

## ACT 228

H.B. NO. 896

A Bill for an Act Relating to the Revised Uniform Commercial Code Article 9 - Secured Transactions.

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

SECTION 1. Act 241, Session Laws of Hawaii 2000, section 1, is amended by adding a new section 490:9-707, Hawaii Revised Statutes, to read as follows:

**“§490:9-707 Amendment of pre-effective-date financing statement.** (a) In this section, “pre-effective-date financing statement” means a financing statement filed before this article takes effect.

(b) After this article takes effect, a person may add or delete collateral covered by, continue, or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However,

the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this article takes effect only if:

- (1) The pre-effective-date financing statement and an amendment are filed in the office specified in section 490:9-501;
- (2) An amendment is filed in the office specified in section 490:9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 490:9-706(c); or
- (3) An initial financing statement that provides the information as amended and satisfies section 490:9-706(c) is filed in the office specified in section 490:9-501.

(d) If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 490:9-705(d) and (f) or 490:9-706.

(e) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this article takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 490:9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.”

SECTION 2. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending section 490:9-102, Hawaii Revised Statutes, as follows:

1. By amending the definition of “chattel paper” to read:

““Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include [e~~h~~arters]:

- (1) Charters or other contracts involving the use or hire of a vessel[-]; or
- (2) Records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.”

2. By amending the definition of “original debtor” to read:

““Original debtor”, except as used in section 490:9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 490:9-203(d).”

3. By amending the definition of “proceeds” to read:

““Proceeds”, except as used in section 490:9-609(b), means the following property:

- (1) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (2) Whatever is collected on, or distributed on account of, collateral;
- (3) Rights arising out of collateral;

- (4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.”

SECTION 3. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (d) of section 490:9-311, Hawaii Revised Statutes, to read as follows:

“(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling [~~or leasing~~] goods of that kind, this section does not apply to a security interest in that collateral created by that person [~~as debtor~~].”

SECTION 4. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-317, Hawaii Revised Statutes, to read as follows:

- “(a) A security interest or agricultural lien is subordinate to the rights of:
- (1) A person entitled to priority under section 490:9-322; and
  - (2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time [~~the~~]:
    - (A) The security interest or agricultural lien is perfected; or
    - (B) One of the conditions specified in section 490:9-203(b)(3) is met and a financing statement covering the collateral is filed.”

SECTION 5. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (b) of section 490:9-406, Hawaii Revised Statutes, to read as follows:

- “(b) Subject to subsection (h), notification is ineffective under subsection (a):
- (1) If it does not reasonably identify the rights assigned;
  - (2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor’s duty to pay a person other than the seller and the limitation is effective under law other than this article; or
  - (3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
    - (A) Only a portion of the account, chattel paper, or [~~general~~] payment intangible has been assigned to that assignee;
    - (B) A portion has been assigned to another assignee; or
    - (C) The account debtor knows that the assignment to that assignee is limited.”

SECTION 6. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-509, Hawaii Revised Statutes, to read as follows:

“(a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

- (1) The debtor authorizes the filing in an authenticated record[;] or pursuant to subsection (b) or (c); or
- (2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.”

SECTION 7. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (d) of section 490:9-513, Hawaii Revised Statutes, to read as follows:

“(d) Except as otherwise provided in section 490:9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 490:9-510, for purposes of sections 490:9-519(g), 490:9-522(a), and 490:9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.”

SECTION 8. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-608, Hawaii Revised Statutes, to read as follows:

“(a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

- (1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under [this] section 490:9-607 in the following order to:
  - (A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney’s fees and legal expenses incurred by the secured party;
  - (B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
  - (C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.
- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder’s demand under paragraph (1)(C).
- (3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under [this] section 490:9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
- (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.”

SECTION 9. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending section 490:9-613, Hawaii Revised Statutes, to read as follows:

“§490:9-613 Contents and form of notification before disposition of collateral: general. Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
  - (A) Describes the debtor and the secured party;
  - (B) Describes the collateral that is the subject of the intended disposition;
  - (C) States the method of intended disposition;
  - (D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
  - (E) States the time and place of a public [sale] disposition or the time after which any other disposition is to be made.
- (2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:
  - (A) Information not specified by that paragraph; or
  - (B) Minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in section 490:9-614(3), when completed, each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

TO: \_\_\_\_\_ [Name of debtor, obligor, or other person to which the notification is sent]

From: \_\_\_\_\_ [Name, address, and telephone number of secured party]

Name of Debtor(s): \_\_\_\_\_ [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the \_\_\_\_\_ [describe collateral] \_\_\_\_\_ [to the highest qualified bidder] in public as follows:

Day and Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

[For a private disposition:]

We will sell [or lease or license, as applicable] the \_\_\_\_\_ [describe collateral] \_\_\_\_\_ privately sometime after \_\_\_\_\_ [day and date] \_\_\_\_\_.

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$\_\_\_\_\_]. You may request an accounting by calling us at \_\_\_\_\_ [telephone number] \_\_\_\_\_.

[End of Form]<sup>13</sup>

SECTION 10. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (a) of section 490:9-615, Hawaii Revised Statutes, to read as follows:

“(a) A secured party shall apply or pay over for application the cash proceeds of disposition under section 490:9-610 in the following order to:

- (1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
- (2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
- (3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
  - (A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
  - (B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- (4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed."

SECTION 11. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (c) of section 490:9-615, Hawaii Revised Statutes, to read as follows:

"(c) A secured party need not apply or pay over for application noncash proceeds of disposition under ~~[this section]~~ section 490:9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner."

SECTION 12. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending section 490:9-625, Hawaii Revised Statutes, as follows:

1. By amending subsection (b) to read:

"(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply ~~[with a request under section 490:9-210]~~ may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing."

2. By amending subsection (g) to read:

"(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 490:9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure."

SECTION 13. Act 241, Session Laws of Hawaii 2000, section 1, is amended by amending subsection (b) of section 490:9-702, Hawaii Revised Statutes, to read as follows:

"(b) Except as otherwise provided in subsection (c) and sections 490:9-703 through ~~[490:9-708:]~~ 490:9-709:

- (1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before this article takes effect, and would be subject to this article if they had been entered into or created after this article takes effect, and the rights, duties, and interests flowing from those transactions and liens, remain valid after this article takes effect; and
- (2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this article or by the law that otherwise would apply if this article had not taken effect."

SECTION 14. Act 241, Session Laws of Hawaii 2000, section 1, is amended by redesignating sections 490:9-707 and 490:9-708 enacted in that Act, as sections 490:9-708 and 490:9-709, respectively, for the addition of the new section 490:9-707 made by section 1 of this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken except that bracketed instructions in the form and the “end of form” notation in section 490:9-613, Hawaii Revised Statutes, as set forth in section 9 of this Act shall not be repealed and the brackets shall be set forth as part of the form. New statutory material is underscored,<sup>2</sup> except that the underscoring in the form in section 490:9-613, Hawaii Revised Statutes, as set forth in section 9 of this Act, is not indicating new statutory material and shall be set forth as part of the form.

SECTION 16. This Act shall take effect on June 30, 2001.

(Approved June 13, 2001.)

**Notes**

1. “[End of Form]” should be underscored.
2. Edited pursuant to HRS §23G-16.5.