

ACT 132

H.B. NO. 525

A Bill for an Act Relating to the Uniform Commercial Code.

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

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended as follows:

1. By adding two new articles to be appropriately designated and to read:

**“ARTICLE A
CONTROLLABLE ELECTRONIC RECORDS**

§490:A-101 Short title. This article may be cited as Uniform Commercial Code—Controllable Electronic Records.

§490:A-102 Definitions. (a) In this article:

“Controllable electronic record” means a record stored in an electronic medium that may be subjected to control under section 490:A-105. “Controllable electronic record” does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.

“Qualifying purchaser” means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.

“Transferable record” has the same meaning as in:

- (1) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7021(a)(1), as amended; or
- (2) Section 489E-16(a).

“Value” has the same meaning as in section 490:3-303(a), as if references in that section to an “instrument” were references to a controllable account, controllable electronic record, or controllable payment intangible.

(b) The following definitions in other articles of this chapter shall apply to this article:

“Account debtor”. Section 490:9-102.

“Chattel paper”. Section 490:9-102.

“Controllable account”. Section 490:9-102.

“Controllable payment intangible”. Section 490:9-102.

“Deposit account”. Section 490:9-102.

“Electronic money”. Section 490:9-102.

“Investment property”. Section 490:9-102.

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§490:A-103 Relation to article 9 and consumer laws. (a) If there is conflict between this article and article 9, article 9 shall govern.

(b) A transaction subject to this article shall be subject to any applicable rule of law that establishes a different rule for consumers, including any other statute or rule that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and any consumer protection statutes or rules.

§490:A-104 Rights in controllable account, controllable electronic record, and controllable payment intangible. (a) This section shall apply to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(b) To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser shall be deemed to obtain control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

(c) Except as provided in this section, laws other than this article shall determine whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) A purchaser of a controllable electronic record shall be deemed to acquire all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record shall be deemed to acquire rights only to the extent of the interest purchased.

(e) A qualifying purchaser shall be deemed to acquire its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Except as provided in subsections (a) and (e) for a controllable account and a controllable payment intangible or law other than this article, a qualifying purchaser shall take a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) An action shall not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record,

whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h) Filing of a financing statement under article 9 shall not be deemed to be a notice of a claim of a property right in a controllable electronic record.

§490:A-105 Control of controllable electronic record. (a) A person shall be deemed to have control of a controllable electronic record if the electronic record; a record attached to, or logically associated with, the electronic record; or a system in which the electronic record is recorded:

- (1) Gives the person:
 - (A) Power to avail itself of substantially all the benefit from the electronic record; and
 - (B) Exclusive power, subject to subsection (b), to:
 - (i) Prevent others from availing themselves of substantially all the benefit from the electronic record; and
 - (ii) Transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and
- (2) Enables the person to readily identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).
- (b) Subject to subsection (c), a power shall be deemed exclusive under subsection (a)(1)(B) regardless of whether:
 - (1) The controllable electronic record; a record attached to, or logically associated with, the electronic record; or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or
 - (2) The power is shared with another person.
- (c) A power of a person shall not be deemed to be shared with another person under subsection (b)(2) and the person's power shall not be deemed exclusive if:
 - (1) The person may exercise the power only if the power also is exercised by the other person; and
 - (2) The other person:
 - (A) May exercise the power without exercise of the power by the person; or
 - (B) Is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.
- (d) If a person has the powers specified in subsection (a)(1)(B), the powers shall be presumed to be exclusive.
- (e) A person shall be deemed to have control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:
 - (1) Has control of the electronic record and acknowledges that it has control on behalf of the person; or
 - (2) Obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(f) A person having control under this section shall not be required to acknowledge that it has control on behalf of another person.

(g) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article or article 9 otherwise provides, the person shall not owe any duty to the other person and shall not be required to confirm the acknowledgment to any other person.

§490:A-106 Discharge of account debtor on controllable account or controllable payment intangible. (a) An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

- (1) The person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or
- (2) Except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Subject to subsection (d), the account debtor shall not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

- (1) Is signed by a person that formerly had control or the person to which control was transferred;
- (2) Reasonably identifies the controllable account or controllable payment intangible;
- (3) Notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;
- (4) Identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and
- (5) Provides a commercially reasonable method by which the account debtor shall pay the transferee.

(c) After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and shall not discharge the obligation by paying a person that formerly had control.

(d) Subject to subsection (h), notification shall be deemed ineffective under subsection (b):

- (1) Unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;
- (2) To the extent an agreement between the account debtor and 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 the account debtor if the notification notifies the account debtor to:
 - (A) Divide a payment;
 - (B) Make less than the full amount of an installment or other periodic payment; or
 - (C) Pay any part of a payment by more than one method or to more than one person.

(e) Subject to subsection (h), if requested by the account debtor, the person giving the notification under subsection (b) shall seasonably furnish reasonable proof, using the method in the agreement referred to in subsection (d)(1), that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) A person shall be deemed to have furnished reasonable proof under subsection (e) that control has been transferred if the person demonstrates, using the method in the agreement referred to in subsection (d)(1), that the transferee has the power to:

- (1) Avail itself of substantially all the benefit from the controllable electronic record;
- (2) Prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and
- (3) Transfer the powers specified in paragraphs (1) and (2) to another person.

(g) Subject to subsection (h), an account debtor shall not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

(h) This section shall be subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

§490:A-107 Governing law. (a) Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction shall govern a matter covered by this article.

(b) For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction shall govern a matter covered by section 490:A-106 unless an effective agreement determines that the local law of another jurisdiction shall govern.

(c) The following rules shall determine a controllable electronic record's jurisdiction under this section:

- (1) If the controllable electronic record, or a record attached to, or logically associated with, the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or article, that jurisdiction shall be the controllable electronic record's jurisdiction;
- (2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or article, that jurisdiction shall be the controllable electronic record's jurisdiction;
- (3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to, or logically associated with, the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction shall be the controllable electronic record's jurisdiction;
- (4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable

electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction shall be the controllable electronic record's jurisdiction; and

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction shall be the District of Columbia.

(d) If subsection (c)(5) applies and article 12 of the Uniform Commercial Code Amendments (2022) is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article shall be the law of the District of Columbia as though article 12 of the Uniform Commercial Code Amendments (2022) were in effect in the District of Columbia without material modification.

(e) To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law shall govern regardless of whether the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

(f) The rights acquired under section 490:A-104 by a purchaser or qualifying purchaser shall be governed by the law applicable under this section at the time of purchase.

ARTICLE B TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022)

PART 1. GENERAL PROVISIONS AND DEFINITIONS

§490:B-101 Short title. This article may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

§490:B-102 Definitions. (a) In this article:

"Adjustment date" means July 1, 2025, or the date that is one year after the effective date of this Act, whichever is later.

"Article A property" means a controllable account, controllable electronic record, or controllable payment intangible.

(b) The following definitions in other articles of this chapter shall apply to this article:

"Controllable account". Section 490:9-102.

"Controllable electronic record". Section 490:A-102.

"Controllable payment intangible". Section 490:9-102.

"Electronic money". Section 490:9-102.

"Financing statement". Section 490:9-102.

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

PART 2. GENERAL TRANSITIONAL PROVISION

§490:B-201 Savings clause. Except as provided in part 3, a transaction validly entered into before the effective date of this article and the rights, duties, and interests flowing from the transaction shall remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than this chapter or, if applicable, this chapter, as though this article had not taken effect.

PART 3. TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND A

§490:B-301 Savings clause. (a) Except as provided in this part, article 9 as amended by Act , Session Laws of Hawaii 2023, and article A shall apply to a transaction, lien, or other interest in property, regardless of whether the transaction, lien, or interest was entered into, created, or acquired before the effective date of this article.

(b) Except as provided in subsection (c) and sections 490:B-302 through 490:B-306:

- (1) A transaction, lien, or interest in property that was validly entered into, created, or transferred before the effective date of this article and was not governed by this chapter, but would be subject to article 9, as amended by Act , Session Laws of Hawaii 2023, or article A if it had been entered into, created, or transferred on or after the effective date of this article, including the rights, duties, and interests flowing from the transaction, lien, or interest, shall remain valid on and after the effective date of this article; and
- (2) The transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this article or by the law that would apply if this article had not taken effect.

(c) This article shall not affect an action, case, or proceeding commenced before the effective date of this article.

§490:B-302 Security interest perfected before the effective date. (a) A security interest that is enforceable and perfected immediately before the effective date of this article shall be a perfected security interest under this article if, on the effective date of this article, the requirements for enforceability and perfection under this article are satisfied without further action.

(b) If a security interest is enforceable and perfected immediately before the effective date of this article, but the requirements for enforceability or perfection under this article are not satisfied on the effective date of this article, the security interest shall:

- (1) Be deemed a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before the effective date of this article or the adjustment date;
- (2) Remain enforceable thereafter only if the security interest satisfies the requirements for enforceability under section 490:9-203, as amended by Act , Session Laws of Hawaii 2023, before the adjustment date; and
- (3) Remain perfected thereafter only if the requirements for perfection under this article are satisfied before the time specified in paragraph (1).

§490:B-303 Security interest unperfected before the effective date. A security interest that is enforceable immediately before the effective date of this article but is unperfected at that time shall:

- (1) Remain an enforceable security interest until the adjustment date;
- (2) Remain enforceable thereafter if the security interest becomes enforceable under section 490:9-203, as amended by Act , Session Laws of Hawaii 2023, on the effective date of this article or before the adjustment date; and
- (3) Become perfected:

- (A) Without further action, on the effective date of this article if the requirements for perfection under this article are satisfied before or at that time; or
- (B) When the requirements for perfection are satisfied if the requirements are satisfied after that time.

§490:B-304 Effectiveness of actions taken before the effective date.

(a) If action, other than the filing of a financing statement, is taken before the effective date of this article and the action would have resulted in perfection of the security interest had the security interest become enforceable before the effective date of this article, the action shall be effective to perfect a security interest that attaches under this article before the adjustment date. An attached security interest shall become unperfected on the adjustment date unless the security interest becomes a perfected security interest under this article before the adjustment date.

(b) The filing of a financing statement before the effective date of this article shall be effective to perfect a security interest on the effective date of this article to the extent that the filing would satisfy the requirements for perfection under this article.

(c) The taking of an action before the effective date of this article shall be sufficient for the enforceability of a security interest on the effective date of this article if the action would satisfy the requirements for enforceability under this article.

§490:B-305 Priority. (a) Subject to subsections (b) and (c), this article shall determine the priority of conflicting claims to collateral.

(b) Subject to subsection (c), if the priorities of claims to collateral were established before the effective date of this article, article 9, as in effect before the effective date of this article, shall determine priority.

(c) On the adjustment date, to the extent the priorities determined by article 9, as amended by Act , Session Laws of Hawaii 2023, modify the priorities established before the effective date of this article, the priorities of claims to article A property and electronic money established before the effective date of this article shall cease to apply.

§490:B-306 Priority of claims when priority rules of article 9 do not apply.

(a) Subject to subsections (b) and (c), article A shall determine the priority of conflicting claims to article A property when the priority rules of article 9, as amended by Act , Session Laws of Hawaii 2023, do not apply.

(b) Subject to subsection (c), when the priority rules of article 9, as amended by Act , Session Laws of Hawaii 2023, do not apply and the priorities of claims to article A property were established before the effective date of this article, law other than article A shall determine priority.

(c) When the priority rules of article 9, as amended by Act , Session Laws of Hawaii 2023, do not apply, to the extent the priorities determined by this article modify the priorities established before the effective date of this article, the priorities of claims to article A property established before the effective date of this article shall cease to apply on the adjustment date.

PART 4. EFFECTIVE DATE

§490:B-401 Effective date. This article shall take effect on the effective date of this Act.”

2. By adding three new sections to part 1, subpart 1, of article 9 to be appropriately designated and to read:

“§490:9-A Control of electronic money. (a) A person shall be deemed to have control of electronic money if the electronic money; a record attached to, or logically associated with, the electronic money; or a system in which the electronic money is recorded:

- (1) Gives the person:
 - (A) Power to avail itself of substantially all the benefit from the electronic money; and
 - (B) Exclusive power, subject to subsection (b), to:
 - (i) Prevent others from availing themselves of substantially all the benefit from the electronic money; and
 - (ii) Transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and
- (2) Enables the person to readily identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).
- (b) Subject to subsection (c), a power shall be deemed exclusive under subsection (a)(1)(B) regardless of whether:
 - (1) The electronic money; a record attached to, or logically associated with, the electronic money; or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or
 - (2) The power is shared with another person.
- (c) A power of a person shall not be deemed to be shared with another person under subsection (b)(2) and the person's power shall not be deemed exclusive if:
 - (1) The person may exercise the power only if the power is also exercised by the other person; and
 - (2) The other person:
 - (A) May exercise the power without exercise of the power by the person; or
 - (B) Is the transferor to the person of an interest in the electronic money.
- (d) If a person has the powers specified in subsection (a)(1)(B), the powers shall be presumed to be exclusive.
- (e) A person shall be deemed to have control of electronic money if another person, other than the transferor to the person of an interest in the electronic money:
 - (1) Has control of the electronic money and acknowledges that it has control on behalf of the person; or
 - (2) Obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

§490:9-B Control of controllable electronic record, controllable account, or controllable payment intangible. (a) A secured party shall be deemed to have control of a controllable electronic record as provided in section 490:A-105.

(b) A secured party shall be deemed to have control of a controllable account or controllable payment intangible if the secured party has control of

the controllable electronic record that evidences the controllable account or controllable payment intangible.

§490:9-C No requirement to acknowledge or confirm; no duties. (a) A person having control under section 490:9-104, 490:9-105, or 490:9-A shall not be required to acknowledge that it has control on behalf of another person.

(b) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person shall not owe any duty to the other person and shall not be required to confirm the acknowledgment to any other person.”

3. By adding two new sections to part 3, subpart 1, of article 9 to be appropriately designated and to read:

“§490:9-D Law governing perfection and priority of security interests in chattel paper. (a) Except as provided in subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper’s jurisdiction shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, regardless of whether the transaction bears any relation to the chattel paper’s jurisdiction.

(b) The following rules shall determine the chattel paper’s jurisdiction under this section:

- (1) If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to, or logically associated with, the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper’s jurisdiction for purposes of this chapter, article, or part, that jurisdiction shall be the chattel paper’s jurisdiction;
- (2) If paragraph (1) does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper’s jurisdiction for purposes of this chapter, article, or part, that jurisdiction shall be the chattel paper’s jurisdiction;
- (3) If paragraphs (1) and (2) do not apply and the authoritative electronic copy, or a record attached to, or logically associated with, the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction shall be the chattel paper’s jurisdiction;
- (4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction shall be the chattel paper’s jurisdiction; and
- (5) If paragraphs (1) through (4) do not apply, the chattel paper’s jurisdiction shall be the jurisdiction in which the debtor is located.

(c) If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction shall govern:

- (1) Perfection of a security interest in the chattel paper by possession under section 490:9-F; and
- (2) The effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) The local law of the jurisdiction in which the debtor is located shall govern perfection of a security interest in chattel paper by filing.

§490:9-E Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles. (a) Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction specified in sections 490:A-107(c) and (d) shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(b) The local law of the jurisdiction in which the debtor is located shall govern:

- (1) Perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and
- (2) Automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible."

4. By adding a new section to part 3, subpart 2, of article 9 to be appropriately designated and to read:

"§490:9-F Perfection by possession and control of chattel paper. (a) A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.

(b) A security interest shall be deemed perfected under subsection (a) no earlier than the time the secured party takes possession and obtains control and shall be deemed to remain perfected under subsection (a) only while the secured party retains possession and control.

(c) Sections 490:9-313(c) and (f) through (i) shall apply to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper."

5. By adding a new section to part 3, subpart 3, of article 9 to be appropriately designated and to read:

"§490:9-G Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible. A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible shall have priority over a conflicting security interest held by a secured party that does not have control."

SECTION 2. Section 490:1-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Subject to definitions contained in other articles of this chapter that apply to particular articles or parts thereof:

"Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

"Aggrieved party" means a party entitled to pursue a remedy.

"Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances,

including course of performance, course of dealing, or usage of trade as provided in section 490:1-303.

“Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, financial services loan company, and trust company.

“Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

“Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. ~~[The term]~~ “Bill of lading” does not include a warehouse receipt.

“Branch” includes a separately incorporated foreign branch of a bank.

“Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

“Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. “Buyer in the ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“Conspicuous”, with reference to a term, means so written, displayed, or presented that, based on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. ~~[Conspicuous terms include the following:~~

- (1) ~~A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~
- (2) ~~Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.]~~

“Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.

“Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this chapter and as supplemented by any other applicable law.

“Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

“Defendant” includes a person in the position of defendant in a counter-claim, cross-claim, or third-party claim.

“Delivery”, with respect to an electronic document of title, means voluntary transfer of control^[:] and, with respect to an instrument, a tangible document of title, or an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.

“Document of title” means a record^[:] that:

- (1) [~~That in~~] In the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and
- (2) [~~That purports~~] Purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

[~~The term~~] “Document of title” includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. [~~An electronic document of title~~]

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic document of title” means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

“Fault” means a default, breach, or wrongful act or omission.

“Fungible goods” means^[:] goods that:

- (1) [~~Goods that any~~] Any unit, by nature or usage of trade, is the equivalent of any other like unit; or
- (2) [~~Goods that by~~] By agreement are treated as equivalent.

“Genuine” means free of forgery or counterfeiting.

“Good faith” means honesty in fact.

“Holder” means^[:] the person in:

- (1) [~~The person in possession~~] Possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
- (2) [~~The person in possession~~] Possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
- (3) [~~The person in control~~] Control, other than pursuant to section 490:7-106(g), of a negotiable electronic document of title.

“Insolvency proceeding” includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

“Insolvent” means:

- (1) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
- (2) Being unable to pay debts as they become due; or
- (3) Being insolvent within the meaning of federal bankruptcy law.

“Money” means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. [~~The term~~] “Money” includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries. “Money” does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

“Organization” means a person other than an individual.

“Party”, as distinct from a “third party”, means a person that has engaged in a transaction or made an agreement subject to this chapter.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, ~~[public corporation,]~~ or any other legal or commercial entity. “Person” includes a protected series, however denominated, of an entity if the protected series is established under any law other than this chapter that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

“Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

“Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

“Purchaser” means a person that takes by purchase.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

“Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

“Right” includes remedy.

“Security interest” means an interest in personal property or fixtures that secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 490:2-401, but a buyer may also acquire a “security interest” by complying with article 9. Except as otherwise provided in section 490:2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 490:2-401 is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to section 490:1-203.

“Send”, in connection with a ~~[writing,]~~ record~~[-]~~ or ~~[notice]~~ notification, means~~[-]~~ to:

- (1) ~~[To deposit]~~ Deposit in the mail ~~[or]~~, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for ~~[and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none],~~ addressed to any address reasonable under the circumstances; or
- (2) ~~[In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.]~~ Cause the record

or notification to be received within the time it would have been received if properly sent under paragraph (1).

“Signed” [includes any symbol executed or adopted with present intention to adopt or accept a writing-]. “sign”, “signing”, or “signature” means, with present intent to authenticate or adopt a record:

- (1) Execute or adopt a tangible symbol; or
- (2) Attach to, or logically associate with, the record an electronic symbol, sound, or process.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Surety” includes a guarantor or other secondary obligor.

“Term” means a portion of an agreement that relates to a particular matter.

“Unauthorized signature” means a signature made without actual, implied, or apparent authority. ~~[The term]~~ “Unauthorized signature” includes a forgery.

“Warehouse receipt” means a document of title issued by a person engaged in the business of storing goods for hire.

“Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.”

SECTION 3. Section 490:1-204, Hawaii Revised Statutes, is amended to read as follows:

“§490:1-204 Value. Except as otherwise provided in articles 3, 4, ~~[and]~~ 5, and A, a person gives value for rights if the person acquires them:

- (1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) As security for, or in total or partial satisfaction of, a preexisting claim;
- (3) By accepting delivery under a preexisting contract for purchase; or
- (4) In return for any consideration sufficient to support a simple contract.”

SECTION 4. Section 490:1-301, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision ~~[governs]~~ shall govern and a contrary agreement ~~[is]~~ shall be effective only to the extent permitted by the law so specified:

- (1) Section 490:2-402;
- (2) Sections 490:2A-105 and 490:2A-106;
- (3) Section 490:4-102;
- (4) Section 490:4A-507;
- (5) Section 490:5-116;
- (6) Section 490:8-110; ~~[and]~~
- (7) Sections 490:9-301 through 490:9-307~~[-];~~ and
- (8) Section 490:A-107.”

SECTION 5. Section 490:1-306, Hawaii Revised Statutes, is amended to read as follows:

“§490:1-306 Waiver or renunciation of claim or right after breach. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in ~~[an authenticated]~~ a signed record.”

SECTION 6. Section 490:2-102, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-102 Scope; certain security and other transactions excluded from this article. (1) Unless the context otherwise requires,¹ and except as provided in subsection (3), this article [applies] shall apply to transactions in goods[; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.] and, in the case of a hybrid transaction, to the extent provided in subsection (2).

- (2) In a hybrid transaction, if the sale-of-goods aspects:
 - (a) Do not predominate, only the provisions of this article that relate primarily to the sale-of-goods aspects of the transaction shall apply, and the provisions that relate primarily to the transaction as a whole shall not apply; and
 - (b) Predominate, this article shall apply to the transaction but shall not preclude application in appropriate circumstances of other law to aspects of the transaction that do not relate to the sale of goods.
- (3) This article shall not:
 - (a) Apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or
 - (b) Impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.”

SECTION 7. Section 490:2-106, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-106 Definitions: “contract”; “agreement”; “contract for sale”; “sale”; “present sale”; “conforming” to contract; “termination”; “cancellation”[;]; “hybrid transaction”. (1) In this article unless the context otherwise requires “contract” and “agreement” are limited to those relating to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A “sale” consists in the passing of title from the seller to the buyer for a price (section 490:2-401). A “present sale” means a sale ~~[which]~~ that is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.

(3) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On “termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) “Cancellation” occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of “termination” except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) “Hybrid transaction” means a single transaction involving the sale of goods and;

- (a) The provision of services;
- (b) The lease of other goods; or
- (c) The sale, lease, or license of property other than goods.”

SECTION 8. Section 490:2-201, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-201 Formal requirements; statute of frauds. (1) Except as otherwise provided in this section, a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is ~~[some writing]~~ a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~[his]~~ the party’s authorized agent or broker. A ~~[writing is]~~ record shall not be deemed insufficient because it omits or incorrectly states a term agreed upon but the contract ~~[is]~~ shall not be enforceable under this ~~[paragraph]~~ subsection beyond the quantity of goods shown in ~~[such writing;]~~ the record.

(2) Between merchants if within a reasonable time a ~~[writing]~~ record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it ~~[satisfies]~~ shall satisfy the requirements of subsection (1) against ~~[such]~~ the party unless ~~[written]~~ notice in a record of objection to its contents is given within ten days after it is received.

(3) A contract ~~[which]~~ that does not satisfy the requirements of subsection (1) but ~~[which]~~ that is valid in other respects ~~[is]~~ shall be enforceable:

- (a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller’s business and the seller, before notice of repudiation is received and under circumstances ~~[which]~~ that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; ~~[or]~~
- (b) If the party against whom enforcement is sought admits in ~~[his]~~ the party’s pleading, testimony, or otherwise in court that a contract for sale was made, but the contract ~~[is]~~ shall not be enforceable under this ~~[provision]~~ paragraph beyond the quantity of goods admitted; or
- (c) With respect to goods for which payment has been made and accepted or ~~[which]~~ that have been received and accepted (section 490:2-606).”

SECTION 9. Section 490:2-202, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-202 Final ~~[written]~~ expression: parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or that are otherwise set forth in a ~~[writing]~~ record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented by:

- (a) Course of performance, course of dealing, or usage of trade (section 490:1-303); and
- (b) Evidence of consistent additional terms unless the court finds the ~~[writing]~~ record to have been intended also as a complete and exclusive statement of the terms of the agreement.”

SECTION 10. Section 490:2-209, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:
“§490:2-209 Modification, rescission, and waiver.”

2. By amending subsection (2) to read:

“(2) A signed agreement ~~[which]~~ that excludes modification or rescission except by a signed writing ~~[cannot]~~ or other signed record shall not be otherwise modified or rescinded, but except as between merchants ~~[such a]~~ this type of requirement on a form supplied by the merchant ~~[must]~~ shall be separately signed by the other party.”

SECTION 11. Section 490:2A-102, Hawaii Revised Statutes, is amended to read as follows:

“§490:2A-102 Scope. (a) This article ~~[applies]~~ shall apply to any transaction, regardless of form, that creates a lease~~[-]~~ and, in the case of a hybrid lease, this article shall apply to the extent provided in subsection (b).

(b) In a hybrid lease:

(1) If the lease-of-goods aspects do not predominate:

(A) Only the provisions of this article that relate primarily to the lease-of-goods aspects of the transaction shall apply, and the provisions that relate primarily to the transaction as a whole shall not apply;

(B) Section 490:2A-209 shall apply if the lease is a finance lease; and

(C) Section 490:2A-407 shall apply to the promises of the lessee in a finance lease to the extent that the promises are consideration for the right to possession and use of the leased goods; and

(2) If the lease-of-goods aspects predominate, this article shall apply to the transaction, but shall not preclude the application, in appropriate circumstances, of other law to aspects of the lease that do not relate to the lease of goods.”

SECTION 12. Section 490:2A-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In this article ~~[unless the context otherwise requires]:~~

[4] “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

[2] “Cancellation” occurs when either party puts an end to the lease contract for default by the other party.

[3] “Commercial unit” means ~~[such]~~ a unit of goods that as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. ~~[A commercial unit]~~ “Commercial unit” may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

[4] “Conforming” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

~~[(5)]~~ “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

~~[(6)]~~ “Fault” means wrongful act, omission, breach, or default.

~~[(7)]~~ “Finance lease” means a lease with respect to which:

- ~~[(i)]~~ (1) The lessor does not select, manufacture, or supply the goods;
- ~~[(ii)]~~ (2) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
- ~~[(iii)]~~ (3) One of the following occurs:
 - (A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
 - (B) The lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - (C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
 - (D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing ~~[(a) of]:~~
 - (i) ~~Of~~ the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person~~[(b) that];~~
 - (ii) That the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods~~];~~ and ~~[(c) that]~~
 - (iii) That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

~~[(8)]~~ “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (section 490:2A-309)~~[(b) but the term].~~ “Goods” does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. ~~[The term also]~~ “Goods” includes the unborn young of animals.

“Hybrid lease” means a single transaction involving a lease of goods and:

- (1) The provision of services;
- (2) A sale of other goods; or
- (3) A sale, lease, or license of property other than goods.

~~[(9)]~~ “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even

though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

[40] “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration~~[, but]~~. “Lease” does not include a sale, including a sale on approval or a sale or return, or retention or creation of a security interest ~~[is not a lease]~~. Unless the context clearly indicates otherwise, ~~[the term]~~ “lease” includes a sublease.

[41] “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, ~~[the term]~~ “lease agreement” includes a sublease agreement.

[42] “Lease contract” means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, ~~[the term]~~ “lease contract” includes a sublease contract.

[43] “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

[44] “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, ~~[the term]~~ “lessee” includes a sublessee.

[45] “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

[46] “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, ~~[the term]~~ “lessor” includes a sublessor.

[47] “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

[48] “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation~~[, but the term]~~. “Lien” does not include a security interest.

[49] “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

[20] “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

[21] “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

[22] “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

[23] “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

[(24)] “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

[(25)] “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

[(26)] “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.”

SECTION 13. Section 490:2A-107, Hawaii Revised Statutes, is amended to read as follows:

“§490:2A-107 Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a ~~[written]~~ waiver or renunciation in a signed [and] record delivered by the aggrieved party.”

SECTION 14. Section 490:2A-202, Hawaii Revised Statutes, is amended to read as follows:

“§490:2A-202 Final ~~[written]~~ expression: parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~[writing]~~ record intended by the parties as a final expression of their agreement with respect to ~~[such]~~ the terms as are included therein ~~[may]~~ shall not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented[:] by:

- (1) ~~[By course]~~ Course of dealing or usage of trade or by course of performance; and
- (2) ~~[By evidence]~~ Evidence of consistent additional terms unless the court finds the ~~[writing]~~ record to have been intended also as a complete and exclusive statement of the terms of the agreement.”

SECTION 15. Section 490:3-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) Is payable on demand or at a definite time; and
- (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:
 - (A) An undertaking or power to give, maintain, or protect collateral to secure payment;
 - (B) An authorization or power to the holder to confess judgment or realize on or dispose of collateral; ~~[or]~~
 - (C) A waiver of the benefit of any law intended for the advantage or protection of an obligor[:];
 - (D) A term that specifies the law that governs the promise or order;
or
 - (E) An undertaking to resolve in a specified forum a dispute concerning the promise or order.”

SECTION 16. Section 490:3-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Issue” means [the]:

- (1) The first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person[-]; or
- (2) If agreed to by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.”

SECTION 17. Section 490:3-401, Hawaii Revised Statutes, is amended to read as follows:

“§490:3-401 Signature[-] necessary for liability on instrument. [(a)] A person [is] shall not be liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 490:3-402.

[(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.]”

SECTION 18. Section 490:3-604, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, [~~such as~~] including surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party’s signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing. The obligation of a party to pay a check shall not be discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.”

SECTION 19. Section 490:4A-103, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) In this article:

[(1) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

- (i) ~~The instruction does not state a condition to payment to the beneficiary other than time of payment;~~
- (ii) ~~The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and~~
- (iii) ~~The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.~~

(2) “Beneficiary” means the person to be paid by the beneficiary’s bank.

[(3)] (3) “Beneficiary’s bank” means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or [which] that otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

“Payment order” means an instruction of a sender to a receiving bank, transmitted orally or in a record, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

- (1) The instruction does not state a condition to payment to the beneficiary other than time of payment;
- (2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
- (3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

[(4)] “Receiving bank” means the bank to which the sender’s instruction is addressed.

[(5)] “Sender” means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection [(a)(1)] (a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.”

SECTION 20. Section 490:4A-201, Hawaii Revised Statutes, is amended to read as follows:

“§490:4A-201 Security procedure. “Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and require the use of algorithms or other codes, identifying words ~~[ø]~~, numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer [is] or requiring a payment order to be sent from a known email address, internet protocol address, or telephone number shall not be, by itself, a security procedure.”

SECTION 21. Section 490:4A-202, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank [is] shall be deemed effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the bank’s obligations under the security procedure and any ~~[written]~~ agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer. The bank [is] shall not be required to follow an instruction that violates ~~[a-written]~~ an agreement with the customer, evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security

procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in [writing] a record to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer."

SECTION 22. Section 490:4A-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If an accepted payment order is not, under section 490:4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 490:4A-202(b), the following rules apply:

- (1) By express [written] agreement, evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order~~[-]; and~~
- (2) The receiving bank [is] shall not ~~be~~ entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. ~~[Information]~~ In this paragraph, "information" includes any access device, computer software, or the like."

SECTION 23. Section 490:4A-210, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A payment order [is] shall be deemed rejected by the receiving bank by a notice of rejection transmitted to the sender orally~~[-electronically];~~ or in [writing] a record. A notice of rejection need not use any particular words and [is] shall be sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection [is] shall be deemed effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection [is] shall be deemed effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement [is] shall be deemed reasonable and (ii) any means not complying [is] shall be deemed not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means."

SECTION 24. Section 490:4A-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally~~[-electronically];~~ or in [writing] a record. If a security procedure is in effect between the sender and the receiving bank, the communication [is] shall not be deemed effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment."

SECTION 25. Section 490:4A-305, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, ~~[are]~~ shall be recoverable to the extent provided in an express ~~[written]~~ agreement of the receiving bank~~[-]~~, as evidenced by a record.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank ~~[is]~~ shall be liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, ~~[are]~~ shall be recoverable to the extent provided in an express ~~[written]~~ agreement of the receiving bank, as evidenced by a record, but ~~[are]~~ shall not otherwise be recoverable.”

SECTION 26. Section 490:5-104, Hawaii Revised Statutes, is amended to read as follows:

“**§490:5-104 Formal requirements.** A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record ~~[and is authenticated (i) by a signature, or (ii) in accordance with the agreement of the parties or the standard practice referred to in section 490:5-108(e)].~~”

SECTION 27. Section 490:5-116, Hawaii Revised Statutes, is amended to read as follows:

“**§490:5-116 Choice of law and forum.** (a) The liability of an issuer, nominated person, or adviser for action or omission ~~[is]~~ shall be governed by the law of the jurisdiction chosen by an agreement in the form of a record signed ~~[or otherwise authenticated]~~ by the affected parties ~~[in the manner provided in section 490:5-104]~~ or by a provision in the person’s letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission ~~[is]~~ shall be governed by the law of the jurisdiction in which the person is located. The person ~~[is]~~ shall be considered to be located at the address indicated in the person’s undertaking. If more than one address is indicated, the person ~~[is]~~ shall be considered to be located at the address from which the person’s undertaking was issued.

(c) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank ~~[are]~~ shall be considered separate juridical entities and a bank ~~[is]~~ shall be considered to be located at the place where its relevant branch is considered to be located under ~~[this]~~ subsection~~[-]~~ (d).

(d) A branch of a bank shall be considered to be located at the address indicated in the branch’s undertaking; provided that if more than one address is indicated, the branch shall be considered to be located at the address from which the undertaking was issued.

(e) (c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser ~~[is]~~ shall be governed by any rules of custom or practice, ~~[such as]~~ including the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules

shall govern except to the extent of any conflict with the nonvariable provisions specified in section 490:5-103(c).

~~[(d)] (f)~~ If there is conflict between this article and article 3, 4, 4A, or 9, this article ~~[governs.] shall govern.~~

~~[(e)] (g)~~ The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).”

SECTION 28. Section 490:7-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In this article, unless the context otherwise requires:

~~[(1)]~~ “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

~~[(2)]~~ “Carrier” means a person that issues a bill of lading.

~~[(3)]~~ “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

~~[(4)]~~ “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

~~[(5)]~~ “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

~~[(6)]~~ “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

~~[(7)]~~ “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

~~[(8)]~~ “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. ~~[The term]~~ “Issuer” includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

~~[(9)]~~ “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

~~[(10)]~~ “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~[(11)]~~ “Shipper” means a person that enters into a contract of transportation with a carrier.

~~[(12)]~~ “Sign” means, with present intent to authenticate or adopt a record:

~~(A) To execute or adopt a tangible symbol; or~~

~~(B) To attach to or logically associate with the record an electronic sound, symbol, or process.~~

~~[(13)]~~ “Warehouse” means a person engaged in the business of storing goods for hire.”

SECTION 29. Section 490:7-106, Hawaii Revised Statutes, is amended to read as follows:

“§490:7-106 Control of electronic document of title. (a) A person [has] shall be deemed to have control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system [satisfies] shall be deemed to satisfy subsection (a), and a person [is] shall be deemed to have control of an electronic document of title, if the document is created, stored, and [assigned] transferred in [such] a manner that:

- (1) A single authoritative copy of the document exists that is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) The authoritative copy identifies the person asserting control as:
 - (A) The person to which the document was issued; or
 - (B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;
- (3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
- (4) Copies or amendments that add or change an identified [assignee] transferee of the authoritative copy can be made only with the consent of the person asserting control;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system shall be deemed to satisfy subsection (a), and a person shall be deemed to have control of an electronic document of title, if an authoritative electronic copy of the document; a record attached to, or logically associated with, the electronic copy; or a system in which the electronic copy is recorded:

- (1) Enables the person to readily identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
- (2) Enables the person to be readily identified in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and
- (3) Gives the person exclusive power, subject to subsection (d), to:
 - (A) Prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and
 - (B) Transfer control of each authoritative electronic copy.

(d) Subject to subsection (e), a power shall be deemed exclusive under subsection (c)(3) regardless of whether:

- (1) The authoritative electronic copy; a record attached to, or logically associated with, the authoritative electronic copy; or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or
- (2) The power is shared with another person.

(e) A power of a person shall not be deemed to be shared with another person under subsection (d)(2) and the person's power shall not be deemed exclusive if:

- (1) The person may exercise the power only if the power is exercised by the other person; and

(2) The other person:

(A) May exercise the power without exercise of the power by the person; or

(B) Is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3), the powers shall be presumed to be exclusive.

(g) A person shall be deemed to have control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:

(1) Has control of the document and acknowledges that it has control on behalf of the person; or

(2) Obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.

(h) A person that has control under this section shall not be required to acknowledge that it has control on behalf of another person.

(i) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or any law other than this article or article 9 otherwise provides, the person shall not owe any duty to the other person and shall not be required to confirm the acknowledgment to any other person.”

SECTION 30. Section 490:8-102, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) In this article:

“Adverse claim” means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

“Bearer form”, as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

“Broker” means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

“Certificated security” means a security that is represented by a certificate.

“Clearing corporation” means:

(1) A person that is registered as a “clearing agency” under the federal securities laws;

(2) A federal reserve bank; or

(3) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

“Communicate” means to:

(1) Send a signed ~~writings~~ record; or

(2) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

“Entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 490:8-501(b)(2) or (3), that person ~~[is]~~ shall be deemed to be the entitlement holder.

“Entitlement order” means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

“Financial asset”, except as otherwise provided in section 490:8-103, means:

- (1) A security;
- (2) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
- (3) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

As the context requires, ~~[the term]~~ “financial asset” means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

“Good faith”, for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

“Indorsement” means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

“Instruction” means a notification communicated to the issuer of an uncertificated security ~~[which]~~ that directs that the transfer of the security be registered or that the security be redeemed.

“Registered form”, as applied to a certificated security, means a form in which:

- (1) The security certificate specifies a person entitled to the security; and
- (2) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

“Securities intermediary” means:

- (1) A clearing corporation; or
- (2) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

“Security”, except as otherwise provided in section 490:8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

- (1) ~~[Which]~~ That is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
- (2) ~~[Which]~~ That is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
- (3) ~~[Which:]~~ That:
 - (A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

“Security certificate” means a certificate representing a security.

“Security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5.

“Uncertificated security” means a security that is not represented by a certificate.

(b) ~~[Other]~~ The following definitions [applying to] in this article and [the sections in which they appear are:] other articles of this chapter shall apply to this article:

“Appropriate person”. Section 490:8-107.

“Control”. Section 490:8-106.

“Controllable account”. Section 490:9-102.

“Controllable electronic record”. Section 490:A-102.

“Controllable payment intangible”. Section 490:9-102.

“Delivery”. Section 490:8-301.

“Investment company security”. Section 490:8-103.

“Issuer”. Section 490:8-201.

“Overissue”. Section 490:8-210.

“Protected purchaser”. Section 490:8-303.

“Securities account”. Section 490:8-501.”

SECTION 31. Section 490:8-103, Hawaii Revised Statutes, is amended to read as follows:

“§490:8-103 Rules for determining whether certain obligations and interests are securities or financial assets. (a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity [is] shall be deemed a security.

(b) An “investment company security” [is] shall be deemed a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. ~~[Investment company security]~~ “Investment company security” does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company [is] shall not be deemed a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company [is] shall be deemed a financial asset if it is held in a securities account.

(d) A writing that is a security certificate [is] shall be governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 [is] shall be deemed a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants [is] shall not be deemed a security, but [is] shall be deemed a financial asset.

(f) A commodity contract, as defined in section 490:9-102(a), [is] shall not be deemed a security or a financial asset.

(g) A controllable account, controllable electronic record, or controllable payment intangible shall not be deemed a financial asset unless the controllable account, controllable electronic record, or controllable payment

intangible is a property that is held by a securities intermediary for another person in a securities account and the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article."

SECTION 32. Section 490:8-106, Hawaii Revised Statutes, is amended to read as follows:

"§490:8-106 Control. (a) A purchaser [has] shall be deemed to have "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser [has] shall be deemed to have "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

- (1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or
- (2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser [has] shall be deemed to have "control" of an uncertificated security if:

- (1) The uncertificated security is delivered to the purchaser; or
- (2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser [has] shall be deemed to have "control" of a security entitlement if:

- (1) The purchaser becomes the entitlement holder;
- (2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) Another person ~~[has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.]~~ other than the transferor to the purchaser of an interest in the security entitlement:

(A) Has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) Obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary [has] shall be deemed to have control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) [has] shall be deemed to have control, even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary [may] shall not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary [is] shall not be required to enter into ~~[such]~~ an agreement of the kind described in subsection (c)(2) or (d)(2) even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has

entered into ~~[such]~~ an agreement ~~[is]~~ of the kind described in subsection (c)(2) or (d)(2) shall not be required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) A person that has control under this section shall not be required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this article or article 9 otherwise provides, the person shall not owe any duty to the purchaser and shall not be required to confirm the acknowledgment to any other person."

SECTION 33. Section 490:8-110, Hawaii Revised Statutes, is amended to read as follows:

"§490:8-110 Applicability; choice of law. (a) The local law of the issuer's jurisdiction, as specified in subsection (d), ~~[governs:] shall govern:~~

- (1) The validity of a security;
- (2) The rights and duties of the issuer with respect to registration of transfer;
- (3) The effectiveness of registration of transfer by the issuer;
- (4) Whether the issuer owes any duties to an adverse claimant to a security; and
- (5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), ~~[governs:] shall govern:~~

- (1) Acquisition of a security entitlement from the securities intermediary;
- (2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
- (4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery ~~[governs] shall govern~~ whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) to (5).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

- (1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction ~~[is] shall be~~ the securities intermediary's jurisdiction~~[-];~~
- (2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by

the law of a particular jurisdiction, that jurisdiction [is] shall be the securities intermediary's jurisdiction[-];

- (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction [is] shall be the securities intermediary's jurisdiction[-];
- (4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction [is] shall be the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located[-]; and
- (5) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction [is] shall be the jurisdiction in which the chief executive office of the securities intermediary is located.
- (f) A securities intermediary's jurisdiction [is] shall not be determined by the physical location of certificates representing financial assets, or by the jurisdiction in which ~~[is organized]~~ the issuer of the financial asset is organized with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction shall govern a matter or transaction specified in subsection (a) or (b) regardless of whether the matter or transaction bears any relation to the jurisdiction."

SECTION 34. Section 490:8-303, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~"(b) [In addition to acquiring the rights of a purchaser, a]~~ A protected purchaser ~~[also]~~ acquires its interest in the security free of any adverse claim."

SECTION 35. Section 490:9-102, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) In this [a]rticle[]:

"Accession" means goods that are physically united with other goods in [such] a manner [that] in which the identity of the original goods is not lost.

"Account", except as used in "account for"[-], "account statement", "account to", "customer's account", "on account of", "statement of account", "commodity account", and "deposit account":

- (1) Means a right to payment of a monetary obligation, whether or not earned by performance:
 - (A) For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
 - (B) For services rendered or to be rendered;
 - (C) For a policy of insurance issued or to be issued;
 - (D) For a secondary obligation incurred or to be incurred;
 - (E) For energy provided or to be provided;
 - (F) For the use or hire of a vessel under a charter or other contract;
 - (G) Arising out of the use of a credit or charge card or information contained on or for use with the card; or
 - (H) As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state~~[-The term includes];~~

- (2) Includes controllable accounts and health-care-insurance receivables[-]; and
- [(2)] (3) Does not include:
- (A) ~~[Rights to payment evidenced by chattel paper or an instrument;]~~ Chattel paper;
 - (B) Commercial tort claims;
 - (C) Deposit accounts;
 - (D) Investment property;
 - (E) Letter-of-credit rights or letters of credit; ~~[or]~~
 - (F) Rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card[-]; or
 - (G) Rights to payment evidenced by an instrument.

“Account debtor” means a person obligated on an account, chattel paper, or general intangible. ~~[The term]~~ “Account debtor” does not include persons obligated to pay a negotiable instrument, even if the negotiable instrument ~~[constitutes part of]~~ evidences chattel paper.

“Accounting”, except as used in “accounting for”, means a record:

- (1) ~~[Authenticated]~~ Signed by a secured party;
- (2) Indicating the aggregate unpaid secured obligations as of a date ~~[not]~~ no more than thirty-five days earlier or thirty-five days later than the date of the record; and
- (3) Identifying the components of the obligations in reasonable detail.

“Agricultural lien” means an interest in farm products:

- (1) ~~[Which]~~ That secures payment or performance of an obligation for:
 - (A) Goods or services furnished in connection with a debtor’s farming operation; or
 - (B) Rent on real property leased by a debtor in connection with its farming operation;
- (2) ~~[Which]~~ That is created by statute in favor of a person that:
 - (A) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
 - (B) Leased real property to a debtor in connection with the debtor’s farming operation; and
- (3) Whose effectiveness does not depend on the person’s possession of the personal property.

“As-extracted collateral” means:

- (1) Oil, gas, or other minerals that are subject to a security interest that:
 - (A) Is created by a debtor having an interest in the minerals before extraction; and
 - (B) Attaches to the minerals as extracted; or
- (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

~~[“Authenticate” means:~~

- (1) ~~To sign; or~~
- (2) ~~With present intent to adopt or accept a record, to attach or to logically associate with the record an electronic sound, symbol, or process.]~~

“Assignee”, except as used in “assignee for benefit of creditors”, means a person:

- (1) In whose favor a security interest that secures an obligation is created or provided for under a security agreement, regardless of whether the obligation is outstanding; or
- (2) To which an account, chattel paper, payment intangible, or promissory note has been sold.

“Assignee” includes a person to which a security interest has been transferred by a secured party.

“Assignor” means a person that:

- (1) Under a security agreement creates or provides for a security interest that secures an obligation; or
- (2) Sells an account, chattel paper, payment intangible, or promissory note.

“Assignor” includes a secured party that has transferred a security interest to another person.

“Bank” means an organization that is engaged in the business of banking. [The term] “Bank” includes savings banks, savings and loan associations, credit unions, and trust companies.

“Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

“Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. [The term] “Certificate of title” includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

“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.] a right to payment of a monetary obligation that is either:

- (1) Secured by specific goods, if the right to payment and security agreement are evidenced by a record; or
- (2) Owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:
 - (A) The right to payment and lease agreement are evidenced by a record; and
 - (B) The predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

[The term] “Chattel paper” does not include[:

- (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 a charter or other contract involving the use or hire of a vessel or 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.]~~

“Collateral” means the property subject to a security interest or agricultural lien. ~~[The term]~~ “Collateral” includes:

- (1) Proceeds to which a security interest attaches;
- (2) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (3) Goods that are the subject of a consignment.

“Commercial tort claim” means a claim arising in tort with respect to which ~~[:] the claimant is:~~

- (1) ~~[The claimant is an]~~ An organization; or
- (2) ~~[The claimant is an]~~ An individual and the claim:
 - (A) Arose in the course of the claimant’s business or profession; and
 - (B) Does not include damages arising out of personal injury to or the death of an individual.

“Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

“Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (1) Traded on or subject to the rules of a board of trade that has been designated as a contract market for ~~[such a contract]~~ these types of contracts pursuant to federal commodities laws; or
- (2) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

“Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

“Commodity intermediary” means a person that:

- (1) Is registered as a futures commission merchant under federal commodities law; or
- (2) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

“Communicate” means:

- (1) To send a written or other tangible record;
- (2) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

“Consignee” means a merchant to which goods are delivered in a consignment.

“Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (1) The merchant:
 - (A) Deals in goods of that kind under a name other than the name of the person making delivery;
 - (B) Is not an auctioneer; and
 - (C) Is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (2) With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
- (3) The goods are not consumer goods immediately before delivery; and

- (4) The transaction does not create a security interest that secures an obligation.

“Consignor” means a person that delivers goods to a consignee in a consignment.

“Consumer debtor” means a debtor in a consumer transaction.

“Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

“Consumer-goods transaction” means a consumer transaction in which:

- (1) An individual incurs an obligation primarily for personal, family, or household purposes; and
- (2) A security interest in consumer goods secures the obligation.

“Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

“Consumer transaction” means a transaction in which:

- (1) An individual incurs an obligation primarily for personal, family, or household purposes[;];
- (2) A security interest secures the obligation[;]; and
- (3) The collateral is held or acquired primarily for personal, family, or household purposes.

~~[The term]~~ “Consumer transaction” includes consumer-goods transactions.

“Continuation statement” means an amendment of a financing statement ~~[which:]~~ that:

- (1) Identifies, by its file number, the initial financing statement to which it relates; and
- (2) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

“Controllable account” means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under section 490:A-105 of the controllable electronic record.

“Controllable payment intangible” means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under section 490:A-105 of the controllable electronic record.

“Debtor” means:

- (1) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- (2) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (3) A consignee.

“Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. ~~[The term]~~ “Deposit account” does not include investment property or accounts evidenced by an instrument.

“Document” means a document of title or a receipt of the type described in section 490:7-201(b).

~~“Electronic [chattel paper] means chattel paper evidenced by a record or records consisting of information stored in an electronic medium[.]”~~ money” means money in an electronic form.

“Encumbrance” means a right, other than an ownership interest, in real property. ~~[The term]~~ “Encumbrance” includes mortgages and other liens on real property.

“Equipment” means goods other than inventory, farm products, or consumer goods.

“Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

“Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and ~~[which]~~ that are:

- (1) Crops grown, growing, or to be grown, including:
 - (A) Crops produced on trees, vines, and bushes; and
 - (B) Aquatic goods produced in aquacultural operations;
- (2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (3) Supplies used or produced in a farming operation; or
- (4) Products of crops or livestock in their unmanufactured states.

“File number” means the number assigned to an initial financing statement pursuant to section 490:9-519(a).

“Filing office” means an office designated in section 490:9-501 as the place to file a financing statement.

“Filing-office rule” means a rule adopted pursuant to section 490:9-526.

“Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

“Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 490:9-502(a) and (b). ~~[The term]~~ “Fixture filing” includes the filing of a financing statement covering goods of a transmitting utility ~~[which]~~ that are or are to become fixtures.

“Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

“General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. ~~[The term]~~ “General intangible” includes controllable electronic records, payment intangibles, and software.

“Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

“Goods” ~~[means]~~:

- (1) Means all things that are movable when a security interest attaches ~~[-The term includes:]~~;
- (2) Includes:
 - ~~[(+)]~~ (A) Fixtures~~[-]~~;
 - ~~[(2)]~~ (B) Standing timber that is to be cut and removed under a conveyance or contract for sale~~[-]~~;
 - ~~[(3)]~~ (C) The unborn young of animals~~[-]~~;
 - ~~[(4)]~~ (D) Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; ~~[and]~~
 - ~~[(5)]~~ (E) Manufactured homes~~[-The term also includes a:]~~;
 - (F) A computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:
 - (i) ~~[the]~~ The program is associated with the goods in ~~[such]~~ a manner ~~[that]~~ in which it is customarily ~~[is]~~ considered part of the goods~~[-]~~; or

- (ii) ~~[by]~~ By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods~~[- The term does]; and~~
- (3) Does not include [a]:
 - (A) A computer program embedded in goods that consist solely of the medium in which the program is embedded~~[- The term also does not include accounts;]; and~~
 - (B) Accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

“Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. ~~[The term]~~ “Governmental unit” includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

“Health-care-insurance receivable” means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

“Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. ~~[The term]~~ “Instrument” does not include:

- (1) Investment property;
- (2) Letters of credit; ~~or~~
- (3) Writings 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~~[-]; or~~
- (4) Writings that evidence chattel paper.

“Inventory” means goods, other than farm products, ~~[which:]~~ that:

- (1) Are leased by a person as lessor;
- (2) Are held by a person for sale or lease or to be furnished under a contract of service;
- (3) Are furnished by a person under a contract of service; or
- (4) Consist of raw materials, work in process, or materials used or consumed in a business.

“Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

“Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

“Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. ~~[The term]~~ “Letter-of-credit right” does not include the right of a beneficiary to demand payment or performance under a letter of credit.

“Lien creditor” means:

- (1) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (2) An assignee for benefit of creditors from the time of assignment;
- (3) A trustee in bankruptcy from the date of the filing of the petition; or
- (4) A receiver in equity from the time of appointment.

“Manufactured home” means a structure, transportable in one or more sections, ~~[which,] that~~, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and ~~[which] that~~ is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. ~~[The term]~~ “Manufactured home” includes any structure that meets all of the requirements of this ~~[paragraph]~~ definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under ~~[Title]~~ title 42 of the United States Code.

“Manufactured-home transaction” means a secured transaction:

- (1) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (2) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

“Money” has the same meaning as in section 490:1-201(b), but does not include:

- (1) A deposit account; or
- (2) Money in an electronic form that cannot be subjected to control under section 490:9-A.

“Mortgage” means a consensual interest in real property, including fixtures, ~~[which] that~~ secures payment or performance of an obligation.

“New debtor” means a person that becomes bound as debtor under section 490:9-203(d) by a security agreement previously entered into by another person.

“New value” means:

- (1) Money;
- (2) Money’s worth in property, services, or new credit; or
- (3) Release by a transferee of an interest in property previously transferred to the transferee.

~~[The term]~~ “New value” does not include an obligation substituted for another obligation.

“Noncash proceeds” means proceeds other than cash proceeds.

“Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

- (1) Owes payment or other performance of the obligation;
- (2) Has provided property other than the collateral to secure payment or other performance of the obligation; or
- (3) Is otherwise accountable in whole or in part for payment or other performance of the obligation.

~~[The term]~~ “Obligor” does not include issuers or nominated persons under a letter of credit.

“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).

“Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation. “Payment intangible” includes a controllable payment intangible.

“Person related to”, with respect to an individual, means:

- (1) The spouse of the individual;
- (2) A brother, brother-in-law, sister, or sister-in-law of the individual;

- (3) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (4) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to", with respect to an organization, means:

- (1) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (2) An officer or director of, or a person performing similar functions with respect to, the organization;
- (3) An officer or director of, or a person performing similar functions with respect to, a person described in paragraph (1);
- (4) The spouse of an individual described in paragraph (1), (2), or (3); or
- (5) An individual who is related by blood or marriage to an individual described in paragraph (1), (2), (3), or (4) and shares the same home with the individual.

"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.

"Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

"Proposal" means a record ~~[authenticated]~~ signed by a secured party ~~[which] that~~ includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 490:9-620, 490:9-621, and 490:9-622.

"Public-finance transaction" means a secured transaction in connection with which:

- (1) Debt securities are issued;
- (2) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and
- (3) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

"Public organic record" means a record that is available to the public for inspection and is:

- (1) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;
- (2) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or

restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

- (3) A record consisting of legislation enacted by the legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

“Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

“Record”, except as used in “for record”, “of record”, “record or legal title”, and “record owner”, means information that is inscribed on a tangible medium or ~~which~~ that is stored in an electronic or other medium and is retrievable in perceivable form.

“Registered organization” means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. ~~[The term]~~ “Registered organization” includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust’s organic record be filed with the state.

“Secondary obligor” means an obligor to the extent that:

- (1) The obligor’s obligation is secondary; or
- (2) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

“Secured party” means:

- (1) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (2) A person that holds an agricultural lien;
- (3) A consignor;
- (4) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (5) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (6) A person that holds a security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), 490:2A-508(e), 490:4-210, or 490:5-118.

“Security agreement” means an agreement that creates or provides for a security interest.

~~“Send”, in connection with a record or notification, means:~~

- ~~(1) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~
- ~~(2) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph (1).]~~

“Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. ~~[The term]~~

“Software” does not include a computer program that is included in the definition of goods.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

“Tangible ~~[chattel paper]~~ means ~~chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.]~~ money” means money in a tangible form.

“Termination statement” means an amendment of a financing statement ~~[which:]~~ that:

- (1) Identifies, by its file number, the initial financing statement to which it relates; and
- (2) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

“Transmitting utility” means a person primarily engaged in the business of:

- (1) Operating a railroad, subway, street railway, or trolley bus;
- (2) Transmitting communications electrically, electromagnetically, or by light;
- (3) Transmitting goods by pipeline or sewer; or
- (4) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other articles apply to this article:

“Applicant”. Section 490:5-102.

“Beneficiary”. Section 490:5-102.

“Broker”. Section 490:8-102.

“Certificated security”. Section 490:8-102.

“Check”. Section 490:3-104.

“Clearing corporation”. Section 490:8-102.

“Contract for sale”. Section 490:2-106.

“Control”. Section 490:7-106.

“Controllable electronic record”. Section 490:A-102.

“Customer”. Section 490:4-104.

“Entitlement holder”. Section 490:8-102.

“Financial asset”. Section 490:8-102.

“Holder in due course”. Section 490:3-302.

“Issuer” (with respect to a letter of credit or letter-of-credit right). Section 490:5-102.

“Issuer” (with respect to a security). Section 490:8-201.

“Issuer” (with respect to documents of title). Section 490:7-102.

“Lease”. Section 490:2A-103.

“Lease agreement”. Section 490:2A-103.

“Lease contract”. Section 490:2A-103.

“Leasehold interest”. Section 490:2A-103.

“Lessee”. Section 490:2A-103.

“Lessee in ordinary course of business”. Section 490:2A-103.

“Lessor”. Section 490:2A-103.

“Lessor’s residual interest”. Section 490:2A-103.

“Letter of credit”. Section 490:5-102.

“Merchant”. Section 490:2-104.

“Negotiable instrument”. Section 490:3-104.

“Nominated person”. Section 490:5-102.

“Note”. Section 490:3-104.
 “Proceeds of a letter of credit”. Section 490:5-114.
 “Protected purchaser”. Section 490:8-303.
 “Prove”. Section 490:3-103.
 “Qualifying purchaser”. Section 490:A-102.
 “Sale”. Section 490:2-106.
 “Securities account”. Section 490:8-501.
 “Securities intermediary”. Section 490:8-102.
 “Security”. Section 490:8-102.
 “Security certificate”. Section 490:8-102.
 “Security entitlement”. Section 490:8-102.
 “Uncertificated security”. Section 490:8-102.”

SECTION 36. Section 490:9-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A secured party ~~has~~ shall be deemed to have control of a deposit account if:

- (1) The secured party is the bank with which the deposit account is maintained;
- (2) The debtor, secured party, and bank have agreed in ~~an authenticated~~ a signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; ~~or~~
- (3) The secured party becomes the bank’s customer with respect to the deposit account~~[-]; or~~
- (4) Another person, other than the debtor:
 - (A) Has control of the deposit account and acknowledges that it has control on behalf of the secured party; or
 - (B) Obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.”

SECTION 37. Section 490:9-105, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-105 Control of electronic copy of record evidencing chattel paper. (a) A ~~secured party has~~ purchaser shall be deemed to have control of ~~electronic~~ an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the ~~transfer~~ assignment of interests in the chattel paper reliably establishes the ~~secured party~~ purchaser as the person to which ~~the chattel paper~~ the authoritative electronic copy was assigned.

(b) A system ~~satisfies~~ shall be deemed to satisfy subsection (a) if the record ~~or records comprising~~ evidencing the chattel paper ~~are~~ is created, stored, and assigned in ~~such~~ a manner that:

- (1) A single authoritative copy of the record ~~or records~~ exists ~~which~~ that is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) The authoritative copy identifies the ~~secured party~~ purchaser as the assignee of the record ~~or records~~;
- (3) The authoritative copy is communicated to, and maintained by, the ~~secured party~~ purchaser or its designated custodian;
- (4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the ~~secured party;~~ purchaser;

- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.
- (c) A system shall be deemed to satisfy subsection (a), and a purchaser shall be deemed to have control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to, or logically associated with, the electronic copy, or a system in which the electronic copy is recorded:
 - (1) Enables the purchaser to readily identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
 - (2) Enables the purchaser to readily identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and
 - (3) Gives the purchaser exclusive power, subject to subsection (d), to:
 - (A) Prevent others from adding or changing an identified assignee of the authoritative electronic copy; and
 - (B) Transfer control of the authoritative electronic copy.
 - (d) Subject to subsection (e), a power shall be deemed exclusive under subsection (c)(3), regardless of whether:
 - (1) The authoritative electronic copy; a record attached to, or logically associated with, the authoritative electronic copy; or a system in which the authoritative electronic copy is recorded, limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or
 - (2) The power is shared with another person.
 - (e) A power of a purchaser shall not be deemed to be shared with another person under subsection (d)(2) and the purchaser's power shall not be deemed exclusive if:
 - (1) The purchaser may exercise the power only if the power is also exercised by the other person; and
 - (2) The other person:
 - (A) May exercise the power without exercise of the power by the purchaser; or
 - (B) Is the transferor to the purchaser of an interest in the chattel paper.
 - (f) If a purchaser has the powers specified in subsection (c)(3), the powers shall be presumed to be exclusive.
 - (g) A purchaser shall be deemed to have control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:
 - (1) Has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or
 - (2) Obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser."

SECTION 38. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) Value has been given;

- (2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) One of the following conditions is met:
 - (A) The debtor has ~~[authenticated]~~ signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) The collateral is not a certificated security and is in the possession of the secured party under section 490:9-313 pursuant to the debtor's security agreement;
 - (C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 490:8-301 pursuant to the debtor's security agreement; ~~[or]~~
 - (D) The collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic ~~[chattel paper]~~ documents, electronic money, investment property, or letter-of-credit rights, ~~[or electronic documents]~~ and the secured party has control under section 490:7-106, 490:9-104, ~~[490:9-105;]~~ 490:9-A, 490:9-106, ~~[or]~~ 490:9-107, or 490:9-B pursuant to the debtor's security agreement~~[-]; or~~
 - (E) The collateral is chattel paper and the secured party has possession and control under section 490:9-F pursuant to the debtor's security agreement.

SECTION 39. Section 490:9-204, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-204 After-acquired property; future advances. (a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) ~~[A]~~ Subject to subsection (d), a security interest does not attach under a term constituting an after-acquired property clause to:

- (1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or
- (2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

(d) Nothing in subsection (b) shall prevent a security interest from attaching:

- (1) To consumer goods as proceeds under section 490:9-315(a) or commingled goods under section 490:9-336(c);
- (2) To a commercial tort claim as proceeds under section 490:9-315(a);
or
- (3) Under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.”

SECTION 40. Section 490:9-207, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 490:7-106, 490:9-104, 490:9-105, 490:9-A, 490:9-106, ~~[or] 490:9-107[;], or 490:9-B:~~

- (1) May hold as additional security any proceeds, except money or funds, received from the collateral;
- (2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (3) May create a security interest in the collateral.”

SECTION 41. Section 490:9-208, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within ten days after receiving ~~[an authenticated]~~ a signed demand by the debtor:

- (1) A secured party having control of a deposit account under section 490:9-104(a)(2) shall send to the bank with which the deposit account is maintained ~~[an authenticated statement]~~ a signed record that releases the bank from any further obligation to comply with instructions originated by the secured party;
- (2) A secured party having control of a deposit account under section 490:9-104(a)(3) shall:
 - (A) Pay the debtor the balance on deposit in the deposit account; or
 - (B) Transfer the balance on deposit into a deposit account in the debtor’s name;
- (3) A secured party, other than a buyer, having control ~~[of electronic chattel paper]~~ under section 490:9-105 ~~[shall:~~
 - (A) ~~Communicate the]~~ of an authoritative electronic copy of [the electronic] a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or ~~[its]~~ a person designated ~~[custodian;~~
 - (B) ~~If] by the debtor [designates a custodian that is the designated eustodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~
 - (C) ~~Take appropriate action to enable the debtor or its designated eustodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party];~~
- (4) A secured party having control of investment property under section 490:8-106(d)(2) or 490:9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained ~~[an authenticated]~~ a signed record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;
- (5) A secured party having control of a letter-of-credit right under section 490:9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party ~~[an authenticated]~~ a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~[and]~~

- (6) A secured party having control under section 490:7-106 of an authoritative electronic copy of an electronic document shall[
 (A) ~~Give~~] transfer control of the electronic [document] copy to the debtor or [its] a person designated [eustodian;
 (B) ~~If~~] by the debtor [~~designates a custodian that is the designated eustodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated eustodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~
 (C) Take appropriate action to enable the debtor or its designated eustodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.];
- (7) A secured party having control under section 490:9-A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and
- (8) A secured party having control under section 490:A-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.”

SECTION 42. Section 490:9-209, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within ten days after receiving [~~an authenticated~~] a signed demand by the debtor, a secured party shall send to an account debtor that has received notification under section 490:9-406(a) or 490:A-106(b) of an assignment to the secured party as assignee [~~under section 490:9-406(a) an authenticated~~] a signed record that releases the account debtor from any further obligation to the secured party.”

SECTION 43. Section 490:9-301, Hawaii Revised Statutes, is amended to read as follows:

“**§490:9-301 Law governing perfection and priority of security interests.** Except as otherwise provided in sections 490:9-303 through [490:9-306,] 490:9-E, the following rules shall determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction [~~governs~~] shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral[.];
- (2) While collateral is located in a jurisdiction, the local law of that jurisdiction [~~governs~~] shall govern perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral[.];
- (3) Except as otherwise provided in paragraph (4), while [~~tangible~~] negotiable tangible documents, goods, instruments, or tangible money[~~, or tangible chattel paper~~] is located in a jurisdiction, the local law of that jurisdiction [~~governs~~] shall govern:

- (A) Perfection of a security interest in the goods by filing a fixture filing;
- (B) Perfection of a security interest in timber to be cut; and
- (C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral~~[-]; and~~
- (4) The local law of the jurisdiction in which the wellhead or minehead is located ~~[governs]~~ shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.”

SECTION 44. Section 490:9-304, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The local law of a bank’s jurisdiction ~~[governs]~~ shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank~~[-]~~ even if the transaction does not bear any relation to the bank’s jurisdiction.”

SECTION 45. Section 490:9-305, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in subsection (c), the following rules apply:

- (1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction ~~[governs]~~ shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby~~[-];~~
- (2) The local law of the issuer’s jurisdiction as specified in section 490:8-110(d) ~~[governs]~~ shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security~~[-];~~
- (3) The local law of the securities intermediary’s jurisdiction as specified in section 490:8-110(e) ~~[governs]~~ shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account~~[-];~~
- (4) The local law of the commodity intermediary’s jurisdiction ~~[governs]~~ shall govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account~~[-]; and~~
- (5) Paragraphs (2), (3), and (4) shall apply regardless of whether the transaction bears any relation to the jurisdiction.”

SECTION 46. Section 490:9-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The filing of a financing statement ~~[is]~~ shall not be necessary to perfect a security interest:

- (1) That is perfected under section 490:9-308(d), (e), (f), or (g);
- (2) That is perfected under section 490:9-309 when it attaches;
- (3) In property subject to a statute, regulation, or treaty described in section 490:9-311(a);
- (4) In goods in possession of a bailee ~~[which is]~~ perfected under section 490:9-312(d)(1) or (2);
- (5) In certificated securities, documents, goods, or instruments ~~[which is]~~ perfected without filing, control, or possession under section 490:9-312(e), (f), or (g);

- (6) In collateral in the secured party's possession under section 490:9-313;
- (7) In a certificated security ~~[which is]~~ perfected by delivery of the security certificate to the secured party under section 490:9-313;
- (8) In controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~[electronic chattel paper,]~~ electronic documents, investment property, or letter-of-credit rights ~~[which is]~~ perfected by control under section 490:9-314;
- (9) In chattel paper perfected by possession and control under section 490:9-F;
- (10) In proceeds ~~[which is]~~ perfected under section 490:9-315; or
- ~~[(40)]~~ (11) That is perfected under section 490:9-316."

SECTION 47. Section 490:9-312, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsections (a) and (b) to read:

"§490:9-312 Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession. (a) A security interest in chattel paper, ~~[negotiable documents,]~~ controllable accounts, controllable electronic records, controllable payment intangibles, instruments, ~~[or]~~ investment property, ~~or negotiable documents~~ may be perfected by filing.

(b) Except as otherwise provided in section 490:9-315(c) and (d) for proceeds:

- (1) A security interest in a deposit account may be perfected only by control under section 490:9-314;
- (2) And except as otherwise provided in section 490:9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 490:9-314; ~~[and]~~
- (3) A security interest in tangible money may be perfected only by the secured party's taking possession under section 490:9-313[-]; ~~and~~
- (4) A security interest in electronic money may be perfected only by control under section 490:9-314."

2. By amending subsection (e) to read:

"(e) A security interest in certificated securities, negotiable documents, or instruments [is] shall be deemed to be perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under [an authenticated] a signed security agreement."

SECTION 48. Section 490:9-313, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in [tangible negotiable documents,] goods, instruments, negotiable tangible documents, or tangible money[- or tangible chattel paper] by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 490:8-301."

2. By amending subsection (c) to read:

"(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in

the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when~~[-]~~ the person:

- (1) ~~[The person in]~~ In possession ~~[authenticates]~~ signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
- (2) ~~[The person takes]~~ Takes possession of the collateral after having ~~[authenticated]~~ signed a record acknowledging that it will hold possession of the collateral for the secured party's benefit."

SECTION 49. Section 490:9-314, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-314 Perfection by control. (a) A security interest in ~~[investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents]~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights may be perfected by control of the collateral under section 490:7-106, 490:9-104, ~~[490:9-105,]~~ 490:9-A, 490:9-106, ~~[or]~~ 490:9-107~~[-]~~, or 490:9-B.

(b) A security interest in ~~[deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is]~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, or letter-of-credit rights shall be deemed perfected by control under section 490:7-106, 490:9-104, ~~[490:9-105, or]~~ 490:9-A, 490:9-107 ~~[when]~~, or 490:9-B no earlier than the time the secured party obtains control and ~~[remains]~~ shall be deemed to remain perfected by control only while the secured party retains control.

(c) A security interest in investment property ~~[is]~~ shall be deemed perfected by control under section 490:9-106 ~~[from]~~ no earlier than the time the secured party obtains control and ~~[remains]~~ shall be deemed to remain perfected by control until:

- (1) The secured party does not have control; and
- (2) One of the following occurs:
 - (A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
 - (B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
 - (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder."

SECTION 50. Section 490:9-316, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) A security interest perfected pursuant to the law of the jurisdiction designated in section 490:9-301(1) ~~[or]~~, 490:9-305(c) ~~[remains]~~, 490:9-D(d), or 490:9-E(b) shall be deemed to remain perfected until the earliest of:

- (1) The time perfection would have ceased under the law of that jurisdiction;
- (2) The expiration of four months after a change of the debtor's location to another jurisdiction; or
- (3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction."

2. By amending subsection (f) to read:

“(f) A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, letter-of-credit rights, or investment property [which] that is perfected under the law of the chattel paper’s jurisdiction, the controllable electronic record’s jurisdiction, the bank’s jurisdiction, the issuer’s jurisdiction, a nominated person’s jurisdiction, the securities intermediary’s jurisdiction, or the commodity intermediary’s jurisdiction, as applicable, [remains] shall be deemed to remain perfected until the earlier of:

- (1) The time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.”

SECTION 51. Section 490:9-317, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-317 Interests that take priority over or take free of security interest or agricultural lien. (a) A security interest or agricultural lien [is] shall be 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:
 - (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.
- (b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of [~~tangible chattel paper, tangible documents,~~] goods, instruments, tangible documents, or certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) [A] Subject to subsections (f) through (i), a licensee of a general intangible or a buyer, other than a secured party, of collateral other than [~~tangible chattel paper, tangible documents,~~] electronic money, goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 490:9-320 and 490:9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

- (1) Receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and
- (2) If each authoritative electronic copy of the record evidencing the chattel paper may be subjected to control under section 490:9-105, obtains control of each authoritative electronic copy.

(g) A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document may be subjected to control under section 490:7-106, obtains control of each authoritative electronic copy.

(h) A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.

(i) A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.”

SECTION 52. Section 490:9-323, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

“(d) Except as otherwise provided in subsection (e), a buyer of goods ~~[other than a buyer in ordinary course of business]~~ takes free of a security interest to the extent that it secures advances made after the earlier of:

- (1) The time the secured party acquires knowledge of the buyer’s purchase; or
- (2) Forty-five days after the purchase.”

2. By amending subsection (f) to read:

“(f) Except as otherwise provided in subsection (g), a lessee of goods ~~other than a lessee in ordinary course of business;~~ takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

- (1) The time the secured party acquires knowledge of the lease; or
- (2) Forty-five days after the lease contract becomes enforceable.”

SECTION 53. Section 490:9-330, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) A purchaser of chattel paper ~~[has]~~ shall have priority over a security interest in the chattel paper ~~[which]~~ that is claimed merely as proceeds of inventory subject to a security interest if:

- (1) In good faith and in the ordinary course of the purchaser’s business, the purchaser gives new value ~~[and]~~, takes possession of each authoritative tangible copy of the record evidencing the chattel paper [øf], and obtains control [øf] under section 490:9-105 of each authoritative electronic copy of the record evidencing the chattel paper [under section 490:9-105]; and
- (2) The ~~[chattel paper does]~~ authoritative copies of the record evidencing the chattel paper do not indicate that [it] the chattel paper has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper ~~[has]~~ shall have priority over a security interest in the chattel paper ~~[which]~~ that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value ~~[and]~~, takes possession of each authoritative tangible copy of the record evidencing the chattel paper [øf], and obtains control [øf] under section 490:9-105 of each authoritative electronic copy of the record evidencing the chattel paper [under section 490:9-105] in good faith, in the ordinary course of the purchaser’s

business, and without knowledge that the purchase violates the rights of the secured party.”

2. By amending subsection (f) to read:

“(f) For purposes of subsections (b) and (d), if the authoritative copies of the record evidencing chattel paper or an instrument [indicates] indicate that [it] the chattel paper or instrument has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.”

SECTION 54. Section 490:9-331, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

“§490:9-331 Priority of rights of purchasers of ~~instruments;~~ control- lable accounts, controllable electronic records, controllable payment intangibles, documents, instruments, and securities under other articles; priority of interests in financial assets and security entitlements and protection against assertion of claim under [artiele] articles 8[-] and A. (a) This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, ~~[or] a protected purchaser of a security[-], or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible.~~ These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7, ~~[and] 8[-], and A.~~

(b) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under article 8[-] or A.”

SECTION 55. Section 490:9-332, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-332 Transfer of money; transfer of funds from deposit account. (a) A transferee of tangible money takes the money free of a security interest ~~[unless the transferee acts]~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ~~[unless the transferee acts]~~ if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

(c) A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.”

SECTION 56. Section 490:9-406, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective. (a) Subject to subsections (b) through ~~[(4);]~~ (j), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~[authenticated]~~ signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to ~~[subsection]~~ subsections (h)[;] and (j), notification ~~[is]~~ shall be deemed 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 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.

(c) Subject to ~~[subsection]~~ subsections (h)[;] and (j), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper. Except as otherwise provided in subsection (e) and sections 490:2A-303 and 490:9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note ~~[is]~~ shall be deemed ineffective to the extent that it:

- (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
- (2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 490:9-610 or an acceptance of collateral under section 490:9-620.

(f) Except as otherwise provided in sections 490:2A-303 and 490:9-407, and subject to subsections (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper ~~[is]~~ shall be ineffective to the extent that the rule of law, statute, or regulation:

- (1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or
- (2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to ~~[subsection]~~ subsections (h)[;] and (j), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article [~~which~~] that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) Subsections (a), (b), (c), and (g) shall not apply to a controllable account or controllable payment intangible.”

SECTION 57. Section 490:9-408, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor [~~which~~] that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, [~~and which term~~] that prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, [~~is~~] shall be deemed ineffective to the extent that the term:

- (1) Would impair the creation, attachment, or perfection of a security interest; or
- (2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) [~~applies~~] shall apply to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 490:9-610 or an acceptance of collateral under section 490:9-620.

(c) A rule of law, statute, or regulation[~~;~~] that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, [~~is~~] shall be deemed ineffective to the extent that the rule of law, statute, or regulation:

- (1) Would impair the creation, attachment, or perfection of a security interest; or
- (2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor [~~which~~] that relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible[~~;~~] shall not:

- (1) ~~[Is not]~~ Be enforceable against the person obligated on the promissory note or the account debtor;
 - (2) ~~[Does not impose]~~ Impose a duty or obligation on the person obligated on the promissory note or the account debtor;
 - (3) ~~[Does not require]~~ Require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
 - (4) ~~[Does not entitle]~~ Entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
 - (5) ~~[Does not entitle]~~ Entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
 - (6) ~~[Does not entitle]~~ Entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.
- (e) In this section, "promissory note" includes a negotiable instrument that evidences chattel paper."

SECTION 58. Section 490:9-601, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A secured party in possession of collateral or control of collateral under section 490:7-106, 490:9-104, 490:9-105, 490:9-A, 490:9-106, ~~[or]~~ 490:9-107 ~~[has]~~, or 490:9-B shall have the rights and duties provided in section 490:9-207."

SECTION 59. Section 490:9-605, Hawaii Revised Statutes, is amended to read as follows:

§490:9-605 Unknown debtor or secondary obligor. ~~[A]~~ (a) Except as provided in subsection (b), a secured party ~~[does]~~ shall not owe a duty based on its status as secured party:

- (1) To a person that is a debtor or obligor, unless the secured party knows:
 - (A) That the person is a debtor or obligor;
 - (B) The identity of the person; and
 - (C) How to communicate with the person; or
- (2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) That the person is a debtor; and
 - (B) The identity of the person.

(b) A secured party shall be deemed to owe a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

- (1) The person is a debtor or obligor; and
- (2) The secured party knows that the information in subsection (a)(1) relating to the person is not provided by the collateral; a record attached to, or logically associated with, the collateral; or the system in which the collateral is recorded."

SECTION 60. Section 490:9-613, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) The contents of a notification of disposition ~~[are]~~ shall be 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 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]~~ shall not be required [-]; and
- (5) The following form of notification and the form appearing in section ~~[490:9-614(3);]~~ 490:9-614(a)(3), when completed[-] in accordance with the instructions in subsection (b) and section 490:9-614(b), each ~~[provides]~~ shall be deemed to provide 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]—.

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)

(1) Name of any debtor that is not an addressee: (Name of each debtor)

(2) We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

(3) We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

(4) You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.

(5) If you request an accounting, you must pay a charge of \$ (amount).

(6) You may request an accounting by calling us at (telephone number).

(b) The following instructions shall apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in parentheses before items in the form of notification in subsection (a)(5). Do not include the numbers or parentheses in the notification. The numbers and parentheses are used only for the purpose of these instructions;

(2) Include and complete item (1) only if there is a debtor that is not an addressee of the notification and list the name or names;

(3) Include and complete either item (2), if the notification relates to a public disposition of the collateral, or item (3), if the notification relates to a private disposition of the collateral. If item (2) is included, include the words "to the highest qualified bidder" only if applicable;

(4) Include and complete items (4) and (6); and

(5) Include and complete item (5) only if the sender will charge the recipient for an accounting."

SECTION 61. Section 490:9-614, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-614 Contents and form of notification before disposition of collateral: consumer-goods transaction. (a) In a consumer-goods transaction, the following rules shall apply:

(1) A notification of disposition [~~must~~] shall provide the following information:

(A) The information specified in section [~~490:9-613(1);~~] 490:9-613(a)(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that [~~must~~] shall be paid to the secured party to redeem the collateral under section 490:9-623 is available; and

- (D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available[-];
- (2) A particular phrasing of the notification [is] shall not be required[-];
- (3) The following form of notification, when completed[, provides] in accordance with the instructions in subsection (b), shall be deemed to provide sufficient information:
- [-][Name and address of secured party]
—[Date]

~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

~~____Name and address of any obligor who is also a debtor]~~

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

~~[For a public disposition:]~~

~~We will sell [describe collateral] at public sale sometime after [date]. A sale could include a lease or license.~~

~~The sale will be held as follows:~~

~~Day and Date:~~

Time:

~~Place:~~

~~You may attend the sale and bring bidders if you want.~~

~~[For a private disposition:]~~

We will sell [describe collateral] at private sale sometime after [date] . A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you \$_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

~~If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].~~

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

~~Names of all other debtors and obligors, if any~~.

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identify transaction)

We have your (describe collateral) because you broke promises in our agreement.

(1) We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

You may attend the sale and bring bidders if you want.

(2) We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

(3) The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

(4) You can get the property back at any time before we sell it by paying us the full amount you owe, not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at (telephone number).

(5) If you want us to explain to you in (writing) (writing or in (description of electronic record)) (description of electronic record) how we have figured the amount that you owe us, (6)² call us at (telephone number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)) (7)² and request (a written explanation) (a written explanation or an explanation in (description of electronic record)) (an explanation in (description of electronic record)).

(8) We will charge you \$ (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

(9) If you need more information about the sale (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

(10) We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any).

(4) A notification in the form of paragraph (3) [is] shall be deemed sufficient, even if additional information appears at the end of the form[-];

(5) A notification in the form of paragraph (3) [is] shall be deemed sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article[-]; and

(6) If a notification under this section is not in the form of paragraph (3), law other than this article [~~determines~~] shall determine the effect of including information not required by paragraph (1).

(b) The following instructions shall apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in parentheses before items in the form of notification in subsection (a)(3). Do not include the numbers or parentheses in the notification.

- The numbers and parentheses are used only for the purpose of these instructions:
- (2) Include and complete either item (1), if the notification relates to a public disposition of the collateral, or item (2), if the notification relates to a private disposition of the collateral;
 - (3) Include and complete items (3), (4), (5), (6), and (7);
 - (4) In item (5), include and complete any one of the three alternative methods for the explanation--writing, writing or electronic record, or electronic record;
 - (5) In item (6), include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication--writing or electronic communication--for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included;
 - (6) In item (7), include and complete the method or methods for the explanation--writing, writing or electronic record, or electronic record--included in item (5);
 - (7) Include and complete item (8) only if a written explanation is included in item (5) as a method for communicating the explanation and the sender shall charge the recipient for another written explanation;
 - (8) In item (9), include either the telephone number or the address, or both. In addition, the sender may include and complete the additional method of communication--electronic communication--for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included; and
 - (9) If item (10) does not apply, insert "None" after "agreement:."

SECTION 62. Section 490:9-616, Hawaii Revised Statutes, is amended by amending subsections (a) through (c) to read as follows:

- “(a) In this section:
- (1) “Explanation” means a [writing] record that:
 - (A) States the amount of the surplus or deficiency;
 - (B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;
 - (C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
 - (D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.
 - (2) “Request” means a record:
 - (A) [Authenticated] Signed by a debtor or consumer obligor;
 - (B) Requesting that the recipient provide an explanation; and
 - (C) Sent after disposition of the collateral under section 490:9-610.
- (b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 490:9-615, the secured party shall:
- (1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:
 - (A) Before or when the secured party accounts to the debtor and pays any surplus or first makes [written] a demand in a record

- on the consumer obligor after the disposition for payment of the deficiency; and
- (B) Within fourteen days after receipt of a request; or
- (2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.
- (c) To comply with subsection (a)(1)(B), ~~[a writing must]~~ an explanation shall provide the following information in the following order:
 - (1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
 - (A) If the secured party takes or receives possession of the collateral after default, ~~[not]~~ no more than thirty-five days before the secured party takes or receives possession; or
 - (B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, ~~[not]~~ no more than thirty-five days before the disposition;
 - (2) The amount of proceeds of the disposition;
 - (3) The aggregate amount of the obligations after deducting the amount of proceeds;
 - (4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral ~~[which]~~ that are known to the secured party and relate to the current disposition;
 - (5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and ~~[which]~~ that are not reflected in the amount in paragraph (1); and
 - (6) The amount of the surplus or deficiency."

SECTION 63. Section 490:9-628, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-628 Nonliability and limitation on liability of secured party; liability of secondary obligor. (a) ~~[Unless]~~ Subject to subsection (f), unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- (1) The secured party ~~[is]~~ shall not ~~be~~ liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and
- (2) The secured party's failure to comply with this article ~~[does]~~ shall not affect the liability of the person for a deficiency.
- (b) ~~[A]~~ Subject to subsection (f), a secured party [is] shall not be liable because of its the² status as secured party~~[:]~~ to:
 - (1) ~~[To a]~~ A person that is a debtor or obligor, unless the secured party knows:
 - (A) That the person is a debtor or obligor;
 - (B) The identity of the person; and
 - (C) How to communicate with the person; or
 - (2) ~~[To a]~~ A secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) That the person is a debtor; and
 - (B) The identity of the person.

(c) A secured party [is] shall not be liable to any person, and a person's liability for a deficiency [is] shall not be affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its the² reasonable reliance on:

- (1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
- (2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party [is] shall not be liable to any person under section 490:9-625(c)(2) for its failure to comply with section 490:9-616.

(e) A secured party [is] shall not be liable under section 490:9-625(c)(2) more than once with respect to any one secured obligation.

(f) Subsections (a) and (b) shall not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

- (1) The person is a debtor or obligor; and
- (2) The secured party knows that the information in subsection (b)(1) relating to the person is not provided by the collateral; a record attached to, or logically associated with, the collateral; or the system in which the collateral is recorded."

SECTION 64. (a) Sections 490:2-203, 490:2-205, 490:2A-201, 490:2A-203, 490:2A-205, 490:2A-208, 490:4A-207, and 490:4A-208, Hawaii Revised Statutes, are amended by substituting the phrase "record" wherever the phrase "writing" appears.

(b) Sections 490:9-210, 490:9-324, 490:9-334, 490:9-341, 490:9-404, 490:9-509, 490:9-513, 490:9-608, 490:9-611, 490:9-615, 490:9-619, 490:9-620, 490:9-621, and 490:9-624, Hawaii Revised Statutes, are amended by substituting the phrases "signed" or "signing" wherever the phrase "authenticated" or "authenticating" appears.

SECTION 65. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 66. In codifying the new articles and sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate article and section numbers for the letters used in designating the new articles and sections in this Act.

SECTION 67. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 68. This Act shall take effect upon its approval.

(Approved June 29, 2023.)

Notes

1. Comma should not be underscored.

2. So in original.

3. Edited pursuant to HRS §23G-16.5.