

HB2162,HD1

**WRITTEN COMMENTS OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

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

RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 9.

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR.

DATE: Tuesday, March 27, 2012, at 10:30 a.m.
Conference Room 016, State Capitol

WRITTEN COMMENTS ONLY: For further information, please contact Commission to Promote Uniform Legislation Commissioner LANI EWART at 547-5600 or Commissioner PETER J. HAMASAKI at 529-7300.

To Chair Hee and Members of the Committee:

The Commission to Promote Uniform Legislation supports passage of H. B. No. 2162, H.D. 1, Relating to **UNIFORM COMMERCIAL CODE ARTICLE 9**. This bill is the companion to S.B. No. 2444, which this committee approved on February 14, 2012.

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

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currently provided on financing statements will no longer be required.

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 13 U.S. jurisdictions:

- Connecticut
- Indiana
- Minnesota
- Nebraska
- Nevada
- North Dakota
- Oregon
- Puerto Rico
- Rhode Island
- South Dakota
- Texas
- Virginia
- 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
- Idaho
- Illinois
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maryland
- Massachusetts
- Michigan
- New Hampshire

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- New Mexico
- Ohio
- Oklahoma
- Pennsylvania
- Tennessee
- Virginia
- West Virginia

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 states, and Hawaii can benefit from the experience with the existing statute and keep its UCC Article 9 up to date.