

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

ON H.B. NO. 2162, H.D. 1

RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 9.

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 23, 2012, at 2:00 p.m.
Conference Room 308, State Capitol

PERSON(S) TESTIFYING: PETER J. HAMASAKI, Commissioner
Commission to Promote Uniform Legislation

To Chair Oshiro, Vice Chair Lee, and Members of the Committee:

My name is Peter Hamasaki and I am testifying on behalf of the Commission to Promote Uniform Legislation, which supports passage of the H. B. No. 2162, H.D. 1, Relating to **UNIFORM COMMERCIAL CODE ARTICLE 9.**

Article 9 of the Uniform Commercial Code governs secured transactions in personal property. Article 9 was substantially revised in 1998, and the 1998 revisions are in effect in all states and the District of Columbia. The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the revised Article 9.

Of most importance, the amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments provide that, if the debtor holds a driver's license issued by the state where the financing statement is filed, the debtor's name as it appears on the driver's license is the name required to be used on the financing statement. If the debtor does not have such a driver's license, either the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.

The amendments further improve the filing system for the filing of financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership or when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required.

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In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.

The amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

The UCC Article 9 amendments have been endorsed by the American Bar Association.

The UCC Article 9 amendments have been adopted in the following 10 U.S. jurisdictions:

- Connecticut
- Indiana
- Minnesota
- Nebraska
- Nevada
- North Dakota
- Puerto Rico
- Rhode Island
- Texas
- Washington

In addition, the UCC Article 9 amendments have so far been introduced during the 2012 legislative sessions of the following jurisdictions:

- Colorado
- District of Columbia
- Florida
- Kansas
- Kentucky
- Maryland
- Massachusetts
- Michigan

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- New Hampshire
- New Mexico
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- South Dakota
- Tennessee
- Virginia
- West Virginia
- Wisconsin

The amendments are slated to have a uniform effective date of July 1, 2013, so as to allow states to adopt the amendments uniformly and have them become operative simultaneously (thereby avoiding unnecessary conflicts and confusion with respect to interstate transactions).

We respectfully urge adoption of the 2010 amendments to UCC Article 9 so that Hawaii's version of UCC Article 9 will be consistent with Article 9 as adopted in the other statutes, and Hawaii can benefit from the experience with the existing statute and keep its UCC Article 9 up to date.



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Presentation to the Committee on Finance
Thursday, February 23, 2012 at 2:00 p.m.
Testimony on HB 2162, HD1 Relating to Uniform Commercial Code Article

Offering Comments

TO: Honorable Marcus R. Oshiro, Chair
Honorable Marilyn B. Lee, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), offering comments on HB 2162, HD1. HBA is the trade organization that represents FDIC insured depository institutions doing business in Hawaii.

This bill implements the amendments to Article 9 of the Uniform Commercial Code, relating to secured transactions, set forth by the Uniform Law Commission.

HBA understands this bill proposes amendments to Article 9, which modify the existing statute to respond to filing issues and address other matters that have arisen in practice following over a decade of experience since the last revision to Article 9. The amendments are based, in part, on the recommendations of the Permanent Editorial Board (PEB) for UCC, a joint committee of American Law Institute and the Uniform Law Commission. The purpose of PEB is to assist in attaining and maintaining uniformity in state statutes governing commercial transactions by discouraging non-uniform amendments to the Uniform Commercial Code by the states, and by approving and promulgating amendments to the UCC when necessary.

Of most importance, these amendments provide greater guidance as to the name of a debtor to be provided on a financing statement. For business entities and other registered organizations, the amendments clarify that the proper name for perfection purposes is the name filed with the state and provided on the organization's charter or other constitutive documents, to the extent there is a conflict with the name on an entity database. More importantly, the amendments provide significantly greater clarity as to the name of an individual debtor to be provided on a financing statement.

The American Bankers Association (ABA), which is a national trade association for the banking industry, formed a working group to study the alternatives options outlined by PEB if the debtor is an individual.

We support the proposed amendments to SECTION 12. Section 490:9-503 (a) (B) (4) & (5). These sections generally following the recommendations of the ABA if the debtor is an individual.

Thank you for this opportunity to testify.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', followed by a horizontal line.

Gary Y. Fujitani
Executive Director