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# A BILL FOR AN ACT

RELATING TO THE UNIFORM COMMERCIAL CODE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 490, Hawaii Revised Statutes, is  
2 amended as follows:

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

5           "§490:9-A Control of electronic money. (a) A person  
6 shall have control of electronic money if:

7           (1) The electronic money; a record attached to, or  
8           logically associated with, the electronic money; or a  
9           system in which the electronic money is recorded gives  
10           the person:

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

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

14           (i) Prevent others from availing themselves of  
15           substantially all the benefit from the  
16           electronic money; and



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1           (ii) Transfer control of the electronic money to  
2                   another person or cause another person to  
3                   obtain control of other electronic money as  
4                   a result of the transfer of the electronic  
5                   money; and

6       (2) The electronic money; a record attached to, or  
7           logically associated with, the electronic money; or a  
8           system in which the electronic money is recorded  
9           enables the person to readily identify itself in any  
10          way, including by name, identifying number,  
11          cryptographic key, office, or account number, as  
12          having the powers under paragraph (1).

13       (b) Subject to subsection (c), a power is exclusive under  
14 clauses (a) (1) (B) (i) and (ii) regardless of whether:

15       (1) The electronic money; a record attached to, or  
16           logically associated with, the electronic money; or a  
17           system in which the electronic money is recorded  
18           limits the use of the electronic money or has a  
19           protocol programmed to cause a change, including a  
20           transfer or loss of control; or

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



1        (c) A power of a person shall not be shared with another  
2 person under subsection (b) (2) and the person's power shall not  
3 be exclusive if:

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

6        (2) The other person:

7            (A) May exercise the power without exercise of the  
8 power by the person; or

9            (B) Is the transferor to the person of an interest in  
10 the electronic money.

11        (d) If a person has the powers specified in clauses  
12 (a) (1) (B) (i) and (ii), the powers shall be presumed to be  
13 exclusive.

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

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

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



1        §490:9-B Control of controllable electronic record,  
2 controllable account, or controllable payment intangible. (a)  
3 A secured party shall have control of a controllable electronic  
4 record as provided in section 490:A-105.

5        (b) A secured party shall have control of a controllable  
6 account or controllable payment intangible if the secured party  
7 has control of the controllable electronic record that evidences  
8 the controllable account or controllable payment intangible.

9        §490:9-C No requirement to acknowledge or confirm; no  
10 duties. (a) A person having control under sections 490:9-104,  
11 490:9-105, or 490:9-A shall not be required to acknowledge that  
12 it has control on behalf of another person.

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

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

20        "§490:9-D Law governing perfection and priority of  
21 security interests in chattel paper. (a) Except as provided in



1 subsection (d), if chattel paper is evidenced only by an  
2 authoritative electronic copy of the chattel paper or is  
3 evidenced by an authoritative electronic copy and an  
4 authoritative tangible copy, the local law of the chattel  
5 paper's jurisdiction shall govern perfection, the effect of  
6 perfection or nonperfection, and the priority of a security  
7 interest in the chattel paper, regardless of whether the  
8 transaction bears any relation to the chattel paper's  
9 jurisdiction.

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

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

20 (2) If paragraph (1) does not apply and the rules of the  
21 system in which the authoritative electronic copy is



1 recorded are readily available for review and  
2 expressly provide that a particular jurisdiction shall  
3 be the chattel paper's jurisdiction for purposes of  
4 this part, article, or chapter, that jurisdiction  
5 shall be the chattel paper's jurisdiction;

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

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



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

4       (c) If an authoritative tangible copy of a record  
5       evidences chattel paper and the chattel paper is not evidenced  
6       by an authoritative electronic copy, while the authoritative  
7       tangible copy of the record evidencing chattel paper is located  
8       in a jurisdiction, the local law of that jurisdiction shall  
9       govern:

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

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

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

17       §490:9-E Law governing perfection and priority of security  
18       interests in controllable accounts, controllable electronic  
19       records, and controllable payment intangibles. (a) Except as  
20       provided in subsection (b), the local law of the controllable  
21       electronic record's jurisdiction specified in sections



1 490:A-107(c) and (d) shall govern perfection, the effect of  
2 perfection or nonperfection, and the priority of a security  
3 interest in a controllable electronic record and a security  
4 interest in a controllable account or controllable payment  
5 intangible evidenced by the controllable electronic record.

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

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

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

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

16 "§490:9-F Perfection by possession and control of chattel  
17 paper. (a) A secured party may perfect a security interest in  
18 chattel paper by taking possession of each authoritative  
19 tangible copy of the record evidencing the chattel paper and  
20 obtaining control of each authoritative electronic copy of the  
21 electronic record evidencing the chattel paper.





1        (b) A security interest is perfected under subsection (a)  
2 not earlier than the time the secured party takes possession and  
3 obtains control and remains perfected under subsection (a) only  
4 while the secured party retains possession and control.

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

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

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

18        5. By adding two new articles to be appropriately  
19 designated and to read:



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"ARTICLE A.

CONTROLLABLE ELECTRONIC RECORDS

§490:A-101 Short title. This article may be cited as  
Uniform Commercial Code--Controllable Electronic Records.

§490:A-102 Definitions. (a) As used in this article:

"Account debtor" shall have the same meaning as in section  
490:9-102(a).

"Chattel paper" shall have the same meaning as in section  
490:9-102(a).

"Controllable account" shall have the same meaning as in  
section 490:9-102(a).

"Controllable electronic record" means a record stored in  
an electronic medium that may be subjected to control under  
section 490:A-105. The term does not include a controllable  
account, a controllable payment intangible, a deposit account,  
an electronic copy of a record evidencing chattel paper, an  
electronic document of title, electronic money, investment  
property, or a transferable record.

"Controllable payment intangible" shall have the same  
meaning as in section 490:9-102(a).



1 "Deposit account" shall have the same meaning as in section  
2 490:9-102(a).

3 "Electronic money" shall have the same meaning as in  
4 section 490:9-102(a).

5 "Investment property" shall have the same meaning as in  
6 section 490:9-102(a).

7 "Qualifying purchaser" means a purchaser of a controllable  
8 electronic record or an interest in a controllable electronic  
9 record that obtains control of the controllable electronic  
10 record for value, in good faith, and without notice of a claim  
11 of a property right in the controllable electronic record.

12 "Transferable record" shall have the same meaning as in:

13 (1) Section 201(a)(1) of the Electronic Signatures in  
14 Global and National Commerce Act, Title 15 United  
15 States Code section 7021(a)(1), as amended; or

16 (2) Section 489E-16(a).

17 "Value" shall have the same meaning as in section  
18 490:3-303(a), as if references in that subsection to an  
19 "instrument" were references to a controllable account,  
20 controllable electronic record, or controllable payment  
21 intangible.



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

4 §490:A-103 Relation to article 9 and consumer laws. (a)  
5 If there is conflict between this article and article 9,  
6 article 9 shall govern.

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

13 §490:A-104 Rights in controllable account, controllable  
14 electronic record, and controllable payment intangible. (a)  
15 This section shall apply to the acquisition and purchase of  
16 rights in a controllable account or controllable payment  
17 intangible, including the rights and benefits under subsections  
18 (c), (d), (e), (g), and (h) of a purchaser and qualifying  
19 purchaser, in the same manner this section applies to a  
20 controllable electronic record.



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

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

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

17           (e) A qualifying purchaser shall acquire its rights in the  
18 controllable electronic record free of a claim of a property  
19 right in the controllable electronic record.

20           (f) Except as provided in subsections (a) and (e) for a  
21 controllable account and a controllable payment intangible or



1 law other than this article, a qualifying purchaser shall take a  
2 right to payment, right to performance, or other interest in  
3 property evidenced by the controllable electronic record subject  
4 to a claim of a property right in the right to payment, right to  
5 performance, or other interest in property.

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

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

15 **§490:A-105 Control of controllable electronic record. (a)**

16 A person shall control a controllable electronic record if the  
17 electronic record; a record attached to, or logically associated  
18 with, the electronic record; or a system in which the electronic  
19 record is recorded:

20 (1) Gives the person:



- 1 (A) Power to avail itself of substantially all the  
2 benefit from the electronic record; 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 record; and
- 7 (ii) Transfer control of the electronic record to  
8 another person or cause another person to  
9 obtain control of another controllable  
10 electronic record as a result of the  
11 transfer of the electronic record; 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 specified in paragraph (1).
- 16 (b) Subject to subsection (c), a power shall be exclusive  
17 under clauses (a)(1)(B)(i) and (ii) regardless of whether:
- 18 (1) The controllable electronic record; a record attached  
19 to, or logically associated with, the electronic  
20 record; or a system in which the electronic record is  
21 recorded limits the use of the electronic record or



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

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

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

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

10          (2) The other person:

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

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

18          (d) If a person has the powers specified in clauses  
19 (a) (1) (B) (i) and (ii), the powers shall be presumed to be  
20 exclusive.





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

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

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

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

14          (g) If a person acknowledges that it has or will obtain  
15 control on behalf of another person, unless the person otherwise  
16 agrees or 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           §490:A-106 Discharge of account debtor on controllable  
21 account or controllable payment intangible. (a) An account



1 debtor on a controllable account or controllable payment

2 intangible may discharge its obligation by paying:

3 (1) The person having control of the controllable  
4 electronic record that evidences the controllable  
5 account or controllable payment intangible; or

6 (2) Except as provided in subsection (b), a person that  
7 formerly had control of the controllable electronic  
8 record.

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

13 (1) Is signed by a person that formerly had control or the  
14 person to which control was transferred;

15 (2) Reasonably identifies the controllable account or  
16 controllable payment intangible;

17 (3) Notifies the account debtor that control of the  
18 controllable electronic record that evidences the  
19 controllable account or controllable payment  
20 intangible was transferred;



1           (4) Identifies the transferee, in any reasonable way,  
2           including by name, identifying number, cryptographic  
3           key, office, or account number; and

4           (5) Provides a commercially reasonable method by which the  
5           account debtor shall pay the transferee.

6           (c) After receipt of a notification that complies with  
7           subsection (b), the account debtor may discharge its obligation  
8           by paying in accordance with the notification and shall not  
9           discharge the obligation by paying a person that formerly had  
10          control.

11          (d) Subject to subsection (h), notification is ineffective  
12          under subsection (b):

13          (1) Unless, before the notification is sent, the account  
14          debtor and the person that, at that time, had control  
15          of the controllable electronic record that evidences  
16          the controllable account or controllable payment  
17          intangible agree in a signed record to a commercially  
18          reasonable method by which a person may furnish  
19          reasonable proof that control has been transferred;

20          (2) To the extent an agreement between the account debtor  
21          and seller of a payment intangible limits the account



1           debtor's duty to pay a person other than the seller  
2           and the limitation is effective under law other than  
3           this article; or

4           (3) At the option of the account debtor if the  
5           notification notifies the account debtor to:

6           (A) Divide a payment;

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

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

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

20           (f) A person furnishes reasonable proof under subsection  
21 (e) that control has been transferred if the person



1 demonstrates, using the method in the agreement referred to in  
2 subsection (d)(1), that the transferee has the power to:

3 (1) Avail itself of substantially all the benefit from the  
4 controllable electronic record;

5 (2) Prevent others from availing themselves of  
6 substantially all the benefit from the controllable  
7 electronic record; and

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

10 (g) Subject to subsection (h), an account debtor shall not  
11 waive or vary its rights under subsections (d)(1) and (e) or its  
12 option under paragraph (d)(3).

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

17 **§490:A-107 Governing law.** (a) Except as provided in  
18 subsection (b), the local law of a controllable electronic  
19 record's jurisdiction shall govern a matter covered by this  
20 article.



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

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

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



1           for purposes of this article or chapter, that  
2           jurisdiction shall be the controllable electronic  
3           record's jurisdiction;

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

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





1 ARTICLE B.

2 TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS

3 (2022)

4 PART 1. GENERAL PROVISIONS AND DEFINITIONS

5 §490:B-101 Short title. This article may be cited as  
6 Transitional Provisions for Uniform Commercial Code Amendments  
7 (2022).

8 §490:B-102 Definitions. (a) As used in this article:

9 "Adjustment date" means July 1, 2025, or the date that is  
10 one year after the effective date of this Act, whichever is  
11 later.

12 "Article A property" means a controllable account,  
13 controllable electronic record, or controllable payment  
14 intangible.

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

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

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

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

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

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



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

12 PART 3. TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND A

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

19 (b) Except as provided in subsection (c) and sections  
20 490:A-302 through 490:A-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 Act and was not governed by  
4           this chapter, but would be subject to article 9, as  
5           amended by this Act, or article A if it had been  
6           entered into, created, or transferred on or after the  
7           effective date of this Act, including the rights,  
8           duties, and interests flowing from the transaction,  
9           lien, or interest, shall remain valid on and after the  
10          effective date of this Act; and

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

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

17          **§490:B-302 Security interest perfected before the**  
18          **effective date of this Act.** (a) A security interest that is  
19          enforceable and perfected immediately before the effective date  
20          of this Act shall be a perfected security interest under this  
21          chapter if, on the effective date of this Act, the requirements



1 for enforceability and perfection under this chapter are  
2 satisfied without further action.

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

8 (1) Shall be a perfected security interest until the  
9 earlier of the time perfection would have ceased under  
10 the law in effect immediately before the effective  
11 date of this Act or the adjustment date;

12 (2) Shall remain enforceable thereafter only if the  
13 security interest satisfies the requirements for  
14 enforceability under section 490:9-203, as amended by  
15 this Act, before the adjustment date; and

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

19 **§490:B-303 Security interest unperfected before the**  
20 **effective date of this Act.** A security interest that is



1 enforceable immediately before the effective date of this Act  
2 but is unperfected at that time:

3 (1) Shall remain an enforceable security interest until  
4 the adjustment date;

5 (2) Shall remain enforceable thereafter if the security  
6 interest becomes enforceable under section 490:9-203,  
7 as amended by this Act, on the effective date of this  
8 Act or before the adjustment date; and

9 (3) Shall become perfected:

10 (A) Without further action, on the effective date of  
11 this Act if the requirements for perfection under  
12 this chapter are satisfied before or at that  
13 time; or

14 (B) When the requirements for perfection are  
15 satisfied if the requirements are satisfied after  
16 that time.

17 **§490:B-304 Effectiveness of actions taken before the**  
18 **effective date of this Act.** (a) If action, other than the  
19 filing of a financing statement, is taken before the effective  
20 date of this Act and the action would have resulted in  
21 perfection of the security interest had the security interest



1 become enforceable before the effective date of this Act, the  
2 action shall be effective to perfect a security interest that  
3 attaches under this chapter before the adjustment date. An  
4 attached security interest shall become unperfected on the  
5 adjustment date unless the security interest becomes a perfected  
6 security interest under this chapter before the adjustment date.

7 (b) The filing of a financing statement before the  
8 effective date of this Act shall be effective to perfect a  
9 security interest on the effective date of this Act to the  
10 extent that the filing would satisfy the requirements for  
11 perfection under this chapter.

12 (c) The taking of an action before the effective date of  
13 this Act shall be sufficient for the enforceability of a  
14 security interest on the effective date of this Act if the  
15 action would satisfy the requirements for enforceability under  
16 this chapter.

17 **§490:B-305 Priority.** (a) Subject to subsections (b) and  
18 (c), this chapter shall determine the priority of conflicting  
19 claims to collateral.

20 (b) Subject to subsection (c), if the priorities of claims  
21 to collateral were established before the effective date of this



1 Act, article 9, as in effect before the effective date of this  
2 Act, shall determine priority.

3 (c) On the adjustment date, to the extent the priorities  
4 determined by article 9, as amended by this Act, modify the  
5 priorities established before the effective date of this Act,  
6 the priorities of claims to article A property and electronic  
7 money established before the effective date of this Act shall  
8 cease to apply.

9 §490:B-306 Priority of claims when priority rules of  
10 article 9 do not apply. (a) Subject to subsections (b) and  
11 (c), article A shall determine the priority of conflicting  
12 claims to article A property when the priority rules of article  
13 9, as amended by this Act, do not apply.

14 (b) Subject to subsection (c), when the priority rules of  
15 article 9, as amended by this Act, do not apply and the  
16 priorities of claims to article A property were established  
17 before the effective date of this Act, law other than article A  
18 shall determine priority.

19 (c) When the priority rules of article 9, as amended by  
20 this Act, do not apply, to the extent the priorities determined  
21 by this Act modify the priorities established before the



1 effective date of this Act, the priorities of claims to article  
2 A property established before the effective date of this Act  
3 shall cease to apply on the adjustment date.

4 **PART 4. EFFECTIVE DATE**

5 **§490:B-401 Effective date.** This article shall take effect  
6 on the effective date of this Act."

7 SECTION 2. Section 490:1-201(b), Hawaii Revised Statutes,  
8 is amended as follows:

9 1. By adding a new definition to be appropriately inserted  
10 and to read:

11 "Electronic" means relating to technology having  
12 electrical, digital, magnetic, wireless, optical,  
13 electromagnetic, or similar capabilities."

14 2. By amending the definition of "conspicuous" to read:

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





1       ~~(1) A heading in capitals equal to or greater in size than~~  
2       ~~the surrounding text, or in contrasting type, font, or~~  
3       ~~color to the surrounding text of the same or lesser~~  
4       ~~size; and~~

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

11       3. By amending the definition of "delivery" to read:  
12        "Delivery", with respect to an electronic document of  
13       title, means voluntary transfer of control, and, with respect to  
14       an instrument, a tangible document of title, or an authoritative  
15       tangible copy of a record evidencing chattel paper, means  
16       voluntary transfer of possession."

17       4. By amending the definition of "holder" to read:  
18        "Holder" means:  
19       (1) The person in possession of a negotiable instrument  
20       that is payable either to bearer or to an identified  
21       person that is the person in possession;



1           (2) The person in possession of a negotiable tangible  
2           document of title if the goods are deliverable either  
3           to bearer or to the order of the person in possession;  
4           or

5           (3) The person in control, other than pursuant to section  
6           490:7-106(g), of a negotiable electronic document of  
7           title."

8           5. By amending the definition of "money" to read:

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

18          6. By amending the definition of "person" to read:

19          ""Person" means an individual, corporation, business trust,  
20          estate, trust, partnership, limited liability company,  
21          association, joint venture, government, governmental



1 subdivision, agency, or instrumentality, [~~public corporation,~~  
2 or any other legal or commercial entity. The term includes a  
3 protected series, however denominated, of an entity if the  
4 protected series is established under any law other than this  
5 chapter that limits, or limits if conditions specified under the  
6 law are satisfied, the ability of a creditor of the entity or of  
7 any other protected series of the entity to satisfy a claim from  
8 assets of the protected series."

9 7. By amending the definition of "send" to read:

10 "Send", in connection with a [~~writing,~~] record[~~,~~] or  
11 [~~notice~~] notification, means:

12 (1) To deposit in the mail [~~or~~], deliver for transmission,  
13 or transmit by any other usual means of communication,  
14 with postage or cost of transmission provided for [~~and~~  
15 ~~properly addressed and, in the case of an instrument,~~  
16 ~~to an address specified thereon or otherwise agreed,~~  
17 ~~or if there be none~~], addressed to any address  
18 reasonable under the circumstances; or

19 (2) [~~In any other way to cause to be received any record~~  
20 ~~or notice within the time it would have arrived if~~  
21 ~~properly sent.~~] To cause the record or notification to



1           be received within the time it would have been  
2           received if properly sent under paragraph (1)."

3           8. By amending the definition of "signed" to read:

4           "Signed" [~~includes any symbol executed or adopted with~~  
5 ~~present intention to adopt or accept a writing.~~], "sign",  
6 "signing", or "signature" means, with present intent to  
7 authenticate or adopt a record:

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

9           (2) Attach to, or logically associate with, the record an  
10 electronic symbol, sound, or process."

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

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

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



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

7           SECTION 4. Section 490:1-301, Hawaii Revised Statutes, is

8 amended by amending subsection (c) to read as follows:

9           "(c) If one of the following provisions of the Uniform

10 Commercial Code specifies the applicable law, that provision

11 governs and a contrary agreement is effective only to the extent

12 permitted by the law so specified:

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



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

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

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

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

20 (b) In a hybrid transaction:



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

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

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



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

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

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

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





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

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

5 (a) The provision of services;

6 (b) The lease of other goods; or

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

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

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

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



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

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

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

19           (b) If the party against whom enforcement is sought admits  
20 in his pleading, testimony or otherwise in court that  
21 a contract for sale was made, but the contract is not



1 enforceable under this provision beyond the quantity  
2 of goods admitted; or

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

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

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

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

18 (b) Evidence of consistent additional terms unless the  
19 court finds the [~~writing~~] record to have been intended  
20 also as a complete and exclusive statement of the  
21 terms of the agreement."



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

3 "(2) A signed agreement which excludes modification or  
4 rescission except by a signed writing or other signed record  
5 cannot be otherwise modified or rescinded, but except as between  
6 merchants [~~such a~~] this type of requirement on a form supplied  
7 by the merchant must be separately signed by the other party."

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

10 "§490:2A-102 Scope. (a) This article applies to any  
11 transaction, regardless of form, that creates a lease[-] and, in  
12 the case of a hybrid lease, this article shall apply to the  
13 extent provided in subsection (b).

14 (b) In a hybrid lease:

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

16 (A) Only the provisions of this article that relate  
17 primarily to the lease-of-goods aspects of the  
18 transaction shall apply, and the provisions that  
19 relate primarily to the transaction as a whole  
20 shall not apply;



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

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

14           "(a) In this article unless the context otherwise  
15 requires:

16           ~~[-(1)-]~~ "Buyer in ordinary course of business" means a person  
17 who in good faith and without knowledge that the sale to that  
18 person is in violation of the ownership rights or security  
19 interest or leasehold interest of a third party in the goods,  
20 buys in ordinary course from a person in the business of selling  
21 goods of that kind but does not include a pawnbroker. "Buying"



1 may be for cash or by exchange of other property or on secured  
2 or unsecured credit and includes acquiring goods or documents of  
3 title under a preexisting contract for sale but does not include  
4 a transfer in bulk or as security for or in total or partial  
5 satisfaction of a money debt.

6 [~~2~~] "Cancellation" occurs when either party puts an end  
7 to the lease contract for default by the other party.

8 [~~3~~] "Commercial unit" means [~~such~~] a unit of goods that  
9 as by commercial usage is a single whole for purposes of lease  
10 and division of which materially impairs its character or value  
11 on the market or in use. A commercial unit may be a single  
12 article, as a machine, or a set of articles, as a suite of  
13 furniture or a line of machinery, or a quantity, as a gross or  
14 carload, or any other unit treated in use or in the relevant  
15 market as a single whole.

16 [~~4~~] "Conforming" goods or performance under a lease  
17 contract means goods or performance that are in accordance with  
18 the obligations under the lease contract.

19 [~~5~~] "Consumer lease" means a lease that a lessor  
20 regularly engaged in the business of leasing or selling makes to  
21 a lessee who is an individual and who takes under the lease



1 primarily for a personal, family, or household purpose, if the  
2 total payments to be made under the lease contract, excluding  
3 payments for options to renew or buy, do not exceed \$25,000.

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

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

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

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

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

13 (A) The lessee receives a copy of the contract by  
14 which the lessor acquired the goods or the right  
15 to possession and use of the goods before signing  
16 the lease contract;

17 (B) The lessee's approval of the contract by which  
18 the lessor acquired the goods or the right to  
19 possession and use of the goods is a condition to  
20 effectiveness of the lease contract;



- 1           (C) The lessee, before signing the lease contract,  
2           receives an accurate and complete statement  
3           designating the promises and warranties, and any  
4           disclaimers of warranties, limitations or  
5           modifications of remedies, or liquidated damages,  
6           including those of a third party, [~~such as~~]  
7           including the manufacturer of the goods, provided  
8           to the lessor by the person supplying the goods  
9           in connection with or as part of the contract by  
10          which the lessor acquired the goods or the right  
11          to possession and use of the goods; or
- 12          (D) If the lease is not a consumer lease, the lessor,  
13          before the lessee signs the lease contract,  
14          informs the lessee in writing (a) of the identity  
15          of the person supplying the goods to the lessor,  
16          unless the lessee has selected that person and  
17          directed the lessor to acquire the goods or the  
18          right to possession and use of the goods from  
19          that person, (b) that the lessee is entitled  
20          under this article to the promises and  
21          warranties, including those of any third party,





1           provided to the lessor by the person supplying  
2           the goods in connection with or as part of the  
3           contract by which the lessor acquired the goods  
4           or the right to possession and use of the goods,  
5           and (c) that the lessee may communicate with the  
6           person supplying the goods to the lessor and  
7           receive an accurate and complete statement of  
8           those promises and warranties, including any  
9           disclaimers and limitations of them or of  
10          remedies.

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

18          ~~[(9)]~~ "Hybrid lease" means a single transaction involving a  
19 lease of goods and:

- 20          (1) The provision of services;  
21          (2) A sale of other goods; or



1           (3) A sale, lease, or license of property other than  
2           goods.

3           "Installment lease contract" means a lease contract that  
4 authorizes or requires the delivery of goods in separate lots to  
5 be separately accepted, even though the lease contract contains  
6 a clause "each delivery is a separate lease" or its equivalent.

7           ~~[(10)]~~ "Lease" means a transfer of the right to possession  
8 and use of goods for a term in return for consideration, but a  
9 sale, including a sale on approval or a sale or return, or  
10 retention or creation of a security interest is not a lease.  
11 Unless the context clearly indicates otherwise, the term  
12 includes a sublease.

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

20           ~~[(12)]~~ "Lease contract" means the total legal obligation  
21 that results from the lease agreement as affected by this



1 article and any other applicable rules of law. Unless the  
2 context clearly indicates otherwise, the term includes a  
3 sublease contract.

4 [~~13~~] "Leasehold interest" means the interest of the  
5 lessor or the lessee under a lease contract.

6 [~~14~~] "Lessee" means a person who acquires the right to  
7 possession and use of goods under a lease. Unless the context  
8 clearly indicates otherwise, the term includes a sublessee.

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



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

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

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

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

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

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



1 circumstances of each case at the time the transaction was  
2 entered into.

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

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

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

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

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

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

18       "**§490:2A-107 Waiver or renunciation of claim or right**  
19 **after default.** Any claim or right arising out of an alleged  
20 default or breach of warranty may be discharged in whole or in



1 part without consideration by a [~~written~~] waiver or renunciation  
2 in a signed [and] record delivered by the aggrieved party."

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

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

13 (1) By course of dealing or usage of trade or by course of  
14 performance; and

15 (2) By evidence of consistent additional terms unless the  
16 court finds the [~~writing~~] record to have been intended  
17 also as a complete and exclusive statement of the  
18 terms of the agreement."

19 SECTION 15. Section 490:2A-208, Hawaii Revised Statutes,  
20 is amended by amending subsection (b) to read as follows:



1           "(b) A signed lease agreement that excludes modification  
2 or rescission except by a signed [~~writing~~] record may not be  
3 otherwise modified or rescinded, but, except as between  
4 merchants, such a requirement on a form supplied by a merchant  
5 must be separately signed by the other party."

6           SECTION 16. Section 490:3-104, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

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

12           (1) Is payable to bearer or to order at the time it is  
13                issued or first comes into possession of a holder;  
14           (2) Is payable on demand or at a definite time; and  
15           (3) Does not state any other undertaking or instruction by  
16                the person promising or ordering payment to do any act  
17                in addition to the payment of money, but the promise  
18                or order may contain:

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



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- 1 (B) An authorization or power to the holder to
- 2 confess judgment or realize on or dispose of
- 3 collateral; [~~or~~]
- 4 (C) A waiver of the benefit of any law intended for
- 5 the advantage or protection of an obligor[~~-~~];
- 6 (D) A term that specifies the law that governs the
- 7 promise or order; or
- 8 (E) An undertaking to resolve in a specified forum a
- 9 dispute concerning the promise or order."

10 SECTION 17. Section 490:3-105, Hawaii Revised Statutes, is  
 11 amended by amending subsection (a) to read as follows:

- 12 "(a) "Issue" means [~~the~~]:
- 13 (1) The first delivery of an instrument by the maker or
- 14 drawer, whether to a holder or nonholder, for the
- 15 purpose of giving rights on the instrument to any
- 16 person[~~-~~]; or
- 17 (2) If agreed by the payee, the first transmission by the
- 18 drawer to the payee of an image of an item and
- 19 information derived from the item that enables the
- 20 depository bank to collect the item by transferring or
- 21 presenting under federal law an electronic check."





1 SECTION 18. Section 490:3-401, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§490:3-401 Signature~~[-]~~ necessary for liability on  
4 instrument. [~~a~~] A person is not liable on an instrument  
5 unless (i) the person signed the instrument, or (ii) the person  
6 is represented by an agent or representative who signed the  
7 instrument and the signature is binding on the represented  
8 person under section 490:3-402.

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

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

16 "(a) A person entitled to enforce an instrument, with or  
17 without consideration, may discharge the obligation of a party  
18 to pay the instrument (i) by an intentional voluntary act, [~~such~~  
19 ~~as~~] including surrender of the instrument to the party,  
20 destruction, mutilation, or cancellation of the instrument,  
21 cancellation or striking out of the party's signature, or the



1 addition of words to the instrument indicating discharge, or  
2 (ii) by agreeing not to sue or otherwise renouncing rights  
3 against the party by a signed writing. The obligation of a  
4 party to pay a check shall not be discharged solely by  
5 destruction of the check in connection with a process in which  
6 information is extracted from the check and an image of the  
7 check is made and, subsequently, the information and image are  
8 transmitted for payment."

9 SECTION 20. Section 490:4A-103, Hawaii Revised Statutes,  
10 is amended by amending subsections (a) and (b) to read as  
11 follows:

12 "(a) In this article:

13 [~~1~~] "Payment order" means an instruction of a sender to a  
14 receiving bank, transmitted orally [~~, electronically, or in~~  
15 ~~writing,~~] or in a record, to pay, or to cause another bank to  
16 pay, a fixed or determinable amount of money to a beneficiary  
17 if:

18 [~~i~~] (1) The instruction does not state a condition to  
19 payment to the beneficiary other than time of payment;



1        [~~(ii)~~] (2)    The receiving bank is to be reimbursed by  
2                    debiting an account of, or otherwise receiving payment  
3                    from, the sender; and

4        [~~(iii)~~] (3)    The instruction is transmitted by the sender  
5                    directly to the receiving bank or to an agent, funds-  
6                    transfer system, or communication system for  
7                    transmittal to the receiving bank.

8        [~~(2)~~] "Beneficiary" means the person to be paid by the  
9        beneficiary's bank.

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

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

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

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

20       (a) is to make more than one payment to a beneficiary, the



1 instruction is a separate payment order with respect to each  
2 payment."

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

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



1 SECTION 22. Section 490:4A-202, Hawaii Revised Statutes,  
2 is amended by amending subsections (b) and (c) to read as  
3 follows:

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



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

17           SECTION 23. Section 490:4A-203, Hawaii Revised Statutes,  
18 is amended by amending subsection (a) to read as follows:

19           "(a) If an accepted payment order is not, under section  
20 490:4A-202(a), an authorized order of a customer identified as



1 sender, but is effective as an order of the customer pursuant to  
2 section 490:4A-202(b), the following rules apply:

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

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



1 SECTION 24. Section 490:4A-210, Hawaii Revised Statutes,  
2 is amended by amending subsection (a) to read as follows:

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

18 SECTION 25. Section 490:4A-211, Hawaii Revised Statutes,  
19 is amended by amending subsection (a) to read as follows:

20 "(a) A communication of the sender of a payment order  
21 canceling or amending the order may be transmitted to the





1 receiving bank orally [~~electronically,~~] or in [~~writing.~~] a  
2 record. If a security procedure is in effect between the sender  
3 and the receiving bank, the communication is not effective to  
4 cancel or amend the order unless the communication is verified  
5 pursuant to the security procedure or the bank agrees to the  
6 cancellation or amendment."

7 SECTION 26. Section 490:4A-305, Hawaii Revised Statutes,  
8 is amended by amending subsections (c) and (d) to read as  
9 follows:

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

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



1 SECTION 27. Section 490:5-104, Hawaii Revised Statutes, is  
2 amended to read as follows:

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

9 SECTION 28. Section 490:5-116, Hawaii Revised Statutes, is  
10 amended to read as follows:

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

20 (b) Unless subsection (a) applies, the liability of an  
21 issuer, nominated person, or adviser for action or omission is



1 governed by the law of the jurisdiction in which the person is  
2 located. The person is considered to be located at the address  
3 indicated in the person's undertaking. If more than one address  
4 is indicated, the person is considered to be located at the  
5 address from which the person's undertaking was issued.

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

12 ~~(e)]~~ (d).

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

18 (e) Except as otherwise provided in this subsection, the  
19 liability of an issuer, nominated person, or adviser is governed  
20 by any rules of custom or practice, [~~such as~~] including the  
21 Uniform Customs and Practice for Documentary Credits, to which



1 the letter of credit, confirmation, or other undertaking is  
2 expressly made subject. If (i) this article would govern the  
3 liability of an issuer, nominated person, or adviser under  
4 subsection (a) or (b), (ii) the relevant undertaking  
5 incorporates rules of custom or practice, and (iii) there is  
6 conflict between this article and those rules as applied to that  
7 undertaking, those rules govern except to the extent of any  
8 conflict with the nonvariable provisions specified in section  
9 490:5-103(c).

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

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

16 SECTION 29. Section 490:7-102, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) In this article, unless the context otherwise  
19 requires:



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

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

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

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

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

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

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

19           ~~[(8)]~~ "Issuer" means a bailee that issues a document of  
20 title or, in the case of an unaccepted delivery order, the  
21 person that orders the possessor of goods to deliver. The term



1 includes a person for which an agent or employee purports to act  
2 in issuing a document if the agent or employee has real or  
3 apparent authority to issue documents, even if the issuer did  
4 not receive any goods, the goods were misdescribed, or in any  
5 other respect the agent or employee violated the issuer's  
6 instructions.

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

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

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

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

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

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



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

3       SECTION 30. Section 490:7-106, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "**§490:7-106 Control of electronic document of title.** (a)

6 A person has control of an electronic document of title if a  
7 system employed for evidencing the transfer of interests in the  
8 electronic document reliably establishes that person as the  
9 person to which the electronic document was issued or  
10 transferred.

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

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

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

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



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





- 1        (1) Enables the person to readily identify each electronic  
2        copy as either an authoritative copy or a  
3        nonauthoritative copy;
- 4        (2) Enables the person to be readily identified in any  
5        way, including by name, identifying number,  
6        cryptographic key, office, or account number, as the  
7        person to which each authoritative electronic copy was  
8        issued or transferred; and
- 9        (3) Gives the person exclusive power, subject to  
10       subsection (d), to:
  - 11       (A) Prevent others from adding or changing the person  
12       to which each authoritative electronic copy has  
13       been issued or transferred; and
  - 14       (B) Transfer control of each authoritative electronic  
15       copy.
- 16       (d) Subject to subsection (e), a power is exclusive under  
17       subparagraphs (c) (3) (A) and (B) regardless of whether:
  - 18       (1) The authoritative electronic copy; a record attached  
19       to, or logically associated with, the authoritative  
20       electronic copy; or a system in which the  
21       authoritative electronic copy is recorded limits the



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

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

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

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

10          (2) The other person:

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

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

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

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

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



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

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

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

13       SECTION 31. Section 490:8-102, Hawaii Revised Statutes, is  
14 amended by amending subsections (a) and (b) to read as follows:

15       "(a) In this article:

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

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



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

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

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

8 "Clearing corporation" means:

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

20 "Communicate" means to:

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



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

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

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

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

- 15          (1) A security;
- 16          (2) An obligation of a person or a share, participation,  
17           or other interest in a person or in property or an  
18           enterprise of a person, which is, or is of a type,  
19           dealt in or traded on financial markets, or which is  
20           recognized in any area in which it is issued or dealt  
21           in as a medium for investment; or



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

6           As the context requires, the term means either the interest  
7           itself or the means by which a person's claim to it is  
8           evidenced, including a certificated or uncertificated security,  
9           a security certificate, or a security entitlement.

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

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

19          "Instruction" means a notification communicated to the  
20          issuer of an uncertificated security [~~which~~] that directs that



1 the transfer of the security be registered or that the security  
2 be redeemed.

3 "Registered form", as applied to a certificated security,  
4 means a form in which:

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

10 "Securities intermediary" means:

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

15 "Security", except as otherwise provided in section  
16 490:8-103, means an obligation of an issuer or a share,  
17 participation, or other interest in an issuer or in property or  
18 an enterprise of an issuer:

- 19 (1) Which is represented by a security certificate in  
20 bearer or registered form, or the transfer of which



1           may be registered upon books maintained for that  
2           purpose by or on behalf of the issuer;

3           (2) Which is one of a class or series or by its terms is  
4           divisible into a class or series of shares,  
5           participations, interests, or obligations; and

6           (3) Which:

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

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

12          "Security certificate" means a certificate representing a  
13 security.

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

17          "Uncertificated security" means a security that is not  
18 represented by a certificate.

19          (b) ~~[Other]~~ The following definitions ~~[applying to]~~ in  
20 this article and ~~[the sections in which they appear are:]~~ other  
21 articles apply to this article:





1 "Appropriate person". Section 490:8-107.  
2 "Control". Section 490:8-106.  
3 "Controllable account". Section 490:9-102.  
4 "Controllable electronic record". Section 490:A-102.  
5 "Controllable payment intangible". Section 490:9-102.  
6 "Delivery". Section 490:8-301.  
7 "Investment company security". Section 490:8-103.  
8 "Issuer". Section 490:8-201.  
9 "Overissue". Section 490:8-210.  
10 "Protected purchaser". Section 490:8-303.  
11 "Securities account". Section 490:8-501."  
12 SECTION 32. Section 490:8-103, Hawaii Revised Statutes, is  
13 amended to read as follows:  
14 **"§490:8-103 Rules for determining whether certain**  
15 **obligations and interests are securities or financial assets.**  
16 (a) A share or similar equity interest issued by a corporation,  
17 business trust, joint stock company, or similar entity is a  
18 security.  
19 (b) An "investment company security" is a security.  
20 "Investment company security" means a share or similar equity  
21 interest issued by an entity that is registered as an investment



1 company under the federal investment company laws, an interest  
2 in a unit investment trust that is so registered, or a face-  
3 amount certificate issued by a face-amount certificate company  
4 that is so registered. Investment company security does not  
5 include an insurance policy or endowment policy or annuity  
6 contract issued by an insurance company.

7 (c) An interest in a partnership or limited liability  
8 company is not a security unless it is dealt in or traded on  
9 securities exchanges or in securities markets, its terms  
10 expressly provide that it is a security governed by this  
11 article, or it is an investment company security. However, an  
12 interest in a partnership or limited liability company is a  
13 financial asset if it is held in a securities account.

14 (d) A writing that is a security certificate is governed  
15 by this article and not by article 3, even though it also meets  
16 the requirements of that article. However, a negotiable  
17 instrument governed by article 3 is a financial asset if it is  
18 held in a securities account.

19 (e) An option or similar obligation issued by a clearing  
20 corporation to its participants is not a security, but is a  
21 financial asset.



1 (f) A commodity contract, as defined in section  
2 490:9-102(a), is not a security or a financial asset.

3 (g) A controllable account, controllable electronic  
4 record, or controllable payment intangible is not a financial  
5 asset unless the controllable account, controllable electronic  
6 record, or controllable payment intangible is a property that is  
7 held by a securities intermediary for another person in a  
8 securities account and the securities intermediary has expressly  
9 agreed with the other person that the property is to be treated  
10 as a financial asset under this article."

11 SECTION 33. Section 490:8-106, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§490:8-106 Control. (a) A purchaser has "control" of a  
14 certificated security in bearer form if the certificated  
15 security is delivered to the purchaser.

16 (b) A purchaser has "control" of a certificated security  
17 in registered form if the certificated security is delivered to  
18 the purchaser, and:

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



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

4           (c) A purchaser has "control" of an uncertificated  
5 security if:

6           (1) The uncertificated security is delivered to the  
7           purchaser; or

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

11          (d) A purchaser has "control" of a security entitlement  
12 if:

13          (1) The purchaser becomes the entitlement holder;

14          (2) The securities intermediary has agreed that it will  
15          comply with entitlement orders originated by the  
16          purchaser without further consent by the entitlement  
17          holder; or

18          (3) Another person [~~has control of the security~~  
19          ~~entitlement on behalf of the purchaser or, having~~  
20          ~~previously acquired control of the security~~  
21          ~~entitlement, acknowledges that it has control on~~



1 ~~behalf of the purchaser.],~~ other than the transferor  
2 to the purchaser of an interest in the security  
3 entitlement:

4 (A) Has control of the security entitlement and  
5 acknowledges that it has control on behalf of the  
6 purchaser; or

7 (B) Obtains control of the security entitlement after  
8 having acknowledged that it will obtain control  
9 of the security entitlement on behalf of the  
10 purchaser.

11 (e) If an interest in a security entitlement is granted by  
12 the entitlement holder to the entitlement holder's own  
13 securities intermediary, the securities intermediary has  
14 control.

15 (f) A purchaser who has satisfied the requirements of  
16 subsection (c) or (d) has control, even if the registered owner  
17 in the case of subsection (c) or the entitlement holder in the  
18 case of subsection (d) retains the right to make substitutions  
19 for the uncertificated security or security entitlement, to  
20 originate instructions or entitlement orders to the issuer or



1 securities intermediary, or otherwise to deal with the  
2 uncertificated security or security entitlement.

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

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

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



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

3 SECTION 34. Section 490:8-110, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§490:8-110 Applicability; choice of law.** (a) The local  
6 law of the issuer's jurisdiction, as specified in subsection  
7 (d), governs:

- 8 (1) The validity of a security;
- 9 (2) The rights and duties of the issuer with respect to  
10 registration of transfer;
- 11 (3) The effectiveness of registration of transfer by the  
12 issuer;
- 13 (4) Whether the issuer owes any duties to an adverse  
14 claimant to a security; and
- 15 (5) Whether an adverse claim can be asserted against a  
16 person to whom transfer of a certificated or  
17 uncertificated security is registered or a person who  
18 obtains control of an uncertificated security.

19 (b) The local law of the securities intermediary's  
20 jurisdiction, as specified in subsection (e), governs:



- 1           (1) Acquisition of a security entitlement from the  
2           securities intermediary;
- 3           (2) The rights and duties of the securities intermediary  
4           and entitlement holder arising out of a security  
5           entitlement;
- 6           (3) Whether the securities intermediary owes any duties to  
7           an adverse claimant to a security entitlement; and
- 8           (4) Whether an adverse claim can be asserted against a  
9           person who acquires a security entitlement from the  
10          securities intermediary or a person who purchases a  
11          security entitlement or interest therein from an  
12          entitlement holder.
- 13          (c) The local law of the jurisdiction in which a security  
14          certificate is located at the time of delivery governs whether  
15          an adverse claim can be asserted against a person to whom the  
16          security certificate is delivered.
- 17          (d) "Issuer's jurisdiction" means the jurisdiction under  
18          which the issuer of the security is organized or, if permitted  
19          by the law of that jurisdiction, the law of another jurisdiction  
20          specified by the issuer. An issuer organized under the law of





1 this State may specify the law of another jurisdiction as the  
2 law governing the matters specified in subsection (a)(2) to (5).

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

5 (1) If an agreement between the securities intermediary  
6 and its entitlement holder governing the securities  
7 account expressly provides that a particular  
8 jurisdiction is the securities intermediary's  
9 jurisdiction for purposes of this part, this article,  
10 or this chapter, that jurisdiction is the securities  
11 intermediary's jurisdiction.

12 (2) If paragraph (1) does not apply and an agreement  
13 between the securities intermediary and its  
14 entitlement holder governing the securities account  
15 expressly provides that the agreement is governed by  
16 the law of a particular jurisdiction, that  
17 jurisdiction is the securities intermediary's  
18 jurisdiction.

19 (3) If neither paragraph (1) nor paragraph (2) applies and  
20 an agreement between the securities intermediary and  
21 its entitlement holder governing the securities



1 account expressly provides that the securities account  
2 is maintained at an office in a particular  
3 jurisdiction, that jurisdiction is the securities  
4 intermediary's jurisdiction.

5 (4) If none of the preceding paragraphs applies, the  
6 securities intermediary's jurisdiction is the  
7 jurisdiction in which the office identified in an  
8 account statement as the office serving the  
9 entitlement holder's account is located.

10 (5) If none of the preceding paragraphs applies, the  
11 securities intermediary's jurisdiction is the  
12 jurisdiction in which the chief executive office of  
13 the securities intermediary is located.

14 (f) A securities intermediary's jurisdiction is not  
15 determined by the physical location of certificates representing  
16 financial assets, or by the jurisdiction in which is organized  
17 the issuer of the financial asset with respect to which an  
18 entitlement holder has a security entitlement, or by the  
19 location of facilities for data processing or other  
20 recordkeeping concerning the account.



1        (g) The local law of the issuer's jurisdiction or the  
2 securities intermediary's jurisdiction shall govern a matter or  
3 transaction specified in subsection (a) or (b) regardless of  
4 whether the matter or transaction bears any relation to the  
5 jurisdiction."

6        SECTION 35. Section 490:8-303, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

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

11        SECTION 36. Section 490:9-102, Hawaii Revised Statutes, is  
12 amended by amending subsections (a) and (b) to read as follows:

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

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

17        "Account", except as used in "account for" [+], "account  
18 statement", "account to", "customer's account", "on account of",  
19 "statement of account", and the definitions of "commodity  
20 account" and "deposit account" provided in this subsection:



- 1           (1) Means a right to payment of a monetary obligation,  
2           whether or not earned by performance:
- 3           (A) For property that has been or is to be sold,  
4           leased, licensed, assigned, or otherwise disposed  
5           of;
- 6           (B) For services rendered or to be rendered;
- 7           (C) For a policy of insurance issued or to be issued;
- 8           (D) For a secondary obligation incurred or to be  
9           incurred;
- 10          (E) For energy provided or to be provided;
- 11          (F) For the use or hire of a vessel under a charter  
12          or other contract;
- 13          (G) Arising out of the use of a credit or charge card  
14          or information contained on or for use with the  
15          card; or
- 16          (H) As winnings in a lottery or other game of chance  
17          operated or sponsored by a state, governmental  
18          unit of a state, or person licensed or authorized  
19          to operate the game by a state or governmental  
20          unit of a state [~~—The term includes~~];



- 1        (3) Includes controllable accounts and health-care-  
2            insurance receivables~~[ ]~~; and  
3        [~~2~~] (3) Does not include:  
4            (A) [~~Rights to payment evidenced by chattel paper or~~  
5            ~~an instrument,~~] Chattel paper;  
6            (B) Commercial tort claims;  
7            (C) Deposit accounts;  
8            (D) Investment property;  
9            (E) Letter-of-credit rights or letters of credit;  
10            [~~or~~]  
11            (F) Rights to payment for money or funds advanced or  
12            sold, other than rights arising out of the use of  
13            a credit or charge card or information contained  
14            on or for use with the card~~[ ]~~; or  
15            (G) Rights to payment evidenced by an instrument.

16        "Account debtor" means a person obligated on an account,  
17        chattel paper, or general intangible. The term does not include  
18        persons obligated to pay a negotiable instrument, even if the  
19        negotiable instrument [~~constitutes part of~~] evidences chattel  
20        paper.



1 "Accounting", except as used in "accounting for", means a  
2 record:

- 3 (1) [~~Authenticated~~] Signed by a secured party;
- 4 (2) Indicating the aggregate unpaid secured obligations as  
5 of a date not more than thirty-five days earlier or  
6 thirty-five days later than the date of the record;  
7 and
- 8 (3) Identifying the components of the obligations in  
9 reasonable detail.

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

- 11 (1) Which secures payment or performance of an obligation  
12 for:
  - 13 (A) Goods or services furnished in connection with a  
14 debtor's farming operation; or
  - 15 (B) Rent on real property leased by a debtor in  
16 connection with its farming operation;
- 17 (2) Which is created by statute in favor of a person that:
  - 18 (A) In the ordinary course of its business furnished  
19 goods or services to a debtor in connection with  
20 a debtor's farming operation; or



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

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

5 "As-extracted collateral" means:

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

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

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

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

14 [~~"Authenticate" means:~~

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

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

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



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

5       (2) To whom an account, chattel paper, payment intangible,  
 6           or promissory note has been sold.

7       The term includes a person to whom a security interest has been  
 8       transferred by a secured party.

9       "Assignor" means a person that:

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

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

14       The term includes a secured party that has transferred a  
 15       security interest to another person.

16       "Bank" means an organization that is engaged in the  
 17 business of banking. The term includes savings banks, savings  
 18 and loan associations, credit unions, and trust companies.

19       "Cash proceeds" means proceeds that are money, checks,  
 20 deposit accounts, or the like.





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

12 "Chattel paper" means ~~[a record or records that evidence~~  
13 ~~both a monetary obligation and a security interest in specific~~  
14 ~~goods, a security interest in specific goods and software used~~  
15 ~~in the goods, a security interest in specific goods and license~~  
16 ~~of software used in the goods, a lease of specific goods, or a~~  
17 ~~lease of specific goods and license of software used in the~~  
18 ~~goods. In this paragraph, "monetary obligation" means a~~  
19 ~~monetary obligation secured by the goods or owed under a lease~~  
20 ~~of the goods and includes a monetary obligation with respect to~~



1 ~~software used in the goods.]~~ a right to payment of a monetary  
2 obligation that is either:

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

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

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

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

14 The term does not include [+

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

17 ~~(2) Records that evidence]~~ a right to payment arising out  
18 of a charter or other contract involving the use or  
19 hire of a vessel or a right to payment arising out of  
20 the use of a credit or charge card or information  
21 contained on or for use with the card. [~~If a~~



1           ~~transaction is evidenced by records that include an~~  
2           ~~instrument or series of instruments, the group of~~  
3           ~~records taken together constitutes chattel paper.]~~

4           "Collateral" means the property subject to a security  
5 interest or agricultural lien. The term includes:

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

10          "Commercial tort claim" means a claim arising in tort with  
11 respect to which:

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

18          "Commodity account" means an account maintained by a  
19 commodity intermediary in which a commodity contract is carried  
20 for a commodity customer.



1 "Commodity contract" means a commodity futures contract, an  
2 option on a commodity futures contract, a commodity option, or  
3 another contract if the contract or option is:

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

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

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

13 "Commodity intermediary" means a person that:

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

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

20 "Communicate" means:

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



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

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

6           "Consignee" means a merchant to which goods are delivered  
7 in a consignment.

8           "Consignment" means a transaction, regardless of its form,  
9 in which a person delivers goods to a merchant for the purpose  
10 of sale and:

11           (1) The merchant:

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

14                   (B) Is not an auctioneer; and

15                   (C) Is not generally known by its creditors to be  
16                   substantially engaged in selling the goods of  
17                   others;

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

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



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

3           "Consignor" means a person that delivers goods to a  
4 consignee in a consignment.

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

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

8           "Consumer-goods transaction" means a consumer transaction  
9 in which:

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

12           (2) A security interest in consumer goods secures the  
13 obligation.

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

17           "Consumer transaction" means a transaction in which:

18           (1) An individual incurs an obligation primarily for  
19 personal, family, or household purposes,

20           (2) A security interest secures the obligation, and



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

3 The term includes consumer-goods transactions.

4           "Continuation statement" means an amendment of a financing  
5 statement which:

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

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

11          "Controllable account" means an account evidenced by a  
12 controllable electronic record that provides that the account  
13 debtor undertakes to pay the person that has control under  
14 section 490:A-105 of the controllable electronic record.

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

20          "Debtor" means:



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

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

6 (3) A consignee.

7 "Deposit account" means a demand, time, savings, passbook,  
8 or similar account maintained with a bank. The term does not  
9 include investment property or accounts evidenced by an  
10 instrument.

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

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

16 "Encumbrance" means a right, other than an ownership  
17 interest, in real property. The term includes mortgages and  
18 other liens on real property.

19 "Equipment" means goods other than inventory, farm  
20 products, or consumer goods.





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

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

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

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

9 (B) Aquatic goods produced in aquacultural  
10 operations;

11 (2) Livestock, born or unborn, including aquatic goods  
12 produced in aquacultural operations;

13 (3) Supplies used or produced in a farming operation; or

14 (4) Products of crops or livestock in their unmanufactured  
15 states.

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

18 "Filing office" means an office designated in section  
19 490:9-501 as the place to file a financing statement.

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



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

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

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

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

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



1 "Goods" means all things that are movable when a security  
2 interest attaches. The term includes:

- 3 (1) Fixtures,
- 4 (2) Standing timber that is to be cut and removed under a  
5 conveyance or contract for sale,
- 6 (3) The unborn young of animals,
- 7 (4) Crops grown, growing, or to be grown, even if the  
8 crops are produced on trees, vines, or bushes; and
- 9 (5) Manufactured homes.

10 The term also includes a computer program embedded in goods and  
11 any supporting information provided in connection with a  
12 transaction relating to the program if (i) the program is  
13 associated with the goods in [~~such~~] a manner [~~that~~] in which it  
14 is customarily [~~is~~] considered part of the goods, or (ii) by  
15 becoming the owner of the goods, a person acquires a right to  
16 use the program in connection with the goods. The term does not  
17 include a computer program embedded in goods that consist solely  
18 of the medium in which the program is embedded. The term also  
19 does not include accounts, chattel paper, commercial tort  
20 claims, deposit accounts, documents, general intangibles,  
21 instruments, investment property, letter-of-credit rights,



1 letters of credit, money, or oil, gas, or other minerals before  
2 extraction.

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

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

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

- 20 (1) Investment property;
- 21 (2) Letters of credit; [~~or~~]



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

4 (4) Writings that evidence chattel paper.

5 "Inventory" means goods, other than farm products, which:

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

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

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

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

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

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

19 "Letter-of-credit right" means a right to payment or  
20 performance under a letter of credit, whether or not the  
21 beneficiary has demanded or is at the time entitled to demand



1 payment or performance. The term does not include the right of  
2 a beneficiary to demand payment or performance under a letter of  
3 credit.

4 "Lien creditor" means:

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

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



1 requirements and with respect to which the manufacturer  
2 voluntarily files a certification required by the United States  
3 Secretary of Housing and Urban Development and complies with the  
4 standards established under Title 42 of the United States Code.

5 "Manufactured-home transaction" means a secured  
6 transaction:

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

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

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

18 "Mortgage" means a consensual interest in real property,  
19 including fixtures, which secures payment or performance of an  
20 obligation.



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

4 "New value" means:

- 5 (1) Money;
- 6 (2) Money's worth in property, services, or new credit; or
- 7 (3) Release by a transferee of an interest in property  
8 previously transferred to the transferee. The term  
9 does not include an obligation substituted for another  
10 obligation.

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

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

- 15 (1) Owes payment or other performance of the obligation;
- 16 (2) Has provided property other than the collateral to  
17 secure payment or other performance of the obligation;  
18 or
- 19 (3) Is otherwise accountable in whole or in part for  
20 payment or other performance of the obligation.





1 The term does not include issuers or nominated persons under a  
2 letter of credit.

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

7 "Payment intangible" means a general intangible under which  
8 the account debtor's principal obligation is a monetary  
9 obligation. The term includes a controllable payment  
10 intangible.

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

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

20 "Person related to", with respect to an organization,  
21 means:



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

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

- 16 (1) Whatever is acquired upon the sale, lease, license,  
17 exchange, or other disposition of collateral;
- 18 (2) Whatever is collected on, or distributed on account  
19 of, collateral;
- 20 (3) Rights arising out of collateral;



1           (4) To the extent of the value of collateral, claims  
2           arising out of the loss, nonconformity, or  
3           interference with the use of, defects or infringement  
4           of rights in, or damage to, the collateral; or

5           (5) To the extent of the value of collateral and to the  
6           extent payable to the debtor or the secured party,  
7           insurance payable by reason of the loss or  
8           nonconformity of, defects or infringement of rights  
9           in, or damage to, the collateral.

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

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

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

21           (1) Debt securities are issued;



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

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

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



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

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

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

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



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

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

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

11 "Secured party" means:

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



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

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

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

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

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

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

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



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

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

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

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

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

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





1 (1) Operating a railroad, subway, street railway, or  
2 trolley bus;

3 (2) Transmitting communications electrically,  
4 electromagnetically, or by light;

5 (3) Transmitting goods by pipeline or sewer; or

6 (4) Transmitting or producing and transmitting  
7 electricity, steam, gas, or water.

8 (b) The following definitions in other articles apply to  
9 this article:

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

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

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

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

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

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

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

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

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

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

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

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



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



- 1        "Protected purchaser". Section 490:8-303.
- 2        "Prove". Section 490:3-103.
- 3        "Qualifying purchaser". Section 490:A-102.
- 4        "Sale". Section 490:2-106.
- 5        "Securities account". Section 490:8-501.
- 6        "Securities intermediary". Section 490:8-102.
- 7        "Security". Section 490:8-102.
- 8        "Security certificate". Section 490:8-102.
- 9        "Security entitlement". Section 490:8-102.
- 10       "Uncertificated security". Section 490:8-102."

11       SECTION 37. Section 490:9-104, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13       "(a) A secured party has control of a deposit account if:

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

16       (2) The debtor, secured party, and bank have agreed in [~~an~~  
17       authenticated] a signed record that the bank will  
18       comply with instructions originated by the secured  
19       party directing disposition of the funds in the  
20       deposit account without further consent by the debtor;

21       [~~e~~]



- 1 (3) The secured party becomes the bank's customer with  
2 respect to the deposit account [-]; or
- 3 (4) Another person, other than the debtor:
- 4 (A) Has control of the deposit account and  
5 acknowledges that it has control on behalf of the  
6 secured party; or
- 7 (B) Obtains control of the deposit account after  
8 having acknowledged that it will obtain control  
9 of the deposit account on behalf of the secured  
10 party."

11 SECTION 38. Section 490:9-105, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§490:9-105 Control of electronic copy of record  
14 evidencing chattel paper. (a) A [~~secured party~~] purchaser has  
15 control of [~~electronic~~] an authoritative electronic copy of a  
16 record evidencing chattel paper if a system employed for  
17 evidencing the [~~transfer~~] assignment of interests in the chattel  
18 paper reliably establishes the [~~secured party~~] purchaser as the  
19 person to [~~which the chattel paper~~] whom the authoritative  
20 electronic copy was assigned.



1 (b) A system satisfies subsection (a) if the record or  
2 records [~~comprising~~] evidencing the chattel paper are created,  
3 stored, and assigned in [~~such~~] a manner that:

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

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

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

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

16 (5) Each copy of the authoritative copy and any copy of a  
17 copy is readily identifiable as a copy that is not the  
18 authoritative copy; and

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



- 1        (c) A system satisfies subsection (a), and a purchaser has  
2 control of an authoritative electronic copy of a record  
3 evidencing chattel paper, if the electronic copy, a record  
4 attached to, or logically associated with, the electronic copy,  
5 or a system in which the electronic copy is recorded:
- 6        (1) Enables the purchaser to readily identify each  
7 electronic copy as either an authoritative copy or a  
8 nonauthoritative copy;
- 9        (2) Enables the purchaser to readily identify itself in  
10 any way, including by name, identifying number,  
11 cryptographic key, office, or account number, as the  
12 assignee of the authoritative electronic copy; and
- 13        (3) Gives the purchaser exclusive power, subject to  
14 subsection (d), to:
- 15        (A) Prevent others from adding or changing an  
16 identified assignee of the authoritative  
17 electronic copy; and
- 18        (B) Transfer control of the authoritative electronic  
19 copy.
- 20        (d) Subject to subsection (e), a power is exclusive under  
21 subparagraphs (c) (3) (A) and (B), regardless of whether:



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

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

9       (e) A power of a purchaser is not shared with another  
10      person under subsection (d) (2) and the purchaser's power shall  
11      not be exclusive if:

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

14       (2) The other person:

15           (A) May exercise the power without exercise of the  
16           power by the purchaser; or

17           (B) Is the transferor to the purchaser of an interest  
18           in the chattel paper.

19       (f) If a purchaser has the powers specified in  
20      subparagraphs (c) (3) (A) and (B), the powers shall be presumed to  
21      be exclusive.



1        (g) A purchaser has control of an authoritative electronic  
2 copy of a record evidencing chattel paper if another person,  
3 other than the transferor to the purchaser of an interest in the  
4 chattel paper:

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

8        (2) Obtains control of the authoritative electronic copy  
9 after having acknowledged that it will obtain control  
10 of the electronic copy on behalf of the purchaser."

11        SECTION 39. Section 490:9-203, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

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

16        (1) Value has been given;

17        (2) The debtor has rights in the collateral or the power  
18 to transfer rights in the collateral to a secured  
19 party; and

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





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



1                   ~~[490:9-105,]~~ 490:9-A, 490:9-106, ~~[or]~~ 490:9-107,  
2                   or 490:9-B pursuant to the debtor's security  
3                   agreement ~~[.];~~ or  
4                   (E) The collateral is chattel paper and the secured  
5                   party has possession and control under section  
6                   490:9-F pursuant to the debtor's security  
7                   agreement."

8                   SECTION 40. Section 490:9-204, Hawaii Revised Statutes, is  
9                   amended to read as follows:

10                   "**§490:9-204 After-acquired property; future advances.** (a)  
11                   Except as otherwise provided in subsection (b), a security  
12                   agreement may create or provide for a security interest in  
13                   after-acquired collateral.

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

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

21                   (2) A commercial tort claim.



1 (c) A security agreement may provide that collateral  
 2 secures, or that accounts, chattel paper, payment intangibles,  
 3 or promissory notes are sold in connection with, future advances  
 4 or other value, whether or not the advances or value are given  
 5 pursuant to commitment.

6 (d) Nothing in subsection (b) shall prevent a security  
 7 interest from attaching:

8 (1) To consumer goods as proceeds under section  
 9 490:9-315(a) or commingled goods under section  
 10 490:9-336(c);

11 (2) To a commercial tort claim as proceeds under section  
 12 490:9-315(a); or

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

16 SECTION 41. Section 490:9-207, Hawaii Revised Statutes, is  
 17 amended by amending subsection (c) to read as follows:

18 "(c) Except as otherwise provided in subsection (d), a  
 19 secured party having possession of collateral or control of  
 20 collateral under section 490:7-106, 490:9-104, 490:9-105,  
 21 490:9-A, 490:9-106, [~~e~~] 490:9-107[+], or 490:9-B:



- 1 (1) May hold as additional security any proceeds, except  
2 money or funds, received from the collateral;
- 3 (2) Shall apply money or funds received from the  
4 collateral to reduce the secured obligation, unless  
5 remitted to the debtor; and
- 6 (3) May create a security interest in the collateral."

7 SECTION 42. Section 490:9-208, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

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

- 11 (1) A secured party having control of a deposit account  
12 under section 490:9-104(a)(2) shall send to the bank  
13 with which the deposit account is maintained [~~an~~  
14 ~~authenticated statement~~] a signed record that releases  
15 the bank from any further obligation to comply with  
16 instructions originated by the secured party;
- 17 (2) A secured party having control of a deposit account  
18 under section 490:9-104(a)(3) shall:
- 19 (A) Pay the debtor the balance on deposit in the  
20 deposit account; or



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

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

6 ~~(A) Communicate the]~~ of an authoritative electronic  
7 copy of [the electronic] a record evidencing  
8 chattel paper shall transfer control of the  
9 electronic copy to the debtor or ~~[its]~~ a person  
10 designated ~~[custodian,~~

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



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

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

16          (5) A secured party having control of a letter-of-credit  
17          right under section 490:9-107 shall send to each  
18          person having an unfulfilled obligation to pay or  
19          deliver proceeds of the letter of credit to the  
20          secured party ~~[an authenticated]~~ a signed release from



1 any further obligation to pay or deliver proceeds of  
2 the letter of credit to the secured party; [and]

3 (6) A secured party having control under section 490:7-106  
4 of an authoritative electronic document of title  
5 shall [+

6 ~~(A) Give~~ transfer control of the electronic  
7 ~~[document]~~ copy to the debtor or ~~[its]~~ a person  
8 designated ~~[custodian,~~

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

19 ~~(C) Take appropriate action to enable the debtor or~~  
20 ~~its designated custodian to make copies of or~~  
21 ~~revisions to the authoritative copy that add or~~



1           ~~change an identified assignee of the~~  
2           ~~authoritative copy without the consent of the~~  
3           ~~secured party.] ;~~

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

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

15       SECTION 43. Section 490:9-209, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:

17       "(b) Within ten days after receiving [~~an authenticated~~] a  
18 signed demand by the debtor, a secured party shall send to an  
19 account debtor that has received notification under section  
20 490:9-406(a) or 490:A-106(b) of an assignment to the secured  
21 party as assignee [~~under section 490:9-406(a) an authenticated~~]





1 a signed record that releases the account debtor from any  
2 further obligation to the secured party."

3 SECTION 44. Section 490:9-301, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§490:9-301 Law governing perfection and priority of  
6 security interests. Except as otherwise provided in sections  
7 490:9-303 through [~~490:9-306~~] 490:9-E the following rules  
8 determine the law governing perfection, the effect of perfection  
9 or nonperfection, and the priority of a security interest in  
10 collateral:

11 (1) Except as otherwise provided in this section, while a  
12 debtor is located in a jurisdiction, the local law of  
13 that jurisdiction governs perfection, the effect of  
14 perfection or nonperfection, and the priority of a  
15 security interest in collateral.

16 (2) While collateral is located in a jurisdiction, the  
17 local law of that jurisdiction governs perfection, the  
18 effect of perfection or nonperfection, and the  
19 priority of a possessory security interest in that  
20 collateral.



1           (3) Except as otherwise provided in paragraph (4), while  
 2            [~~tangible~~] negotiable tangible documents, goods,  
 3            instruments, or tangible money [~~, or tangible chattel~~  
 4            ~~paper~~] is located in a jurisdiction, the local law of  
 5            that jurisdiction governs:

6            (A) Perfection of a security interest in the goods by  
 7            filing a fixture filing;

8            (B) Perfection of a security interest in timber to be  
 9            cut; and

10           (C) The effect of perfection or nonperfection and the  
 11            priority of a nonpossessory security interest in  
 12            the collateral.

13           (4) The local law of the jurisdiction in which the  
 14            wellhead or minehead is located governs perfection,  
 15            the effect of perfection or nonperfection, and the  
 16            priority of a security interest in as-extracted  
 17            collateral."

18           SECTION 45. Section 490:9-304, Hawaii Revised Statutes, is  
 19            amended by amending subsection (a) to read as follows:

20            "(a) The local law of a bank's jurisdiction governs  
 21            perfection, the effect of perfection or nonperfection, and the



1 priority of a security interest in a deposit account maintained  
2 with that bank[-] even if the transaction does not bear any  
3 relation to the bank's jurisdiction."

4 SECTION 46. Section 490:9-305, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

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

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



1 nonperfection, and the priority of a security interest  
2 in a security entitlement or securities account[-];

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

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

11 SECTION 47. Section 490:9-310, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) The filing of a financing statement is not necessary  
14 to perfect a security interest:

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

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

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



- 1 (4) In goods in possession of a bailee [~~which is~~]  
2 perfected under section 490:9-312(d)(1) or (2);
- 3 (5) In certificated securities, documents, goods, or  
4 instruments [~~which is~~] perfected without filing,  
5 control, or possession under section 490:9-312(e),  
6 (f), or (g);
- 7 (6) In collateral in the secured party's possession under  
8 section 490:9-313;
- 9 (7) In a certificated security [~~which is~~] perfected by  
10 delivery of the security certificate to the secured  
11 party under section 490:9-313;
- 12 (8) In controllable accounts, controllable electronic  
13 records, controllable payment intangibles, deposit  
14 accounts, [electronic chattel paper,] electronic  
15 documents, investment property, or letter-of-credit  
16 rights [~~which is~~] perfected by control under section  
17 490:9-314;
- 18 (9) In chattel paper perfected by possession and control  
19 under section 490:9-F;
- 20 (10) In proceeds [~~which is~~] perfected under section  
21 490:9-315; or



1        (11) That is perfected under section 490:9-316."

2            SECTION 48. Section 490:9-312, Hawaii Revised Statutes, is  
3 amended as follows:

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

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

17            (b) Except as otherwise provided in [~~section~~] sections  
18 490:9-315(c) and [~~(d)~~] 490:9-315(d) for proceeds:

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



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

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

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

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

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

17           SECTION 49. Section 490:9-313, Hawaii Revised Statutes, is  
 18 amended as follows:

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

20           "(a) Except as otherwise provided in subsection (b), a  
 21 secured party may perfect a security interest in [~~tangible~~



1 ~~negotiable documents,~~ goods, instruments, negotiable tangible  
2 documents, or tangible money [~~, or tangible chattel paper~~] by  
3 taking possession of the collateral. A secured party may  
4 perfect a security interest in certificated securities by taking  
5 delivery of the certificated securities under section  
6 490:8-301."

7 2. By amending subsections (c) and (d) to read:

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

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

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





1 (d) If perfection of a security interest depends upon  
 2 possession of the collateral by a secured party, perfection  
 3 occurs ~~[no]~~ not earlier than the time the secured party takes  
 4 possession and continues only while the secured party retains  
 5 possession."

6 SECTION 50. Section 490:9-314, Hawaii Revised Statutes, is  
 7 amended to read as follows:

8 "§490:9-314 **Perfection by control.** (a) A security  
 9 interest in [~~investment property, deposit accounts, letter of~~  
 10 ~~credit rights, electronic chattel paper, or electronic~~  
 11 ~~documents~~] controllable accounts, controllable electronic  
 12 records, controllable payment intangibles, deposit accounts,  
 13 electronic documents, electronic money, investment property, or  
 14 letter-of-credit rights may be perfected by control of the  
 15 collateral under section 490:7-106, 490:9-104, [~~490:9-105,~~  
 16 490:9-A, 490:9-106, [ex] 490:9-107[-], or 490:9-B.

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



1 perfected by control under section 490:7-106, 490:9-104,  
2 [~~490:9-105, or~~] 490:9-A, 490:9-107 [~~when~~], or 490:9-B not  
3 earlier than the time the secured party obtains control and  
4 remains perfected by control only while the secured party  
5 retains control.

6 (c) A security interest in investment property is  
7 perfected by control under section 490:9-106 [~~from~~] not earlier  
8 than the time the secured party obtains control and remains  
9 perfected by control until:

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

11 (2) One of the following occurs:

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

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

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

20 SECTION 51. Section 490:9-316, Hawaii Revised Statutes, is  
21 amended as follows:



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

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

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

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

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

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

14          "(f) A security interest in chattel paper, controllable  
15 accounts, controllable electronic records, controllable payment  
16 intangibles, deposit accounts, letter-of-credit rights, or  
17 investment property which is perfected under the law of the  
18 chattel paper's jurisdiction, the controllable electronic  
19 record's jurisdiction, the bank's jurisdiction, the issuer's  
20 jurisdiction, a nominated person's jurisdiction, the securities  
21 intermediary's jurisdiction, or the commodity intermediary's



1 jurisdiction, as applicable, remains perfected until the earlier  
2 of:

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

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

7 SECTION 52. Section 490:9-317, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§490:9-317 **Interests that take priority over or take free**  
10 **of security interest or agricultural lien.** (a) A security  
11 interest or agricultural lien is subordinate to the rights of:

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

14 (2) Except as otherwise provided in subsection (e), a  
15 person that becomes a lien creditor before the earlier  
16 of the time:

17 (A) The security interest or agricultural lien is  
18 perfected; or

19 (B) One of the conditions specified in section  
20 490:9-203(b)(3) is met and a financing statement  
21 covering the collateral is filed.



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

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

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

20           (e) Except as otherwise provided in sections 490:9-320 and  
 21 490:9-321, if a person files a financing statement with respect



1 to a purchase-money security interest before or within twenty  
2 days after the debtor receives delivery of the collateral, the  
3 security interest takes priority over the rights of a buyer,  
4 lessee, or lien creditor which arise between the time the  
5 security interest attaches and the time of filing.

6 (f) A buyer, other than a secured party, of chattel paper  
7 takes free of a security interest if, without knowledge of the  
8 security interest and before the it is perfected, the buyer  
9 gives value and:

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

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

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



1       (h) A buyer of a controllable electronic record takes free  
2 of a security interest if, without knowledge of the security  
3 interest and before it is perfected, the buyer gives value and  
4 obtains control of the controllable electronic record.

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

11       SECTION 53. Section 490:9-323, Hawaii Revised Statutes, is  
12 amended as follows:

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

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

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

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

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



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

6           (1) The time the secured party acquires knowledge of the  
7 lease; or

8           (2) Forty-five days after the lease contract becomes  
9 enforceable."

10           SECTION 54. Section 490:9-330, Hawaii Revised Statutes, is  
11 amended as follows:

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

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

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





1           each authoritative electronic copy of the record  
 2           evidencing the chattel paper [~~under section~~  
 3           490:9-105]; and

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

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

9           "(b) A purchaser of chattel paper has priority over a  
 10          security interest in the chattel paper [~~which~~] that is claimed  
 11          other than merely as proceeds of inventory subject to a security  
 12          interest if the purchaser gives new value [~~and~~], takes  
 13          possession of each authoritative tangible copy of the record  
 14          evidencing the chattel paper [~~or~~], and obtains control [~~of~~]  
 15          under section 490:9-105 of each authoritative electronic copy of  
 16          the record evidencing the chattel paper [~~under section~~  
 17          490:9-105] in good faith, in the ordinary course of the  
 18          purchaser's business, and without knowledge that the purchase  
 19          violates the rights of the secured party."

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



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

8           SECTION 55. Section 490:9-331, Hawaii Revised Statutes, is  
9 amended to read as follows:

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



1 purchasers take priority over an earlier security interest, even  
2 if perfected, to the extent provided in articles 3, 7, [and]  
3 8[-], and A.

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

7 (c) Filing under this article does not constitute notice  
8 of a claim or defense to the holders, or purchasers, or persons  
9 described in subsections (a) and (b)."

10 SECTION 56. Section 490:9-332, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§490:9-332 **Transfer of money; transfer of funds from**  
13 **deposit account.** (a) A transferee of tangible money takes the  
14 money free of a security interest [~~unless the transferee acts~~]  
15 if the transferee receives possession of the money without  
16 acting in collusion with the debtor in violating the rights of  
17 the secured party.

18 (b) A transferee of funds from a deposit account takes the  
19 funds free of a security interest in the deposit account [~~unless~~  
20 ~~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 57. 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) [7] and (j), an account debtor on an account,  
14 chattel paper, or a payment intangible may discharge its  
15 obligation by paying the assignor until, but not after, the  
16 account debtor receives a notification, [~~authenticated~~] signed  
17 by the assignor or the assignee, that the amount due or to  
18 become due has been assigned and that payment is to be made to  
19 the assignee. After receipt of the notification, the account  
20 debtor may discharge its obligation by paying the assignee and  
21 may not discharge the obligation by paying the assignor.



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

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

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

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

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

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

19           (C) The account debtor knows that the assignment to  
20 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) As used in this subsection, "promissory note" includes  
8 a 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 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 ineffective to the extent that the rule of law, statute, or  
16 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 58. 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 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 to a security interest in a  
2 payment intangible or promissory note only if the security  
3 interest arises out of a sale of the payment intangible or  
4 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, that prohibits,  
8 restricts, or requires the consent of a government, governmental  
9 body or official, person obligated on a promissory note, or  
10 account debtor to the assignment or transfer of, or creation of  
11 a security interest in, a promissory note, health-care-insurance  
12 receivable, or general intangible, including a contract, permit,  
13 license, or franchise between an account debtor and a debtor, is  
14 ineffective to the extent that the rule of law, statute, or  
15 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:

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

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

18            (3) Does not 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 the secured party to use or assign  
4           the debtor's rights under the promissory note, health-  
5           care-insurance receivable, or general intangible,  
6           including any related information or materials  
7           furnished to the debtor in the transaction giving rise  
8           to the promissory note, health-care-insurance  
9           receivable, or general intangible;

10          (5) Does not entitle the secured party to use, assign,  
11          possess, or have access to any trade secrets or  
12          confidential information of the person obligated on  
13          the promissory note or the account debtor; and

14          (6) Does not entitle the secured party to enforce the  
15          security interest in the promissory note, health-care-  
16          insurance receivable, or general intangible.

17          (e) As used in this section, "promissory note" includes a  
18          negotiable instrument that evidences chattel paper."

19          SECTION 59. Section 490:9-601, Hawaii Revised Statutes, is  
20          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, or 490:9-B has  
 4 the rights and duties provided in section 490:9-207."

5           SECTION 60. 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 not  
 9 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 owes a duty based on its status as a  
 21 secured party to a person if, at the time the secured party



1 obtains control of collateral that is a controllable account,  
2 controllable electronic record, or controllable payment  
3 intangible or at the time the security interest attaches to the  
4 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)(A), (B), or (C) relating to the  
8             person is not provided by the collateral; a record  
9             attached to, or logically associated with, the  
10            collateral; or the system in which the collateral is  
11            recorded."

12       SECTION 61. Section 490:9-613, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "**§490:9-613 Contents and form of notification before**  
15 **disposition of collateral: general.** (a) Except in a  
16 consumer-goods transaction, the following rules apply:

- 17       (1) The contents of a notification of disposition are  
18             sufficient if the notification:  
19             (A) Describes the debtor and the secured party;  
20             (B) Describes the collateral that is the subject of  
21             the intended disposition;



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



1 in subsection (b) and section 490:9-614(b), each  
2 provides sufficient information:

3  
4 ~~[NOTIFICATION OF DISPOSITION OF COLLATERAL~~

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

7 From: \_\_\_\_\_ [Name, address, and telephone number of  
8 secured party]

9 Name of Debtor(s): \_\_\_\_\_ [Include only if debtor(s)  
10 are not an addressee]

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

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

15 Day and Date: \_\_\_\_\_

16 Time: \_\_\_\_\_

17 Place: \_\_\_\_\_

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

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





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]\_\_\_\_\_.~~

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

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

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



- 1        (2) Include and complete item (1) only if there is a  
2        debtor that is not an addressee of the notification  
3        and list the name or names;
- 4        (3) Include and complete either item (2), if the  
5        notification relates to a public disposition of the  
6        collateral, or item (3), if the notification relates  
7        to a private disposition of the collateral. If item  
8        (2) is included, include the words "to the highest  
9        qualified bidder" only if applicable;
- 10       (4) Include and complete items (4) and (6); and
- 11       (5) Include and complete item (5) only if the sender will  
12       charge the recipient for an accounting."

13       SECTION 62. Section 490:9-614, Hawaii Revised Statutes, is  
14 amended to read as follows:

15       "**§490:9-614 Contents and form of notification before**  
16 **disposition of collateral: consumer-goods transaction.** (a) In  
17 a consumer-goods transaction, the following rules apply:

18       (1) A notification of disposition must provide the  
19 following information:

20       (A) The information specified in section  
21       ~~[490:9-613(1)]~~ 490:9-613(a)(1);



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

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

7 (D) A telephone number or mailing address from which  
8 additional information concerning the disposition  
9 and the obligation secured is available.

10 (2) A particular phrasing of the notification is not  
11 required.

12 (3) The following form of notification, when completed[7]  
13 in accordance with the instructions in subsection (b),  
14 provides sufficient information:

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

16 ~~\_\_\_\_\_ [Date]~~

17 ~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

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

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



1           We have your \_\_\_\_\_ [describe collateral] \_\_\_\_\_,  
2 because you broke promises in our agreement.

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

4           We will sell \_\_\_\_\_ [describe collateral] \_\_\_\_\_ at  
5 public sale sometime after \_\_\_\_\_ [date] \_\_\_\_\_. A sale  
6 could include a lease or license.

7           The sale will be held as follows:

8 Day and Date: \_\_\_\_\_

9 Time: \_\_\_\_\_

10 Place: \_\_\_\_\_

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

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

14           We will sell \_\_\_\_\_ [describe collateral] \_\_\_\_\_ at  
15 private sale sometime after \_\_\_\_\_ [date] \_\_\_\_\_. A sale  
16 could include a lease or license.

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



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

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

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

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

19 ~~We are sending this notice to the following other~~  
20 ~~people who have an interest in \_\_\_\_\_ [describe~~



1 collateral] \_\_\_\_\_ ~~or who owe money under your~~  
2 ~~agreement.~~

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

5 (Name and address of secured party)

6 (Date)

7 NOTICE OF OUR PLAN TO SELL PROPERTY

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

9 Subject: (Identify transaction)

10 We have your (describe collateral) because you  
11 broke promises in our agreement.

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

15 (Date)

16 (Time)

17 (Place)

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



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

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

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

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





1           written explanation) (a written explanation or an  
 2           explanation in (description of electronic record)) (an  
 3           explanation in (description of electronic record)).

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

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

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

16          (4) A notification in the form of paragraph (3) is  
 17               sufficient, even if additional information appears at  
 18               the end of the form.

19          (5) A notification in the form of paragraph (3) is  
 20               sufficient, even if it includes errors in information  
 21               not required by paragraph (1), unless the error is



1 misleading with respect to rights arising under this  
2 article.

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

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

9 (1) The instructions in this subsection refer to the  
10 numbers in parentheses before items in the form of  
11 notification in subsection (a)(3). Do not include the  
12 numbers or parentheses in the notification. The  
13 numbers and parentheses are used only for the purpose  
14 of these instructions;

15 (2) Include and complete either item (1), if the  
16 notification relates to a public disposition of the  
17 collateral, or item (2), if the notification relates  
18 to a private disposition of the collateral;

19 (3) Include and complete items (3), (4), (5), (6), and  
20 (7);



- 1       (4) In item (5), include and complete any one of the three  
2       alternative methods for the explanation--writing,  
3       writing or electronic record, or electronic record;
- 4       (5) In item (6), include the telephone number. In  
5       addition, the sender may include and complete either  
6       or both of the two additional alternative methods of  
7       communication--writing or electronic communication--  
8       for the recipient of the notification to communicate  
9       with the sender. Neither of the two additional  
10       methods of communication is required to be included;
- 11       (6) In item (7), include and complete the method or  
12       methods for the explanation--writing, writing or  
13       electronic record, or electronic record--included in  
14       item (5);
- 15       (7) Include and complete item (8) only if a written  
16       explanation is included in item (5) as a method for  
17       communicating the explanation and the sender shall  
18       charge the recipient for another written explanation;
- 19       (8) In item (9), include either the telephone number or  
20       the address or both the telephone number and the  
21       address. In addition, the sender may include and



1           complete the additional method of communication--  
2           electronic communication--for the recipient of the  
3           notification to communicate with the sender. The  
4           additional method of electronic communication is not  
5           required to be included; and

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

8           SECTION 63. Section 490:9-616, Hawaii Revised Statutes, is  
9 amended by amending subsections (a) through (c) to read as  
10 follows:

11           (a) In this section:

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

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

14           (B) Provides an explanation in accordance with

15           subsection (c) of how the secured party

16           calculated the surplus or deficiency;

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

18           credits, charges, including additional credit

19           service charges or interest, rebates, and

20           expenses may affect the amount of the surplus or

21           deficiency; and



1 (D) Provides a telephone number or mailing address  
2 from which additional information concerning the  
3 transaction is available.

4 (2) "Request" means a record:

5 (A) [~~Authenticated~~] Signed by a debtor or consumer  
6 obligor;

7 (B) Requesting that the recipient provide an  
8 explanation; and

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

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

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

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



1 (B) Within fourteen days after receipt of a request;

2 or

3 (2) In the case of a consumer obligor who is liable for a  
4 deficiency, within fourteen days after receipt of a  
5 request, send to the consumer obligor a record waiving  
6 the secured party's right to a deficiency.

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

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

15 (A) If the secured party takes or receives possession  
16 of the collateral after default, not more than  
17 thirty-five days before the secured party takes  
18 or receives possession; or

19 (B) If the secured party takes or receives possession  
20 of the collateral before default or does not take



- 1                   possession of the collateral, not more than  
2                   thirty-five days before the disposition;
- 3           (2)   The amount of proceeds of the disposition;
- 4           (3)   The aggregate amount of the obligations after  
5           deducting the amount of proceeds;
- 6           (4)   The amount, in the aggregate or by type, and types of  
7           expenses, including expenses of retaking, holding,  
8           preparing for disposition, processing, and disposing  
9           of the collateral, and attorney's fees secured by the  
10          collateral [~~which~~] that are known to the secured party  
11          and relate to the current disposition;
- 12          (5)   The amount, in the aggregate or by type, and types of  
13          credits, including rebates of interest or credit  
14          service charges, to which the obligor is known to be  
15          entitled and [~~which~~] that are not reflected in the  
16          amount in paragraph (1); and
- 17          (6)   The amount of the surplus or deficiency."

18           SECTION 64.   Section 490:9-628, Hawaii Revised Statutes, is  
19   amended to read as follows:

20           "**§490:9-628   Nonliability and limitation on liability of**  
21   **secured party; liability of secondary obligor.**   (a)   [~~Unless~~



1 Subject to subsection (f), unless a secured party knows that a  
2 person is a debtor or obligor, knows the identity of the person,  
3 and knows how to communicate with the person:

4 (1) The secured party is not liable to the person, or to a  
5 secured party or lienholder that has filed a financing  
6 statement against the person, for failure to comply  
7 with this article; and

8 (2) The secured party's failure to comply with this  
9 article does not affect the liability of the person  
10 for a deficiency.

11 (b) [A] Subject to subsection (f), a secured party is not  
12 liable because of its the status as secured party:

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

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

16 (B) The identity of the person; and

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

18 (2) To a secured party or lienholder that has filed a  
19 financing statement against a person, unless the  
20 secured party knows:

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





1 (B) The identity of the person.

2 (c) A secured party is not liable to any person, and a  
3 person's liability for a deficiency is not affected, because of  
4 any act or omission arising out of the secured party's  
5 reasonable belief that a transaction is not a consumer-goods  
6 transaction or a consumer transaction or that goods are not  
7 consumer goods, if the secured party's belief is based on its  
8 the reasonable reliance on:

9 (1) A debtor's representation concerning the purpose for  
10 which collateral was to be used, acquired, or held; or

11 (2) An obligor's representation concerning the purpose for  
12 which a secured obligation was incurred.

13 (d) A secured party is not liable to any person under  
14 section 490:9-625(c)(2) for its failure to comply with section  
15 490:9-616.

16 (e) A secured party is not liable under section  
17 490:9-625(c)(2) more than once with respect to any one secured  
18 obligation.

19 (f) Subsections (a) and (b) shall not apply to limit the  
20 liability of a secured party to a person if, at the time the  
21 secured party obtains control of collateral that is a



1 controllable account, controllable electronic record, or  
2 controllable payment intangible or at the time the security  
3 interest attaches to the collateral, whichever is later:

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

11         SECTION 65. (a) Sections 490:2-203, 490:2-205,  
12 490:2A-201, 490:2A-203, 490:2A-205, 490:4A-207, and 490:4A-208,  
13 Hawaii Revised Statutes, are amended by substituting the phrase  
14 "record" wherever the phrase "writing" appears.

15         (b) Sections 490:9-210, 490:9-324, 490:9-334, 490:9-341,  
16 490:9-404, 490:9-509, 490:9-513, 490:9-608, 490:9-611,  
17 490:9-615, 490:9-619, 490:9-620, 490:9-621, 490:9-624, Hawaii  
18 Revised Statutes, are amended by substituting the phrases  
19 "signed", "signing", or "signs" wherever the phrase  
20 "authenticated", "authenticating", or "authenticates" appears.



# S.B. NO. 352

1 SECTION 66. This Act does not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before its effective date.

4 SECTION 67. In codifying the new sections added by section  
5 1 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 68. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 69. This Act shall take effect upon its approval.

11

INTRODUCED BY: Kal Rhoad



# S.B. NO. 352

**Report Title:**

Uniform Commercial Code

**Description:**

Implements amendments to the Uniform Commercial Code set forth by the Uniform Law Commission.

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

