

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]~~ 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 as follows:

7 1. By amending its title to read:

8 "**§490:2-209 Modification, rescission, and waiver.**"

9 2. By amending subsection (2) to read:

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12 signed record shall not be otherwise modified or rescinded, but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

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

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



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

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



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

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

14 [~~(2)~~] "Cancellation" occurs when either party puts an end
15 to the lease contract for default by the other party.

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



1 gross or carload, or any other unit treated in use or in the
2 relevant market as a single whole.

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

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

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

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

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

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

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



- 1 (A) The lessee receives a copy of the contract by
2 which the lessor acquired the goods or the right
3 to possession and use of the goods before signing
4 the lease contract;
- 5 (B) The lessee's approval of the contract by which
6 the lessor acquired the goods or the right to
7 possession and use of the goods is a condition to
8 effectiveness of the lease contract;
- 9 (C) The lessee, before signing the lease contract,
10 receives an accurate and complete statement
11 designating the promises and warranties, and any
12 disclaimers of warranties, limitations or
13 modifications of remedies, or liquidated damages,
14 including those of a third party, such as the
15 manufacturer of the goods, provided to the lessor
16 by the person supplying the goods in connection
17 with or as part of the contract by which the
18 lessor acquired the goods or the right to
19 possession and use of the goods; or



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

4 (i) Of the identity of the person supplying the
5 goods to the lessor, unless the lessee has
6 selected that person and directed the lessor
7 to acquire the goods or the right to
8 possession and use of the goods from that
9 person [~~(b) that~~];

10 (ii) That the lessee is entitled under this
11 article to the promises and warranties,
12 including those of any third party, provided
13 to the lessor by the person supplying the
14 goods in connection with or as part of the
15 contract by which the lessor acquired the
16 goods or the right to possession and use of
17 the goods [~~(c)~~]; and [~~(e) that~~]

18 (iii) That the lessee may communicate with the
19 person supplying the goods to the lessor and
20 receive an accurate and complete statement
21 of those promises and warranties, including



1 any disclaimers and limitations of them or
2 of remedies.

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

10 "Hybrid lease" means a single transaction involving a lease
11 of goods and:

- 12 (1) The provision of services;
13 (2) A sale of other goods; or
14 (3) A sale, lease, or license of property other than
15 goods.

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



1 [~~(10)~~] "Lease" means a transfer of the right to possession
2 and use of goods for a term in return for consideration[~~, but~~].
3 "Lease" does not include a sale, including a sale on approval or
4 a sale or return, or retention or creation of a security
5 interest [~~is not a lease~~]. Unless the context clearly indicates
6 otherwise, [~~the term~~] "lease" includes a sublease.

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

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

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



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

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

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



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

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

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

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

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



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

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

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

9 [~~(25)~~] "Supply contract" means a contract under which a
10 lessor buys or leases goods to be leased.

11 [~~(26)~~] "Termination" occurs when either party pursuant to a
12 power created by agreement or law puts an end to the lease
13 contract otherwise than for default."

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

16 "**§490:2A-107 Waiver or renunciation of claim or right**
17 **after default.** Any claim or right arising out of an alleged
18 default or breach of warranty may be discharged in whole or in
19 part without consideration by a [~~written~~] waiver or renunciation
20 in a signed [and] record delivered by the aggrieved party."



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

3 "~~§490:2A-202~~ Final [~~written~~] expression: ~~parol~~ or
4 ~~extrinsic evidence~~. Terms with respect to which the
5 confirmatory memoranda of the parties agree or which are
6 otherwise set forth in a [~~writing~~] record intended by the
7 parties as a final expression of their agreement with respect to
8 [~~such~~] the terms as are included therein [~~may~~] shall not be
9 contradicted by evidence of any prior agreement or of a
10 contemporaneous oral agreement but may be explained or
11 supplemented[+] by:

- 12 (1) [~~By course~~] Course of dealing or usage of trade or by
13 course of performance; and
14 (2) [~~By evidence~~] Evidence of consistent additional terms
15 unless the court finds the [~~writing~~] record to have
16 been intended also as a complete and exclusive
17 statement of the terms of the agreement."

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

20 "(a) Except as provided in subsections (c) and (d),
21 "negotiable instrument" means an unconditional promise or order



1 to pay a fixed amount of money, with or without interest or
2 other charges described in the promise or order, if it:

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

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

6 (3) Does not state any other undertaking or instruction by
7 the person promising or ordering payment to do any act
8 in addition to the payment of money, but the promise
9 or order may contain:

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

12 (B) An authorization or power to the holder to
13 confess judgment or realize on or dispose of
14 collateral; [øx]

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

17 (D) A term that specifies the law that governs the
18 promise or order; or

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



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

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

4 (1) The first delivery of an instrument by the maker or
5 drawer, whether to a holder or nonholder, for the
6 purpose of giving rights on the instrument to any
7 person[-]; or

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

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

15 "§490:3-401 Signature[-] necessary for liability on
16 instrument. [~~a~~] A person [~~is~~] shall not be liable on an
17 instrument unless (i) the person signed the instrument, or (ii)
18 the person is represented by an agent or representative who
19 signed the instrument and the signature is binding on the
20 represented person under section 490:3-402.



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

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

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



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

4 "(a) In this article:

5 [~~(1)~~] ~~"Payment order" means an instruction of a sender to a~~
6 ~~receiving bank, transmitted orally, electronically, or in~~
7 ~~writing, to pay, or to cause another bank to pay, a fixed or~~
8 ~~determinable amount of money to a beneficiary if:~~

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

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

14 ~~(iii) The instruction is transmitted by the sender directly~~
15 ~~to the receiving bank or to an agent, funds transfer~~
16 ~~system, or communication system for transmittal to the~~
17 ~~receiving bank.~~

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

20 [~~(3)~~] "Beneficiary's bank" means the bank identified in a
21 payment order in which an account of the beneficiary is to be



1 credited pursuant to the order or [~~which~~] that otherwise is to
2 make payment to the beneficiary if the order does not provide
3 for payment to an account.

4 "Payment order" means an instruction of a sender to a
5 receiving bank, transmitted orally or in a record, to pay, or to
6 cause another bank to pay, a fixed or determinable amount of
7 money to a beneficiary if:

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

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

13 (3) The instruction is transmitted by the sender directly
14 to the receiving bank or to an agent, funds-transfer
15 system, or communication system for transmittal to the
16 receiving bank.

17 [~~(4)~~] "Receiving bank" means the bank to which the sender's
18 instruction is addressed.

19 [~~(5)~~] "Sender" means the person giving the instruction to
20 the receiving bank.



1 (b) If an instruction complying with subsection [~~(a)(1)~~]
2 (a) is to make more than one payment to a beneficiary, the
3 instruction is a separate payment order with respect to each
4 payment."

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

7 "**§490:4A-201 Security procedure.** "Security procedure"
8 means a procedure established by agreement of a customer and a
9 receiving bank for the purpose of (i) verifying that a payment
10 order or communication amending or canceling a payment order is
11 that of the customer, or (ii) detecting error in the
12 transmission or the content of the payment order or
13 communication. A security procedure may impose an obligation on
14 the receiving bank or the customer and require the use of
15 algorithms or other codes, identifying words [~~or~~], numbers,
16 symbols, sounds, biometrics, encryption, callback procedures, or
17 similar security devices. Comparison of a signature on a
18 payment order or communication with an authorized specimen
19 signature of the customer [~~is~~] or requiring a payment order to
20 be sent from a known email address, internet protocol address,



1 or telephone number shall not be, by itself, a security
2 procedure."

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

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



1 reasonable opportunity to act on it before the payment order is
2 accepted.

3 (c) Commercial reasonableness of a security procedure is a
4 question of law to be determined by considering the wishes of
5 the customer expressed to the bank, the circumstances of the
6 customer known to the bank, including the size, type, and
7 frequency of payment orders normally issued by the customer to
8 the bank, alternative security procedures offered to the
9 customer, and security procedures in general use by customers
10 and receiving banks similarly situated. A security procedure is
11 deemed to be commercially reasonable if (i) the security
12 procedure was chosen by the customer after the bank offered, and
13 the customer refused, a security procedure that was commercially
14 reasonable for that customer, and (ii) the customer expressly
15 agreed in [~~writing~~] a record to be bound by any payment order,
16 whether or not authorized, issued in its name and accepted by
17 the bank in compliance with the bank's obligations under the
18 security procedure chosen by the customer."

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



1 "(a) If an accepted payment order is not, under section
2 490:4A-202(a), an authorized order of a customer identified as
3 sender, but is effective as an order of the customer pursuant to
4 section 490:4A-202(b), the following rules apply:

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

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



1 "information" includes any access device, computer
2 software, or the like."

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

5 "(a) A payment order [~~is~~] shall be deemed rejected by the
6 receiving bank by a notice of rejection transmitted to the
7 sender orally[~~, electronically,~~] or in [~~writing.~~] a record. A
8 notice of rejection need not use any particular words and [~~is~~]
9 shall be sufficient if it indicates that the receiving bank is
10 rejecting the order or will not execute or pay the order.
11 Rejection [~~is~~] shall be deemed effective when the notice is
12 given if transmission is by a means that is reasonable in the
13 circumstances. If notice of rejection is given by a means that
14 is not reasonable, rejection [~~is~~] shall be deemed effective when
15 the notice is received. If an agreement of the sender and
16 receiving bank establishes the means to be used to reject a
17 payment order, (i) any means complying with the agreement [~~is~~]
18 shall be deemed reasonable and (ii) any means not complying [~~is~~]
19 shall be deemed not reasonable unless no significant delay in
20 receipt of the notice resulted from the use of the noncomplying
21 means."



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

3 "(a) A communication of the sender of a payment order
4 canceling or amending the order may be transmitted to the
5 receiving bank orally [~~electronically~~] or in [~~writing~~] a
6 record. If a security procedure is in effect between the sender
7 and the receiving bank, the communication [~~is~~] shall not be
8 deemed effective to cancel or amend the order unless the
9 communication is verified pursuant to the security procedure or
10 the bank agrees to the cancellation or amendment."

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

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

19 (d) If a receiving bank fails to execute a payment order
20 it was obliged by express agreement to execute, the receiving
21 bank [~~is~~] shall be liable to the sender for its expenses in the



1 transaction and for incidental expenses and interest losses
2 resulting from the failure to execute. Additional damages,
3 including consequential damages, [~~are~~] shall be recoverable to
4 the extent provided in an express [~~written~~] agreement of the
5 receiving bank, as evidenced by a record, but [~~are~~] shall not
6 otherwise be recoverable."

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

9 "**§490:5-104 Formal requirements.** A letter of credit,
10 confirmation, advice, transfer, amendment, or cancellation may
11 be issued in any form that is a signed record [~~and is~~
12 ~~authenticated (i) by a signature, or (ii) in accordance with the~~
13 ~~agreement of the parties or the standard practice referred to in~~
14 ~~section 490:5-108(e)] ."~~

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

17 "**§490:5-116 Choice of law and forum.** (a) The liability
18 of an issuer, nominated person, or adviser for action or
19 omission [~~is~~] shall be governed by the law of the jurisdiction
20 chosen by an agreement in the form of a record signed [~~or~~
21 ~~otherwise authenticated~~] by the affected parties [~~in the manner~~



1 ~~provided in section 490:5-104]~~ or by a provision in the person's
2 letter of credit, confirmation, or other undertaking. The
3 jurisdiction whose law is chosen need not bear any relation to
4 the transaction.

5 (b) Unless subsection (a) applies, the liability of an
6 issuer, nominated person, or adviser for action or omission [~~is~~]
7 shall be governed by the law of the jurisdiction in which the
8 person is located. The person [~~is~~] shall be considered to be
9 located at the address indicated in the person's undertaking.
10 If more than one address is indicated, the person [~~is~~] shall be
11 considered to be located at the address from which the person's
12 undertaking was issued.

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

19 (d) A branch of a bank shall be considered to be located
20 at the address indicated in the branch's undertaking; provided
21 that if more than one address is indicated, the branch shall be



1 considered to be located at the address from which the
2 undertaking was issued.

3 ~~[(e)]~~ (e) Except as otherwise provided in this subsection,
4 the liability of an issuer, nominated person, or adviser ~~[is]~~
5 shall be governed by any rules of custom or practice, ~~[such as]~~
6 including the Uniform Customs and Practice for Documentary
7 Credits, to which the letter of credit, confirmation, or other
8 undertaking is expressly made subject. If (i) this article
9 would govern the liability of an issuer, nominated person, or
10 adviser under subsection (a) or (b), (ii) the relevant
11 undertaking incorporates rules of custom or practice, and (iii)
12 there is conflict between this article and those rules as
13 applied to that undertaking, those rules shall govern except to
14 the extent of any conflict with the nonvariable provisions
15 specified in section 490:5-103(c).

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

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



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

3 "(a) In this article, unless the context otherwise
4 requires:

5 [~~(1)~~] "Bailee" means a person that by a warehouse receipt,
6 bill of lading, or other document of title acknowledges
7 possession of goods and contracts to deliver them.

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

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

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

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

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



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

3 [~~(8)~~] "Issuer" means a bailee that issues a document of
4 title or, in the case of an unaccepted delivery order, the
5 person that orders the possessor of goods to deliver. [~~The~~
6 ~~term~~] "Issuer" includes a person for which an agent or employee
7 purports to act in issuing a document if the agent or employee
8 has real or apparent authority to issue documents, even if the
9 issuer did not receive any goods, the goods were misdescribed,
10 or in any other respect the agent or employee violated the
11 issuer's instructions.

12 [~~(9)~~] "Person entitled under the document" means the
13 holder, in the case of a negotiable document of title, or the
14 person to which delivery of the goods is to be made by the terms
15 of, or pursuant to instructions in a record under, a
16 nonnegotiable document of title.

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

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



1 ~~[(12) "Sign" means, with present intent to authenticate or~~
2 ~~adopt a record.~~

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

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

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

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

10 **"§490:7-106 Control of electronic document of title. (a)**

11 A person ~~[has]~~ shall be deemed to have control of an electronic
12 document of title if a system employed for evidencing the
13 transfer of interests in the electronic document reliably
14 establishes that person as the person to which the electronic
15 document was issued or transferred.

16 (b) A system ~~[satisfies]~~ shall be deemed to satisfy
17 subsection (a), and a person ~~[is]~~ shall be deemed to have
18 control of an electronic document of title, if the document is
19 created, stored, and ~~[assigned]~~ transferred in ~~[such]~~ a manner
20 that:



- 1 (1) A single authoritative copy of the document exists
2 that is unique, identifiable, and, except as otherwise
3 provided in paragraphs (4), (5), and (6), unalterable;
- 4 (2) The authoritative copy identifies the person asserting
5 control as:
6 (A) The person to which the document was issued; or
7 (B) If the authoritative copy indicates that the
8 document has been transferred, the person to
9 which the document was most recently transferred;
- 10 (3) The authoritative copy is communicated to and
11 maintained by the person asserting control or its
12 designated custodian;
- 13 (4) Copies or amendments that add or change an identified
14 [assignee] transferee of the authoritative copy can be
15 made only with the consent of the person asserting
16 control;
- 17 (5) Each copy of the authoritative copy and any copy of a
18 copy is readily identifiable as a copy that is not the
19 authoritative copy; and
- 20 (6) Any amendment of the authoritative copy is readily
21 identifiable as authorized or unauthorized.



1 (c) A system shall be deemed to satisfy subsection (a),
2 and a person shall be deemed to have control of an electronic
3 document of title, if an authoritative electronic copy of the
4 document; a record attached to, or logically associated with,
5 the electronic copy; or a system in which the electronic copy is
6 recorded:

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

10 (2) Enables the person to be readily identified in any
11 way, including by name, identifying number,
12 cryptographic key, office, or account number, as the
13 person to which each authoritative electronic copy was
14 issued or transferred; and

15 (3) Gives the person exclusive power, subject to
16 subsection (d), to:

17 (A) Prevent others from adding or changing the person
18 to which each authoritative electronic copy has
19 been issued or transferred; and

20 (B) Transfer control of each authoritative electronic
21 copy.



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

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

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

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

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

16 (2) The other person:

17 (A) May exercise the power without exercise of the
18 power by the person; or

19 (B) Is the transferor to the person of an interest in
20 the document of title.



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

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

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

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

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

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

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



1 "(a) In this article:

2 "Adverse claim" means a claim that a claimant has a
3 property interest in a financial asset and that it is a
4 violation of the rights of the claimant for another person to
5 hold, transfer, or deal with the financial asset.

6 "Bearer form", as applied to a certificated security, means
7 a form in which the security is payable to the bearer of the
8 security certificate according to its terms but not by reason of
9 an indorsement.

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

13 "Certificated security" means a security that is
14 represented by a certificate.

15 "Clearing corporation" means:

- 16 (1) A person that is registered as a "clearing agency"
17 under the federal securities laws;
- 18 (2) A federal reserve bank; or
- 19 (3) Any other person that provides clearance or settlement
20 services with respect to financial assets that would
21 require it to register as a clearing agency under the



1 federal securities laws but for an exclusion or
2 exemption from the registration requirement, if its
3 activities as a clearing corporation, including
4 promulgation of rules, are subject to regulation by a
5 federal or state governmental authority.

6 "Communicate" means to:

- 7 (1) Send a signed [~~writing,~~] record; or
8 (2) Transmit information by any mechanism agreed upon by
9 the persons transmitting and receiving the
10 information.

11 "Entitlement holder" means a person identified in the
12 records of a securities intermediary as the person having a
13 security entitlement against the securities intermediary. If a
14 person acquires a security entitlement by virtue of section
15 490:8-501(b) (2) or (3), that person [~~is~~] shall be deemed to be
16 the entitlement holder.

17 "Entitlement order" means a notification communicated to a
18 securities intermediary directing transfer or redemption of a
19 financial asset to which the entitlement holder has a security
20 entitlement.



1 "Financial asset", except as otherwise provided in section
2 490:8-103, means:

3 (1) A security;

4 (2) An obligation of a person or a share, participation,
5 or other interest in a person or in property or an
6 enterprise of a person, which is, or is of a type,
7 dealt in or traded on financial markets, or which is
8 recognized in any area in which it is issued or dealt
9 in as a medium for investment; or

10 (3) Any property that is held by a securities intermediary
11 for another person in a securities account if the
12 securities intermediary has expressly agreed with the
13 other person that the property is to be treated as a
14 financial asset under this article.

15 As the context requires, [~~the term~~] "financial asset" means
16 either the interest itself or the means by which a person's
17 claim to it is evidenced, including a certificated or
18 uncertificated security, a security certificate, or a security
19 entitlement.

20 "Good faith", for purposes of the obligation of good faith
21 in the performance or enforcement of contracts or duties within



1 this article, means honesty in fact and the observance of
2 reasonable commercial standards of fair dealing.

3 "Indorsement" means a signature that alone or accompanied
4 by other words is made on a security certificate in registered
5 form or on a separate document for the purpose of assigning,
6 transferring, or redeeming the security or granting a power to
7 assign, transfer, or redeem it.

8 "Instruction" means a notification communicated to the
9 issuer of an uncertificated security [~~which~~] that directs that
10 the transfer of the security be registered or that the security
11 be redeemed.

12 "Registered form", as applied to a certificated security,
13 means a form in which:

- 14 (1) The security certificate specifies a person entitled
15 to the security; and
16 (2) A transfer of the security may be registered upon
17 books maintained for that purpose by or on behalf of
18 the issuer, or the security certificate so states.

19 "Securities intermediary" means:

- 20 (1) A clearing corporation; or



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

4 "Security", except as otherwise provided in section
5 490:8-103, means an obligation of an issuer or a share,
6 participation, or other interest in an issuer or in property or
7 an enterprise of an issuer:

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

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

15 (3) [~~Which+~~] That:

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

18 (B) Is a medium for investment and by its terms
19 expressly provides that it is a security governed
20 by this article.



1 "Security certificate" means a certificate representing a
2 security.

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

6 "Uncertificated security" means a security that is not
7 represented by a certificate.

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

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

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

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

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

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

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

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

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

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

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

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



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

3 "§490:8-103 Rules for determining whether certain
4 obligations and interests are securities or financial assets.

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

8 (b) An "investment company security" [~~is~~] shall be deemed
9 a security. "Investment company security" means a share or
10 similar equity interest issued by an entity that is registered
11 as an investment company under the federal investment company
12 laws, an interest in a unit investment trust that is so
13 registered, or a face-amount certificate issued by a face-amount
14 certificate company that is so registered. [~~Investment company~~
15 ~~security~~] "Investment company security" does not include an
16 insurance policy or endowment policy or annuity contract issued
17 by an insurance company.

18 (c) An interest in a partnership or limited liability
19 company [~~is~~] shall not be deemed a security unless it is dealt
20 in or traded on securities exchanges or in securities markets,
21 its terms expressly provide that it is a security governed by



1 this article, or it is an investment company security. However,
2 an interest in a partnership or limited liability company [~~is~~]
3 shall be deemed a financial asset if it is held in a securities
4 account.

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

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

13 (f) A commodity contract, as defined in section
14 490:9-102(a), [~~is~~] shall not be deemed a security or a financial
15 asset.

16 (g) A controllable account, controllable electronic
17 record, or controllable payment intangible shall not be deemed a
18 financial asset unless the controllable account, controllable
19 electronic record, or controllable payment intangible is a
20 property that is held by a securities intermediary for another
21 person in a securities account and the securities intermediary



1 has expressly agreed with the other person that the property is
2 to be treated as a financial asset under this article."

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

5 "§490:8-106 Control. (a) A purchaser [~~has~~] shall be
6 deemed to have "control" of a certificated security in bearer
7 form if the certificated security is delivered to the purchaser.

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

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

13 (2) The certificate is registered in the name of the
14 purchaser, upon original issue or registration of
15 transfer by the issuer.

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

18 (1) The uncertificated security is delivered to the
19 purchaser; or



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

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

6 (1) The purchaser becomes the entitlement holder;

7 (2) The securities intermediary has agreed that it will
8 comply with entitlement orders originated by the
9 purchaser without further consent by the entitlement
10 holder; or

11 (3) Another person [~~has control of the security~~
12 ~~entitlement on behalf of the purchaser or, having~~
13 ~~previously acquired control of the security~~
14 ~~entitlement, acknowledges that it has control on~~
15 ~~behalf of the purchaser.], other than the transferor
16 to the purchaser of an interest in the security
17 entitlement:~~

18 (A) Has control of the security entitlement and
19 acknowledges that it has control on behalf of the
20 purchaser; or



1 (B) Obtains control of the security entitlement after
2 having acknowledged that it will obtain control
3 of the security entitlement on behalf of the
4 purchaser.

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

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

17 (g) An issuer or a securities intermediary [~~may~~] shall not
18 enter into an agreement of the kind described in subsection
19 (c) (2) or (d) (2) without the consent of the registered owner or
20 entitlement holder, but an issuer or a securities intermediary
21 [~~is~~] shall not be required to enter into [~~such~~] an agreement of



1 the kind described in subsection (c)(2) or (d)(2) even though
2 the registered owner or entitlement holder so directs. An
3 issuer or securities intermediary that has entered into [~~sueh~~]
4 an agreement [~~is~~] of the kind described in subsection (c)(2) or
5 (d)(2) shall not be required to confirm the existence of the
6 agreement to another party unless requested to do so by the
7 registered owner or entitlement holder.

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

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

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

19 "**§490:8-110 Applicability; choice of law.** (a) The local
20 law of the issuer's jurisdiction, as specified in subsection
21 (d), [~~governs-~~] shall govern:



- 1 (1) The validity of a security;
- 2 (2) The rights and duties of the issuer with respect to
3 registration of transfer;
- 4 (3) The effectiveness of registration of transfer by the
5 issuer;
- 6 (4) Whether the issuer owes any duties to an adverse
7 claimant to a security; and
- 8 (5) Whether an adverse claim can be asserted against a
9 person to whom transfer of a certificated or
10 uncertificated security is registered or a person who
11 obtains control of an uncertificated security.
- 12 (b) The local law of the securities intermediary's
13 jurisdiction, as specified in subsection (e), [~~governs~~] shall
14 govern:
- 15 (1) Acquisition of a security entitlement from the
16 securities intermediary;
- 17 (2) The rights and duties of the securities intermediary
18 and entitlement holder arising out of a security
19 entitlement;
- 20 (3) Whether the securities intermediary owes any duties to
21 an adverse claimant to a security entitlement; and



1 (4) Whether an adverse claim can be asserted against a
2 person who acquires a security entitlement from the
3 securities intermediary or a person who purchases a
4 security entitlement or interest therein from an
5 entitlement holder.

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

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

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

18 (1) If an agreement between the securities intermediary
19 and its entitlement holder governing the securities
20 account expressly provides that a particular
21 jurisdiction is the securities intermediary's



1 jurisdiction for purposes of this part, this article,
2 or this chapter, that jurisdiction [~~is~~] shall be the
3 securities intermediary's jurisdiction[~~]~~;

4 (2) If paragraph (1) does not apply and an agreement
5 between the securities intermediary and its
6 entitlement holder governing the securities account
7 expressly provides that the agreement is governed by
8 the law of a particular jurisdiction, that
9 jurisdiction [~~is~~] shall be the securities
10 intermediary's jurisdiction[~~]~~;

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

18 (4) If none of the preceding paragraphs applies, the
19 securities intermediary's jurisdiction [~~is~~] shall be
20 the jurisdiction in which the office identified in an



1 account statement as the office serving the
2 entitlement holder's account is located[-]; and
3 (5) If none of the preceding paragraphs applies, the
4 securities intermediary's jurisdiction [~~is~~] shall be
5 the jurisdiction in which the chief executive office
6 of the securities intermediary is located.

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

14 (g) The local law of the issuer's jurisdiction or the
15 securities intermediary's jurisdiction shall govern a matter or
16 transaction specified in subsection (a) or (b) regardless of
17 whether the matter or transaction bears any relation to the
18 jurisdiction."

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



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

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

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

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

10 "Account", except as used in "account for" [+], "account
11 statement", "account to", "customer's account", "on account of",
12 "statement of account", "commodity account", and "deposit
13 account":

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

16 (A) For property that has been or is to be sold,
17 leased, licensed, assigned, or otherwise disposed
18 of;

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

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



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



- 1 (E) Letter-of-credit rights or letters of credit;
2 [~~or~~]
- 3 (F) Rights to payment for money or funds advanced or
4 sold, other than rights arising out of the use of
5 a credit or charge card or information contained
6 on or for use with the card[-]; or
- 7 (G) Rights to payment evidenced by an instrument.

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

13 "Accounting", except as used in "accounting for", means a
14 record:

- 15 (1) [~~Authenticated~~] Signed by a secured party;
- 16 (2) Indicating the aggregate unpaid secured obligations as
17 of a date [~~not~~] no more than thirty-five days earlier
18 or thirty-five days later than the date of the record;
19 and
- 20 (3) Identifying the components of the obligations in
21 reasonable detail.



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

2 (1) [~~Which~~] That secures payment or performance of an
3 obligation for:

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

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

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

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

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

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

17 "As-extracted collateral" means:

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

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



- 1 (B) Attaches to the minerals as extracted; or
- 2 (2) Accounts arising out of the sale at the wellhead or
- 3 minehead of oil, gas, or other minerals in which the
- 4 debtor had an interest before extraction.

5 [~~"Authenticate" means:~~

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

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

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

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

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

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

20 "Assignor" means a person that:



- 1 (1) Under a security agreement creates or provides for a
2 security interest that secures an obligation; or
3 (2) Sells an account, chattel paper, payment intangible,
4 or promissory note.

5 "Assignor" includes a secured party that has transferred a
6 security interest to another person.

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

11 "Cash proceeds" means proceeds that are money, checks,
12 deposit accounts, or the like.

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



1 condition or result of the security interest's obtaining
2 priority over the rights of a lien creditor with respect to the
3 collateral.

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

- 15 (1) Secured by specific goods, if the right to payment and
16 security agreement are evidenced by a record; or
17 (2) Owed by a lessee under a lease agreement with respect
18 to specific goods and a monetary obligation owed by
19 the lessee in connection with the transaction giving
20 rise to the lease, if:



- 1 (2) Accounts, chattel paper, payment intangibles, and
2 promissory notes that have been sold; and
3 (3) Goods that are the subject of a consignment.

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

6 (1) [~~The claimant is an~~] An organization; or

7 (2) [~~The claimant is an~~] An individual and the claim:

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

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

12 "Commodity account" means an account maintained by a
13 commodity intermediary in which a commodity contract is carried
14 for a commodity customer.

15 "Commodity contract" means a commodity futures contract, an
16 option on a commodity futures contract, a commodity option, or
17 another contract if the contract or option is:

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



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

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

6 "Commodity intermediary" means a person that:

7 (1) Is registered as a futures commission merchant under
8 federal commodities law; or

9 (2) In the ordinary course of its business provides
10 clearance or settlement services for a board of trade
11 that has been designated as a contract market pursuant
12 to federal commodities law.

13 "Communicate" means:

14 (1) To send a written or other tangible record;

15 (2) To transmit a record by any means agreed upon by the
16 persons sending and receiving the record; or

17 (3) In the case of transmission of a record to or by a
18 filing office, to transmit a record by any means
19 prescribed by filing-office rule.

20 "Consignee" means a merchant to which goods are delivered
21 in a consignment.



1 "Consignment" means a transaction, regardless of its form,
2 in which a person delivers goods to a merchant for the purpose
3 of sale and:

4 (1) The merchant:

5 (A) Deals in goods of that kind under a name other
6 than the name of the person making delivery;

7 (B) Is not an auctioneer; and

8 (C) Is not generally known by its creditors to be
9 substantially engaged in selling the goods of
10 others;

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

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

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

17 "Consignor" means a person that delivers goods to a
18 consignee in a consignment.

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

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



1 "Consumer-goods transaction" means a consumer transaction
2 in which:

- 3 (1) An individual incurs an obligation primarily for
- 4 personal, family, or household purposes; and
- 5 (2) A security interest in consumer goods secures the
- 6 obligation.

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

10 "Consumer transaction" means a transaction in which:

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

16 ~~[The term]~~ "Consumer transaction" includes consumer-goods
17 transactions.

18 "Continuation statement" means an amendment of a financing
19 statement ~~[which-]~~ that:

- 20 (1) Identifies, by its file number, the initial financing
- 21 statement to which it relates; and



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

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

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

13 "Debtor" means:

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

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

19 (3) A consignee.

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

13 "Goods" [~~means~~]:

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

16 (2) Includes:

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

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

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



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

4 ~~[(5)]~~ (E) Manufactured homes ~~[. The term also includes~~
5 a];

6 (F) A computer program embedded in goods and any
7 supporting information provided in connection
8 with a transaction relating to the program if:

9 (i) ~~[the]~~ The program is associated with the
10 goods in ~~[such]~~ a manner ~~[that]~~ in which it
11 is customarily ~~[is]~~ considered part of the
12 goods ~~[,]~~ ; or

13 (ii) ~~[by]~~ By becoming the owner of the goods, a
14 person acquires a right to use the program
15 in connection with the goods ~~[. The term~~
16 does] ; and

17 (3) Does not include ~~[a]~~ ;

18 (A) A computer program embedded in goods that consist
19 solely of the medium in which the program is
20 embedded ~~[. The term also does not include~~
21 accounts, ; and



1 (B) Accounts, chattel paper, commercial tort claims,
2 deposit accounts, documents, general intangibles,
3 instruments, investment property, letter-of-
4 credit rights, letters of credit, money, or oil,
5 gas, or other minerals before extraction.

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

13 "Health-care-insurance receivable" means an interest in or
14 claim under a policy of insurance that is a right to payment of
15 a monetary obligation for health-care goods or services provided
16 or to be provided.

17 "Instrument" means a negotiable instrument or any other
18 writing that evidences a right to the payment of a monetary
19 obligation, is not itself a security agreement or lease, and is
20 of a type that in ordinary course of business is transferred by



1 delivery with any necessary indorsement or assignment. [The
2 ~~term~~] "Instrument" does not include:

- 3 (1) Investment property;
- 4 (2) Letters of credit; [~~or~~]
- 5 (3) Writings that evidence a right to payment arising out
6 of the use of a credit or charge card or information
7 contained on or for use with the card[-]; or
- 8 (4) Writings that evidence chattel paper.

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

- 11 (1) Are leased by a person as lessor;
- 12 (2) Are held by a person for sale or lease or to be
13 furnished under a contract of service;
- 14 (3) Are furnished by a person under a contract of service;
15 or
- 16 (4) Consist of raw materials, work in process, or
17 materials used or consumed in a business.

18 "Investment property" means a security, whether
19 certificated or uncertificated, security entitlement, securities
20 account, commodity contract, or commodity account.



1 "Jurisdiction of organization", with respect to a
2 registered organization, means the jurisdiction under whose law
3 the organization is formed or organized.

4 "Letter-of-credit right" means a right to payment or
5 performance under a letter of credit, whether or not the
6 beneficiary has demanded or is at the time entitled to demand
7 payment or performance. [~~The term~~] "Letter-of-credit right"
8 does not include the right of a beneficiary to demand payment or
9 performance under a letter of credit.

10 "Lien creditor" means:

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

18 "Manufactured home" means a structure, transportable in one
19 or more sections, [~~which,~~] that, in the traveling mode, is eight
20 body feet or more in width or forty body feet or more in length,
21 or, when erected on site, is three hundred twenty or more square



1 feet, and ~~[which]~~ that is built on a permanent chassis and
2 designed to be used as a dwelling with or without a permanent
3 foundation when connected to the required utilities, and
4 includes the plumbing, heating, air-conditioning, and electrical
5 systems contained therein. ~~[The term]~~ "Manufactured home"
6 includes any structure that meets all of the requirements of
7 this ~~[paragraph]~~ definition except the size requirements and
8 with respect to which the manufacturer voluntarily files a
9 certification required by the United States Secretary of Housing
10 and Urban Development and complies with the standards
11 established under ~~[Title]~~ title 42 of the United States Code.

12 "Manufactured-home transaction" means a secured
13 transaction:

- 14 (1) That creates a purchase-money security interest in a
15 manufactured home, other than a manufactured home held
16 as inventory; or
17 (2) In which a manufactured home, other than a
18 manufactured home held as inventory, is the primary
19 collateral.

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



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

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

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

10 "New value" means:

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

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

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

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

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



1 (2) Has provided property other than the collateral to
2 secure payment or other performance of the obligation;
3 or

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

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

8 "Original debtor", except as used in section 490:9-310(c),
9 means a person that, as debtor, entered into a security
10 agreement to which a new debtor has become bound under section
11 490:9-203(d).

12 "Payment intangible" means a general intangible under which
13 the account debtor's principal obligation is a monetary
14 obligation. "Payment intangible" includes a controllable
15 payment intangible.

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

- 17 (1) The spouse of the individual;
- 18 (2) A brother, brother-in-law, sister, or sister-in-law of
19 the individual;
- 20 (3) An ancestor or lineal descendant of the individual or
21 the individual's spouse; or



1 (4) Any other relative, by blood or marriage, of the
2 individual or the individual's spouse who shares the
3 same home with the individual.

4 "Person related to", with respect to an organization,
5 means:

- 6 (1) A person directly or indirectly controlling,
7 controlled by, or under common control with the
8 organization;
- 9 (2) An officer or director of, or a person performing
10 similar functions with respect to, the organization;
- 11 (3) An officer or director of, or a person performing
12 similar functions with respect to, a person described
13 in paragraph (1);
- 14 (4) The spouse of an individual described in paragraph
15 (1), (2), or (3); or
- 16 (5) An individual who is related by blood or marriage to
17 an individual described in paragraph (1), (2), (3), or
18 (4) and shares the same home with the individual.

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



- 1 (1) Whatever is acquired upon the sale, lease, license,
2 exchange, or other disposition of collateral;
- 3 (2) Whatever is collected on, or distributed on account
4 of, collateral;
- 5 (3) Rights arising out of collateral;
- 6 (4) To the extent of the value of collateral, claims
7 arising out of the loss, nonconformity, or
8 interference with the use of, defects or infringement
9 of rights in, or damage to, the collateral; or
- 10 (5) To the extent of the value of collateral and to the
11 extent payable to the debtor or the secured party,
12 insurance payable by reason of the loss or
13 nonconformity of, defects or infringement of rights
14 in, or damage to, the collateral.

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

19 "Proposal" means a record [~~authenticated~~] signed by a
20 secured party [~~which~~] that includes the terms on which the
21 secured party is willing to accept collateral in full or partial



1 satisfaction of the obligation it secures pursuant to sections
2 490:9-620, 490:9-621, and 490:9-622.

3 "Public-finance transaction" means a secured transaction in
4 connection with which:

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

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

- 15 (1) A record consisting of the record initially filed with
16 or issued by a state or the United States to form or
17 organize an organization and any record filed with or
18 issued by the state or the United States that amends
19 or restates the initial record;
- 20 (2) An organic record of a business trust consisting of
21 the record initially filed with a state and any record



1 filed with the state that amends or restates the
2 initial record, if a statute of the state governing
3 business trusts requires that the record be filed with
4 the state; or

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

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

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



1 "Registered organization" means an organization formed or
2 organized solely under the law of a single state or the United
3 States by the filing of a public organic record with, the
4 issuance of a public organic record by, or the enactment of
5 legislation by the state or the United States. [~~The term~~]
6 "Registered organization" includes a business trust that is
7 formed or organized under the law of a single state if a statute
8 of the state governing business trusts requires that the
9 business trust's organic record be filed with the state.

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

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

15 "Secured party" means:

- 16 (1) A person in whose favor a security interest is created
17 or provided for under a security agreement, whether or
18 not any obligation to be secured is outstanding;
19 (2) A person that holds an agricultural lien;
20 (3) A consignor;



1 (4) A person to which accounts, chattel paper, payment
2 intangibles, or promissory notes have been sold;

3 (5) A trustee, indenture trustee, agent, collateral agent,
4 or other representative in whose favor a security
5 interest or agricultural lien is created or provided
6 for; or

7 (6) A person that holds a security interest arising under
8 section 490:2-401, 490:2-505, 490:2-711(3), 490:2A-
9 508(e), 490:4-210, or 490:5-118.

10 "Security agreement" means an agreement that creates or
11 provides for a security interest.

12 [~~"Send", in connection with a record or notification,~~
13 ~~means:~~

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

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



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

5 "State" means a state of the United States, the District of
6 Columbia, Puerto Rico, the United States Virgin Islands, or any
7 territory or insular possession subject to the jurisdiction of
8 the United States.

9 "Supporting obligation" means a letter-of-credit right or
10 secondary obligation that supports the payment or performance of
11 an account, chattel paper, a document, a general intangible, an
12 instrument, or investment property.

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

16 "Termination statement" means an amendment of a financing
17 statement [~~which~~] that:

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



1 (2) Indicates either that it is a termination statement or
2 that the identified financing statement is no longer
3 effective.

4 "Transmitting utility" means a person primarily engaged in
5 the business of:

- 6 (1) Operating a railroad, subway, street railway, or
7 trolley bus;
8 (2) Transmitting communications electrically,
9 electromagnetically, or by light;
10 (3) Transmitting goods by pipeline or sewer; or
11 (4) Transmitting or producing and transmitting
12 electricity, steam, gas, or water.

13 (b) The following definitions in other articles apply to
14 this article:

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

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

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

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

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

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

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



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

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

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

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

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

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

7 "Issuer" (with respect to a letter of credit or letter-of-

8 credit right). Section 490:5-102.

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

10 "Issuer" (with respect to documents of title). Section

11 490:7-102.

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

13 "Lease agreement". Section 490:2A-103.

14 "Lease contract". Section 490:2A-103.

15 "Leasehold interest". Section 490:2A-103.

16 "Lessee". Section 490:2A-103.

17 "Lessee in ordinary course of business". Section

18 490:2A-103.

19 "Lessor". Section 490:2A-103.

20 "Lessor's residual interest". Section 490:2A-103.

21 "Letter of credit". Section 490:5-102.



1 "Merchant". Section 490:2-104.
2 "Negotiable instrument". Section 490:3-104.
3 "Nominated person". Section 490:5-102.
4 "Note". Section 490:3-104.
5 "Proceeds of a letter of credit". Section 490:5-114.
6 "Protected purchaser". Section 490:8-303.
7 "Prove". Section 490:3-103.
8 "Qualifying purchaser". Section 490:A-102.
9 "Sale". Section 490:2-106.
10 "Securities account". Section 490:8-501.
11 "Securities intermediary". Section 490:8-102.
12 "Security". Section 490:8-102.
13 "Security certificate". Section 490:8-102.
14 "Security entitlement". Section 490:8-102.
15 "Uncertificated security". Section 490:8-102."
16 SECTION 36. Section 490:9-104, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:
18 "(a) A secured party [~~has~~] shall be deemed to have control
19 of a deposit account if:
20 (1) The secured party is the bank with which the deposit
21 account is maintained;



1 (2) The debtor, secured party, and bank have agreed in [~~an~~
2 authenticated] a signed record that the bank will
3 comply with instructions originated by the secured
4 party directing disposition of the funds in the
5 deposit account without further consent by the debtor;
6 [~~or~~]

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

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

10 (A) Has control of the deposit account and
11 acknowledges that it has control on behalf of the
12 secured party; or

13 (B) Obtains control of the deposit account after
14 having acknowledged that it will obtain control
15 of the deposit account on behalf of the secured
16 party."

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

19 "§490:9-105 Control of electronic copy of record

20 evidencing chattel paper. (a) A [~~secured party has~~] purchaser
21 shall be deemed to have control of [electronic] an authoritative



1 electronic copy of a record evidencing chattel paper if a system
2 employed for evidencing the [~~transfer~~] assignment of interests
3 in the chattel paper reliably establishes the [~~secured party~~]
4 purchaser as the person to which [~~the chattel paper~~] the
5 authoritative electronic copy was assigned.

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

- 10 (1) A single authoritative copy of the record [~~or records~~]
11 exists [~~which~~] that is unique, identifiable, and,
12 except as otherwise provided in paragraphs (4), (5),
13 and (6), unalterable;
- 14 (2) The authoritative copy identifies the [~~secured party~~]
15 purchaser as the assignee of the record [~~or records~~];
- 16 (3) The authoritative copy is communicated to, and
17 maintained by, the [~~secured party~~] purchaser or its
18 designated custodian;
- 19 (4) Copies or amendments that add or change an identified
20 assignee of the authoritative copy can be made only
21 with the consent of the [~~secured party,~~] purchaser;



1 (5) Each copy of the authoritative copy and any copy of a
2 copy is readily identifiable as a copy that is not the
3 authoritative copy; and

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

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

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

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

19 (3) Gives the purchaser exclusive power, subject to
20 subsection (d), to:



- 1 (A) Prevent others from adding or changing an
2 identified assignee of the authoritative
3 electronic copy; and
- 4 (B) Transfer control of the authoritative electronic
5 copy.
- 6 (d) Subject to subsection (e), a power shall be deemed
7 exclusive under subsection (c) (3), regardless of whether:
- 8 (1) The authoritative electronic copy; a record attached
9 to, or logically associated with, the authoritative
10 electronic copy; or a system in which the
11 authoritative electronic copy is recorded, limits the
12 use of the authoritative electronic copy or has a
13 protocol programmed to cause a change, including a
14 transfer or loss of control; or
- 15 (2) The power is shared with another person.
- 16 (e) A power of a purchaser shall not be deemed to be
17 shared with another person under subsection (d) (2) and the
18 purchaser's power shall not be deemed exclusive if:
- 19 (1) The purchaser may exercise the power only if the power
20 is also exercised by the other person; and
- 21 (2) The other person:



1 (A) May exercise the power without exercise of the
2 power by the purchaser; or

3 (B) Is the transferor to the purchaser of an interest
4 in the chattel paper.

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

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

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

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

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

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



- 1 (1) Value has been given;
- 2 (2) The debtor has rights in the collateral or the power
3 to transfer rights in the collateral to a secured
4 party; and
- 5 (3) One of the following conditions is met:
- 6 (A) The debtor has [authenticated] signed a security
7 agreement that provides a description of the
8 collateral and, if the security interest covers
9 timber to be cut, a description of the land
10 concerned;
- 11 (B) The collateral is not a certificated security and
12 is in the possession of the secured party under
13 section 490:9-313 pursuant to the debtor's
14 security agreement;
- 15 (C) The collateral is a certificated security in
16 registered form and the security certificate has
17 been delivered to the secured party under section
18 490:8-301 pursuant to the debtor's security
19 agreement; [~~or~~]
- 20 (D) The collateral is controllable accounts,
21 controllable electronic records, controllable



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

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

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

15 **"§490:9-204 After-acquired property; future advances. (a)**

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

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



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

5 (2) A commercial tort claim.

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

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

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

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

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



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

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

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

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

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

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

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

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



- 1 the bank from any further obligation to comply with
2 instructions originated by the secured party;
- 3 (2) A secured party having control of a deposit account
4 under section 490:9-104(a)(3) shall:
- 5 (A) Pay the debtor the balance on deposit in the
6 deposit account; or
- 7 (B) Transfer the balance on deposit into a deposit
8 account in the debtor's name;
- 9 (3) A secured party, other than a buyer, having control
10 ~~[of electronic chattel paper]~~ under section 490:9-105
11 ~~[shall:~~
- 12 ~~(A) Communicate the] of an authoritative electronic~~
13 ~~copy of [the electronic] a record evidencing~~
14 ~~chattel paper shall transfer control of the~~
15 ~~electronic copy to the debtor or [its] a person~~
16 ~~designated [custodian,~~
- 17 ~~(B) If] by the debtor [designates a custodian that is~~
18 ~~the designated custodian with which the~~
19 ~~authoritative copy of the electronic chattel~~
20 ~~paper is maintained for the secured party,~~
21 ~~communicate to the custodian an authenticated~~



1 ~~record releasing the designated custodian from~~
2 ~~any further obligation to comply with~~
3 ~~instructions originated by the secured party and~~
4 ~~instructing the custodian to comply with~~
5 ~~instructions originated by the debtor; and~~
6 ~~(C) Take appropriate action to enable the debtor or~~
7 ~~its designated custodian to make copies of or~~
8 ~~revisions to the authoritative copy which add or~~
9 ~~change an identified assignee of the~~
10 ~~authoritative copy without the consent of the~~
11 ~~secured party];~~

12 (4) A secured party having control of investment property
13 under section 490:8-106(d)(2) or 490:9-106(b) shall
14 send to the securities intermediary or commodity
15 intermediary with which the security entitlement or
16 commodity contract is maintained [an authenticated] a
17 signed record that releases the securities
18 intermediary or commodity intermediary from any
19 further obligation to comply with entitlement orders
20 or directions originated by the secured party;



- 1 (5) A secured party having control of a letter-of-credit
2 right under section 490:9-107 shall send to each
3 person having an unfulfilled obligation to pay or
4 deliver proceeds of the letter of credit to the
5 secured party [~~an authenticated~~] a signed release from
6 any further obligation to pay or deliver proceeds of
7 the letter of credit to the secured party; [~~and~~]
- 8 (6) A secured party having control under section 490:7-106
9 of an authoritative electronic copy of an electronic
10 document shall [+
11 ~~(A) Give~~] transfer control of the electronic
12 [~~document~~] copy to the debtor or [~~its~~] a person
13 designated [~~eustodian,~~
14 ~~(B) If~~] by the debtor [~~designates a custodian that is~~
15 ~~the designated custodian with which the~~
16 ~~authoritative copy of the electronic document is~~
17 ~~maintained for the secured party, communicate to~~
18 ~~the custodian an authenticated record releasing~~
19 ~~the designated custodian from any further~~
20 ~~obligation to comply with instructions originated~~
21 ~~by the secured party and instructing the~~



1 ~~custodian to comply with instructions originated~~
 2 ~~by the debtor; and~~

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

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

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

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



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

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

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

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



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



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

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

5 "(a) The local law of a bank's jurisdiction [~~governs~~]
6 shall govern perfection, the effect of perfection or
7 nonperfection, and the priority of a security interest in a
8 deposit account maintained with that bank[+] even if the
9 transaction does not bear any relation to the bank's
10 jurisdiction."

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

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

15 (1) While a security certificate is located in a
16 jurisdiction, the local law of that jurisdiction
17 [~~governs~~] shall govern perfection, the effect of
18 perfection or nonperfection, and the priority of a
19 security interest in the certificated security
20 represented thereby[-];



- 1 (2) The local law of the issuer's jurisdiction as
2 specified in section 490:8-110(d) [~~governs~~] shall
3 govern perfection, the effect of perfection or
4 nonperfection, and the priority of a security interest
5 in an uncertificated security[-];
- 6 (3) The local law of the securities intermediary's
7 jurisdiction as specified in section 490:8-110(e)
8 [~~governs~~] shall govern perfection, the effect of
9 perfection or nonperfection, and the priority of a
10 security interest in a security entitlement or
11 securities account [-];
- 12 (4) The local law of the commodity intermediary's
13 jurisdiction [~~governs~~] shall govern perfection, the
14 effect of perfection or nonperfection, and the
15 priority of a security interest in a commodity
16 contract or commodity account [-]; and
- 17 (5) Paragraphs (2), (3), and (4) shall apply regardless of
18 whether the transaction bears any relation to the
19 jurisdiction."

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



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

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

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

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

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

11 (5) In certificated securities, documents, goods, or
12 instruments ~~[which is]~~ perfected without filing,
13 control, or possession under section 490:9-312(e),
14 (f), or (g);

15 (6) In collateral in the secured party's possession under
16 section 490:9-313;

17 (7) In a certificated security ~~[which is]~~ perfected by
18 delivery of the security certificate to the secured
19 party under section 490:9-313;

20 (8) In controllable accounts, controllable electronic
21 records, controllable payment intangibles, deposit



1 accounts, [~~electronic chattel paper,~~] electronic
2 documents, investment property, or letter-of-credit
3 rights [~~which is~~] perfected by control under section
4 490:9-314;

5 (9) In chattel paper perfected by possession and control
6 under section 490:9-F;

7 (10) In proceeds [~~which is~~] perfected under section
8 490:9-315; or

9 [~~(10)~~] (11) That is perfected under section 490:9-316."

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

12 1. By amending its title and subsections (a) and (b) to
13 read:

14 "§490:9-312 Perfection of security interests in chattel
15 paper, controllable accounts, controllable electronic records,
16 controllable payment intangibles, deposit accounts, documents,
17 goods covered by documents, instruments, investment property,
18 letter-of-credit rights, and money; perfection by permissive
19 filing; temporary perfection without filing or transfer of
20 possession. (a) A security interest in chattel paper,
21 [~~negotiable documents,~~] controllable accounts, controllable



1 electronic records, controllable payment intangibles,
2 instruments, [~~e~~] investment property, or negotiable documents
3 may be perfected by filing.

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

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

8 (2) And except as otherwise provided in section
9 490:9-308(d), a security interest in a letter-of-
10 credit right may be perfected only by control under
11 section 490:9-314; [~~and~~]

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

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

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

18 "(e) A security interest in certificated securities,
19 negotiable documents, or instruments [~~is~~] shall be deemed to be
20 perfected without filing or the taking of possession or control
21 for a period of twenty days from the time it attaches to the



1 extent that it arises for new value given under [~~an~~
2 ~~authenticated~~] a signed security agreement."

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

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

6 "(a) Except as otherwise provided in subsection (b), a
7 secured party may perfect a security interest in [~~tangible~~
8 ~~negotiable documents,~~] goods, instruments, negotiable tangible
9 documents, or tangible money [~~, or tangible chattel paper~~] by
10 taking possession of the collateral. A secured party may
11 perfect a security interest in certificated securities by taking
12 delivery of the certificated securities under section
13 490:8-301."

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

15 "(c) With respect to collateral other than certificated
16 securities and goods covered by a document, a secured party
17 takes possession of collateral in the possession of a person
18 other than the debtor, the secured party, or a lessee of the
19 collateral from the debtor in the ordinary course of the
20 debtor's business, when[+] the person:



- 1 (1) ~~[The person in]~~ In possession ~~[authenticates]~~ signs a
2 record acknowledging that it holds possession of the
3 collateral for the secured party's benefit; or
- 4 (2) ~~[The person takes]~~ Takes possession of the collateral
5 after having ~~[authenticated]~~ signed a record
6 acknowledging that it will hold possession of the
7 collateral for the secured party's benefit."

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

10 "**§490:9-314 Perfection by control.** (a) A security
11 interest in ~~[investment property, deposit accounts, letter-of-~~
12 ~~credit rights, electronic chattel paper, or electronic~~
13 ~~documents]~~ controllable accounts, controllable electronic
14 records, controllable payment intangibles, deposit accounts,
15 electronic documents, electronic money, investment property, or
16 letter-of-credit rights may be perfected by control of the
17 collateral under section 490:7-106, 490:9-104, ~~[490:9-105,~~
18 490:9-A, 490:9-106, ~~[or]~~ 490:9-107~~[-]~~, or 490:9-B.

19 (b) A security interest in ~~[deposit accounts, electronic~~
20 ~~chattel paper, letter-of-credit rights, or electronic documents~~
21 ~~is]~~ controllable accounts, controllable electronic records,



1 controllable payment intangibles, deposit accounts, electronic
2 documents, electronic money, or letter-of-credit rights shall be
3 deemed perfected by control under section 490:7-106, 490:9-104,
4 [490:9-105, or] 490:9-A, 490:9-107 [when], or 490:9-B no earlier
5 than the time the secured party obtains control and ~~[remains]~~
6 shall be deemed to remain perfected by control only while the
7 secured party retains control.

8 (c) A security interest in investment property ~~[is]~~ shall
9 be deemed perfected by control under section 490:9-106 ~~[from]~~ no
10 earlier than the time the secured party obtains control and
11 ~~[remains]~~ shall be deemed to remain perfected by control until:

12 (1) The secured party does not have control; and

13 (2) One of the following occurs:

14 (A) If the collateral is a certificated security, the
15 debtor has or acquires possession of the security
16 certificate;

17 (B) If the collateral is an uncertificated security,
18 the issuer has registered or registers the debtor
19 as the registered owner; or

20 (C) If the collateral is a security entitlement, the
21 debtor is or becomes the entitlement holder."



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

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

4 "(a) A security interest perfected pursuant to the law of
5 the jurisdiction designated in section 490:9-301(1) [~~or~~],
6 490:9-305(c) [~~remains~~], 490:9-D(d), or 490:9-E(b) shall be
7 deemed to remain perfected until the earliest of:

8 (1) The time perfection would have ceased under the law of
9 that jurisdiction;

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

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

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

16 "(f) A security interest in chattel paper, controllable
17 accounts, controllable electronic records, controllable payment
18 intangibles, deposit accounts, letter-of-credit rights, or
19 investment property [~~which~~] that is perfected under the law of
20 the chattel paper's jurisdiction, the controllable electronic
21 record's jurisdiction, the bank's jurisdiction, the issuer's



1 jurisdiction, a nominated person's jurisdiction, the securities
2 intermediary's jurisdiction, or the commodity intermediary's
3 jurisdiction, as applicable, [~~remains~~] shall be deemed to remain
4 perfected until the earlier of:

- 5 (1) The time the security interest would have become
6 unperfected under the law of that jurisdiction; or
7 (2) The expiration of four months after a change of the
8 applicable jurisdiction to another jurisdiction."

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

11 "§490:9-317 Interests that take priority over or take free
12 of security interest or agricultural lien. (a) A security
13 interest or agricultural lien [~~is~~] shall be subordinate to the
14 rights of:

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

17 (2) Except as otherwise provided in subsection (e), a
18 person that becomes a lien creditor before the earlier
19 of the time:

20 (A) The security interest or agricultural lien is
21 perfected; or



1 (B) One of the conditions specified in section
2 490:9-203(b)(3) is met and a financing statement
3 covering the collateral is filed.

4 (b) Except as otherwise provided in subsection (e), a
5 buyer, other than a secured party, of [~~tangible chattel paper,~~
6 ~~tangible documents,~~] goods, instruments, tangible document, or
7 certificated security takes free of a security interest or
8 agricultural lien if the buyer gives value and receives delivery
9 of the collateral without knowledge of the security interest or
10 agricultural lien and before it is perfected.

11 (c) Except as otherwise provided in subsection (e), a
12 lessee of goods takes free of a security interest or
13 agricultural lien if the lessee gives value and receives
14 delivery of the collateral without knowledge of the security
15 interest or agricultural lien and before it is perfected.

16 (d) [A] Subject to subsections (f) through (i), a licensee
17 of a general intangible or a buyer, other than a secured party,
18 of collateral other than [~~tangible chattel paper,~~ ~~tangible~~
19 ~~documents,~~] electronic money, goods, instruments, tangible
20 documents, or a certificated security takes free of a security



1 interest if the licensee or buyer gives value without knowledge
2 of the security interest and before it is perfected.

3 (e) Except as otherwise provided in sections 490:9-320 and
4 490:9-321, if a person files a financing statement with respect
5 to a purchase-money security interest before or within twenty
6 days after the debtor receives delivery of the collateral, the
7 security interest takes priority over the rights of a buyer,
8 lessee, or lien creditor which arise between the time the
9 security interest attaches and the time of filing.

10 (f) A buyer, other than a secured party, of chattel paper
11 takes free of a security interest if, without knowledge of the
12 security interest and before it is perfected, the buyer gives
13 value and:

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

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

20 (g) A buyer of an electronic document takes free of a
21 security interest if, without knowledge of the security interest



1 and before it is perfected, the buyer gives value and, if each
2 authoritative electronic copy of the document may be subjected
3 to control under section 490:7-106, obtains control of each
4 authoritative electronic copy.

5 (h) A buyer of a controllable electronic record takes free
6 of a security interest if, without knowledge of the security
7 interest and before it is perfected, the buyer gives value and
8 obtains control of the controllable electronic record.

9 (i) A buyer, other than a secured party, of a controllable
10 account or a controllable payment intangible takes free of a
11 security interest if, without knowledge of the security interest
12 and before it is perfected, the buyer gives value and obtains
13 control of the controllable account or controllable payment
14 intangible."

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

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

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



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

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

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

5 "(f) Except as otherwise provided in subsection (g), a
6 lessee of goods [~~other than a lessee in ordinary course of~~
7 ~~business,~~] takes the leasehold interest free of a security
8 interest to the extent that it secures advances made after the
9 earlier of:

10 (1) The time the secured party acquires knowledge of the
11 lease; or

12 (2) Forty-five days after the lease contract becomes
13 enforceable."

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

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

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



- 1 (1) In good faith and in the ordinary course of the
2 purchaser's business, the purchaser gives new value
3 ~~[and]~~, takes possession of each authoritative tangible
4 copy of the record evidencing the chattel paper ~~[or]~~,
5 and obtains control ~~[of]~~ under section 490:9-105 of
6 each authoritative electronic copy of the record
7 evidencing the chattel paper ~~[under section~~
8 ~~490:9-105]~~; and
- 9 (2) The ~~[chattel paper does]~~ authoritative copies of the
10 record evidencing the chattel paper do not indicate
11 that ~~[it]~~ the chattel paper has been assigned to an
12 identified assignee other than the purchaser.
- 13 (b) A purchaser of chattel paper ~~[has]~~ shall have priority
14 over a security interest in the chattel paper ~~[which]~~ that is
15 claimed other than merely as proceeds of inventory subject to a
16 security interest if the purchaser gives new value ~~[and]~~, takes
17 possession of each authoritative tangible copy of the record
18 evidencing the chattel paper ~~[or]~~, and obtains control ~~[of]~~
19 under section 490:9-105 of each authoritative electronic copy of
20 the record evidencing the chattel paper ~~[under section~~
21 ~~490:9-105]~~ in good faith, in the ordinary course of the



1 purchaser's business, and without knowledge that the purchase
2 violates the rights of the secured party."

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

4 "(f) For purposes of subsections (b) and (d), if the
5 authoritative copies of the record evidencing chattel paper or
6 an instrument [indicates] indicate that [it] the chattel paper
7 or instrument has been assigned to an identified secured party
8 other than the purchaser, a purchaser of the chattel paper or
9 instrument has knowledge that the purchase violates the rights
10 of the secured party."

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

14 "§490:9-331 Priority of rights of purchasers of
15 [~~instruments,~~] controllable accounts, controllable electronic
16 records, controllable payment intangibles, documents,
17 instruments, and securities under other articles; priority of
18 interests in financial assets and security entitlements and
19 protection against assertion of claim under [article] articles
20 8[-] and A. (a) This article does not limit the rights of a
21 holder in due course of a negotiable instrument, a holder to



1 which a negotiable document of title has been duly negotiated,
2 [~~or~~] a protected purchaser of a security[-], a qualifying
3 purchaser of a controllable account, controllable electronic
4 record, or controllable payment intangible. These holders or
5 purchasers take priority over an earlier security interest, even
6 if perfected, to the extent provided in articles 3, 7, [~~and~~]
7 8 [-], and A.

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

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

13 **"§490:9-332 Transfer of money; transfer of funds from**
14 **deposit account.** (a) A transferee of tangible money takes the
15 money free of a security interest [~~unless the transferee acts~~]
16 if the transferee receives possession of the money without
17 acting in collusion with the debtor in violating the rights of
18 the secured party.

19 (b) A transferee of funds from a deposit account takes the
20 funds free of a security interest in the deposit account [~~unless~~
21 ~~the transferee acts~~] if the transferee receives the funds



1 without acting in collusion with the debtor in violating the
2 rights of the secured party.

3 (c) A transferee of electronic money takes the money free
4 of a security interest if the transferee obtains control of the
5 money without acting in collusion with the debtor in violating
6 the rights of the secured party."

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

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



1 (b) Subject to ~~[subsection]~~ subsections (h) ~~[7]~~ and (j),
2 notification ~~[is]~~ shall be deemed ineffective under subsection

3 (a):

4 (1) If it does not reasonably identify the rights
5 assigned;

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

11 (3) At the option of an account debtor, if the
12 notification notifies the account debtor to make less
13 than the full amount of any installment or other
14 periodic payment to the assignee, even if:

15 (A) Only a portion of the account, chattel paper, or
16 payment intangible has been assigned to that
17 assignee;

18 (B) A portion has been assigned to another assignee;
19 or

20 (C) The account debtor knows that the assignment to
21 that assignee is limited.



1 (c) Subject to [~~subsection~~] subsections (h) [~~7~~] and (j), if
2 requested by the account debtor, an assignee shall seasonably
3 furnish reasonable proof that the assignment has been made.
4 Unless the assignee complies, the account debtor may discharge
5 its obligation by paying the assignor, even if the account
6 debtor has received a notification under subsection (a).

7 (d) In this subsection, "promissory note" includes a
8 negotiable instrument that evidences chattel paper. Except as
9 otherwise provided in subsection (e) and sections 490:2A-303 and
10 490:9-407, and subject to subsection (h), a term in an agreement
11 between an account debtor and an assignor or in a promissory
12 note [~~is~~] shall be deemed ineffective to the extent that it:

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

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



1 breach, right of recoupment, claim, defense,
2 termination, right of termination, or remedy under the
3 account, chattel paper, payment intangible, or
4 promissory note.

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

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

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



1 (2) Provides that the assignment or transfer or the
2 creation, attachment, perfection, or enforcement of
3 the security interest may give rise to a default,
4 breach, right of recoupment, claim, defense,
5 termination, right of termination, or remedy under the
6 account or chattel paper.

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

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

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

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

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

20 "§490:9-408 Restrictions on assignment of promissory
21 notes, health-care-insurance receivables, and certain general



1 **intangibles ineffective.** (a) Except as otherwise provided in
2 subsection (b), a term in a promissory note or in an agreement
3 between an account debtor and a debtor [~~which~~] that relates to a
4 health-care-insurance receivable or a general intangible,
5 including a contract, permit, license, or franchise, [~~and which~~
6 ~~term~~] that prohibits, restricts, or requires the consent of the
7 person obligated on the promissory note or the account debtor
8 to, the assignment or transfer of, or creation, attachment, or
9 perfection of a security interest in, the promissory note,
10 health-care-insurance receivable, or general intangible, [~~is~~]
11 shall be deemed ineffective to the extent that the term:

- 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 (b) Subsection (a) [~~applies~~] shall apply to a security
2 interest in a payment intangible or promissory note only if the
3 security interest arises out of a sale of the payment intangible
4 or promissory note, other than a sale pursuant to a disposition
5 under section 490:9-610 or an acceptance of collateral under
6 section 490:9-620.

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

16 (1) Would impair the creation, attachment, or perfection
17 of a security interest; or

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



1 termination, or remedy under the promissory note,
2 health-care-insurance receivable, or general
3 intangible.

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

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

15 (2) [~~Does not impose~~] Impose a duty or obligation on the
16 person obligated on the promissory note or the account
17 debtor;

18 (3) [~~Does not require~~] Require the person obligated on the
19 promissory note or the account debtor to recognize the
20 security interest, pay or render performance to the



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

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

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



1 "(b) A secured party in possession of collateral or
2 control of collateral under section 490:7-106, 490:9-104,
3 490:9-105, 490:9-A, 490:9-106, [~~or~~] 490:9-107 [~~has~~], or 490:9-B
4 shall have the rights and duties provided in section 490:9-207."

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

7 "**§490:9-605 Unknown debtor or secondary obligor.** [A] (a)
8 Except as provided in subsection (b), a secured party [~~does~~]
9 shall not owe a duty based on its status as secured party:

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

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

13 (B) The identity of the person; and

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

15 (2) To a secured party or lienholder that has filed a
16 financing statement against a person, unless the
17 secured party knows:

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

19 (B) The identity of the person.

20 (b) A secured party shall be deemed to owe a duty based on
21 its status as a secured party to a person if, at the time the



1 secured party obtains control of collateral that is a
2 controllable account, controllable electronic record, or
3 controllable payment intangible or at the time the security
4 interest attaches to the collateral, whichever is later:

5 (1) The person is a debtor or obligor; and

6 (2) The secured party knows that the information in
7 subsection (a) (1) relating to the person is not
8 provided by the collateral; a record attached to, or
9 logically associated with, the collateral; or the
10 system in which the collateral is recorded."

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

13 "§490:9-613 Contents and form of notification before

14 disposition of collateral: general. (a) Except in a

15 consumer-goods transaction, the following rules shall apply:

16 (1) The contents of a notification of disposition [~~are~~]
17 shall be sufficient if the notification:

18 (A) Describes the debtor and the secured party;

19 (B) Describes the collateral that is the subject of
20 the intended disposition;

21 (C) States the method of intended disposition;



- 1 (D) States that the debtor is entitled to an
- 2 accounting of the unpaid indebtedness and states
- 3 the charge, if any, for an accounting; and
- 4 (E) States the time and place of a public disposition
- 5 or the time after which any other disposition is
- 6 to be made[-];
- 7 (2) Whether the contents of a notification that lacks any
- 8 of the information specified in paragraph (1) are
- 9 nevertheless sufficient is a question of fact[-];
- 10 (3) The contents of a notification providing substantially
- 11 the information specified in paragraph (1) are
- 12 sufficient, even if the notification includes:
- 13 (A) Information not specified by that paragraph; or
- 14 (B) Minor errors that are not seriously
- 15 misleading[-];
- 16 (4) A particular phrasing of the notification [~~is~~] shall
- 17 not be required[-]; and
- 18 (5) The following form of notification and the form
- 19 appearing in section [~~490:9-614(3)~~] 490:9-614(a)(3),
- 20 when completed[-] in accordance with the instructions
- 21 in subsection (b) and section 490:9-614(b), each



1 ~~You are entitled to an accounting of the unpaid~~
2 ~~indebtedness secured by the property that we intend to~~
3 ~~sell [or lease or license, as applicable] [for a~~
4 ~~charge of \$_____]. You may request an accounting~~
5 ~~by calling us at _____ [telephone number]_____.~~

6 NOTIFICATION OF DISPOSITION OF COLLATERAL

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

9 From: (Name, address, and telephone number of secured
10 party)

11 (1) Name of any debtor that is not an addressee:
12 (Name of each debtor)

13 (2) We will sell (describe collateral) (to the
14 highest qualified bidder) at public sale. A sale
15 could include a lease or license. The sale will be
16 held as follows:

17 (Date)

18 (Time)

19 (Place)



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

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

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

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

11 (b) The following instructions shall apply to the form of
12 notification in subsection (a) (5):

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

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



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

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

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

15 (1) A notification of disposition [~~must~~] shall provide the
16 following information:

17 (A) The information specified in section

18 [~~490:9-613(1);~~] 490:9-613(a)(1);

19 (B) A description of any liability for a deficiency
20 of the person to which the notification is sent;



1 (C) A telephone number from which the amount that
2 ~~[must]~~ shall be paid to the secured party to
3 redeem the collateral under section 490:9-623 is
4 available; and

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

8 (2) A particular phrasing of the notification ~~[is]~~ shall
9 not be required~~[]~~;

10 (3) The following form of notification, when completed~~[]~~
11 ~~provides]~~ in accordance with the instructions in
12 subsection (b), shall be deemed to provide sufficient
13 information:

14 ~~[_____ [Name and address of secured party]~~

15 ~~_____ [Date]~~

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

17 ~~_____ [Name and address of any obligor who is also a~~
18 ~~debtor]~~

19 Subject: ~~_____ [Identification of Transaction]~~

20 We have your ~~_____ [describe collateral]~~,

21 because you broke promises in our agreement.



~~{For a public disposition:}~~

~~We will sell _____ [describe collateral] _____ at
public sale sometime after _____ [date] _____. A sale
could include a lease or license.~~

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

~~Day and Date: _____~~

~~Time: _____~~

~~Place: _____~~

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

~~{For a private disposition:}~~

~~We will sell _____ [describe collateral] _____ at
private sale sometime after _____ [date] _____. A sale
could include a lease or license.~~

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



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

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

14 ~~If you need more information about the sale call~~
15 ~~us at _____ [telephone number]_____ [or write us~~
16 ~~at _____ [secured party's address]_____].~~

17 ~~We are sending this notice to the following other~~
18 ~~people who have an interest in _____ [describe~~
19 ~~collateral]_____ or who owe money under your~~
20 ~~agreement.~~



1 ~~_____ [Names of all other debtors and obligors, if~~
2 any]_____.

3 (Name and address of secured party)

4 (Date)

5 NOTICE OF OUR PLAN TO SELL PROPERTY

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

7 Subject: (Identify transaction)

8 We have your (describe collateral) because you
9 broke promises in our agreement.

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

13 (Date)

14 (Time)

15 (Place)

16 You may attend the sale and bring bidders if you
17 want.

18 (2) We will sell (describe collateral) at
19 private sale sometime after (date). A sale could
20 include a lease or license.



1 (3) The money that we get from the sale, after
2 paying our costs, will reduce the amount you owe. If
3 we get less money than you owe, you (will or will not,
4 as applicable) still owe us the difference. If we get
5 more money than you owe, you will get the extra money,
6 unless we must pay it to someone else.

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

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



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

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

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

12 (4) A notification in the form of paragraph (3) [~~is~~] shall
13 be deemed sufficient, even if additional information
14 appears at the end of the form[-];

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

20 (6) If a notification under this section is not in the
21 form of paragraph (3), law other than this article



1 ~~[determines]~~ shall determine the effect of including
2 information not required by paragraph (1).

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

- 5 (1) The instructions in this subsection refer to the
6 numbers in parentheses before items in the form of
7 notification in subsection (a) (3). Do not include the
8 numbers or parentheses in the notification. The
9 numbers and parentheses are used only for the purpose
10 of these instructions;
- 11 (2) Include and complete either item (1), if the
12 notification relates to a public disposition of the
13 collateral, or item (2), if the notification relates
14 to a private disposition of the collateral;
- 15 (3) Include and complete items (3), (4), (5), (6), and
16 (7);
- 17 (4) In item (5), include and complete any one of the three
18 alternative methods for the explanation--writing,
19 writing or electronic record, or electronic record;
- 20 (5) In item (6), include the telephone number. In
21 addition, the sender may include and complete either



1 or both of the two additional alternative methods of
2 communication--writing or electronic communication--
3 for the recipient of the notification to communicate
4 with the sender. Neither of the two additional
5 methods of communication is required to be included;
6 (6) In item (7), include and complete the method or
7 methods for the explanation--writing, writing or
8 electronic record, or electronic record--included in
9 item (5);
10 (7) Include and complete item (8) only if a written
11 explanation is included in item (5) as a method for
12 communicating the explanation and the sender shall
13 charge the recipient for another written explanation;
14 (8) In item (9), include either the telephone number or
15 the address, or both. In addition, the sender may
16 include and complete the additional method of
17 communication--electronic communication--for the
18 recipient of the notification to communicate with the
19 sender. The additional method of electronic
20 communication is not required to be included; and



1 (9) If item (10) does not apply, insert "None" after
2 "agreement:". "

3 SECTION 62. Section 490:9-616, Hawaii Revised Statutes, is
4 amended by amending subsections (a) through (c) to read as
5 follows:

6 "(a) In this section:

7 (1) "Explanation" means a [~~writing~~] record that:

8 (A) States the amount of the surplus or deficiency;

9 (B) Provides an explanation in accordance with

10 subsection (c) of how the secured party

11 calculated the surplus or deficiency;

12 (C) States, if applicable, that future debits,

13 credits, charges, including additional credit

14 service charges or interest, rebates, and

15 expenses may affect the amount of the surplus or

16 deficiency; and

17 (D) Provides a telephone number or mailing address

18 from which additional information concerning the

19 transaction is available.

20 (2) "Request" means a record:



1 (A) [~~Authenticated~~] Signed by a debtor or consumer
2 obligor;

3 (B) Requesting that the recipient provide an
4 explanation; and

5 (C) Sent after disposition of the collateral under
6 section 490:9-610.

7 (b) In a consumer-goods transaction in which the debtor is
8 entitled to a surplus or a consumer obligor is liable for a
9 deficiency under section 490:9-615, the secured party shall:

10 (1) Send an explanation to the debtor or consumer obligor,
11 as applicable, after the disposition and:

12 (A) Before or when the secured party accounts to the
13 debtor and pays any surplus or first makes
14 [~~written~~] a demand in a record on the consumer
15 obligor after the disposition for payment of the
16 deficiency; and

17 (B) Within fourteen days after receipt of a request;
18 or

19 (2) In the case of a consumer obligor who is liable for a
20 deficiency, within fourteen days after receipt of a



1 request, send to the consumer obligor a record waiving
2 the secured party's right to a deficiency.

3 (c) To comply with subsection (a)(1)(B), [~~a writing must~~]
4 an explanation shall provide the following information in the
5 following order:

6 (1) The aggregate amount of obligations secured by the
7 security interest under which the disposition was
8 made, and, if the amount reflects a rebate of unearned
9 interest or credit service charge, an indication of
10 that fact, calculated as of a specified date:

11 (A) If the secured party takes or receives possession
12 of the collateral after default, [~~not~~] no more
13 than thirty-five days before the secured party
14 takes or receives possession; or

15 (B) If the secured party takes or receives possession
16 of the collateral before default or does not take
17 possession of the collateral, [~~not~~] no more than
18 thirty-five days before the disposition;

19 (2) The amount of proceeds of the disposition;

20 (3) The aggregate amount of the obligations after
21 deducting the amount of proceeds;



1 (4) The amount, in the aggregate or by type, and types of
2 expenses, including expenses of retaking, holding,
3 preparing for disposition, processing, and disposing
4 of the collateral, and attorney's fees secured by the
5 collateral [~~which~~] that are known to the secured party
6 and relate to the current disposition;

7 (5) The amount, in the aggregate or by type, and types of
8 credits, including rebates of interest or credit
9 service charges, to which the obligor is known to be
10 entitled and [~~which~~] that are not reflected in the
11 amount in paragraph (1); and

12 (6) The amount of the surplus or deficiency."

13 SECTION 63. Section 490:9-628, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§490:9-628 Nonliability and limitation on liability of
16 secured party; liability of secondary obligor. (a) [~~Unless~~]
17 Subject to subsection (f), unless a secured party knows that a
18 person is a debtor or obligor, knows the identity of the person,
19 and knows how to communicate with the person:

20 (1) The secured party [~~is~~] shall not be liable to the
21 person, or to a secured party or lienholder that has



1 filed a financing statement against the person, for
2 failure to comply with this article; and

3 (2) The secured party's failure to comply with this
4 article [~~does~~] shall not affect the liability of the
5 person for a deficiency.

6 (b) [A] Subject to subsection (f), a secured party [is]
7 shall not be liable because of its the status as secured
8 party[+] to:

9 (1) [~~to a~~] A person that is a debtor or obligor, unless
10 the secured party knows:

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

12 (B) The identity of the person; and

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

14 (2) [~~to a~~] A secured party or lienholder that has filed a
15 financing statement against a person, unless the
16 secured party knows:

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

18 (B) The identity of the person.

19 (c) A secured party [is] shall not be liable to any
20 person, and a person's liability for a deficiency [is] shall not
21 be affected, because of any act or omission arising out of the



1 secured party's reasonable belief that a transaction is not a
2 consumer-goods transaction or a consumer transaction or that
3 goods are not consumer goods, if the secured party's belief is
4 based on its the reasonable reliance on:

- 5 (1) A debtor's representation concerning the purpose for
6 which collateral was to be used, acquired, or held; or
7 (2) An obligor's representation concerning the purpose for
8 which a secured obligation was incurred.

9 (d) A secured party [~~is~~] shall not be liable to any person
10 under section 490:9-625(c) (2) for its failure to comply with
11 section 490:9-616.

12 (e) A secured party [~~is~~] shall not be liable under section
13 490:9-625(c) (2) more than once with respect to any one secured
14 obligation.

15 (f) Subsections (a) and (b) shall not apply to limit the
16 liability of a secured party to a person if, at the time the
17 secured party obtains control of collateral that is a
18 controllable account, controllable electronic record, or
19 controllable payment intangible or at the time the security
20 interest attaches to the collateral, whichever is later:

- 21 (1) The person is a debtor or obligor; and



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

6 SECTION 64. (a) Sections 490:2-203, 490:2-205,
7 490:2A-201, 490:2A-203, 490:2A-205, 490:2A-208, 490:4A-207, and
8 490:4A-208, Hawaii Revised Statutes, are amended by substituting
9 the phrase "record" wherever the phrase "writing" appears.

10 (b) Sections 490:9-210, 490:9-324, 490:9-334, 490:9-341,
11 490:9-404, 490:9-509, 490:9-513, 490:9-608, 490:9-611,
12 490:9-615, 490:9-619, 490:9-620, 490:9-621, and 490:9-624,
13 Hawaii Revised Statutes, are amended by substituting the phrases
14 "signed" or "signing" wherever the phrase "authenticated" or
15 "authenticating" appears.

16 SECTION 65. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.

19 SECTION 66. In codifying the new articles and sections
20 added by section 1 of this Act, the revisor of statutes shall
21 substitute appropriate article and section numbers for the



1 letters used in designating the new articles and sections in
2 this Act.

3 SECTION 67. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 68. This Act shall take effect June 30, 3000.



Report Title:

Uniform Commercial Code

Description:

Implements the 2022 Uniform Commercial Code Amendments set forth by the Uniform Law Commission. Effective 6/30/3000. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

