

## ACT 32

S.B. NO. 958

A Bill for an Act Relating to the Uniform Commercial Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 490:1-201, Hawaii Revised Statutes, is amended by amending the definition of “agreement” to read as follows:

“(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 490:1-205 [and], 490:2-208[.], and 490:2A-207). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 490:1-103). (Compare “Contract”.)”

SECTION 2. Section 490:1-201, Hawaii Revised Statutes, is amended by amending the definition of “value” to read as follows:

“(44) “Value”. Except as otherwise provided with respect to negotiable instruments and bank collections (sections 490:3-303, [[490:4-210[]], and [[490:4-211[]]) a person gives “value” for rights if he acquires them:

- (a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
- (b) As security for or in total or partial satisfaction of a preexisting claim; or
- (c) By accepting delivery pursuant to a preexisting contract for purchase; or
- (d) Generally, in return for any consideration sufficient to support a simple contract.”

SECTION 3. Section 490:2-103, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

- “(3) The following definitions in other Articles apply to this Article:  
 “Check”. Section 490:3-104.  
 “Consignee”. Section 490:7-102.

- “Consignor”. Section 490:7-102.
- “Consumer goods”. Section 490:9-109.
- “Dishonor”. Section [490:3-507.] 490:3-502.
- “Draft”. Section 490:3-104.”

SECTION 4. Section 490:2-511, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Subject to the provisions of this chapter on the effect of an instrument on an obligation (section [490:3-802,] 490:3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.”

SECTION 5. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Subject to the provisions of section [[490:4-210[]] on the security interest of a collecting bank, section 490:8-321 on security interests in securities and section 490:9-113 on a security interest arising under the [Article] Articles on Sales[,] and Leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

- (a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
- (b) Value has been given; and
- (c) The debtor has rights in the collateral.”

SECTION 6. Section 490:9-302, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A financing statement must be filed to perfect all security interests except the following:

- (a) A security interest in collateral in possession of the secured party under section 490:9-305;
- (b) A security interest temporarily perfected in instruments or documents without delivery under section 490:9-304 or in proceeds for a ten-day period under section 490:9-306;
- (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent’s estate;
- (d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 490:9-313;
- (e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
- (f) A security interest of a collecting bank (section [[490:4-210[]]) or in securities (section 490:8-321) or arising under the [Article] Articles on Sales and Leases (see section 490:9-113) or covered in subsection (3) of this section;
- (g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

- (h) A security interest in a deposit account. Such a security interest is perfected:
  - (i) As to a deposit account maintained with the secured party, when the security agreement is executed;
  - (ii) As to a deposit account maintained with any organization other than the secured party, when notice thereof is given in writing to the organization with whom the deposit account is maintained.”

SECTION 7. Section 490:9-312, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: section [[490:4-210[]] with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 490:9-103 on security interests related to other jurisdictions; section 490:9-114 on consignments.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved April 22, 1997.)