricts, or requires the consent of a government,  
5 governmental body or official, person obligated on a promissory  
6 note, or account debtor to the assignment or transfer of, or  
7 creation of a security interest in, a promissory note, health-  
8 care-insurance receivable, or general intangible, including a  
9 contract, permit, license, or franchise between an account  
10 debtor and a debtor, [~~is~~] shall be deemed ineffective to the  
11 extent that the rule of law, statute, or regulation:

- 12 (1) Would impair the creation, attachment, or perfection  
13 of a security interest; or  
14 (2) Provides that the assignment or transfer or the  
15 creation, attachment, or perfection of the security  
16 interest may give rise to a default, breach, right of  
17 recoupment, claim, defense, termination, right of  
18 termination, or remedy under the promissory note,  
19 health-care-insurance receivable, or general  
20 intangible.



1 (d) To the extent that a term in a promissory note or in  
2 an agreement between an account debtor and a debtor [~~which~~] that  
3 relates to a health-care-insurance receivable or general  
4 intangible or a rule of law, statute, or regulation described in  
5 subsection (c) would be effective under law other than this  
6 article but is ineffective under subsection (a) or (c), the  
7 creation, attachment, or perfection of a security interest in  
8 the promissory note, health-care-insurance receivable, or  
9 general intangible[+] shall not:

10 (1) [~~Is not~~] Be enforceable against the person obligated  
11 on the promissory note or the account debtor;

12 (2) [~~Does not impose~~] Impose a duty or obligation on the  
13 person obligated on the promissory note or the account  
14 debtor;

15 (3) [~~Does not require~~] Require the person obligated on the  
16 promissory note or the account debtor to recognize the  
17 security interest, pay or render performance to the  
18 secured party, or accept payment or performance from  
19 the secured party;

20 (4) [~~Does not entitle~~] Entitle the secured party to use or  
21 assign the debtor's rights under the promissory note,



1 health-care-insurance receivable, or general  
2 intangible, including any related information or  
3 materials furnished to the debtor in the transaction  
4 giving rise to the promissory note, health-care-  
5 insurance receivable, or general intangible;  
6 (5) ~~[Does not entitle]~~ Entitle the secured party to use,  
7 assign, possess, or have access to any trade secrets  
8 or confidential information of the person obligated on  
9 the promissory note or the account debtor; and  
10 (6) ~~[Does not entitle]~~ Entitle the secured party to  
11 enforce the security interest in the promissory note,  
12 health-care-insurance receivable, or general  
13 intangible.

14 (e) In this section, "promissory note" includes a  
15 negotiable instrument that evidences chattel paper."

16 SECTION 58. Section 490:9-601, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18 "(b) A secured party in possession of collateral or  
19 control of collateral under section 490:7-106, 490:9-104,  
20 490:9-105, 490:9-A, 490:9-106, ~~[or]~~ 490:9-107 ~~[has]~~, or 490:9-B  
21 shall have the rights and duties provided in section 490:9-207."



1 SECTION 59. Section 490:9-605, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§490:9-605 Unknown debtor or secondary obligor.** [A] (a)  
4 Except as provided in subsection (b), a secured party [does]  
5 shall not owe a duty based on its status as secured party:

6 (1) To a person that is a debtor or obligor, unless the  
7 secured party knows:

8 (A) That the person is a debtor or obligor;

9 (B) The identity of the person; and

10 (C) How to communicate with the person; or

11 (2) To a secured party or lienholder that has filed a  
12 financing statement against a person, unless the  
13 secured party knows:

14 (A) That the person is a debtor; and

15 (B) The identity of the person.

16 (b) A secured party shall be deemed to owe a duty based on  
17 its status as a secured party to a person if, at the time the  
18 secured party obtains control of collateral that is a  
19 controllable account, controllable electronic record, or  
20 controllable payment intangible or at the time the security  
21 interest attaches to the collateral, whichever is later:



- 1       (1) The person is a debtor or obligor; and
- 2       (2) The secured party knows that the information in
- 3       subsection (a)(1) relating to the person is not
- 4       provided by the collateral; a record attached to, or
- 5       logically associated with, the collateral; or the
- 6       system in which the collateral is recorded."

7       SECTION 60. Section 490:9-613, Hawaii Revised Statutes, is  
8 amended to read as follows:

9       "**§490:9-613 Contents and form of notification before**  
10 **disposition of collateral: general.** (a) Except in a  
11 consumer-goods transaction, the following rules shall apply:

- 12       (1) The contents of a notification of disposition are
- 13       sufficient if the notification:
  - 14           (A) Describes the debtor and the secured party;
  - 15           (B) Describes the collateral that is the subject of
  - 16           the intended disposition;
  - 17           (C) States the method of intended disposition;
  - 18           (D) States that the debtor is entitled to an
  - 19           accounting of the unpaid indebtedness and states
  - 20           the charge, if any, for an accounting; and



1 (E) States the time and place of a public disposition  
2 or the time after which any other disposition is  
3 to be made[-];

4 (2) Whether the contents of a notification that lacks any  
5 of the information specified in paragraph (1) are  
6 nevertheless sufficient is a question of fact[-];

7 (3) The contents of a notification providing substantially  
8 the information specified in paragraph (1) are  
9 sufficient, even if the notification includes:

10 (A) Information not specified by that paragraph; or

11 (B) Minor errors that are not seriously  
12 misleading[-];

13 (4) A particular phrasing of the notification is not  
14 required[-]; and

15 (5) The following form of notification and the form  
16 appearing in section [~~490:9-614(3)~~] 490:9-614(a)(3),  
17 when completed[-] in accordance with the instructions  
18 in subsection (b) and section 490:9-614(b), each  
19 provides sufficient information:

20

21 [~~NOTIFICATION OF DISPOSITION OF COLLATERAL~~



1           To:            ~~\_\_\_\_\_ [Name of debtor, obligor, or other~~  
2                           ~~person to which the notification is sent]~~

3           From:         ~~\_\_\_\_\_ [Name, address, and telephone number of~~  
4                           ~~secured party]~~

5           Name of Debtor(s): ~~\_\_\_\_\_ [Include only if debtor(s)~~  
6                           ~~are not an addressee]~~

7           ~~{For a public disposition:}~~

8                         ~~We will sell [or lease or license, as applicable]~~  
9           the ~~\_\_\_\_\_ [describe collateral] \_\_\_\_\_ [to the highest~~  
10           ~~qualified bidder] in public as follows:~~

11           Day and Date: ~~\_\_\_\_\_~~

12           Time:           ~~\_\_\_\_\_~~

13           Place:           ~~\_\_\_\_\_~~

14           ~~{For a private disposition:}~~

15                         ~~We will sell [or lease or license, as applicable]~~  
16           the ~~\_\_\_\_\_ [describe collateral] \_\_\_\_\_ privately sometime~~  
17           after ~~\_\_\_\_\_ [day and date] \_\_\_\_\_.~~

18                         ~~You are entitled to an accounting of the unpaid~~  
19           ~~indebtedness secured by the property that we intend to~~  
20           ~~sell [or lease or license, as applicable] [for a~~



1 charge of \$\_\_\_\_\_]. You may request an accounting  
2 by calling us at \_\_\_\_\_ [telephone number].]

3 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

4 To: (Name of debtor, obligor, or other person to which the  
5 notification is sent)

6 From: (Name, address, and telephone number of secured  
7 party)

8 (1) Name of any debtor that is not an addressee:

9 (Name of each debtor)

10 (2) We will sell (describe collateral) (to the

11 highest qualified bidder) at public sale. A sale  
12 could include a lease or license. The sale will be  
13 held as follows:

14 (Date)

15 (Time)

16 (Place)

17 (3) We will sell (describe collateral) at

18 private sale sometime after (date). A sale could  
19 include a lease or license.



1           (4) You are entitled to an accounting of the  
2           unpaid indebtedness secured by the property that we  
3           intend to sell or, as applicable, lease or license.

4           (5) If you request an accounting, you must pay a  
5           charge of \$ (amount).

6           (6) You may request an accounting by calling us  
7           at (telephone number).

8  
9           (b) The following instructions shall apply to the form of  
10          notification in subsection (a) (5):

11          (1) The instructions in this subsection refer to the  
12          numbers in parentheses before items in the form of  
13          notification in subsection (a) (5). Do not include the  
14          numbers or parentheses in the notification. The  
15          numbers and parentheses are used only for the purpose  
16          of these instructions;

17          (2) Include and complete item (1) only if there is a  
18          debtor that is not an addressee of the notification  
19          and list the name or names;

20          (3) Include and complete either item (2), if the  
21          notification relates to a public disposition of the



1           collateral, or item (3), if the notification relates  
2           to a private disposition of the collateral. If item  
3           (2) is included, include the words "to the highest  
4           qualified bidder" only if applicable;  
5           (4) Include and complete items (4) and (6); and  
6           (5) Include and complete item (5) only if the sender will  
7           charge the recipient for an accounting."

8           SECTION 61. Section 490:9-614, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           **"§490:9-614 Contents and form of notification before**  
11 **disposition of collateral: consumer-goods transaction. (a) In**  
12 **a consumer-goods transaction, the following rules shall apply:**

13           (1) A notification of disposition must provide the  
14           following information:  
15           (A) The information specified in section  
16           ~~[490:9-613(1),]~~ 490:9-613(a)(1);  
17           (B) A description of any liability for a deficiency  
18           of the person to which the notification is sent;  
19           (C) A telephone number from which the amount that  
20           must be paid to the secured party to redeem the



1 collateral under section 490:9-623 is available;

2 and

3 (D) A telephone number or mailing address from which  
4 additional information concerning the disposition  
5 and the obligation secured is available~~[ ]~~;

6 (2) A particular phrasing of the notification is not  
7 required~~[ ]~~;

8 (3) The following form of notification, when completed~~[ ]~~  
9 in accordance with the instructions in subsection (b),  
10 provides sufficient information:

11 ~~[ \_\_\_\_\_ [Name and address of secured party]~~

12 ~~\_\_\_\_\_ [Date]~~

13 **~~NOTICE OF OUR PLAN TO SELL PROPERTY~~**

14 ~~\_\_\_\_\_ [Name and address of any obligor who is also a~~  
15 ~~debtor]~~

16 Subject: ~~\_\_\_\_\_ [Identification of Transaction]~~

17 We have your ~~\_\_\_\_\_ [describe collateral]~~,

18 ~~because you broke promises in our agreement.~~

19 ~~[For a public disposition:]~~



1                   We will sell \_\_\_\_\_ [describe collateral] \_\_\_\_\_ at  
2                   public sale sometime after \_\_\_\_\_ [date] \_\_\_\_\_. A sale  
3                   could include a lease or license.

4                   ~~The sale will be held as follows:~~

5                   Day and Date:                   \_\_\_\_\_

6                   Time:                               \_\_\_\_\_

7                   Place:                               \_\_\_\_\_

8                   ~~You may attend the sale and bring bidders if you~~  
9                   ~~want.~~

10                  ~~{For a private disposition:}~~

11                  We will sell \_\_\_\_\_ [describe collateral] \_\_\_\_\_ at  
12                  private sale sometime after \_\_\_\_\_ [date] \_\_\_\_\_. A sale  
13                  could include a lease or license.

14                  ~~The money that we get from the sale (after paying~~  
15                  ~~our costs) will reduce the amount you owe. If we get~~  
16                  ~~less money than you owe, you \_\_\_\_\_ [will or will not,~~  
17                  ~~as applicable] \_\_\_\_\_ still owe us the difference. If~~  
18                  ~~we get more money than you owe, you will get the extra~~  
19                  ~~money, unless we must pay it to someone else.~~

20                  ~~You can get the property back at any time before~~  
21                  ~~we sell it by paying us the full amount you owe (not~~



1 ~~just the past due payments), including our expenses.~~  
2 ~~To learn the exact amount you must pay, call us~~  
3 ~~at \_\_\_\_\_ [telephone number]\_\_\_\_\_.~~

4 ~~If you want us to explain to you in writing how~~  
5 ~~we have figured the amount that you owe us, you may~~  
6 ~~call us at \_\_\_\_\_ [telephone number]\_\_\_\_\_ [or write us~~  
7 ~~at \_\_\_\_\_ [secured party's address]\_\_\_\_\_] and request a~~  
8 ~~written explanation. [We will charge you~~  
9 ~~\$\_\_\_\_\_ for the explanation if we sent you another~~  
10 ~~written explanation of the amount you owe us within~~  
11 ~~the last six months.]~~

12 ~~If you need more information about the sale call~~  
13 ~~us at \_\_\_\_\_ [telephone number]\_\_\_\_\_ [or write us~~  
14 ~~at \_\_\_\_\_ [secured party's address]\_\_\_\_\_].~~

15 ~~We are sending this notice to the following other~~  
16 ~~people who have an interest in \_\_\_\_\_ [describe~~  
17 ~~collateral]\_\_\_\_\_ or who owe money under your~~  
18 ~~agreement:~~

19 ~~\_\_\_\_\_ [Names of all other debtors and obligors, if~~  
20 ~~any]\_\_\_\_\_.]~~

21 (Name and address of secured party)



1            (Date)

2                            **NOTICE OF OUR PLAN TO SELL PROPERTY**

3            (Name and address of any obligor who is also a debtor)

4            Subject: (Identify transaction)

5                            We have your (describe collateral) because you  
6                            broke promises in our agreement.

7                            (1) We will sell (describe collateral) at public  
8                            sale. A sale could include a lease or license. The  
9                            sale will be held as follows:

10                            (Date)

11                            (Time)

12                            (Place)

13                            You may attend the sale and bring bidders if you  
14                            want.

15                            (2) We will sell (describe collateral) at  
16                            private sale sometime after (date). A sale could  
17                            include a lease or license.

18                            (3) The money that we get from the sale, after  
19                            paying our costs, will reduce the amount you owe. If  
20                            we get less money than you owe, you (will or will not,  
21                            as applicable) still owe us the difference. If we get



1 more money than you owe, you will get the extra money,  
2 unless we must pay it to someone else.

3 (4) You can get the property back at any time  
4 before we sell it by paying us the full amount you  
5 owe, not just the past due payments, including our  
6 expenses. To learn the exact amount you must pay,  
7 call us at (telephone number).

8 (5) If you want us to explain to you in  
9 (writing) (writing or in (description of electronic  
10 record)) (description of electronic record) how we  
11 have figured the amount that you owe us, (6) call us  
12 at (telephone number) (or) (write us at (secured  
13 party's address)) (or contact us by (description of  
14 electronic communication method)) (7) and request (a  
15 written explanation) (a written explanation or an  
16 explanation in (description of electronic record)) (an  
17 explanation in (description of electronic record)).

18 (8) We will charge you \$ (amount) for the  
19 explanation if we sent you another written explanation  
20 of the amount you owe us within the last six months.



1                   (9) If you need more information about the sale  
 2                   (call us at (telephone number)) (or) (write us at  
 3                   (secured party's address)) (or contact us by  
 4                   (description of electronic communication method)).

5                   (10) We are sending this notice to the following  
 6                   other people who have an interest in (describe  
 7                   collateral) or who owe money under your agreement:  
 8                   (Names of all other debtors and obligors, if any)

9  
 10           (4) A notification in the form of paragraph (3) is  
 11           sufficient, even if additional information appears at  
 12           the end of the form[+];

13           (5) A notification in the form of paragraph (3) is  
 14           sufficient, even if it includes errors in information  
 15           not required by paragraph (1), unless the error is  
 16           misleading with respect to rights arising under this  
 17           article[+]; and

18           (6) If a notification under this section is not in the  
 19           form of paragraph (3), law other than this article  
 20           determines the effect of including information not  
 21           required by paragraph (1).



1       (b) The following instructions shall apply to the form of  
2 notification in subsection (a)(3):

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)(3). 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 either item (1), if the  
10 notification relates to a public disposition of the  
11 collateral, or item (2), if the notification relates  
12 to a private disposition of the collateral;

13       (3) Include and complete items (3), (4), (5), (6), and  
14 (7);

15       (4) In item (5), include and complete any one of the three  
16 alternative methods for the explanation--writing,  
17 writing or electronic record, or electronic record;

18       (5) In item (6), include the telephone number. In  
19 addition, the sender may include and complete either  
20 or both of the two additional alternative methods of  
21 communication--writing or electronic communication--



1           for the recipient of the notification to communicate  
2           with the sender. Neither of the two additional  
3           methods of communication is required to be included;  
4       (6) In item (7), include and complete the method or  
5           methods for the explanation--writing, writing or  
6           electronic record, or electronic record--included in  
7           item (5);  
8       (7) Include and complete item (8) only if a written  
9           explanation is included in item (5) as a method for  
10           communicating the explanation and the sender shall  
11           charge the recipient for another written explanation;  
12       (8) In item (9), include either the telephone number or  
13           the address, or both. In addition, the sender may  
14           include and complete the additional method of  
15           communication--electronic communication--for the  
16           recipient of the notification to communicate with the  
17           sender. The additional method of electronic  
18           communication is not required to be included; and  
19       (9) If item (10) does not apply, insert "None" after  
20           "agreement:."



1 SECTION 62. Section 490:9-616, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) through (c) to read as  
3 follows:

4 "(a) In this section:

5 (1) "Explanation" means a [~~writing~~] record that:

6 (A) States the amount of the surplus or deficiency;

7 (B) Provides an explanation in accordance with  
8 subsection (c) of how the secured party  
9 calculated the surplus or deficiency;

10 (C) States, if applicable, that future debits,  
11 credits, charges, including additional credit  
12 service charges or interest, rebates, and  
13 expenses may affect the amount of the surplus or  
14 deficiency; and

15 (D) Provides a telephone number or mailing address  
16 from which additional information concerning the  
17 transaction is available.

18 (2) "Request" means a record:

19 (A) [~~Authenticated~~] Signed by a debtor or consumer  
20 obligor;



- 1 (B) Requesting that the recipient provide an
- 2 explanation; and
- 3 (C) Sent after disposition of the collateral under
- 4 section 490:9-610.

5 (b) In a consumer-goods transaction in which the debtor is  
6 entitled to a surplus or a consumer obligor is liable for a  
7 deficiency under section 490:9-615, the secured party shall:

8 (1) Send an explanation to the debtor or consumer obligor,  
9 as applicable, after the disposition and:

10 (A) Before or when the secured party accounts to the  
11 debtor and pays any surplus or first makes  
12 [~~written~~] a demand in a record on the consumer  
13 obligor after the disposition for payment of the  
14 deficiency; and

15 (B) Within fourteen days after receipt of a request;  
16 or

17 (2) In the case of a consumer obligor who is liable for a  
18 deficiency, within fourteen days after receipt of a  
19 request, send to the consumer obligor a record waiving  
20 the secured party's right to a deficiency.



1 (c) To comply with subsection (a)(1)(B), [~~a writing must~~]  
2 an explanation shall provide the following information in the  
3 following order:

4 (1) The aggregate amount of obligations secured by the  
5 security interest under which the disposition was  
6 made, and, if the amount reflects a rebate of unearned  
7 interest or credit service charge, an indication of  
8 that fact, calculated as of a specified date:

9 (A) If the secured party takes or receives possession  
10 of the collateral after default, [~~not~~] no more  
11 than thirty-five days before the secured party  
12 takes or receives possession; or

13 (B) If the secured party takes or receives possession  
14 of the collateral before default or does not take  
15 possession of the collateral, [~~not~~] no more than  
16 thirty-five days before the disposition;

17 (2) The amount of proceeds of the disposition;

18 (3) The aggregate amount of the obligations after  
19 deducting the amount of proceeds;

20 (4) The amount, in the aggregate or by type, and types of  
21 expenses, including expenses of retaking, holding,



1 preparing for disposition, processing, and disposing  
2 of the collateral, and attorney's fees secured by the  
3 collateral [~~which~~] that are known to the secured party  
4 and relate to the current disposition;

5 (5) The amount, in the aggregate or by type, and types of  
6 credits, including rebates of interest or credit  
7 service charges, to which the obligor is known to be  
8 entitled and [~~which~~] that are not reflected in the  
9 amount in paragraph (1); and

10 (6) The amount of the surplus or deficiency."

11 SECTION 63. Section 490:9-628, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§490:9-628 Nonliability and limitation on liability of**  
14 **secured party; liability of secondary obligor.** (a) [~~Unless~~]  
15 Subject to subsection (f), unless a secured party knows that a  
16 person is a debtor or obligor, knows the identity of the person,  
17 and knows how to communicate with the person:

18 (1) The secured party [~~is~~] shall not be liable to the  
19 person, or to a secured party or lienholder that has  
20 filed a financing statement against the person, for  
21 failure to comply with this article; and



1 (2) The secured party's failure to comply with this  
2 article [~~does~~] shall not affect the liability of the  
3 person for a deficiency.

4 (b) [A] Subject to subsection (f), a secured party [~~is~~]  
5 shall not be liable because of its the status as secured  
6 party[+] to:

7 (1) [~~To a~~] A person that is a debtor or obligor, unless  
8 the secured party knows:

9 (A) That the person is a debtor or obligor;

10 (B) The identity of the person; and

11 (C) How to communicate with the person; or

12 (2) [~~To a~~] A secured party or lienholder that has filed a  
13 financing statement against a person, unless the  
14 secured party knows:

15 (A) That the person is a debtor; and

16 (B) The identity of the person.

17 (c) A secured party [~~is~~] shall not be liable to any  
18 person, and a person's liability for a deficiency [~~is~~] shall not  
19 be affected, because of any act or omission arising out of the  
20 secured party's reasonable belief that a transaction is not a  
21 consumer-goods transaction or a consumer transaction or that



1 goods are not consumer goods, if the secured party's belief is  
2 based on its the reasonable reliance on:

3 (1) A debtor's representation concerning the purpose for  
4 which collateral was to be used, acquired, or held; or

5 (2) An obligor's representation concerning the purpose for  
6 which a secured obligation was incurred.

7 (d) A secured party [~~is~~] shall not be liable to any person  
8 under section 490:9-625(c) (2) for its failure to comply with  
9 section 490:9-616.

10 (e) A secured party [~~is~~] shall not be liable under section  
11 490:9-625(c) (2) more than once with respect to any one secured  
12 obligation.

13 (f) Subsections (a) and (b) shall not apply to limit the  
14 liability of a secured party to a person if, at the time the  
15 secured party obtains control of collateral that is a  
16 controllable account, controllable electronic record, or  
17 controllable payment intangible or at the time the security  
18 interest attaches to the collateral, whichever is later:

19 (1) The person is a debtor or obligor; and

20 (2) The secured party knows that the information in  
21 subsection (b) (1) relating to the person is not



1           provided by the collateral; a record attached to, or  
2           logically associated with, the collateral; or the  
3           system in which the collateral is recorded."

4           SECTION 64. (a) Sections 490:2-203, 490:2-205,  
5 490:2A-201, 490:2A-203, 490:2A-205, 490:2A-208, 490:4A-207, and  
6 490:4A-208, Hawaii Revised Statutes, are amended by substituting  
7 the phrase "record" wherever the phrase "writing" appears.

8           (b) Sections 490:9-210, 490:9-324, 490:9-334, 490:9-341,  
9 490:9-404, 490:9-509, 490:9-513, 490:9-608, 490:9-611,  
10 490:9-615, 490:9-619, 490:9-620, 490:9-621, and 490:9-624,  
11 Hawaii Revised Statutes, are amended by substituting the phrases  
12 "signed" or "signing" wherever the phrase "authenticated" or  
13 "authenticating" appears.

14           SECTION 65. This Act does not affect rights and duties  
15 that matured, penalties that were incurred, and proceedings that  
16 were begun before its effective date.

17           SECTION 66. In codifying the new sections added by section  
18 1 of this Act, the revisor of statutes shall substitute  
19 appropriate section numbers for the letters used in designating  
20 the new sections in this Act.



1           SECTION 67. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 68. This Act shall take effect June 30, 3000.

4



# H.B. NO. 525 H.D. 2

**Report Title:**

Uniform Commercial Code

**Description:**

Implements the 2022 Uniform Commercial Code Amendments set forth by the Uniform Law Commission. Effective 6/30/3000. (HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

2023-1735 HB525 HD2 HMSO

