

ACT 18

A Bill for an Act Relating to the Uniform Commercial Code: Amend-

ing Certain Provisions in Said Code and in the Revised Laws to Clarify, Harmonize and Conform the Same.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is hereby declared to be an urgency measure within the meaning of section 11 of Article III of the State Constitution.

The following is a statement of the facts constituting such urgency:

The Uniform Commercial Code (Act 208, Session Laws of Hawaii 1965) will go into effect on January 1, 1967. The State Commission to Promote Uniform Legislation reports that it is necessary in some instances, and highly desirable in others, that certain sections in the Uniform Commercial Code and in the Revised Laws be amended to fill gaps and to clarify and harmonize the law, and has recommended certain changes. The Commission states that the proposed amendments to the Code relate to transitional or localized provisions and therefore would not be contrary to the interests of uniformity. It is important that these amendments be made before the law goes into effect. This is particularly true with respect to the transition provision amendment which would refine and clarify the status after January 1, 1967, of transactions entered before then.

SECTION 2. The Uniform Commercial Code (Act 208, Session Laws of Hawaii 1965) is amended in the following respects:

a. By adding to subsection (1) of section 9-105, next following paragraph (e), a new paragraph to be designated "(ee)", to read: "(ee) 'Filing' means recording."

b. By amending subsection (2) of section 9-203 to read:

"(2) A transaction, although subject to this article, is also subject to chapter 194 (industrial loan act), chapter 195 (small loan act) and chapter 201A (retail installment sales act), Revised Laws of Hawaii 1955, as amended, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

c. By amending subsections (3) and (4) of section 9-302 to read:

"(3) The filing provisions of this Article do not apply to a security interest in

(a) property subject to a statute of the United States which provides for a national registration or filing of all security interests in such property; and

(b) a vehicle required to be registered under chapter 160, unless such vehicle is inventory.

(4) A security interest in property subject to a statute of the United States which provides for national registration or filing of all security interests in such property may be perfected only by filing or registration under such statute. A security interest in a vehicle required to be registered under chapter 160 which is not inventory may be perfected only by registration thereunder."

d. By amending subsection (4) of section 9-403 to read:

"(4) A filing officer shall record and index each statement in the

manner provided in chapter 343. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement (where the collateral is crops or goods which are or are to become fixtures) shall be considered a grantor with respect to the financing statement and the secured party (or assignee) shall be considered a grantee with respect to the financing statement."

e. By amending subsection (5) of section 9-403 to read:

"(5) The fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be \$2 per page."

f. By amending the third sentence in subsection (1) of section 9-404 to read:

"The fee for filing and indexing such an assignment or statement thereof shall be \$2 per page."

g. By amending subsection (3) of section 9-404 to read:

"(3) The fee for filing and indexing a termination statement shall be \$2 per page."

h. By amending the last sentence of subsection (1) of section 9-405 to read:

"The fee for filing, indexing and furnishing filing data for a financing statement shall be \$2 per page."

i. By amending subsection (2) of section 9-405 to read:

"(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record. Such statement shall set forth the name of the secured party of record and the debtor, the name and address of the assignee, the date of filing of the financing statement and except as otherwise provided in section 9-408(2), the book and page number and shall contain a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. Except as otherwise provided in section 9-408(1) and (2) the filing officer, upon presentation of such a separate statement, shall record and index such separate statement in the manner provided in chapter 343. The fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$2 per page."

j. By amending section 9-406 to read:

"A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the book and page number of the financing statement. Except as otherwise provided in sections 9-408 (1) and (2) the filing officer, upon presentation of such statement, shall record and index such statement in the manner provided in chapter 343. The fee for filing and noting such a statement of release shall be \$2 per page."

k. By amending section 9-408 to read:

"Special provisions for processing of filings as to fixtures; fees, combined real estate and fixture mortgage. (1) Filings of financing

statements, security agreements, amendments, continuation statements, termination statements, statements of assignment and statements of a lease* complying with the requirements of section 9-402 and relating to security interests in goods which are or are to become fixtures shall be processed by the filing officer in the manner provided in chapter 343 if they concern unregistered land and in the manner provided in chapter 342 if they concern registered land.

(2) In addition to the other requirements specified in this part an amendment, continuation statement, termination statement, statement of assignment or statement of release relating to security interests in goods which are or are to become fixtures must contain a reference to the book and page of the record of the original financing statement if it relates to unregistered land and to its document number and certificate of title number if it relates to registered land.

(3) The fee for the recording of a financing statement (including a statement disclosing an assignment), a security agreement or an amendment adding new collateral relating to goods which are or are to become fixtures affixed to unregistered land and for the recording of all other subsequent statements listed in subsection (1) and relating to such goods shall be \$2 per page.

(4) Provision for a security interest in goods which are or are to become fixtures may be included in a mortgage or other like instrument transferring an interest in the real estate concerned. Such instrument shall contain a designation: 'Mortgage (or other appropriate designation) and Financing Statement.' If such instrument complies with the requirements for a financing statement specified in section 9-402, with the exception of the requirement of secured party's signature, is recorded or registered as an instrument affecting real estate, and has the appropriate recording or registration fee paid for it, such recording or registering and payment of fee shall be effective filing under this part without the necessity of any separate filing or payment of any separate fee under this part."

1. By amending subsection (2) of section 10-102 to read:

"(2) Transactions validly entered into before the effective date specified in section 10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law repealed, amended or modified by this Act as though such repeal, amendment or modification had not occurred; provided, however, that the perfection of a security interest, as defined in this Act and however denominated in any law repealed, amended or modified by this Act:

(a) which was perfected when this Act takes effect by a filing or recording under a law repealed by this Act and requiring a further filing or recording to continue its perfection, continues until and will lapse on the date provided by the law so repealed for such further filing or recording;

(b) which was perfected when this Act takes effect by a filing or recording under a law repealed by this Act and requiring no further

*The words "a lease" probably should read "release".

filing or recording to continue its perfection, continues until and will lapse twelve months after the date this Act takes effect;

(c) which was perfected when this Act takes effect without any filing or recording, and for the perfection of which the filing of a financing statement would be required if this Act applied continues until and will lapse twelve months after this Act takes effect; unless, in each case, a continuation statement is filed by the secured party before the perfection of the security interest would otherwise lapse. Any such continuation statement must be signed by the secured party, identify the security agreement, statement or notice, however denominated in any law repealed by this Act, state the office where and the date when the last filing or recording was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated in any law repealed by this Act, is still effective. Section 9-401(1) determines the proper place to file such a continuation statement. Except as specified in this subsection the provisions of section 9-403(3) apply to such a continuation statement.

(3) Notwithstanding subsection (2):

(a) The perfection of a security interest, however denominated in any law repealed by this Act, which was perfected when this Act takes effect by a filing or recording under a law repealed by this Act, and for the perfection of which, if this Act applied, no filing of a financing statement would be required, continues under this Act.

(b) A security interest, however denominated in any law repealed by this Act, which was not perfected when this Act takes effect but which could have been perfected before this Act takes effect by a filing or recording under a law repealed, by this Act, and which, if this Act applied, could be perfected by the filing of a financing statement under this Act, may be perfected by the filing of a financing statement in accordance with this Act.

(c) A security interest, however denominated in any law repealed, amended or modified by this Act, which was not perfected when this Act takes effect but which could have been perfected before this Act takes effect by the secured party's taking possession of the collateral under a law repealed, modified or amended by this Act, and which, if this Act applied, could be perfected by the secured party's taking possession of the collateral, may be perfected by the secured party's taking possession of the collateral in accordance with this Act."

SECTION 3. Section 160-1, Revised Laws of Hawaii 1955, as amended, is amended by amending the definition of "legal owner" therein to read:

"'Legal owner' means a person who holds the legal title to a motor vehicle or a security interest therein;".

SECTION 4. Section 160-10(e), Revised Laws of Hawaii 1955, is amended to read:

"(e) Until the treasurer has issued the new certificate of registration and certificate of ownership as in subdivision (d) provided, delivery of such vehicle shall be deemed not to have been made and title

thereto shall be deemed not to have passed or the security interest therein shall be deemed not to have been registered, and the intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose."

SECTION 5. Chapter 196, Revised Laws of Hawaii 1955, is amended in the following respects:

a. By amending the title thereof to read:

MORTGAGES OF REAL PROPERTY OR FIXTURES

b. By amending Section 196-1 to read:

“§ 196-1. Lien of mortgages of real property or fixtures; debts secured; priority. (a) Every transfer of an interest in real property fixtures made as security for the performance of another act or subject to defeasance upon the payment of an obligation, whether such transfer is made in trust or otherwise, is to be deemed a mortgage and shall create a lien only as security for the obligation and shall not be deemed to pass title.

(b) A mortgage may secure the repayment of past debt, a debt incurred at the time the mortgage is executed or a debt incurred for advances which may be made by the mortgagee subsequent to the execution of the mortgage even though the mortgagee is under no contractual duty to make such advances. Except as otherwise provided in section 9-313 of the uniform commercial code with respect to security interests in fixtures, in any case where the mortgagee is under no such contractual duty, the mortgage lien, to the extent that it secures future advances, shall be superior to any mortgage or any other lien, other than liens for taxes and for public improvements, duly recorded subsequent to the time at which such advance has been made, but in the event the mortgagee is under a contractual duty to make future advances and the maximum amount of such future advances is stated in the mortgage, the lien therefor shall be superior to that of any subsequently recorded mortgage or other lien, except liens for taxes and for public improvements, even though such subsequently recorded mortgage or other lien, except liens for taxes and for public improvements, is recorded prior to the date upon which any such advance or advances have been made.”

c. By amending section 196-2 to read:

“§ 196-2. On what property; enforceability. (a) Subject to the limitations contained in this chapter and to the provisions of section 9-313 of the uniform commercial code respecting security interests in fixtures, if the mortgage so provides, the lien of the mortgage may attach to additions, improvements, and purchases or substitutions made to supply the place of any real property or fixtures disposed of and to all other after-acquired real property or fixtures referred to in the mortgage when the mortgagor acquires an interest therein to the extent of such interest, but subject to existing liens and the lien of a purchase money mortgage given by the mortgagor of any such after-acquired real property or fixtures.

(b) Any mortgage, except to the extent provided in this chapter, shall be enforceable against the mortgagor, creditors of the mortgagor, and against subsequent purchasers, mortgagees, assignees, and

transferees, who take without valuable consideration or with notice, actual or constructive, even though the mortgaged real property or fixtures may have been detached or moved to a location different from that occupied by it at the time of the execution of the mortgage."

d. By amending section 196-4 to read:

"§ 196-4. After-acquired real property and fixtures. The mortgage shall operate only as a contract between the parties with respect to, and shall not create a lien upon real property or fixtures acquired in any manner by the mortgagor subsequent to the execution of the mortgage, if there are not described therein such real property, such fixtures and the real property to which such fixtures are or will be affixed, unless and until the mortgagor or the mortgagee, at the time of or subsequent to such acquisition, executes and duly records in the bureau of conveyances an instrument or affidavit containing a reference to the book and page number where such mortgage is recorded and also a description of such real property, such fixtures and the real property to which such fixtures are or will be affixed sufficient to identify and locate the same, which description of real property may be made by describing the deed or other instrument of conveyance by which the real property was acquired or by describing the land by metes and bounds."

e. By repealing sections 196-6, 196-7 and 196-8, respectively entitled "Registered motor vehicles", "Choses in action", and "Tangible personal property".

f. By renumbering and amending section 196-9 to read:

"§ 196-6. Use and possession of mortgaged property. In the absence of an agreement to the contrary, the mortgagor of real property or fixtures under a duly recorded mortgage shall be entitled to the use or possession thereof until default."

SECTION 6. Paragraph (c) of section 233-9, Revised Laws of Hawaii 1955, is amended to read:

"(c) A security or any share or any interest evidenced thereby shall be attached in the same manner as is provided for the levy of an execution thereon."

SECTION 7. Section 233-46, Revised Laws of Hawaii 1955, is amended to read:

"§ 233-46. Levy on and execution sale of investment securities; garnishment the proper procedure when the security is subject to right of possession of third party. (a) A security or any share or other interest evidenced thereby which is outstanding and not in the possession of a third party who has a security interest, lien or right of retention therein which entitles him to possession shall be levied upon under a writ of execution by being actually seized by the officer executing the writ.

At any time after the issuance of the writ, upon application of the judgment creditor or the officer executing the writ and upon due notice to the defendant or other person having possession of the security without being entitled thereto under a security interest, lien or right

of retention, the court or judge may summarily direct the defendant or such other person so having possession of the security to produce the same and deliver it to the officer.

In the case of a levy for execution, the security so levied upon shall be advertised for sale and sold in the manner provided in section 233-42. After the sale the levying officer shall deliver to the purchaser the security endorsed or assigned by him as the agent of the judgment debtor, which delivery and endorsement or assignment shall entitle the purchaser to all the right, title and interest of the judgment debtor in the security and to registration of the transfer as provided in U.C.C. Article 8. This subsection shall apply to any security which is either within the State or which is in the possession of an owner or other person subject to the jurisdiction of this State.

(b) A security or any share or other interest evidenced thereby which is outstanding and in the possession of a person who is entitled to such possession under a security interest or lien or other right of retention therein shall be reached by garnishment as provided in chapter 237.

SECTION 8. Section 342-60, Revised Laws of Hawaii 1955, as amended, is amended to read:

"Mortgage registration necessary. The owner of any interest in registered land may mortgage his interest in the real property, and in any fixtures thereon, that are described in the mortgage by executing a mortgage thereof. Such a mortgage may be assigned, extended, discharged, released in whole or in part or otherwise dealt with by the mortgagee by any form of instrument sufficient in law for the purpose. The mortgage, and all instruments assigning, extending, discharging and otherwise dealing with the mortgage, shall be registered, and shall take effect upon the title of the mortgaged property only from the time of registration. With respect to fixtures, he may create a separate security interest in them pursuant to Article 9, secured transactions, of the uniform commercial code. Such a security interest in fixtures and all documents relating thereto and the registration thereof shall be governed in all respects by the provisions of the uniform commercial code."

SECTION 9. Section 343-23, Revised Laws of Hawaii 1955, is amended to read:

"Identification of assignments, etc., of mortgages and leases by reference to registration of original. It shall not be lawful for the registrar to record any assignment, extension or release of mortgage of real property, or a certificate of entry for the purpose of foreclosure under mortgage, or an affidavit of foreclosure under a power contained in mortgage, or an affidavit of entry, or an execution, order or decree, for possession of the premises covered by any mortgage, or an assignment, extension or cancellation of lease, unless the same contains a reference to the book and page of the registration of the original mortgage or lease, as the case may be. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are

or are to become fixtures shall be filed unless it complies with the requirements of uniform commercial code section 9-408(2). This section shall not apply to any document mentioned herein executed prior to April 13, 1915; and this section shall not apply to any document mentioned herein which refers to an unrecorded mortgage or lease, if such fact be recited therein.”

SECTION 10. All matter appearing in strike-out type in this bill is repealed and in printing this Act, the revisor of statutes shall not include any matter appearing in strike-out type and shall include the underscored matter without the underscoring.

SECTION 11. This Act shall take effect on January 1, 1967.
(Approved April 5, 1966.) **H.B. 198.**