HOUSE BILL NO. 79

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/3/99
Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to letters of credit under the Uniform Commercial Code; and

providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.30.070(b) is amended to read:

(b) Except when the court finds that the parties have agreed otherwise and except as provided by AS 45.05.111(d), prejudgment interest accrues from the day the process is served on the defendant or the day the defendant received written notification that an injury has occurred and that a claim may be brought against the defendant for that injury, whichever is earlier. The written notification must be of a nature that would lead a prudent person to believe that a claim will be made against the person receiving the notification, for personal injury, death, or damage to property.

* Sec. 2. AS 45.01.105(b) is amended to read:

(b) Where one of the following provisions of the code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent
permitted by the law, including the conflict of laws rules, so specified:

(1) AS 45.02.402 (rights of creditors against sold goods);

(2) AS 45.04.102 (applicability of the chapter on bank deposits and collections);

(3) AS 45.05.116 (applicability of the chapter on letters of credit);

(4) AS 45.08.110 (applicability of the chapter on investment securities);

(5) AS 45.09.103 (perfection provisions of the chapter on secured transactions);

(6) AS 45.12.105 and 45.12.106 (applicability of the chapter on leases);

(7) AS 45.14 (funds transfers).

* Sec. 3. AS 45.02.512(a) is amended to read:

(a) If the contract requires payment before inspection, nonconformity of the goods does not excuse the buyer from so making payment unless

(1) the nonconformity appears without inspection; or

(2) despite tender of the required documents, the circumstances would justify injunction against honor under AS 45.05.109(b) [THE PROVISIONS OF AS 45.05.114].

* Sec. 4. AS 45.05.102 is repealed and reenacted to read:

Sec. 45.05.102. Definitions. (a) In this chapter,

(1) "adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended;

(2) "applicant" means a person at whose request or for whose account a letter of credit is issued; "applicant" includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer;

(3) "beneficiary" means a person who under the terms of a letter of credit is entitled to have the letter of credit’s complying presentation honored; "beneficiary" includes a person to whom drawing rights have been transferred under a transferable letter of credit;
(4) "confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another;

(5) "dishonor" of a letter of credit means the failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit;

(6) "document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion that is

   (A) presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in AS 45.05.108(e);

   (B) capable of being examined for compliance with the terms and conditions of the letter of credit; and

   (C) not oral;

(7) "good faith" means honesty in fact in the conduct or transaction concerned;

(8) "honor" of a letter of credit means performance of the issuer’s undertaking in the letter of credit to pay or deliver an item of value; unless the letter of credit provides otherwise, "honor" occurs

   (A) upon payment;

   (B) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

   (C) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance;

(9) "issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes;

(10) "letter of credit" means a definite undertaking that satisfies the requirements of AS 45.05.104 by an issuer to a beneficiary at the request or for the account of an applicant, or, in the case of a financial institution, to itself or for its own
account, to honor a documentary presentation by payment or delivery of an item of value;

(11) "nominated person" means a person whom the issuer
(A) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and
(B) undertakes by agreement or custom and practice to reimburse;

(12) "presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit;

(13) "presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person;

(14) "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;

(15) "successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, an executor, a personal representative, a trustee in bankruptcy, a debtor in possession, a liquidator, and a receiver.

(b) The following definitions that apply to this chapter and the sections in which they appear are

(1) "accept" or "acceptance" (AS 45.03.409);
(2) "value" (AS 45.03.303 and AS 45.04.211).

(c) AS 45.01 contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

* Sec. 5. AS 45.05.103 is repealed and reenacted to read:

Sec. 45.05.103. Scope. (a) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.
(c) With the exception of this subsection, (a) and (d) of this section, AS 45.05.102(a)(9) and (10), 45.05.106(d), and 45.05.114(d), and except to the extent prohibited in AS 45.01.102(c) and AS 45.05.117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or that underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

* Sec. 6. AS 45.05.104 is repealed and reenacted to read:

Sec. 45.05.104. Formal requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated

(1) by a signature; or

(2) under the agreement of the parties or the standard practice referred to in AS 45.05.108(e).

* Sec. 7. AS 45.05.105 is repealed and reenacted to read:

Sec. 45.05.105. Consideration. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

* Sec. 8. AS 45.05.106 is repealed and reenacted to read:

Sec. 45.05.106. Issuance, amendment, cancellation, and duration. (a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it provides that it is revocable.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which the beneficiary, applicant, confirmer, or issuer has not consented, except to the
extent the letter of credit provides that the letter of credit is revocable or that the issuer may amend or cancel the letter of credit without the consent.

(c) If there is no stated expiration date or other provision that determines the letter of credit’s duration, a letter of credit expires one year after its stated date of issuance or, if a date of issuance is not stated, after the date on which the letter of credit is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance or, if a date of issuance is not stated, after the date on which the letter of credit is issued.

* Sec. 9. AS 45.05.107 is repealed and reenacted to read:

Sec. 45.05.107. Confirmer, nominated person, and adviser. (a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of the confirmer’s confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary to advise accurately as to the terms of the letter of credit, confirmation, amendment, or advice received by the person requested to advise, and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in a notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who notifies the transferee beneficiary.

* Sec. 10. AS 45.05.108 is repealed and reenacted to read:
Sec. 45.05.108. Issuer’s rights and obligations. (a) Except as otherwise provided in AS 45.05.109, an issuer shall honor a presentation that, as determined by the standard practice referred to in (e) of this section, appears on its face to comply strictly with the terms and conditions of the letter of credit. Except as otherwise provided in AS 45.05.113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of the issuer’s receipt of documents,

(1) to honor the presentation;
(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or
(3) to give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in (d) of this section, an issuer is precluded from asserting a discrepancy as a basis for dishonor if

(1) timely notice is not given; or
(2) the discrepancy is not stated in the notice, if timely notice is given.

(d) Failure to give the notice specified in (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in AS 45.05.109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe the standard practice of financial institutions that regularly issue letters of credit. A determination of the issuer’s observance of the standard practice is a matter of interpretation for a court. A court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for

(1) the performance or nonperformance of the underlying contract, arrangement, or transaction;
(2) an act or omission of others; or
(3) observance or knowledge of the usage of a particular trade, other
than the standard practice referred to in (e) of this section.

(g) If an undertaking constituting a letter of credit under AS 45.05.102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that dishonors a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that honors a presentation as permitted or required by this chapter shall:
   (1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of the payment of funds;
   (2) takes the documents free of claims of the beneficiary or presenter;
   (3) is precluded from asserting a right of recourse on a draft under AS 45.03.414 - 45.03.415;
   (4) except as otherwise provided in AS 45.05.110 and 45.05.117, is precluded from asserting a right of recourse on a draft under the mistake concerns discrepancies in the documents or tender that are apparent on the face of the presentation; and
   (5) is discharged to the extent of the issuer’s performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

* Sec. 11. AS 45.05.109 is repealed and reenacted to read:

Sec. 45.05.109. Fraud and forgery. (a) If a presentation is made that appears on its face to comply strictly with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, the issuer

   (1) shall honor the presentation, if honor is demanded by

      (A) a nominated person that has given value in good faith and without notice of forgery or material fraud;

      (B) a confirmer that has honored its confirmation in good faith;

      (C) a holder in due course of a draft that was drawn under the letter of credit and that was taken after acceptance by the issuer or nominated
person; or

(D) an assignee of the issuer’s or nominated person’s deferred obligation if the obligation was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) acting in good faith, may honor or dishonor the presentation in a case not covered by (1) of this subsection.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that the beneficiary, issuer, or nominated person may suffer because the relief is granted;

(3) all of the conditions that entitle a person to the relief under the law of this state are met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud, and the person demanding honor does not qualify for protection under (a)(1) of this section.

* Sec. 12. AS 45.05.110 is repealed and reenacted to read:

Sec. 45.05.110. Warranties. (a) If its presentation is honored, the beneficiary warrants to

(1) the issuer, another person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in AS 45.05.109(a); and

(2) the applicant that the drawing does not violate an agreement between the applicant and beneficiary or another agreement intended by them to be augmented by the letter of credit.
(b) The warranties in (a) of this section are in addition to warranties arising
under AS 45.03, AS 45.04, AS 45.07, and AS 45.08 because of the presentation or
transfer of documents covered by those chapters.

* Sec. 13. AS 45.05.111 is repealed and reenacted to read:

Sec. 45.05.111. Remedies. (a) If an issuer wrongfully dishonors or repudiates
its obligation to pay money under a letter of credit before presentation, the beneficiary,
successor, or nominated person presenting on its own behalf may recover from the
issuer the amount that is the subject of the dishonor or repudiation. If the issuer’s
obligation under the letter of credit is not for the payment of money, the claimant may
obtain specific performance or, at the claimant’s election, recover an amount equal to
the value of performance from the issuer. In either case, the claimant may also
recover incidental but not consequential damages. The claimant is not obligated to
take action to avoid damages that might be due from the issuer under this subsection.
If, although not obligated to do so, the claimant avoids damages, the claimant’s
recovery from the issuer is reduced by the amount of damages avoided. The issuer has
the burden of proving the amount of damages avoided. In the case of repudiation, the
claimant does not need to present a document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter
of credit or honors a draft or demand in breach of the issuer’s obligation to the
applicant, the applicant may recover damages resulting from the breach, including
incidental but not consequential damages, less any amount saved as a result of the
breach.

(c) If an adviser or nominated person other than a confirmer breaches an
obligation under this chapter or an issuer breaches an obligation not covered in (a) or
(b) of this section, a person to whom the obligation is owed may recover damages
resulting from the breach, including incidental but not consequential damages, less any
amount saved as a result of the breach. To the extent of the confirmation, a confirmer
has the liability of an issuer specified in this subsection and in (a) and (b) of this
section.

(d) An issuer, nominated person, or adviser who is found liable under (a) - (c)
of this section shall pay interest on the amount owed under the liability from the date
of wrongful dishonor or other appropriate date.

(e) Attorney fees and costs shall be awarded under Rules 79 and 82, Alaska Rules of Civil Procedure, to the prevailing party in an action in which a remedy is sought under this chapter.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

* Sec. 14. AS 45.05.112 is repealed and reenacted to read:

Sec. 45.05.112. Transfer of letter of credit. (a) Except as otherwise provided in AS 45.05.113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if

(1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with a requirement stated in the letter of credit, or with another requirement that

(A) relates to transfer imposed by the issuer; and

(B) is within the standard practice referred to in AS 45.05.108(e) or is otherwise reasonable under the circumstances.

* Sec. 15. AS 45.05.113 is repealed and reenacted to read:

Sec. 45.05.113. Transfer by operation of law. (a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for the successor’s predecessor upon compliance with

(1) the requirements for recognition by the issuer of a transfer of
drawing rights by operation of law under the standard practice in AS 45.05.108(e); or

(2) in the absence of the standard practice referred to in AS 45.05.108(e), other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor’s apparently complying presentation under (a) or (b) of this section has the consequences specified in AS 45.05.108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is not the beneficiary or the successor of the beneficiary are forged documents for the purposes of AS 45.05.109.

(e) An issuer whose rights of reimbursement are not covered by (d) of this section, or by substantially similar law, and any confirmer or nominated person may decline to recognize a presentation under (b) of this section.

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

* Sec. 16. AS 45.05.114 is repealed and reenacted to read:

Sec. 45.05.114. Assignment of proceeds. (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or a nominated person under the letter of credit. The term does not include a beneficiary’s drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of the beneficiary’s right to receive proceeds contingent upon the beneficiary’s compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until the issuer or nominated person consents to the assignment.

(d) An issuer or nominated person does not have an obligation to give or
withhold its consent to an assignment of proceeds of a letter of credit, but consent may
not be unreasonably withheld if the assignee possesses and exhibits the letter of credit
and if presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of
the beneficiary’s assignment of the proceeds of a letter of credit and are superior to
the assignee’s right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an
issuer, transferee beneficiary, or nominated person nor the issuer’s or nominated
person’s payment of proceeds to an assignee or a third person affect the rights between
the assignee and a person other than the issuer, transferee beneficiary, or nominated
person. The mode of creating and perfecting a security interest in or granting an
assignment of a beneficiary’s rights to proceeds is governed by AS 45.09 or other law.
As against a person other than the issuer, transferee beneficiary, or nominated person,
the rights and obligations arising on the creation of a security interest and its
perfection, or other assignment of a beneficiary’s rights to proceeds are governed by
AS 45.09 or other law.

* Sec. 17. AS 45.05.115 is repealed and reenacted to read:

**Sec. 45.05.115. Statute of limitations.** An action to enforce a right or
obligation arising under this chapter must be commenced within one year after the
expiration date of the relevant letter of credit or one year after the cause of action
accrues, whichever occurs later. A cause of action accrues when the breach occurs,
regardless of the aggrieved party’s lack of knowledge of the breach.

* Sec. 18. AS 45.05.116 is repealed and reenacted to read:

**Sec. 45.05.116. Choice of law and forum.** (a) The liability of an issuer,
nominated person, or adviser for an action or omission is 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 AS 45.05.104 or by a
provision in the letter of credit, confirmation, or other undertaking. The jurisdiction
whose law is chosen does not need to bear a relation to the transaction.

(b) Unless (a) of this section applies, the liability of an issuer, nominated
person, or adviser for action or omission is governed by the law of the jurisdiction in
which the issuer, nominated person, or adviser is located. The issuer, nominated person, or adviser is considered to be located at the address indicated in the undertaking of the issuer, nominated person, or adviser. If more than one address is indicated, the issuer, nominated person, or adviser is considered to be located at the address from which the undertaking of the issuer, nominated person, or adviser was issued. 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 considered separate juridical entities, and a bank is considered to be located at the place where the bank’s relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If this chapter would govern the liability of an issuer, nominated person, or adviser under (a) or (b) of this section, if the relevant undertaking incorporates rules of custom or practice, and if there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of a conflict with the nonvariable provisions specified in AS 45.05.103(c).

(d) If there is conflict between this chapter and AS 45.03, AS 45.04, AS 45.09, or AS 45.14, this chapter governs.

(e) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen under (a) of this section.

* Sec. 19. AS 45.05.117 is repealed and reenacted to read:

Sec. 45.05.117. Subrogation of issuer, applicant, and nominated person.

(a) An issuer who honors a beneficiary’s presentation is subrogated to the rights of

(1) the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary; and

(2) the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.
(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against a beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer, and the applicant has the rights of subrogation of the issuer to the rights of the beneficiary stated in (a) of this section.

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of

1. the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;
2. the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and
3. the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding an agreement or term to the contrary, the rights of subrogation stated in (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays, and the rights of subrogation stated in (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

* Sec. 20. AS 45.09.103(a) is amended to read:

(a) This subsection applies to documents, instruments, rights to proceeds of written letters of credit, and goods other than those covered by a certificate of title described in (b) of this section, mobile goods described in (c) of this section, and minerals described in (e) of this section:

1. except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected;
2. if the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest
attaches that the goods will be kept in another jurisdiction, then the law of the other
jurisdiction governs the perfection and the effect of perfection or nonperfection of the
security interest from the time it attaches until 30 days after the debtor receives
possession of the goods and thereafter if the goods are taken to the other jurisdiction
before the end of the 30-day period;

(3) if collateral is brought into and kept in this state while subject to
a security interest perfected under the law of the jurisdiction from which the collateral
was removed, the security interest remains perfected, but if action is required by
AS 45.09.301 - 45.09.318 to perfect the security interest,

(A) if the action is not taken before the expiration of the period
of perfection in the other jurisdiction or the end of four months after the
collateral is brought into this state, whichever period first expires, the security
interest becomes unperfected at the end of that period and is thereafter
considered to have been unperfected as against a person who became a
purchaser after removal;

(B) if the action is taken before the expiration of the period
specified in (A) of this paragraph, the security interest continues perfected
thereafter;

(C) for the purpose of priority over a buyer of consumer goods
(AS 45.09.307), the period of the effectiveness of a filing in the jurisdiction
from which the collateral is removed is governed by the rules with respect to
perfection in (A) and (B) of this paragraph.

* Sec. 21. AS 45.09.104 is amended by adding a new paragraph to read:
(14) to a transfer of an interest in a letter of credit other than the rights
to proceeds of a written letter of credit.

* Sec. 22. AS 45.09.105(c) is amended to read:
(c) The following definitions apply to this chapter:
(1) "broker" (AS 45.08.102)
(2) "certificated security" (AS 45.08.102)
(3) "check" (AS 45.03.104)
(4) "clearing corporation" (AS 45.08.102)
(5) "contract for sale" (AS 45.02.106); (6) "control" (AS 45.08.106); (7) "delivery" (AS 45.08.301); (8) "entitlement holder" (AS 45.08.102); (9) "financial asset" (AS 45.08.102); (10) "holder in due course" (AS 45.03.302); (11) "letter of credit" (AS 45.05.102); (12) "note" (AS 45.03.104); (13) "proceeds of a letter of credit" (AS 45.05.114(a)); (14) [(12)] "sale" (AS 45.02.106); (15) [(13)] "securities intermediary" (AS 45.08.102); (16) [(14)] "security" (AS 45.08.102); (17) [(15)] "security certificate" (AS 45.08.102); (18) [(16)] "security entitlement" (AS 45.08.102); (19) [(17)] "uncertificated security" (AS 45.08.102).

* Sec. 23. AS 45.09.106 is amended to read:

Sec. 45.09.106. Definitions: "account"; "general intangibles." "Account" means a right to payment for goods sold or leased or for services rendered that is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means personal property (including a thing in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

* Sec. 24. AS 45.09.304(a) is amended to read:

(a) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party’s taking possession of the letter of credit. A security interest in money or instruments (other than instruments that constitute part of chattel paper) can be perfected only by the secured party’s taking
possession, except as provided in (d) and (e) of this section and AS 45.09.306(b) and (c) on proceeds.

* Sec. 25. AS 45.09.305 is amended to read:

Sec. 45.09.305. When possession by secured party perfects security interest without filing. A security interest in [LETTERS OF CREDIT AND ADVICES OF CREDIT (AS 45.05.116(b)(1)),] goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party’s taking possession of the collateral. A security interest in the rights to proceeds of a written letter of credit may be perfected by the secured party’s taking possession of the letter of credit.

If the collateral, other than goods covered by a negotiable document, is held by a bailee, the secured party is considered to have possession from the time the bailee receives notification of the secured party’s interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

* Sec. 26. TRANSITION PROVISIONS. (a) This Act applies to a letter of credit that is issued on or after the effective date of this Act. This Act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before the effective date of this Act.

(b) A transaction arising out of or associated with a letter of credit that was issued before the effective date of this Act and the rights, obligations, and interests flowing from that transaction are governed by a statute or other law amended, repealed, or repealed and reenacted by this Act as if the repeal, amendment, or repeal and reenactment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

* Sec. 27. This Act takes effect January 1, 2000.