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S.B. NO. 1715

A Bill for an Act Relating to Secured Transactions.

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

SECTION 1. During the regular session of 1996, revised article 5, uniform commercial code (UCC), concerning letters of credit, was adopted and conforming changes were made to section 490:9-104, Hawaii Revised Statutes (HRS). The conforming changes inappropriately excluded from article 9, relating to secured transactions, a transfer of an interest in any depository account. Hawaii, along with California and a few other states, has long provided for the taking of security interests in deposit accounts under article 9. The change that excluded deposit accounts from article 9 slipped by essentially unnoticed and, it is believed, was not intended. This is indicated by the fact that article 9 continues to contain other provisions concerning perfection of security interests in deposit accounts. This Act would return Hawaii law to the status quo, pending complete revision of article 9. It is anticipated that the revised article 9, when proposed in a year or two, will adopt the California-Hawaii approach of including transfers of deposit accounts within the coverage of that article.

The purpose of this Act is to make a technical amendment to section 490:9-104, HRS, to make article 9 of the UCC, applicable to a transfer of an interest in a deposit account, to correct a drafting error made in that section last session.

SECTION 2. Section 490:9-104, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-104 Transactions excluded from article. This Article does not apply:

- (a) To a security interest subject to any statute of the United States to the extent that [such] the statute governs the rights of parties to and third parties affected by transactions in particular types of property; [or]
- (b) To a landlord's lien; [or]
- (c) To a lien given by statute or other rule of law for services or materials, except as provided in section 490:9-310 on priority of [such] liens; [or]
- (d) To a transfer of a claim for wages, salary, or other compensation of an employee; [or]

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- (e) To a transfer by government or governmental subdivision or agency; [or]
- (f) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper [which] that is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; [or]
- (g) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (section 490:9-306) and priorities in proceeds (section 490:9-312); [or]
- (h) To a right represented by a judgment (other than a judgment taken on a right to payment [which] that was collateral); [or]
- (i) To any right of set-off; [or]
- (j) Except to the extent that provision is made for fixtures in section 490:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder;
- (k) To a transfer in whole or in part of any claim arising out of tort; or
- [(l) To a transfer of an interest in any deposit account (subsection (1) of section 490:9-105), except as provided with respect to proceeds (section 490:9-306) and priorities in proceeds (section 490:9-312); or
- (m)] (l) To a transfer of an interest in a letter of credit, other than the rights to proceeds of a written letter of credit.’’

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 1997.)