

SB 2444

Measure Title: RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 9.

Report Title: Uniform Commercial Code; Secured Transactions

Description: Implements the amendments to Article 9 of the Uniform Commercial Code, relating to secured transactions, set forth by the Uniform Law Commission.

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): BAKER

Sort by Date		Status Text
1/20/2012	S	Introduced.
1/23/2012	S	Passed First Reading.
1/23/2012	S	Referred to CPN, JDL.
1/27/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-03-12 9:00AM in conference room 229.



TEL:
808-524-5161
FAX:
808-521-4120
ADDRESS:
1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation to the Committee on Commerce and Consumer Protection
Friday, February 3, 2012 at 9:00 a.m.
Testimony on SB 2444 Relating to Uniform Commercial Code Article

Offering Comments

TO: Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), offering comments on SB 2444. HBA is the trade organization that represents FDIC insured depository institutions doing business in Hawaii.

This 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', written over a horizontal line.

Gary Y. Fujitani
Executive Director

TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION

ON S.B. NO. 2444

RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 9.

BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 3, 2012, at 9:00 a.m.
Conference Room 229, State Capitol

PERSON(S) TESTIFYING: LANI EWART, Commissioner
Commission to Promote Uniform Legislation

To Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

My name is Lani Ewart and I am testifying on behalf of the Commission to Promote Uniform Legislation, which supports passage of the S. B. No. 2444, 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.

TESTIMONY of CPUL on S.B. NO. 2444,
Relating to Uniform Commercial Code Article 9
Senate CPN on 2/3/2012

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:

- District of Columbia
- Florida
- Kentucky
- Massachusetts
- Michigan
- New Hampshire
- Ohio
- Oklahoma

TESTIMONY of CPUL on S.B. NO. 2444,
Relating to Uniform Commercial Code Article 9
Senate CPN on 2/3/2012

- Oregon
- Pennsylvania
- South Dakota
- 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 statutes, and Hawaii can benefit from the experience with the existing statute and keep its UCC Article 9 up to date.