



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

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Rep Mark Neuman, V-Chair Rep. Mike Chenault
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Rep. Lindsey Holmes Rep. Bob Buch

SPONSOR STATEMENT

CSHB 102(JUD) – UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

The Uniform Commercial Code is a uniform act created with the objective of synchronizing the law of sales and other commercial transactions in all fifty states. The UCC is a joint project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). The UCC is not itself law, but provides recommendation of the laws that should be adopted by individual states. All fifty states have adopted the UCC in one version or another, and it is a major part of Title 45 of the Alaska Statutes.

The UCC was originally released in 1952; periodically, the NCCUSL and ALI revisit the UCC and make appropriate recommendations for revisions to states statutes. This bill reflects the recent revisions of Articles 1 and 7 of the UCC. The Alaska Uniform Law commissioners have recommended passage of these revisions this legislative session.

Article 1 provides definitions and general provisions for the UCC; the updates to Article 1 modernize and reflect changing business practices and developments in the law and are necessary to bring Article 1 up to date. Thirty-four other states have already adopted the revised Article 1 language.

Article 7 of the UCC pertains to warehouse receipts, bills of lading, and other documents of title. The revisions to Article 7 introduce new rules concerning electronic documents of title. The substantive revisions to Article 7 fall into four main categories: recognition of electronic documents of title; extension of the statute of fraud requirements to include electronic records and signatures as equivalent to paper documents and written manual signatures; establishment of the unique original in electronic form; and interchangeability between electronic and tangible documents of title. Thirty-one other states have already adopted the revised Article 7 language.

An expert from the NCCUSL will be available to testify and answer questions at the hearing, along with an Alaska Commissioner to the NCCUSL and Chief Administrative Law Judge Terry Thurbon. Should you have questions before the hearing, please do not hesitate to call legislative aide Allison Laffen at 465-2840.



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SECTIONAL ANALYSIS

CSHB 102(JUD) – UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

(Sections Making Substantive, Non-technical Changes)

Section 1 codifies in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract.

Section 2 provides for the Uniform Electronic Transactions Act (UETA) to apply to sections of the Uniform Commercial Code (UCC) concerning warehouse receipts, bills of lading and documents of title previously excluded from application of UETA.

Sections 4 – 7 modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually exclusive; an owner of property wrongfully disposed of has rights and remedies under each statute in the event both statutes apply.

Section 8 adds a short title, describes the scope, and adds rules of construction and severability provision for the UCC, and addresses modification of federal electronic signatures laws.

Section 9 adds several new sections to AS 45.01 to promote uniformity in UCC-covered transactions by revising or modifying general rules. These include: general definitions; standards for determining when someone has notice or knowledge; provisions on distinguishing between leases and security interests, what constitutes value given for rights, and determining whether actions are timely performed and what facts must be

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

presumed; choice of laws; good faith; course of performance and dealings, and usage of trade; and various rights and remedies.

Sections 15 & 17 amend payment requirement as it relates to delivery of goods and passage of title to goods to facilitate use of electronic documents of title.

Section 30 adds several new sections to AS 45.07 to modernize the UCC Documents of Title statutes, especially to reflect the use of electronic documents of title by the shipping and warehousing industries. These include: general definitions; negotiation of documents of title; use of alternative media (electronic versus tangible documents); and control of electronic documents of title.

Section 39 updates the language of warehouse lien provisions to include liens arising from storage agreements and clarifies (in this provision rather than by cross reference to another statute) the protection afford the rights of a person with a perfected security interest in the goods who did not entrust the goods/document of title.

Section 54 amends the lien provisions applicable to the carrier of goods to ensure that a carrier's lien extends to the proceeds of the goods, not just the goods themselves.

Section 61 modernizes the language of and clarifies the ability to limit a carrier's liability by specifically referring to bills of lading and transportation agreements at the source documents for limitation of liability provisions.

Section 68 modernizes the standards for negotiation of documents of title to address use of negotiable electronic documents.

Section 71 amends provisions on the rights arising from transfer of documents of title to address the rights of lessors and lessees.

Section 77 revises remedial provisions for dealing with lost or missing documents of title by changing the standards for require the posting of security before the courts order delivery of goods or of a substitute document, and eliminates archaic classification and tariff-related conditions from the standard for whether delivery of goods in good faith constitutes conversion.

Section 100 amends duties of secured parties who must respond to debtors' demands to include duties for a party with control over an electronic document of title to respond to such demands.

Sections 114 & 118 describe two indirect amendments of the rules of evidence and provide for those changes to take effect only if the necessary two-thirds majority vote is achieved.



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EXPLANATION OF CHANGES

Changes between HB102 and CSHB102(JUD):

- Adds **Section 1**, which codifies in Title 9 in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract. The Alaska Supreme Court has previously found that the duty of good faith and fair dealing is implied in every contract in Alaska, and has gone so far as to call the duty "a long-standing tenet of Alaska law." McConnell v. State, Dept of Health and Social Services, 991 P.2d 178, 184 (Alaska 1999). The covenant of good faith and fair dealing assures parties to a contract that no party "will do anything which will interfere with the right of [another] party to receive the benefits of the agreement." Guin v. Ha, 591 P.2d 1281, 1291 (Alaska 1979). The covenant is implied "in order to effectuate the reasonable expectations of the parties to the agreement." Ramsey v. City of Sand Point, 936 P.2d 126, 133 (Alaska 1997); see generally Casey v. Semco Energy, Inc, 92 P.3d 379, 384 (Alaska 2004); Keffer v. Keffer, 852 P.2d 394 (Alaska 1993); Municipality of Anchorage v. Gentile, 922 P.2d 248 (Alaska 1996). Since common law is more malleable than statutory law, codification through this legislation offers additional guarantees of the duty of good faith and fair dealing to all parties of a contract.
- Adds **Sections 4-7**, which modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually

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exclusive; an owner of property wrongfully disposed of has rights and remedies under each statute in the event both statutes apply.

- Updates the language of **Section 50**, relating to AS 45.07.302. Professor William H. Henning, Distinguished Professor of Law at the University of Alabama School of Law, provide the following rationale for the change:

"The language in the uniform version of Section 7-302 was included because of the interface between state and federal law. At the time revised Article 7 was adopted by the Uniform Law Commission, federal law provided that performing or connecting carriers could not alter obligations if they were within the ambit of federal law regarding carrier obligations. The language in 7-302 designated what was outside that ambit and was included merely to point out what would have been true without the language - if the parties were outside federal law, the performing carrier COULD alter liability by agreement. Since the ULC adopted the act, much of federal law regarding carriers has been restated and reorganized and that exact formulation does not seem to be used. The new language that we suggested should be appropriate regardless of the scope of current federal law."

HB 102: UNIFORM COMMERCIAL CODE

Witness List (H) JUD 3 15 09

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Professor Henning currently serves as Distinguished Professor of Law at the University of Alabama School of Law. Before coming to Alabama, he was the R.B. Price Professor of Law at the University of Missouri-Columbia School of Law. At Missouri, he was a three-time winner of the Distinguished Faculty Teaching Award and the first member of the law faculty to be selected for a William T. Kemper Fellowship for Teaching Excellence, awarded annually to ten faculty members from all areas of the university. He has published widely in the field of commercial law, including several books on aspects of the Uniform Commercial Code. In 1994, Professor Henning was appointed to serve as a Missouri Commissioner with the Uniform Law Commission (ULC), and in that capacity he served from 1999-2001 as Chair of the Drafting Committee to Amend Uniform Commercial Code Article 2 (Sales) and Article 2A (Leases). In 2001, he became the ULC's Executive Director, a position he held until 2007. He now serves as an Alabama Commissioner. Professor Henning is a member of the American Law Institute, where he serves as an Adviser to the *Principles of the Law Governing Software Contracts* project.

Michael R. Kerr
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Michael R. Kerr is Legislative Director for the National Conference of Commissioners on Uniform State Laws (NCCUSL), and is responsible for the planning and execution of nation-wide enactment efforts for NCCUSL's Uniform and Model Acts. Prior to joining NCCUSL he was a Deputy Legislative Counsel for the State Of California. He holds a bachelor's degree in public policy from Stanford University, a J.D. from the University of Southern California, and a Certificate in Government Practice from the McGeorge School of Law at the University of the Pacific. He works with a broad range of uniform and models acts on behalf of NCCUSL, with an emphasis in business organizations, commercial transactions, regulatory measures, health law, family law, and land use acts.



A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 1, GENERAL PROVISIONS (2001)

PURPOSE:

Updates the general provisions section of the Uniform Commercial Code, to harmonize with ongoing UCC projects and recent revisions.

ORIGIN:

Completed by the Uniform Law Commissioners and the American Law Institute in 2001.

APPROVED BY:

American Bar Association

STATE ADOPTIONS:

Alabama	Minnesota
Arizona	Montana
Arkansas	Nebraska
California	Nevada
Colorado	New Hampshire
Connecticut	New Mexico
Delaware	North Carolina
Florida	North Dakota
Hawaii	Oklahoma
Idaho	Pennsylvania
Illinois	Rhode Island
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	U.S. Virgin Islands
Louisiana	Utah
	Vermont
	Virginia
	West Virginia

2009 INTRODUCTIONS:

For any further information regarding the Revised UCC Article 1, please contact Michael Kerr or Katie Robinson at 312-450-6600.



SUMMARY

Revised Article 1 of the Uniform Commercial Code

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

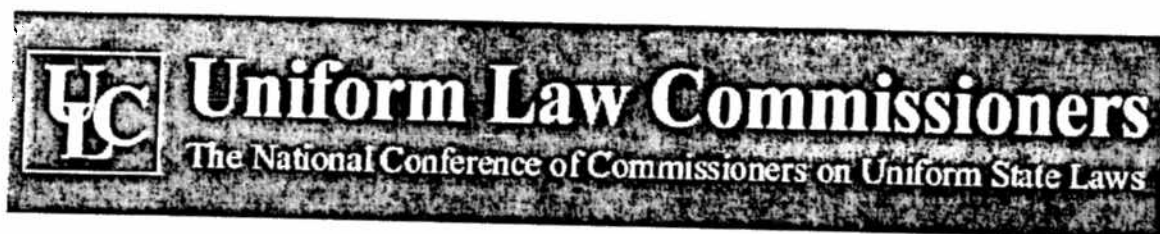
The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Perhaps the most important change to Article 1, however, has to do with default choice-of-law provisions found in 1-301, which replaces previous 1-105. Under the Article 1 before the 2001 amendments, parties to a transaction may agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances.

With respect to all transactions, an agreement by the parties to use the law of any state (or in the case of an international transaction, country) is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice-of-law provision in a contract may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country which has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

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A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 7 (2003)

PURPOSE:

The 2003 Revision of UCC Article 7 updates the original UCC7 to provide a framework for the further development of electronic documents of title, and to update the article for modern times in light of state, federal and international developments.

ORIGIN:

Completed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 2003.

ENDORSED BY:

International Association of Refrigerated Warehouses
International Warehouse Logistics Association

STATE ADOPTIONS:

Alabama	Nebraska
Arizona	Nevada
Arkansas	New Hampshire
California	New Mexico
Colorado	North Carolina
Connecticut	North Dakota
Delaware	Oklahoma
Hawaii	Pennsylvania
Idaho	Rhode Island
Illinois	Tennessee
Indiana	Texas
Iowa	Utah
Kansas	Virginia
Maryland	West Virginia
Minnesota	
Mississippi	
Montana	

2009 INTRODUCTIONS:



SUMMARY

Uniform Commercial Code - Revised Article 7 (2003)

Revision in 2003

The original Article 7 of the Uniform Commercial Code, "Warehouse Receipts, Bills of Lading and Other Documents of Title," combined two earlier uniform acts, the Uniform Warehouse Receipts Act (1906) and the Uniform Bills of Lading Act (1909), with some principles from the Uniform Sales Act (which became Article 2-Sales of the UCC). Article 7 had not been revisited after the 1951 promulgation of the original Uniform Commercial Code until 2003, a period of 52 years. The longevity of the principles of warehouse receipts and bills of lading suggests very successful law and law-making as it pertains to the commercial storage and shipment of goods. The basic principles do not change basically in the 2003 revision. But there are reasons to readdress this area of the commercial law in 2003, which shall be discussed a little later. First, it is necessary to establish some of the basics.

Introduction to Documents of Title

The storage and shipment of tangible goods for commercial purposes has been going on for centuries. The physical side of the business is carried on by entities that provide warehouses (warehousemen) and entities that carry the goods from place of origin to destination (common carriers). These are tangible, visible businesses. What is not tangible and visible is the transfer of rights in the goods while they are stored and/or shipped. The common law provided the rules of bailment. The terminology of bailor and bailee is still incorporated in the Uniform Act. As the law developed, the transfer of rights came to depend upon the transfer of specific documents of title. The transfer of the documents from one person to another became the transfer of the rights. The title documents were warehouseman's receipts on the storage/warehouse side, and the bill of lading on the carrier side. The original uniform acts and the 2003 revision all incorporate these basics.

One of the important principles carried forward into the 2003 revision is that of negotiability. Free transfer of interests is an important policy norm throughout the UCC. In Article 7, documents of title may be negotiable. Whether a document is negotiable or non-negotiable depends upon how it identifies the transferee and how it is transferred. A negotiable document may be one of two kinds of paper documents, bearer paper or order paper. A document made out to bearer may be transferred from one person to another by simple delivery of possession. The delivery transfers the rights to the goods (therefore the title) to the transferee. Order paper is made out to a specific person. After initial delivery to the person named on the document, it may be negotiated to another person by the indorsement of the named person and delivery of possession to that other person. The rights to the goods (and therefore the title) pass with the negotiation to the transferee.

Documents of title may also be made non-negotiable. This is primarily done by a statement on the face of the instrument. Non-negotiable documents of title may also be assigned or transferred. The difference between negotiable and non-negotiable documents is the rights that they may transfer. A non-negotiable document of title transfers only the actual interests of the transferor. A negotiable document of title may transfer more than the actual interests of the transferor. If negotiated, for example, it transfers free of any claims against the issuer of the document. A non-negotiable document is not free of such claims.

Negotiation as a concept exists to make commerce in goods possible. Goods would not be transferred if the purchaser always has to look behind the transaction to see who may come after the goods after the transfer is complete. Negotiation erases the peril. The principle enunciated in Article 7 is consistent with other parts of the UCC governing notes, drafts, checks and investment securities.

Electronic Documents of Title

Article 7 governs other important aspects of the transfer of rights in goods when stored or shipped, such as the liens of warehousemen and carriers and their enforcement and allocation of risk of loss of the goods either in storage or transit, but the issue of negotiation has been its most important aspect, up to the revisions in 2003. Something very important has happened to change the way we look at the principle of negotiation. That something is computers, electronic communications and the ability to create electronic documents of title. Computers have been accused and applauded for their impact on commerce and business. Their impact on storage and shipment of goods is profound. Federal law has actually recognized electronic documents for some time, but electronic documents of title cannot be substituted one to one with tangible documents of title. Their characteristics in electronic form are not the same as their characteristics in tangible form.

The tangible form is a written document on paper with signatures of issuers and subsequent transferors. The individual document is a unique token of the rights and interests it represents. Even if there is a copy, there is always the original. This is not so with electronic documents. Originals and copies are indistinguishable from each other in electronic form. Signatures in the sense of an individual's scribing them uniquely on a piece of paper cannot be equally duplicated in an electronic document. Transferors and transferees, who are remote from each other when tangible documents are transferred, are not remote from each other in electronic media. Electronic communications can occur between any two persons anywhere in the world. Yet, it is difficult for each participant in an electronic communication to verify or authenticate the identity of the other party. To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7, therefore, is the new rules for electronic documents of title.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules for electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in the favor of either form. Only the actual marketplace should determine users' choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.

Recognition of Electronic Documents of Title

Recognition of electronic documents of title begins in the definition of "Document of Title:" "An electronic document of title is evidence by a record consisting of information stored in an electronic medium." Other definitions have been modified to accord with this root definition. For example, "Holder" is defined to include: "a person in control of a negotiable electronic document of title." Electronic documents of title become the equal to tangible documents of title.

Statute of Frauds Requirements

Revised Article 7 extends statute of fraud requirements to include electronic records and signatures. Any writing requirement that relates to enforceability of a document is a statute of frauds requirement. Article 7 treats electronic records and signatures as the equivalent of paper documents and written, manual signatures. This initially occurs in new definitions of "record" and "sign." A record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The term "sign" is defined to

“execute or adopt a tangible symbol” and “to attach or logically associate with the record an electronic sound, symbol or process.” Within Revised Article 7, wherever the term “writing” or an equivalent may have been used before revision, the term “record” is uniformly used. When a document is required to be signed anywhere in Revised Article 7, electronic signing meets the test.

In addition, Revised Article 7 provides language stating expressly that it modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act. This express language, permitted in the federal act, avoids any issue of federal preemption. The federal statute allows specific tailoring for the purposes of incorporating electronic records and signatures into state law.

Establishing the Unique Token

It is not possible to transfer an electronic document of title in the same manner as a tangible document of title, particularly in terms of negotiating it. It cannot be guaranteed that a transfer directly from one person to the next by delivery and/or signature will transfer the authentic original document of title. An electronic alternative to the tangible system is necessary. To accomplish the equivalent system for electronic documents of title, Article 7 adapts the concept of “control” to the purpose. It is not a brand-new concept. It initially was developed in Article 8 of the Uniform Commercial Code for investment securities in the indirect holding system. The 1999 revisions to Article 9 adapted the concept further for secured transactions. Further adaptation of the concept occurred in Section 16 of the Uniform Electronic Transactions Act for promissory notes. This latter adaptation is most important for Revised Article 7, because the issues of negotiation for promissory notes are very similar to those for documents of title.

A person has control of a document of title for Article 7 purposes “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.” Such a system exists when it establishes a “single authoritative copy ...which is unique, identifiable and ... unalterable.” The authoritative copy must identify the person in control or the next person to whom the document has transferred. The person in control determines to whom the document is next transferred. Further, the standard requires that copies that are not authoritative, including copies of the authoritative copy, must be readily identifiable as not being the authoritative copy.

There is more than one way to meet this set of standards, unlike negotiation of a paper document, which occurs in one way only. One way to establish the single authoritative document is to have a single custodian of the electronic record, who enters all transfers of the document and identifies the person in control on its records, records that for all who want to know is the source of the single authoritative copy. In such a system, the person in control notifies the custodian of any transfer or authorized change in the document, who then notates its records appropriately and notifies the person in control and other relevant parties of the action. A transfer would obviously shift control from transferor to transferee. The transferee would become the new person in control.

Encryption technology may provide other methods for meeting these standards. Some kind of hybrid system of encryption and custodian may arise. UCC Article 7 prescribes no system per se and more than one system may develop over time. It is not possible to predict what technology may finally bring to electronic transfer systems. Revised Article 7 allows the technology to develop without need to amend it later when a new kind of technology comes along.

Interchangeability

UCC Article 7 provides for an electronic system of transfer for electronic documents of title and for the traditional paper system of documents of title which includes negotiable documents of title. There are dual tracks. Control is the operative term with electronic documents and negotiation is the operative term for tangible documents of title. With respect to the transfer of rights in a particular group of goods, can electronic documents be converted to tangible documents and vice versa? UCC Article 7 provides for such conversions. An electronic document may be converted

when the person in control surrenders control to the issuer, which then issues a tangible document of title containing a statement that it substitutes for the electronic document. The same kind of process will convert a tangible document to an electronic one. The person entitled to enforce a tangible document surrenders possession to the issuer. The electronic document must also state that it is a substitute for the tangible document. Without the ability to convert from tangible to electronic documents, this system would not work.

Other Benefits to Revision

The revisions to UCC Article 7, beyond making way for electronic documents of title, primarily update or clarify existing rules of law. There are references to tariffs and regulations in original UCC Article 7 that no longer exist with deregulation. These have been eliminated in the revision. There is nothing as significant as the rules for electronic documents of title. But these rules alone make it imperative for the states to enact the revision to UCC Article 7 as soon as practicable. Documents of title are fundamental to the transfer of goods in interstate commerce. The new rules are wholly commerce friendly and every state needs them as soon as possible.

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MEMORANDUM

February 24, 2009

SUBJECT: CSHB 102(JUD) relating to the Uniform Commercial Code, contractual duties, and liens (Work Order No. 26-LS0059\R)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

Single subject considerations. With the addition of just the lien language amendment in AS 34.35, the bill would have a single subject of "commercial transactions." With the addition of just the contract duty language amendment in AS 09.70.030, the bill would have to rely on a somewhat questionable single subject of "contracts." With the addition of both, the bill will have to rely on the somewhat questionable subject of "contracts."

Although I believe that this single subject would not ultimately be held to violate the constitutional single subject rule,¹ there is definitely an issue here. First, it is difficult to reduce the Uniform Commercial Code to "contracts," although that is the ultimate basis for its commercial transactions. The Supreme Court has held that the purpose of the constitutional provision is to guard against legislative log-rolling, "the practice of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."² However, it is likely that the general perception, at least of the legal community, of the UCC, the contract duty in AS 09.70.030, and the lien provisions would be that they are logically related. So they may not be considered dissimilar or incongruously placed together in the bill. Second, it is not clearly spelled out in the AS 34.35 lien language that the transactions it covers are based on a contract. However, the treatment in AS 34.35 suggests that there was some kind of expectation or agreement that the other party would pay for the services provided.

¹ Art. II, sec. 13, Constitution of the State of Alaska.

² Evans v. State, 56 P.3d 1046, 1069 (Alaska 2002), quoting from State v. First National Bank of Anchorage, 660 P.2d 406, 415 (Alaska 1982).

Representative Jay Ramras
February 24, 2009
Page 2

Although some justices in dissents have expressed concern that the court's broad construction may possibly make the rule meaningless,³ the Supreme Court has not overturned legislation because of a failure of the single-subject requirement. The Court has indicated that one meaning of the general subject is that all matters treated of should be so connected with or related to each other, either logically or in popular understanding as to be part of, or germane to, one general subject.⁴ It appears logical to group the amendments and the original bill together as related to contractual relations. As mentioned earlier, it also appears likely that, at least in the legal community, the general perception of the items in the bill would be that they are logically related.

When construing the single-subject rule, the Court will "resolve doubts in favor of validity."⁵ In order "to warrant the setting aside of enactments for failure to comply, the violation must be substantial and plain."⁶ In this case, the possible lack of a single subject among the provisions is not plain and it does not appear to be substantial.

In light of all these factors, I would say that relying on the single subject of "contracts" probably would not be fatal for the legislation. However, it is an issue and I wanted you to be aware of it.

If I may be of further assistance, please advise.

TLB:ljw
09-101.ljw

Enclosure

³ See Yute Air Alaska, Inc., et. al. v. Stephen A McAlpine, et al., 698 P.2d 1173, 1180 - 1183 (Alaska 1985); and Gellert v. State, 522 P.2d 1120, 1124 (Alaska 1974).

⁴ See State v. First National Bank of Anchorage, supra at 415.

⁵ See Suber v. Alaska State Bond Committee, 414 P.d 546, 557 (Alaska 1966).

⁶ See State v. First National Bank of Anchorage, supra at 415 (Alaska 1982), citing, among other cases, North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

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Bannister
2/24/09

CS FOR HOUSE BILL NO. 102(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): THE HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Uniform Commercial Code, to the general provisions of the
2 Uniform Commercial Code, to documents of title under the Uniform Commercial Code,
3 to the Uniform Electronic Transactions Act, to lease-purchases of personal property, to
4 the contractual duty to act fairly and in good faith, and to carrier, warehouse, and
5 animal care liens; amending Rules 403 and 902, Alaska Rules of Evidence; and
6 providing for an effective date."

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

8 * **Section 1.** AS 09.70 is amended by adding a new section to read:

9 **Sec. 09.70.030. Good faith.** The parties to every contract have a duty to act
10 fairly and in good faith in the performance and enforcement of the contract.

11 * **Sec. 2.** AS 09.80.010(b) is amended to read:

12 (b) This chapter does not apply to a transaction to the extent it is governed by

13 (1) a law governing the creation and execution of wills, codicils, or

1 testamentary trusts;

2 (2) the Uniform Commercial Code other than AS 45.01.306, AS 45.02,
3 AS 45.12, and, to the extent allowed by AS 45.07.113(c), AS 45.07 [AS 45.01.107,
4 45.01.206, AS 45.02, AND AS 45.12].

5 * **Sec. 3.** AS 09.80.130(c) is amended to read:

6 (c) Except as otherwise agreed, a person having control of a transferable
7 record is the holder, as defined in AS 45.01.211(b) [AS 45.01.201], of the transferable
8 record and has the same rights and defenses as a holder of an equivalent record or
9 writing under the Uniform Commercial Code, including, if the applicable statutory
10 requirements under AS 45.03.302(a), AS 45.07.501, or AS 45.29.308 are satisfied, the
11 rights and defenses of a holder in due course, a holder to which a negotiable document
12 of title has been duly negotiated, or a purchaser, respectively. Delivery, possession,
13 and endorsement are not required to obtain or exercise a right [ANY OF THE
14 RIGHTS] under this subsection.

15 * **Sec. 4.** AS 34.35.220 is amended to read:

16 **Sec. 34.35.220. Persons entitled to carrier, warehouse, and animal care**
17 **[LIVESTOCK] liens.** The following persons [SHALL] have liens on [UPON]
18 personal property for their just and reasonable charges for the labor, care, and attention
19 provided [BESTOWED] and the food furnished, and may retain possession of the
20 property until the charges are paid:

21 (1) a person who is a common carrier, or who, at the request of the
22 owner or lawful possessor of personal property, [CARRIES, CONVEYS, OR]
23 transports the property from one place to another;

24 (2) a person who safely keeps or stores [GRAIN, WARES,
25 MERCHANDISE, AND] personal property at the request of the owner or lawful
26 possessor of the property; and

27 (3) a person who pastures or feeds animals [HORSES, CATTLE,
28 HOGS, SHEEP, OR OTHER LIVESTOCK], or bestows labor, care, or attention on
29 [UPON] the animals [LIVESTOCK] at the request of the owner or lawful possessor
30 of the animals [LIVESTOCK].

31 * **Sec. 5.** AS 34.35.225(b) is amended to read:

(b) Nothing in this section may be construed to authorize a person [WAREHOUSEMAN] to sell more of the property [WOOL, WHEAT, OATS, OR OTHER GRAIN] than is sufficient to pay charges due the person [WAREHOUSEMAN] on the property [WOOL, WHEAT, OATS, OR OTHER GRAIN].

* **Sec. 6.** AS 34.35.225(c) is amended to read:

(c) A person [WAREHOUSEMAN] who sells, loans, or otherwise disposes of property [THE WOOL, WHEAT, OATS, OR GRAIN] contrary to the provisions of AS 34.35.220 and this section [34.35.225] without the consent of the owner of the property shall, for each offense, forfeit and pay to the owner a sum equal to the market value of the property, and 50 percent of the market value in addition as a penalty. In this subsection, "market value" means [MARKET VALUE IS] the price the property [ARTICLE] bears at the time the owner makes demand on the person [WAREHOUSEMAN] for it.

* **Sec. 7.** AS 34.35.225 is amended by adding a new subsection to read:

(d) The remedies available under this section are in addition to any remedies available under AS 45.07.210.

* **Sec. 8.** AS 45.01 is amended by adding new sections to article 1 to read:

Sec. 45.01.111. Short titles. (a) AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 may be cited as the Uniform Commercial Code.

(b) This chapter may be cited as the Uniform Commercial Code - General Provisions.

Sec. 45.01.112. Scope of chapter. This chapter applies to a transaction to the extent that the transaction is governed by another chapter of the code.

Sec. 45.01.113. Construction of code to promote its purposes and policies; applicability of supplemental principles of law. (a) The code shall be liberally construed and applied to promote the code's underlying purposes and policies, which are to

(1) simplify, clarify, and modernize the law governing commercial transactions;

(2) permit the continued expansion of commercial practices through

1 custom, usage, and agreement of the parties; and

2 (3) make uniform the law among the various jurisdictions.

3 (b) Unless displaced by the particular provisions of the code, the principles of
4 law and equity, including the law merchant and the law relative to capacity to contract,
5 principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,
6 bankruptcy, and other validating or invalidating cause, supplement the code's
7 provisions.

8 **Sec. 45.01.114. Construction against implied repeal.** The code being a
9 general act intended as a unified coverage of its subject matter, no part of it may be
10 considered to be impliedly repealed by subsequent legislation if that construction can
11 reasonably be avoided.

12 **Sec. 45.01.115. Severability.** If a provision or clause of the code or application
13 of the clause or provision to a person or circumstances is held invalid, the invalidity
14 does not affect other provisions or applications of the code that can be given effect
15 without the invalid provision or application, and to this end the provisions of the code
16 are severable.

17 **Sec. 45.01.116. Use of singular and plural; gender.** In the code, the rules of
18 construction in AS 01.10.050(b) and (c) apply, unless the statutory context otherwise
19 requires.

20 **Sec. 45.01.117. Section captions.** Notwithstanding AS 01.05.006 and
21 01.05.031(b)(2), section captions are part of the code.

22 **Sec. 45.01.118. Relation to Electronic Signatures in Global and National**
23 **Commerce Act.** The code modifies, limits, and supersedes 15 U.S.C. 7001 - 7031
24 (Electronic Signatures in Global and National Commerce Act) but does not modify,
25 limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of a notice
26 described in 15 U.S.C. 7003(b).

27 * **Sec. 9.** AS 45.01 is amended by adding new sections to read:

28 **Sec. 45.01.211. General definitions.** (a) Unless the context otherwise requires,
29 words or phrases defined in this section, or in the additional definitions contained in
30 other chapters of the code that apply to particular chapters or articles of the code, have
31 the meanings stated.

(b) Subject to definitions contained in other chapters of the code that apply to particular chapters or articles of the code,

(1) "action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and another proceeding in which rights are determined;

(2) "aggrieved party" means a party entitled to pursue a remedy;

(3) "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 AS 45.01.303;

(4) "bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company;

(5) "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 endorsed in blank;

(6) "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; "bill of lading" does not include a warehouse receipt;

(7) "branch" includes a separately incorporated foreign branch of a bank;

(8) "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;

(9) "buyer in ordinary course of business" means a person who 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 who 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 who takes possession of the goods or has a right to recover the goods from the seller under AS 45.02 may be a buyer in ordinary course of business; "buyer in ordinary course of business" does not include a person who acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(10) "code" means AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29;

(11) "conspicuous," with reference to a term, means written, displayed, or presented in a way that a reasonable person against whom 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

(A) 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

(B) 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;

(12) "consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes;

(13) "contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the code as supplemented by other applicable laws;

(14) "creditor" includes a general creditor, a secured creditor, a lien creditor, and a 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;

(15) "defendant" includes a person in the position of defendant in a

counterclaim, cross-claim, or third-party claim;

(16) "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 chattel paper, means voluntary transfer of possession;

(17) "document of title"

(A) means a record that

(i) 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

(ii) purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass;

(B) includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods;

(18) "electronic document of title" means a document of title evidenced by a record consisting of information stored in an electronic medium;

(19) "fault" means a default, breach, or wrongful act or omission;

(20) "fungible goods" means goods

(A) of which a unit, by nature or usage of trade, is the equivalent of another like unit; or

(B) that, by agreement, are treated as equivalent;

(21) "genuine" means free of forgery or counterfeiting;

(22) "good faith," except as otherwise provided in AS 45.05, means honesty in fact and the observance of reasonable commercial standards of fair dealing;

(23) "holder" means the person in

(A) possession of a negotiable instrument that is payable either to bearer or to an identified person who is the person in possession;

(B) 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

(C) control of a negotiable electronic document of title;

(24) "insolvency proceeding" includes an assignment for the benefit of creditors or another proceeding intended to liquidate or rehabilitate the estate of the person involved;

(25) "insolvent" means

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law;

(26) "money" means a medium of exchange currently authorized or adopted by a domestic or foreign government, and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries;

(27) "organization" means a person other than an individual;

(28) "party," as distinguished from "third party," means a person who has engaged in a transaction or made an agreement subject to the code;

(29) "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 another legal or commercial entity;

(30) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain

(A) by use of an interest rate that is specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into; or

(B) if an interest rate is not determined under (A) of this paragraph, by use of a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into;

(31) "purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or another voluntary

transaction creating an interest in property;

(32) "purchaser" means a person who takes by purchase;

(33) "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;

(34) "remedy" means a remedial right to which an aggrieved party is entitled with or without resort to a tribunal;

(35) "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;

(36) "right" includes remedy;

(37) "security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation; "security interest" includes an 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 AS 45.29; "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 AS 45.02.401, but a buyer may also acquire a security interest by complying with AS 45.29; except as otherwise provided in AS 45.02.505, the right of a seller or lessor of goods under AS 45.02 or AS 45.12 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 AS 45.29; the retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under AS 45.02.401 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 under AS 45.01.213;

(38) "send," in connection with a writing, record, or notice, means

(A) to deposit in the mail or deliver for transmission by a 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 on the instrument or otherwise agreed on, or, if an address is not specified on the instrument or otherwise agreed on, to an address reasonable under the

circumstances; or

(B) in another way to cause to be received a record or notice within the time it would have arrived if properly sent;

(39) "signed" includes using a symbol executed or adopted with present intention to adopt or accept a writing;

(40) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States;

(41) "surety" includes a guarantor or other secondary obligor;

(42) "tangible document of title" means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium;

(43) "term" means a portion of an agreement that relates to a particular matter;

(44) "unauthorized signature" means a signature made without actual, implied, or apparent authority, and includes a forgery;

(45) "warehouse receipt" means a document of title issued by a warehouse; in this paragraph, "warehouse" has the meaning given in AS 45.07.112(a);

(46) "writing" includes printing, typewriting, or another intentional reduction to tangible form; "written" has a corresponding meaning.

Sec. 45.01.212. Notice; knowledge. (a) Subject to (f) of this section, a person has "notice" of a fact if the person

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking those steps that may be reasonably required to inform the other person in

ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to (f) of this section, a person "receives" a notice or notification when it

(1) comes to that person's attention; or

(2) is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of that type of communication.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Sec. 45.01.213. Lease distinguished from security interest. (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and the

(1) original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional

consideration upon compliance with the lease agreement; or

(4) lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration on compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because the

(1) present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or greater than the fair market value of the goods at the time the lease is entered into;

(2) lessee assumes risk of loss of the goods;

(3) lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) lessee has an option to renew the lease or to become the owner of the goods;

(5) lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if, when the option to

(1) renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The remaining economic life of the goods and reasonably predictable fair market rent, fair market value, or cost of performing under the lease agreement must

1 be determined with reference to the facts and circumstances at the time the transaction
2 is entered into.

3 **Sec. 45.01.214. Value.** Except as otherwise provided in AS 45.03, AS 45.04,
4 and AS 45.05, a person gives value for rights if the person acquires them

5 (1) in return for a binding commitment to extend credit or for the
6 extension of immediately available credit, whether or not drawn upon and whether or
7 not a charge-back is provided for in the event of difficulties in collection;

8 (2) as security for, or in total or partial satisfaction of, a preexisting
9 claim;

10 (3) by accepting delivery under a preexisting contract for purchase; or

11 (4) in return for consideration sufficient to support a simple contract.

12 **Sec. 45.01.215. Reasonable time; seasonableness.** (a) Whether a time for
13 taking an action required by the code is reasonable depends on the nature, purpose,
14 and circumstances of the action.

15 (b) An action is taken seasonably if it is taken at or within the time agreed on
16 or, if no time is agreed on, at or within a reasonable time.

17 **Sec. 45.01.216. Presumptions.** Whenever the code creates a presumption with
18 respect to a fact, or provides that a fact is presumed, the trier of fact must find the
19 existence of the fact unless and until evidence is introduced that supports a finding of
20 the nonexistence of the fact.

21 **Article 3. Territorial Applicability and General Rules.**

22 **Sec. 45.01.301. Territorial applicability; parties' power to choose**
23 **applicable law.** (a) Except as otherwise provided in this section, when a transaction
24 bears a reasonable relation to this state and also to another state or nation, the parties
25 may agree that the law of this state or of the other state or nation shall govern the
26 parties' rights and duties.

27 (b) In the absence of an agreement effective under (a) of this section, and
28 except as provided in (c) of this section, the code applies to transactions bearing an
29 appropriate relation to this state.

30 (c) If one of the following provisions of the code specifies the applicable law,
31 that provision governs, and a contrary agreement is effective only to the extent

permitted by the applicable law specified by that provision:

- (1) AS 45.02.402;
- (2) AS 45.04.102;
- (3) AS 45.05.116;
- (4) AS 45.08.110;
- (5) AS 45.12.105 and 45.12.106;
- (6) AS 45.14.507;
- (7) AS 45.29.301 - 45.29.307.

Sec. 45.01.302. Variation by agreement. (a) Except as otherwise provided in (b) of this section or elsewhere in the code, the effect of provisions of the code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the code of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Sec. 45.01.303. Course of performance, course of dealing, and usage of trade. (a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if the

(1) agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting the parties'

expressions and other conduct.

(c) A "usage of trade" is a practice or method of dealing having the regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of a usage of trade must be proved as facts. If it is established that a usage of trade is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be used as indicated in the previous sentence as to that part of the performance.

(e) Except as otherwise provided in (f) of this section, the express terms of an agreement and an applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If this construction is unreasonable,

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to AS 45.02.209, a course of performance is relevant to show a waiver or modification of a term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Sec. 45.01.304. Obligation of good faith. Every contract or duty within the code imposes an obligation of good faith in its performance and enforcement.

Sec. 45.01.305. Remedies to be liberally administered. (a) The remedies

provided by the code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in the code or by other rule of law.

(b) A right or obligation declared by the code is enforceable by action unless the provision declaring it specifies a different and limited effect.

Sec. 45.01.306. 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 record.

Sec. 45.01.307. Prima facie evidence by third-party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or another document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Sec. 45.01.308. Performance or acceptance under reservation of rights. (a) A party who, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not by the performance, promise, or assent prejudice the rights reserved. The words, "without prejudice," "under protest," or the like are sufficient.

(b) The provisions of (a) of this section do not apply to an accord and satisfaction.

Sec. 45.01.309. Option to accelerate at will. A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to make the acceleration or requirement only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

Sec. 45.01.310. Subordinated obligations. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a

creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

* **Sec. 10.** AS 45.02.103(c)(2) is amended to read:

(2) "consignee" (AS 45.07.112) [(AS 45.07.102)];

* **Sec. 11.** AS 45.02.103(c)(3) is amended to read:

(3) "consignor" (AS 45.07.112) [(AS 45.07.102)];

* **Sec. 12.** AS 45.02.103(c) is amended by adding a new paragraph to read:

(7) "control" (AS 45.07.116).

* **Sec. 13.** AS 45.02.104(b) is amended to read:

(b) "Financing agency" means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (AS 45.02.707).

* **Sec. 14.** AS 45.02.202 is amended to read:

Sec. 45.02.202. Final written expression; parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree, or that are otherwise set out in a writing intended by the parties as a final expression of their agreement with respect to the terms included in the writing, may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement, but may be explained or supplemented

(1) by course of performance, course of dealing, or usage of trade (AS 45.01.303) [(AS 45.01.205) OR BY COURSE OF PERFORMANCE (AS 45.02.208)]; and

(2) by evidence of consistent additional terms unless the court finds the

1 writing was intended also as a complete and exclusive statement of the terms of the
2 agreement.

3 * **Sec. 15.** AS 45.02.310 is amended to read:

4 **Sec. 45.02.310. Open time for payment or running of credit; authority to**
5 **ship under reservation.** Unless otherwise agreed,

6 (1) payment is due at the time and place at which the buyer is to
7 receive the goods even though the place of shipment is the place of delivery;

8 (2) if the seller is authorized to send the goods, the seller may ship
9 them under reservation and may tender the documents of title, but the buyer may
10 inspect the goods after their arrival before payment is due unless inspection is
11 inconsistent with the terms of the contract (AS 45.02.513);

12 (3) if delivery is authorized and made by way of documents of title
13 other [OTHERWISE] than by (2) of this section, then payment is due, regardless of
14 where the goods are to be received, at the time

15 (A) and place at which the buyer is to receive delivery of the
16 tangible documents; or

17 (B) the buyer is to receive delivery of the electronic
18 documents and at the seller's place of business or, if the seller does not
19 have a place of business, the seller's residence [REGARDLESS OF WHERE
20 THE GOODS ARE TO BE RECEIVED]; and

21 (4) if the seller is required or authorized to ship the goods on credit, the
22 credit period runs from the time of shipment, but postdating the invoice or delaying its
23 dispatch correspondingly delays the starting of the credit period.

24 * **Sec. 16.** AS 45.02.323(b) is amended to read:

25 (b) Where, in a case within (a) of this section, a tangible bill of lading has
26 been issued in a set of parts, unless otherwise agreed, if the documents are not to be
27 sent from abroad, the buyer may demand tender of the full set; otherwise only one part
28 of the bill of lading need be tendered. Even if the agreement expressly requires a full
29 set,

30 (1) due tender of a single part is acceptable within the provisions on
31 cure of improper delivery (AS 45.02.508(a)); and

(2) even though the full set is demanded, if the documents are sent from abroad, the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity that the buyer in good faith considers adequate.

* Sec. 17. AS 45.02.401 is amended to read:

Sec. 45.02.401. Passing of title; reservation for security; limited application of this section. Each provision of this chapter with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods except where the provision refers to the title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material, the following rules apply:

(1) title to goods cannot pass under a contract for sale before their identification to the contract (AS 45.02.501), and, unless otherwise explicitly agreed, the buyer acquires by their identification a special property as limited by the code; a retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest; subject to these provisions and to the provisions of AS 45.29, title to goods passes from the seller to the buyer in the manner and on the conditions explicitly agreed on by the parties;

(2) unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods, despite a reservation of a security interest and even though a document of title is to be delivered at a different time or place; in particular and despite a reservation of a security interest by the bill of lading,

(A) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(B) if the contract requires delivery at destination, title passes on tender there;

(3) unless otherwise explicitly agreed, where delivery is to be made without moving the goods,

(A) if the seller is to deliver a **tangible** document of title, title

passes at the time and place the seller delivers the document, and, if the seller is to deliver an electronic document of title, title passes when the seller delivers the document [DOCUMENTS]; or

(B) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting;

(4) a rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller; this revesting occurs by operation of law and is not a "sale."

* Sec. 18. AS 45.02.503(d) is amended to read:

(d) If goods are in the possession of a bailee and are to be delivered without being moved,

(1) tender requires that the seller either tender a negotiable document of title covering the goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(2) tender to the buyer of a nonnegotiable document of title or of a record directing [WRITTEN DIRECTION TO] the bailee to deliver is sufficient tender unless the buyer seasonably objects, and, except as otherwise provided in AS 45.29, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of a failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

* Sec. 19. AS 45.02.503(e) is amended to read:

(e) If the contract requires the seller to deliver documents,

(1) the seller must tender all such documents in correct form except as provided in AS 45.02.323(b) with respect to bills of lading in a set; and

(2) tender through customary banking channels is sufficient, and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

1 * **Sec. 20.** AS 45.02.505 is amended to read:

2 **Sec. 45.02.505. Seller's shipment under reservation.** (a) If the seller has
3 identified goods to the contract by or before shipment,

4 (1) the seller's procurement of a negotiable bill of lading to the seller's
5 order or otherwise reserves in the seller a security interest in the goods; the seller's
6 procurement of the bill to the order of a financing agency or of the buyer indicates in
7 addition only the seller's expectation of transferring that interest to the person named;

8 (2) a nonnegotiable bill of lading to the seller or the nominee of the
9 seller reserves possession of the goods as security, but, except in a case of conditional
10 delivery (AS 45.02.507(b)), a nonnegotiable bill of lading naming the buyer as
11 consignee reserves no security interest even though the seller retains possession or
12 control of the bill of lading.

13 (b) If shipment by the seller with reservation of a security interest is in
14 violation of the contract for sale, it constitutes an improper contract for transportation
15 within AS 45.02.504 [THE PRECEDING SECTION] but impairs neither the rights
16 given to the buyer by shipment and identification of the goods to the contract nor the
17 seller's powers as a holder of a negotiable document of title.

18 * **Sec. 21.** AS 45.02.506(b) is amended to read:

19 (b) The right to reimbursement of a financing agency that has in good faith
20 honored or purchased the draft under commitment to or authority from the buyer is not
21 impaired by subsequent discovery of defects with reference to a relevant document
22 that was apparently regular [ON ITS FACE].

23 * **Sec. 22.** AS 45.02.509(b) is amended to read:

24 (b) Where the goods are held by a bailee to be delivered without being moved,
25 the risk of loss passes to the buyer

26 (1) on the buyer's receipt of possession or control of a negotiable
27 document of title covering the goods;

28 (2) on acknowledgment by the bailee of the buyer's right to possession
29 of the goods; or

30 (3) after the buyer's receipt of possession or control of a
31 nonnegotiable document of title or other [WRITTEN] direction to deliver in a record,

as provided in AS 45.02.503(d)(2).

* **Sec. 23.** AS 45.02.605(b) is amended to read:

(b) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in [ON THE FACE OF] the documents.

* **Sec. 24.** AS 45.02.705(b) is amended to read:

(b) As against the buyer, the seller may stop delivery until

(1) receipt of the goods by the buyer;

(2) acknowledgment to the buyer by a bailee of the goods, except a carrier, that the bailee holds the goods for the buyer;

(3) an [THAT] acknowledgment to the buyer under (1) or (2) of this subsection by a carrier by reshipment or as a warehouse [WAREHOUSEMAN]; or

(4) negotiation to the buyer of a negotiable document of title covering the goods.

* **Sec. 25.** AS 45.02.705(e) is amended to read:

(e) If a negotiable document of title has been issued for goods, the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

* **Sec. 26.** AS 45.03.103(a)(10) is amended to read:

(10) "prove," with respect to a fact, means to meet the burden of establishing the fact (AS 45.01.211) [(AS 45.01.201)];

* **Sec. 27.** AS 45.04.104(c) is amended by adding a new paragraph to read:

(19) "control" (AS 45.07.116).

* **Sec. 28.** AS 45.04.210(c) is amended to read:

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to AS 45.29, but

(1) a security agreement is not necessary to make the security interest enforceable (AS 45.29.203(b)(3)(A));

1 (2) filing is not required to perfect the security interest; and

2 (3) the security interest has priority over conflicting perfected security
3 interests in the item, accompanying documents, or proceeds.

4 * **Sec. 29.** AS 45.05.103(c) is amended to read:

5 (c) With the exception of this subsection, (a) and (d) of this section,
6 AS 45.05.102(a)(9) and (10), 45.05.106(d), and 45.05.114(d), and except to the extent
7 prohibited in AS 45.01.302 [AS 45.01.102(c)] and AS 45.05.117(d), the effect of this
8 chapter may be varied by agreement or by a provision stated or incorporated by
9 reference in an undertaking. A term in an agreement or undertaking generally excusing
10 liability or generally limiting remedies for failure to perform obligations is not
11 sufficient to vary obligations prescribed by this chapter.

12 * **Sec. 30.** AS 45.07 is amended by adding new sections to read:

13 **Sec. 45.07.111. Short title.** This chapter may be cited as the Uniform
14 Commercial Code - Documents of Title.

15 **Sec. 45.07.112. Definitions and index of definitions.** (a) In this chapter,
16 unless the context otherwise requires,

17 (1) "bailee" means a person who, by a warehouse receipt, bill of
18 lading, or other document of title, acknowledges possession of goods and contracts to
19 deliver them;

20 (2) "carrier" means a person who issues a bill of lading;

21 (3) "consignee" means a person named in a bill of lading to whom or
22 to whose order the bill promises delivery;

23 (4) "consignor" means a person named in a bill of lading as the person
24 from whom the goods have been received for shipment;

25 (5) "delivery order" means a record that contains an order to deliver
26 goods directed to a warehouse, carrier, or other person who, in the ordinary course of
27 business, issues warehouse receipts or bills of lading;

28 (6) "goods" means all things that are treated as movable for the
29 purposes of a contract for storage or transportation;

30 (7) "issuer" means a bailee who issues a document of title or, in the
31 case of an unaccepted delivery order, the person who orders the possessor of goods to

deliver; "issuer" includes a person for whom 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 the goods, the goods were misdescribed, or in another respect the agent or employee violated the issuer's instructions;

(8) "person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to whom delivery of the goods is to be made by the terms of, or under instructions in a record under, a nonnegotiable document of title;

(9) "shipper" means a person who enters into a contract of transportation with a carrier;

(10) "sign" means, with present intent to authenticate or adopt a record, to

(A) execute or adopt a tangible symbol; or

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

(11) "warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other chapters applying to this chapter and the sections in which the definitions appear are

(1) "contract for sale" (AS 45.02.106);

(2) "lessee in ordinary course of business" (AS 45.12.103);

(3) "receipt" of goods (AS 45.02.103).

(c) In addition, AS 45.01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Sec. 45.07.113. Relation of chapter to treaty or statute. (a) This chapter is subject to a treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not modify or repeal a law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of a law described under the previous sentence does not

1 affect the status of a document of title that otherwise is within the definition of a
2 document of title.

3 (c) To the extent there is a conflict between AS 09.80 and this chapter, this
4 chapter governs.

5 **Sec. 45.07.114. Negotiable and nonnegotiable document of title.** (a) Except
6 as otherwise provided in (c) of this section, a document of title is negotiable if by its
7 terms the goods are to be delivered to bearer or to the order of a named person.

8 (b) A document of title other than one described in (a) of this section is
9 nonnegotiable. A bill of lading that states that the goods are consigned to a named
10 person is not made negotiable by a provision that the goods are to be delivered only
11 against an order in a record signed by the same or another named person.

12 (c) A document of title is nonnegotiable if, at the time it is issued, the
13 document has a conspicuous legend, however expressed, that it is nonnegotiable.

14 **Sec. 45.07.115. Reissuance in alternative medium.** (a) On request of a person
15 entitled under an electronic document of title, the issuer of the electronic document
16 may issue a tangible document of title as a substitute for the electronic document if

17 (1) the person entitled under the electronic document surrenders
18 control of the document to the issuer; and

19 (2) the tangible document when issued contains a statement that it is
20 issued in substitution for the electronic document.

21 (b) Upon issuance of a tangible document of title in substitution for an
22 electronic document of title under (a) of this section,

23 (1) the electronic document ceases to have effect or validity; and

24 (2) the person who procured issuance of the tangible document
25 warrants to all subsequent persons entitled under the tangible document that the
26 warrantor was a person entitled under the electronic document when the warrantor
27 surrendered control of the electronic document to the issuer.

28 (c) On request of a person entitled under a tangible document of title, the
29 issuer of the tangible document may issue an electronic document of title as a
30 substitute for the tangible document if

31 (1) the person entitled under the tangible document surrenders

possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) On issuance of an electronic document of title in substitution for a tangible document of title under (c) of this section,

(1) the tangible document ceases to have effect or validity; and

(2) the person who procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Sec. 45.07.116. Control of electronic document of title. (a) A person has 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 whom the electronic document was issued or transferred.

(b) A system satisfies (a) of this section, and a person is considered to have control of an electronic document of title, if the document is created, stored, and assigned in a manner by which

(1) a single authoritative copy of the document exists that is unique, identifiable, and, except as otherwise provided in (4), (5), and (6) of this subsection, unalterable;

(2) the authoritative copy identifies the person asserting control as

(A) the person to whom the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to whom the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or the person's 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 person asserting control;

(5) each copy of the authoritative copy and a copy of a copy are readily

1 identifiable as a copy that is not the authoritative copy; and

2 (6) an amendment of the authoritative copy is readily identifiable as
3 authorized or unauthorized.

4 * **Sec. 31.** AS 45.07.201 is amended to read:

5 **Sec. 45.07.201. Person who [WHO] may issue a warehouse receipt; storage**
6 **under [GOVERNMENT] bond.** (a) A warehouse receipt may be issued by a
7 **warehouse [WAREHOUSEMAN].**

8 (b) If goods, including distilled spirits and agricultural commodities, are stored
9 under a statute requiring a bond against withdrawal or a license for the issuance of
10 receipts in the nature of warehouse receipts, a receipt issued for the goods **is**
11 **considered to be** [HAS LIKE EFFECT AS] a warehouse receipt even **if** [THOUGH]
12 issued by a person who is the owner of the goods and is not a **warehouse**
13 [WAREHOUSEMAN].

14 * **Sec. 32.** AS 45.07.202 is repealed and reenacted to read:

15 **Sec. 45.07.202. Form of warehouse receipt; effect of omission.** (a) A
16 warehouse receipt need not be in a particular form.

17 (b) Unless a warehouse receipt provides for each of the following, the
18 warehouse is liable for damages caused to a person injured by its omission:

19 (1) a statement of the location of the warehouse facility where the
20 goods are stored;

21 (2) the date of issue of the receipt;

22 (3) the unique identification code of the receipt;

23 (4) a statement whether the goods received will be delivered to the
24 bearer, to a named person, or to a named person or the named person's order;

25 (5) the rate of storage and handling charges, unless goods are stored
26 under a field warehousing arrangement, in which case a statement of that fact is
27 sufficient on a nonnegotiable receipt;

28 (6) a description of the goods or the packages containing them;

29 (7) the signature of the warehouse or its agent;

30 (8) if the receipt is issued for goods that the warehouse owns, solely,
31 jointly, or in common with others, a statement of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent who issued the receipt, in which case, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt terms that are not contrary to the code and do not impair its obligation of delivery under AS 45.07.403 or its duty of care under AS 45.07.204. A contrary provision is ineffective.

* Sec. 33. AS 45.07.203 is amended to read:

Sec. 45.07.203. Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies on [RELYING IN EITHER CASE UPON] the description of the goods in the document [OF THE GOODS] may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that

(1) the document conspicuously indicates that the issuer does not know whether [ANY PART OR] all or part of the goods in fact were received or conform to the description, as in the case where the description is in terms of marks or labels or [OF] kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import [THE LIKE], if this indication is true; [,] or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

* Sec. 34. AS 45.07.204 is amended to read:

Sec. 45.07.204. Duty of care; contractual limitation of warehouse's [WAREHOUSEMAN'S] liability. (a) A warehouse [WAREHOUSEMAN] is liable for damages for loss of or injury to the goods caused by the warehouse's failure to exercise [THE] care with [IN] regard to the goods [THEM] that a reasonably careful person would exercise under similar [LIKE] circumstances. Unless [, BUT, UNLESS] otherwise agreed, the warehouse [WAREHOUSEMAN] is not liable for damages that could not have been avoided by the exercise of this care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage [, AND SETTING OUT A SPECIFIC LIABILITY PER ARTICLE OR ITEM, OR VALUE PER UNIT OF WEIGHT,] beyond which the warehouse is [WAREHOUSEMAN SHALL] not [BE] liable. The limitation is not effective with respect to the warehouse's liability for conversion to its own use. On [; HOWEVER, THIS LIABILITY MAY, ON WRITTEN] request of the bailor in a record at the time of signing the storage agreement, or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or [UNDER] the warehouse receipt [OR AGREEMENT]. In this event, increased rates may be charged based on an [THE] increased valuation of the goods [, BUT NO INCREASE MAY BE PERMITTED CONTRARY TO A LAWFUL LIMITATION OF LIABILITY CONTAINED IN THE WAREHOUSEMAN'S TARIFF. NO LIMITATION IS EFFECTIVE WITH RESPECT TO THE WAREHOUSEMAN'S LIABILITY FOR CONVERSION TO THE WAREHOUSEMAN'S OWN USE].

(c) Reasonable provisions as to the time and manner of presenting claims and commencing [INSTITUTING] actions based on the bailment may be included in the warehouse receipt or storage agreement [TARIFF].

* Sec. 35. AS 45.07.205 is amended to read:

Sec. 45.07.205. Title under warehouse receipt defeated in certain cases. A buyer in [THE] ordinary course of business of fungible goods sold and delivered by a warehouse that [WAREHOUSEMAN WHO] is also in the business of buying and selling those [THE] goods takes the goods free of any [A] claim under a warehouse receipt even if the receipt is negotiable and [THOUGH IT] has been duly negotiated.

* Sec. 36. AS 45.07.206 is amended to read:

Sec. 45.07.206. Termination of storage at warehouse's [WAREHOUSEMAN'S] option. (a) A warehouse [WAREHOUSEMAN] may, by giving notice to [ON NOTIFYING] the person on whose account the goods are held and [ANY] other persons [PERSON] known to claim an interest in the goods, require payment of any charges and removal of the goods from the warehouse at the

1 termination of the period of storage fixed by the document of title, or, if a [NO] period
2 is not fixed, within a stated period not less than 30 days after the warehouse gives
3 notice [NOTIFICATION]. If the goods are not removed before the date specified in
4 the notice [NOTIFICATION], the warehouse [WAREHOUSEMAN] may sell them
5 under AS 45.07.210 [IN ACCORDANCE WITH THE PROVISIONS OF THE
6 SECTION ON ENFORCEMENT OF A WAREHOUSEMAN'S LIEN
7 (AS 45.07.210)].

8 (b) If a warehouse [WAREHOUSEMAN] in good faith believes that [THE]
9 goods are about to deteriorate or decline in value to less than the amount of its [THE]
10 lien within the time provided [PRESCRIBED] in (a) of this section and AS 45.07.210
11 [FOR NOTIFICATION, ADVERTISEMENT, AND SALE], the warehouse
12 [WAREHOUSEMAN] may specify in the notice given under (a) of this section
13 [NOTIFICATION] a reasonable shorter time for removal of the goods and, if [IN
14 CASE] the goods are not removed, may sell them at public sale held not less than one
15 week after a single advertisement or posting.

16 (c) If, as a result of a quality or condition of the goods of which the
17 warehouse did not have [WAREHOUSEMAN HAD NO] notice at the time of
18 deposit, the goods are a hazard to other property, [OR TO] the warehouse facilities, or
19 other [TO] persons, the warehouse [WAREHOUSEMAN] may sell the goods at
20 public or private sale without advertisement or posting on reasonable notification to
21 all persons known to claim an interest in the goods. If the warehouse,
22 [WAREHOUSEMAN] after a reasonable effort, is unable to sell the goods, the
23 warehouse [WAREHOUSEMAN] may dispose of them in a lawful manner and does
24 not incur [; THE WAREHOUSEMAN INCURS NO] liability by reason of this
25 disposition.

26 (d) A warehouse shall [THE WAREHOUSEMAN MUST] deliver the goods
27 to a person entitled to them under this chapter on [UPON] due demand made at any
28 time before sale or other disposition under this section.

29 (e) A warehouse [THE WAREHOUSEMAN] may satisfy the warehouse's
30 lien from the proceeds of a sale or disposition under this section, but shall [MUST]
31 hold the balance for delivery on the demand of a person to whom the warehouse

[WAREHOUSEMAN] would have been bound to deliver the goods.

* **Sec. 37.** AS 45.07.207 is amended to read:

Sec. 45.07.207. Goods must be kept separate; fungible goods. (a) Unless the warehouse receipt provides otherwise [PROVIDES], a warehouse shall [WAREHOUSEMAN MUST] keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, [EXCEPT THAT] different lots of fungible goods may be commingled.

(b) If different lots of fungible [FUNGIBLE] goods are [SO] commingled, the goods are owned in common by the persons entitled to them, and the warehouse [WAREHOUSEMAN] is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts that the warehouse [WAREHOUSEMAN] has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

* **Sec. 38.** AS 45.07.208 is amended to read:

Sec. 45.07.208. Altered warehouse receipts. If a blank in a negotiable warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack [WANT] of authority may treat the insertion as authorized. Any other unauthorized alteration leaves a tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

* **Sec. 39.** AS 45.07.209 is amended to read:

Sec. 45.07.209. Lien of warehouse [WAREHOUSEMAN]. (a) A warehouse [WAREHOUSEMAN] has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds of the goods in the warehouse's [WAREHOUSEMAN'S] possession for charges for storage or transportation, [() including demurrage and terminal charges ()], insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale under law. If the person on whose account the goods are held is liable for similar [LIKE] charges or expenses in relation to other goods [,] whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse [WAREHOUSEMAN] also has a

lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds of the goods in its possession [THAT PERSON] for these charges and expenses, whether or not the other goods have been delivered by the warehouse [WAREHOUSEMAN]. However, as [BUT] against a person to whom a negotiable warehouse receipt is duly negotiated, a warehouse's [WAREHOUSEMAN'S] lien is limited to charges in an amount or at a rate specified in [ON] the warehouse receipt or, if no charges are [SO] specified, then to a reasonable charge for storage of the specific goods covered by the receipt after the date of the receipt.

(b) A warehouse [THE WAREHOUSEMAN] may also reserve a security interest against the bailor for the [A] maximum amount specified on the receipt for charges other than those specified in (a) of this section, such as for money advanced and interest. The [SUCH A] security interest is governed by AS 45.29 [ON SECURED TRANSACTIONS].

(c) A warehouse's [WAREHOUSEMAN'S] lien for charges and expenses under (a) of this section or a security interest under (b) of this section is also effective against a person who [SO] entrusted the bailor with possession of the goods to the extent that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest [, BUT] is not effective against a person who, before issuance of a document of title, had a legal interest or a perfected security interest in the goods and did not

(1) deliver or entrust the goods or a document of title covering the goods to the bailor or the bailor's nominee with

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under AS 45.07.403; or

(C) power of disposition under AS 45.02.403, AS 45.12.304(b), 45.12.305(b), AS 45.29.320, 45.29.321(c), or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of a document [AS TO WHOM THE DOCUMENT CONFERS NO RIGHT IN THE GOODS COVERED BY IT UNDER AS 45.07.503].

(d) A warehouse [WAREHOUSEMAN] loses its [THE] lien on any goods

1 that the warehouse [WAREHOUSEMAN] voluntarily delivers or unjustifiably
2 refuses to deliver.

3 * **Sec. 40.** AS 45.07.209 is amended by adding a new subsection to read:

4 (e) A warehouse's lien on household goods for charges and expenses in
5 relation to the goods under (a) of this section is also effective against all persons if the
6 depositor was the legal possessor of the goods at the time of deposit. In this
7 subsection, "household goods" means furniture, furnishings, or personal effects used
8 by the depositor in a dwelling.

9 * **Sec. 41.** AS 45.07.210(a) is amended to read:

10 (a) Except as otherwise provided in (b) of this section, a warehouse's
11 [WAREHOUSEMAN'S] lien may be enforced by public or private sale of the goods,
12 in block or in packages [PARCELS], at any time or place, and on any terms that are
13 commercially reasonable, after notifying all persons known to claim an interest in the
14 goods. This notification must include a statement of the amount due, the nature of the
15 proposed sale, and the time and place of any [A] public sale. The fact that a better
16 price could have been obtained by a sale at a different time or in a method different
17 [METHOD] from that selected by the warehouse [WAREHOUSEMAN] is not of
18 itself sufficient to establish that the sale was not made in a commercially reasonable
19 manner. The warehouse [IF THE WAREHOUSEMAN EITHER] sells in a
20 commercially reasonable manner if the warehouse sells the goods in the usual
21 manner in a recognized market for the goods, [OR IF THE WAREHOUSEMAN] sells
22 at the price current in the market at the time of the sale, or [IF THE
23 WAREHOUSEMAN HAS] otherwise sells [SOLD] in conformity with commercially
24 reasonable practices among dealers in the type of goods sold [, THE
25 WAREHOUSEMAN HAS SOLD IN A COMMERCIALY REASONABLE
26 MANNER]. A sale of more goods than apparently necessary to be offered to ensure
27 [INSURE] satisfaction of the obligation is not commercially reasonable, except in
28 cases covered by the preceding sentence.

29 * **Sec. 42.** AS 45.07.210(b) is amended to read:

30 (b) A warehouse may enforce its [WAREHOUSEMAN'S] lien on goods,
31 other than goods stored by a merchant in the course of the merchant's business, [MAY

BE ENFORCED] only if the following requirements are satisfied [AS FOLLOWS]:

(1) all persons known to claim an interest in the goods must have been [BE] notified;

(2) [THE NOTIFICATION MUST BE DELIVERED IN PERSON OR SENT BY REGISTERED LETTER TO THE LAST KNOWN ADDRESS OF A PERSON TO BE NOTIFIED;

(3)] the notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that, unless the claim is paid within that time, the goods will be advertised for sale and sold by auction at a specified time and place;

(3) [(4)] the sale must conform to the terms of the notification;

(4) [(5)] the sale must be held at the nearest suitable place to [THAT] where the goods are held or stored;

(5) [(6)] after the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held; the [THE] advertisement must include a description of the goods, the name of the person on whose account the goods [THEY] are being held, and the time and place of the sale; the [THE] sale must take place at least 15 days after the first publication; if [IF] there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer [LESS] than three conspicuous places in the neighborhood of the proposed sale.

* Sec. 43. AS 45.07.210(c) is amended to read:

(c) Before a sale under this section, a person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with [UNDER] this section. In that event, the goods may [MUST] not be sold, but must be retained by the warehouse [WAREHOUSEMAN] subject to the terms of the receipt and this chapter.

* Sec. 44. AS 45.07.210(d) is amended to read:

(d) A warehouse [THE WAREHOUSEMAN] may buy at a public sale held

under this section.

* **Sec. 45.** AS 45.07.210(e) is amended to read:

(e) A purchaser in good faith of goods sold to enforce a warehouse's [WAREHOUSEMAN'S] lien takes the goods free of the rights of persons against whom the lien was valid, despite the warehouse's noncompliance [BY THE WAREHOUSEMAN] with [THE REQUIREMENTS OF] this section.

* **Sec. 46.** AS 45.07.210(f) is amended to read:

(f) A warehouse [THE WAREHOUSEMAN] may satisfy its [THE] lien from the proceeds of a sale under this section, but shall [MUST] hold the balance, if any, for delivery on demand to a person to whom the warehouse [WAREHOUSEMAN] would have been bound to deliver the goods.

* **Sec. 47.** AS 45.07.210(g) is amended to read:

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor, including the remedies available under AS 34.35.225.

* **Sec. 48.** AS 45.07.210(i) is amended to read:

(i) A warehouse [THE WAREHOUSEMAN] is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of [A] wilful violation, is liable for conversion.

* **Sec. 49.** AS 45.07.301 is amended to read:

Sec. 45.07.301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load, and count"; improper handling. (a) A consignee of a nonnegotiable bill of lading who has given value in good faith, or a holder to whom a negotiable bill has been duly negotiated, relying on [IN EITHER CASE UPON] the description in the bill of the goods or on [UPON] the date shown in the bill, may recover [,] from the issuer [,] damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill [DOCUMENT] indicates that the issuer does not know whether a [ANY] part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown,"

"said to contain," "shipper's weight, load, and count," or words of similar import [THE LIKE], if this indication is true.

(b) If goods are loaded by the [AN] issuer of a bill of lading [WHO IS A COMMON CARRIER],

(1) the issuer shall [MUST] count the packages of goods if shipped in packages [PACKAGE FREIGHT] and ascertain the kind and quantity if shipped in bulk; and

(2) the words, [FREIGHT. IN THIS CASE] "shipper's weight, load, and count," or other words of similar import indicating that the description was made by the shipper are ineffective except as to goods [FREIGHT] concealed in [BY] packages.

(c) If bulk goods are [FREIGHT IS] loaded by a shipper who makes available to the issuer of a bill of lading adequate facilities for weighing those goods [THE FREIGHT], the [AN] issuer shall [WHO IS A COMMON CARRIER MUST] ascertain the kind and quantity within a reasonable time after receiving the shipper's [WRITTEN] request in a record [OF THE SHIPPER] to ascertain the kind and quantity [DO SO]. In this case, "shipper's weight" or other words of similar import [LIKE PURPORT] are ineffective.

(d) The issuer of a bill of lading, [MAY] by including [INSERTING] in the bill the words "shipper's weight, load, and count" or [OTHER] words of similar import, may [LIKE PURPORT] indicate that the goods were loaded by the shipper, [;] and, if the statement is true, the issuer is not liable for damages caused by the improper loading. However, [BUT THEIR] omission of these words does not imply liability for [THE] damages by improper loading.

(e) A [THE] shipper guarantees [IS CONSIDERED TO HAVE GUARANTEED] to an [THE] issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight as furnished by the shipper, [;] and the shipper shall indemnify the issuer against damage caused by inaccuracies in these particulars. This [THE] right of [THE ISSUER TO THIS] indemnity does not limit [IN NO WAY LIMITS] the issuer's responsibility or [AND] liability under the contract of carriage to a person other than the shipper.

* **Sec. 50.** AS 45.07.302 is amended to read:

Sec. 45.07.302. Through bills of lading and similar documents of title. (a)

The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person [PERSONS] acting as the issuer's agent [AGENTS] or by a performing carrier, [CONNECTING CARRIERS] is liable to a person [ANYONE] entitled to recover on the bill or other document for a breach by the other person [PERSONS] or the performing [BY A CONNECTING] carrier of its obligation under the bill or other document. However [, BUT, TO THE EXTENT THAT THE BILL COVERS AN UNDERTAKING TO BE PERFORMED OVERSEAS OR IN TERRITORY NOT CONTIGUOUS TO THE CONTINENTAL UNITED STATES OR AN UNDERTAKING INCLUDING MATTERS OTHER THAN TRANSPORTATION], this liability for breach by the other person or the performing carrier may be varied by agreement of the parties, except to the extent other law prohibits variation of the liability by agreement.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by the other person, the [THAT] person is subject, with respect to its own [THE PERSON'S] performance while the goods are in its [THE PERSON'S] possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another [SUCH] person under the bill or other document, and does not include liability for breach by another [SUCH] person or by the issuer.

(c) The issuer of a [THE] through bill of lading or other document of title described in (a) of this section may recover [,] from the performing [CONNECTING] carrier, or other person in possession of the goods when the breach of the obligation under the bill [DOCUMENT] occurred, the amount

(1) the issuer may be [IS] required to pay to a person [ANYONE] entitled to recover on the bill or other document for the breach, as may be evidenced by a receipt, judgment, or transcript of judgment; [THAT AMOUNT,] and

(2) [THE AMOUNT] of an expense reasonably incurred by the issuer [CARRIER] in defending an action commenced [BROUGHT] by a person [ANYONE] entitled to recover on the bill or other document for the breach.

* **Sec. 51.** AS 45.07.303 is amended to read:

Sec. 45.07.303. Diversion; reconsignment; change of instructions. (a)

Unless the bill of lading otherwise provides, a [THE] carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given [NOTWITHSTANDING] contrary instructions [INSTRUCTION FROM THE CONSIGNEE];

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods [THEM].

(b) Unless [THE] instructions described in (a) of this section are included in [NOTED ON] a negotiable bill of lading, a person to whom the bill is duly negotiated may [CAN] hold the bailee according to the original terms.

* **Sec. 52.** AS 45.07.304 is amended to read:

Sec. 45.07.304. Tangible bills [BILLS] of lading in a set. (a) Except as [WHERE] customary in international [OVERSEAS] transportation, a tangible bill of lading may [MUST] not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued [DRAWN] in a set of parts, each of which contains an identification code and is [NUMBERED AND] expressed to be valid only if the goods have not been delivered against another [ANY OTHER] part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document of title and the goods even if [THOUGH] a later holder may have received the goods from the carrier

1 in good faith and discharged the carrier's obligation by surrendering its
2 [SURRENDER OF THE LATER HOLDER'S] part.

3 (d) A person who negotiates or transfers a single part of a tangible bill of
4 lading issued [DRAWN] in a set is liable to holders of that part as if it were the whole
5 set.

6 (e) The bailee shall [IS OBLIGED TO] deliver in accordance with
7 AS 45.07.401 - 45.07.404 against the first presented part of a tangible bill of lading
8 lawfully issued [DRAWN] in a set. Delivery in this manner [THIS DELIVERY]
9 discharges the bailee's obligation on the whole bill.

10 * Sec. 53. AS 45.07.305(b) is amended to read:

11 (b) Upon request of a person [ANYONE] entitled as against a [THE] carrier
12 to control the goods while in transit and on surrender of possession or control of an
13 outstanding bill of lading or other receipt covering the goods, the issuer, subject to
14 AS 45.07.115, may procure a substitute bill to be issued at a [ANY] place designated
15 in the request.

16 * Sec. 54. AS 45.07.307 is amended to read:

17 **Sec. 45.07.307. Lien of carrier.** (a) A carrier has a lien on the goods covered
18 by a bill of lading or on the proceeds of the goods in its possession for charges after
19 the date of the carrier's [ITS] receipt of the goods for storage or transportation,
20 including demurrage and terminal charges, and for expenses necessary for
21 preservation of the goods incident to their transportation or reasonably incurred in
22 their sale under [PURSUANT TO] law. However, [BUT] against a purchaser for
23 value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the
24 bill or the applicable tariffs, or, if no charges are stated, [THEN] to a reasonable
25 charge.

26 (b) A lien for charges and expenses under (a) of this section on goods that the
27 carrier was required by law to receive for transportation is effective against the
28 consignor or a person entitled to the goods unless the carrier had notice that the
29 consignor lacked authority to subject the goods to the charges and expenses. Another
30 [ANY OTHER] lien under (a) of this section is effective against the consignor and a
31 person who permitted the bailor to have control or possession of the goods unless the

carrier had notice that the bailor lacked [THE] authority.

(c) A carrier loses its [THE] lien on goods that the carrier voluntarily delivers or unjustifiably refuses to deliver.

* **Sec. 55.** AS 45.07.308(a) is amended to read:

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk [BLOCK] or in packages [PARCELS], at any time or place, and on [ANY] terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The [THIS] notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any [A] public sale. The fact that a better price could have been obtained by a sale at a different time or by [IN] a [DIFFERENT] method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The [IF THE] carrier [EITHER] sells [THE] goods in a commercially reasonable [THE USUAL] manner if the carrier sells the goods in the usual manner in a recognized market for them, [OR IF THE CARRIER] sells at the price current in that [THE] market at the time of the sale, or [IF THE CARRIER HAS] otherwise sells [SOLD] in conformity with commercially reasonable practices among dealers in the type of goods sold [, THE CARRIER HAS SOLD IN A COMMERCIALY REASONABLE MANNER]. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

* **Sec. 56.** AS 45.07.308(b) is amended to read:

(b) Before a sale under this section, a person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with [UNDER] this section. In that event, the goods may [MUST] not be sold [,] but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

* **Sec. 57.** AS 45.07.308(c) is amended to read:

(c) A [THE] carrier may buy at a public sale under this section.

* **Sec. 58.** AS 45.07.308(d) is amended to read:

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the

goods free of the rights of persons against whom the lien was valid, despite the carrier's noncompliance [BY THE CARRIER] with [THE REQUIREMENTS OF] this section.

* **Sec. 59.** AS 45.07.308(e) is amended to read:

(e) A [THE] carrier may satisfy the carrier's lien from the proceeds of a sale under this section, but shall [MUST] hold the balance, if any, for delivery on demand to a person to whom the carrier would have been bound to deliver the goods.

* **Sec. 60.** AS 45.07.308(h) is amended to read:

(h) A [THE] carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of wilful violation, is liable for conversion.

* **Sec. 61.** AS 45.07.309 is amended to read:

Sec. 45.07.309. Duty of care; contractual limitation of carrier's liability. (a)

A carrier who issues a bill of lading, whether negotiable or nonnegotiable, shall [MUST] exercise the degree of care in relation to the goods that a reasonably careful person [MAN] would exercise under similar [LIKE] circumstances. This subsection does not affect a statute, regulation, [REPEAL OR CHANGE ANY LAW] or rule of law that imposes liability on [UPON] a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement [PROVISION] that the carrier's liability may [SHALL] not exceed a value stated in the bill or transportation agreement [DOCUMENT] if the carrier's rates are dependent on [UPON] value and the consignor [BY THE CARRIER'S TARIFF] is afforded an opportunity to declare a higher value and [OR A VALUE AS LAWFULLY PROVIDED IN THE TARIFF, OR IF NO TARIFF IS FILED] the consignor is [OTHERWISE] advised of this opportunity. However, the [; BUT NO SUCH] limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing [INSTITUTING] actions based on the shipment may be included in a bill of lading or a transportation agreement [TARIFF].

1 * **Sec. 62.** AS 45.07.401 is amended to read:

2 **Sec. 45.07.401. Irregularities in issue of receipt or bill or conduct of issuer.**

3 The obligations imposed by this chapter on an issuer apply to a document of title even
4 if [REGARDLESS OF THE FACT THAT]

5 (1) the document does [MAY] not comply with the requirements of
6 this chapter or another statute, a [OF ANY OTHER LAW OR] regulation, or
7 another rule of law regarding its issuance [ISSUE], form, or content;

8 (2) the issuer [MAY HAVE] violated laws regulating the conduct of
9 the issuer's business;

10 (3) the goods covered by the document were owned by the bailee
11 when [AT THE TIME] the document was issued; or

12 (4) the person issuing the document is [DOES] not a warehouse but
13 the document [COME WITHIN THE DEFINITION OF WAREHOUSEMAN IF IT]
14 purports to be a warehouse receipt.

15 * **Sec. 63.** AS 45.07.402 is amended to read:

16 **Sec. 45.07.402. Duplicate document of title [RECEIPT OR BILL];**
17 **overissue. A** [NEITHER A] duplicate or another [NOR ANY OTHER] document of
18 title purporting to cover goods already represented by an outstanding document of the
19 same issuer does not confer [CONFERS] a right in the goods, except as provided in
20 the case of tangible bills of lading in a set of parts, overissue of documents for
21 fungible goods, [AND] substitutes for lost, stolen, or destroyed documents, or
22 substitute documents issued under AS 45.07.115. The [BUT THE] issuer is liable
23 for damages caused by the issuer's overissue or failure to identify a duplicate
24 document [AS SUCH] by a conspicuous notation [ON ITS FACE].

25 * **Sec. 64.** AS 45.07.403(a) is amended to read:

26 (a) A [THE] bailee shall [MUST] deliver the goods to a person entitled under
27 a [THE] document of title if the person [WHO] complies with (b) and (c) of this
28 section, unless and to the extent that the bailee establishes [ESTABLISHED] any of
29 the following:

30 (1) delivery of the goods to a person whose receipt was rightful as
31 against the claimant;

(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's [WAREHOUSEMAN'S] lawful termination of storage;

(4) the exercise by a seller of its [THE] right to stop delivery under AS 45.02.705 or by a lessor of its right to stop delivery under AS 45.12.526;

(5) a diversion, reconsignment, or other disposition under AS 45.07.303 [OR TARIFF REGULATING THIS RIGHT];

(6) release, satisfaction, or another [ANY OTHER FACT AFFORDING A] personal defense against the claimant; or

(7) another [ANY OTHER] lawful excuse.

* Sec. 65. AS 45.07.403(b) is amended to read:

(b) A person claiming goods covered by a document of title shall [MUST] satisfy the bailee's lien if the bailee [SO] requests the person to satisfy the lien or if the bailee is prohibited by law from delivering the goods until the charges are paid.

* Sec. 66. AS 45.07.403(c) is amended to read:

(c) Unless the person claiming the goods is a person [ONE] against whom the document of title does not confer a [CONFERS NO] right under AS 45.07.503(a),

(1) the person claiming under a document shall [MUST] surrender possession [FOR CANCELLATION] or control of [NOTATION OF PARTIAL DELIVERIES] an outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; [,] and

(2) the bailee shall [MUST] cancel the document or conspicuously indicate in [NOTE] the document the partial delivery, [ON THE DOCUMENT] or the bailee is [BE] liable to a person to whom the document is duly negotiated.

* Sec. 67. AS 45.07.404 is amended to read:

Sec. 45.07.404. No liability for good faith delivery under document of title [PURSUANT TO RECEIPT OR BILL]. A bailee who, in good faith, [INCLUDING OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS,] has received

goods and delivered or otherwise disposed of the goods [THEM] according to the terms of a [THE] document of title or under this chapter is not liable for the goods [THAT DISPOSAL. THIS RULE APPLIES] even if [THOUGH] the person

(1) from whom the bailee received the goods did not have [HAD NO] authority to procure the document or to dispose of the goods; or

(2) [AND EVEN THOUGH THE PERSON] to whom the bailee delivered the goods did not have [HAD NO] authority to receive the goods [THEM].

* Sec. 68. AS 45.07.501 is repealed and reenacted to read:

Sec. 45.07.501. Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) if the document's original terms run to the order of a named person, the document is negotiated by the named person's endorsement and delivery; after the named person's endorsement in blank or to bearer, a person may negotiate the document by delivery alone;

(2) if the document's original terms run to bearer, it is negotiated by delivery alone;

(3) if the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated;

(4) negotiation of the document after it has been endorsed to a named person requires endorsement by the named person and delivery;

(5) a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder who purchases it in good faith, without notice of a defense against or claim to it on the part of a person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) if the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person; endorsement by the named person is not required to negotiate the document;

(2) if the document's original terms run to the order of a named person

and the named person has control of the document, the effect is the same as if the document had been negotiated;

(3) a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder who purchases it in good faith, without notice of a defense against or claim to it on the part of a person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Endorsement of a nonnegotiable document of title does not make it negotiable or add to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of an interest of that person in the goods.

* Sec. 69. AS 45.07.502 is amended to read:

Sec. 45.07.502. Rights acquired by due negotiation. (a) Subject to AS 45.07.205 and 45.07.503 [AS 45.07.503 AND TO THE PROVISIONS OF AS 45.07.205 ON FUNGIBLE GOODS], a holder to whom a negotiable document of title has been duly negotiated acquires by the due negotiation

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of a defense or claim by the issuer except those [ONE] arising under the terms of the document or under this chapter, but, [;] in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order, and the obligation acquired by the holder is that the issuer and any [AN] endorser will procure the acceptance of the bailee.

(b) Subject to AS 45.07.503, title and rights [SO] acquired by due negotiation are not defeated by a stoppage of the goods represented by the document of title or by surrender of the goods by the bailee [,] and are not impaired even if

(1) [THOUGH] the due negotiation or a prior due negotiation constituted a breach of duty;

(2) [OR EVEN THOUGH] a person has been deprived of possession of a negotiable tangible [THE] document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; [,] or

(3) [EVEN THOUGH] a previous sale or other transfer of the goods or document has been made to a third person.

* Sec. 70. AS 45.07.503 is amended to read:

Sec. 45.07.503. Document of title to goods defeated in certain cases. (a) A document of title confers no right in goods against a person who, before issuance of the document, had a legal interest or a perfected security interest in the goods [THEM] and who did not [NEITHER]

(1) deliver [DELIVERED] or entrust the goods [ENTRUSTED THEM] or a document of title covering the goods [THEM] to the bailor or the bailor's nominee with

(A) actual or apparent authority to ship, store, or sell;

(B) [OR WITH] power to obtain delivery under AS 45.07.403;

or

(C) [WITH] power of disposition under AS 45.02.403, AS 45.12.304(b), 45.12.305(b), AS 45.29.320, 45.29.321(c) [AS 45.02.403 AND AS 45.29.320] or other statute or rule of law; or [NOR]

(2) acquiesce [ACQUIESCED] in the procurement by the bailor or its [THE BAILOR'S] nominee of a document [OF TITLE].

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of a person [ANYONE] to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That [SUCH A] title may be defeated under AS 45.07.504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of a person [ANYONE] to whom a bill issued by the freight

forwarder is duly negotiated. However, [; BUT] delivery by the carrier in accordance with AS 45.07.401 - 45.07.404 under its own bill of lading discharges the carrier's obligation to deliver.

* Sec. 71. AS 45.07.504 is amended to read:

Sec. 45.07.504. Rights acquired in [THE] absence of due negotiation; effect of diversion; [SELLER'S] stoppage of delivery. (a) A transferee of a document of title, whether negotiable or nonnegotiable [NOT], to whom the document has been delivered but not duly negotiated, acquires the title and rights that the transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until, [(] but not after, [)] the bailee receives notice [NOTIFICATION] of the transfer, the rights of the transferee may be defeated

(1) by those creditors of the transferor who could treat the transfer [SALE] as void under AS 45.02.402 or AS 45.12.308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights; [OR]

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading that causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods [THEY] have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods under a nonnegotiable document of title may be stopped by a seller under AS 45.02.705 or a lessor under AS 45.12.526, [AND] subject to the requirement of due notification [SET OUT] in those sections [AS 45.02.705]. A bailee who honors [HONORING] the seller's or lessor's

instructions is entitled to be indemnified by the seller or lessor against a resulting loss or expense.

* Sec. 72. AS 45.07.505 is amended to read:

Sec. 45.07.505. Endorser not [A] guarantor for other parties. The endorsement of a tangible document of title issued by a bailee does not make the endorser liable for a default by the bailee or [BY] previous endorsers.

* Sec. 73. AS 45.07.506 is amended to read:

Sec. 45.07.506. Delivery without endorsement; right to compel endorsement. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its [THE] transferor supply a necessary endorsement, but the transfer becomes a negotiation only as of the time the endorsement is supplied.

* Sec. 74. AS 45.07.507 is amended to read:

Sec. 45.07.507. Warranties on negotiation or delivery [TRANSFER] of document of title [RECEIPT OR BILL]. If a person negotiates or delivers [TRANSFERS] a document of title for value, other [OTHERWISE] than as a mere intermediary under AS 45.07.508, [THEN,] unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, [PERSON] warrants to its [THE] immediate purchaser only that [IN ADDITION TO ANY WARRANTY MADE IN SELLING THE GOODS]

(1) [THAT] the document is genuine;

(2) [THAT] the transferor does not have [PERSON HAS NO] knowledge of a fact that would impair the document's [ITS] validity or worth; and

(3) [THAT] the negotiation or delivery [TRANSFER] is rightful and fully effective with respect to the title to the document and the goods it represents.

* Sec. 75. AS 45.07.508 is amended to read:

Sec. 45.07.508. Warranties of collecting bank as to documents of title. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority [. THIS RULE APPLIES] even if [THOUGH] the collecting bank or other

intermediary has purchased or made advances against the claim or draft to be collected.

* Sec. 76. AS 45.07.509 is amended to read:

Sec. 45.07.509. Adequate [RECEIPT OR BILL: WHEN ADEQUATE] compliance with commercial contract. Whether [THE QUESTION WHETHER] a document of title is adequate to fulfill the obligations of a contract for sale or a contract for lease or the conditions of a letter of credit is determined [GOVERNED] by AS 45.02, [ON SALES AND] AS 45.05, or AS 45.12 [ON LETTERS OF CREDIT].

* Sec. 77. AS 45.07.601 is repealed and reenacted to read:

Sec. 45.07.601. Lost, stolen, or destroyed documents of title. (a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document, and the bailee may, without liability to any person, comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless the court finds that any person who may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security.

(b) A bailee who, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to a person injured by the delivery. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify a person injured by the delivery who files a notice of claim within one year after the delivery.

* Sec. 78. AS 45.07.602 is amended to read:

Sec. 45.07.602. Judicial process against [ATTACHMENT OF] goods covered by [A] negotiable document of title. Unless A [EXCEPT WHERE THE] document of title was originally issued upon delivery of the goods by a person who did not have [HAD NO] power to dispose of them, a [NO] lien does not attach [ATTACHES] by virtue of a judicial process to goods in the possession of a bailee for

which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or [ITS] negotiation of the document is enjoined. The [, AND THE] bailee may not be compelled to deliver the goods under process until possession or control of the document is surrendered to the bailee or to [IMPOUNDED BY] the court. A purchaser of [ONE WHO PURCHASES] the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

* Sec. 79. AS 45.07.603 is amended to read:

Sec. 45.07.603. Conflicting claims; interpleader. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has [HAD] a reasonable time to ascertain the validity of the adverse claims or to commence [BRING] an action for interpleader. The bailee [TO COMPEL ALL CLAIMANTS TO INTERPLEAD AND] may assert an [COMPEL THIS] interpleader [,] either in defending an action for nondelivery of the goods or by original action [, WHICHEVER IS APPROPRIATE].

* Sec. 80. AS 45.08.103 is amended by adding a new subsection to read:

(h) A document of title is not a financial asset unless AS 45.08.102(a)(10)(C) applies.

* Sec. 81. AS 45.12.103(a)(1) is amended to read:

(1) "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 [RECEIVING] 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;

* Sec. 82. AS 45.12.103(a)(15) is amended to read:

(15) "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,

1 leases in ordinary course from a person in the business of selling or leasing goods of
2 that kind, but does not include a pawnbroker; "leasing" may be for cash or by
3 exchange of other property or on secured or unsecured credit and includes acquiring
4 [RECEIVING] goods or documents of title under a preexisting lease contract, but does
5 not include a transfer in bulk or as security for or in total or partial satisfaction of a
6 money debt;

7 * **Sec. 83.** AS 45.12.304(b) is amended to read:

8 (b) A subsequent lessee in [THE] ordinary course of business from a lessor
9 who is a merchant dealing in goods of that kind to whom the goods were entrusted by
10 the existing lessee of that lessor before the interest of the subsequent lessee became
11 enforceable against that lessor obtains, to the extent of the leasehold interest
12 transferred, all of that lessor's and the existing lessee's rights to the goods, and takes
13 free of the existing lease contract.

14 * **Sec. 84.** AS 45.12.305(b) is amended to read:

15 (b) A buyer in [THE] ordinary course of business or a sublessee in [THE]
16 ordinary course of business from a lessee who is a merchant dealing in goods of that
17 kind to whom the goods were entrusted by the lessor obtains, to the extent of the
18 interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of
19 the existing lease contract.

20 * **Sec. 85.** AS 45.12.310(d) is amended to read:

21 (d) The interest of a lessor or a lessee under a lease contract described in (b) or
22 (c) of this section is subordinate to the interest of

23 (1) a buyer in [THE] ordinary course of business or a lessee in [THE]
24 ordinary course of business of an [ANY] interest in the whole acquired after the goods
25 became accessions; or

26 (2) a creditor with a security interest in the whole perfected before the
27 lease contract was made to the extent that the creditor makes subsequent advances
28 without knowledge of the lease contract.

29 * **Sec. 86.** AS 45.12.501(d) is amended to read:

30 (d) Except as otherwise provided in AS 45.01.305(a) [AS 45.01.106(a)] or this
31 chapter or the lease agreement, the rights and remedies referred to in (b) and (c) of this

section are cumulative.

* **Sec. 87.** AS 45.12.514(b) is amended to read:

(b) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in [ON THE FACE OF] the documents.

* **Sec. 88.** AS 45.12.518(b) is amended to read:

(b) Except as otherwise provided under AS 45.12.504 with respect to damages liquidated in the lease agreement or otherwise determined under agreement of the parties under AS 45.01.302 [AS 45.01.102(c)] and AS 45.12.503, if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages

(1) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(2) incidental or consequential damages, less expenses saved in consequence of the lessor's default.

* **Sec. 89.** AS 45.12.519(a) is amended to read:

(a) Except as otherwise provided under AS 45.12.504 with respect to damages liquidated in the lease agreement or otherwise determined under agreement of the parties under AS 45.01.302 [AS 45.01.102(c)] and AS 45.12.503, if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under AS 45.12.518(b), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

1 * **Sec. 90.** AS 45.12.526(b) is amended to read:

2 (b) In pursuing its remedies under (a) of this section, the lessor may stop
3 delivery until

4 (1) receipt of the goods by the lessee;

5 (2) acknowledgment to the lessee by a bailee of the goods, except a
6 carrier, that the bailee holds the goods for the lessee; or

7 (3) [SUCH] an acknowledgment to the lessee under (1) or (2) of this
8 subsection by a carrier by [VIA] reshipment or as a warehouse
9 [WAREHOUSEMAN].

10 * **Sec. 91.** AS 45.12.527(b) is amended to read:

11 (b) Except as otherwise provided with respect to damages liquidated in the
12 lease agreement under AS 45.12.504 or otherwise determined under agreement of the
13 parties under AS 45.01.302 [AS 45.01.102(c)] and AS 45.12.503, if the disposition is
14 by lease agreement substantially similar to the original lease agreement and the new
15 lease agreement is made in good faith and in a commercially reasonable manner, the
16 lessor may recover from the lessee as damages

17 (1) accrued and unpaid rent as of the date of the commencement of the
18 term of the new lease agreement;

19 (2) the present value, as of the same date, of the total rent for the then
20 remaining lease term of the original lease agreement minus the present value, as of the
21 same date, of the rent under the new lease agreement applicable to that period of the
22 new lease term that is comparable to the then remaining term of the original lease
23 agreement; and

24 (3) [ANY] incidental damages allowed under AS 45.12.530, less
25 expenses saved in consequence of the lessee's default.

26 * **Sec. 92.** AS 45.12.528(a) is amended to read:

27 (a) Except as otherwise provided with respect to damages liquidated in the
28 lease agreement under AS 45.12.504 or otherwise determined under agreement of the
29 parties under AS 45.01.302 [AS 45.01.102(c)] and AS 45.12.503, if a lessor elects to
30 retain the goods or a lessor elects to dispose of the goods and the disposition is by
31 lease agreement that for any reason does not qualify for treatment under

AS 45.12.527(b), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default described in AS 45.12.523(a) or (c)(1), or, if agreed, for other default of the lessee

(1) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(2) the present value as of the date determined under (1) of this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located, computed for the same lease term; and

(3) [ANY] incidental damages allowed under AS 45.12.530, less expenses saved in consequence of the lessee's default.

* **Sec. 93.** AS 45.14.105(a)(7) is amended to read:

(7) "prove₂" with respect to a fact₂ means to meet the burden of establishing the fact; "burden of establishing" has the meaning given in AS 45.01.211 [AS 45.01.201].

* **Sec. 94.** AS 45.14.106(a) is amended to read:

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in AS 45.01.212 [AS 45.01.201(27)]. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling [CANCELING] or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally₂ or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling [CANCELING] or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.