

LEGAL SERVICES

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MEMORANDUM

February 19, 2013

SUBJECT: Sectional summary of bill relating to the Uniform Commercial Code (HB 9; Work Order No. 28-LS0035\N)

TO: Representative Max Gruenberg
Attn: Miles Brookes

FROM:  Terry Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Bill Sections 1 - 2. These sections amend AS 45.14, the chapter of the state's Uniform Commercial Code that governs funds transfers.

Bill Section 1. Amends AS 45.14.108, which states how the chapter applies when the funds transfers are governed by federal law. Adds an exception (found in bill sec. 2) to the general provision that the chapter does not apply to a funds transfer that is governed by the federal Electronic Fund Transfer Act of 1978.

Bill Section 2. Adds two subsections to AS 45.14.108. Subsection (b) states that AS 45.14 applies to a remittance transfer under 15 U.S.C. 1693o-1, unless it is an electronic fund transfer under 15 U.S.C. 1693a. Subsection (c) states that federal law governs if there is an inconsistency between a provision of AS 45.14 and the Electronic Fund Transfer Act of 1978.

Bill Sections 3 - 25. These sections amend AS 45.29, the chapter of the Uniform Commercial Code that governs secured transactions. Secured transactions are transactions that give a creditor an interest in a debtor's personal property to secure payment of the debt.

Bill Sections 3 - 7. These sections amend AS 45.29.102, a definition section for the chapter. They amend the definitions of "authenticate," "certificate of title," "jurisdiction of organization," and "registered organization," and add a definition of "public organic record."

Bill Section 8. Amends AS 45.29.105, which determines when a secured party is considered to have control over electronic chattel paper. The secured party has control if a system reliably establishes that the chattel paper was assigned to that person. The system must satisfy the criteria described in (b) of the section.

Bill Section 9. Amends AS 45.29.307, which determines where a debtor is located. The amendment applies to certain federal organizations and certain bank branches and agencies.

Bill Section 10. Amends AS 45.29.311(a), which lists when the filing of a financing statement is not necessary or effective to perfect a security interest. Makes changes to the use of "certificate of title" in AS 45.29.311(a)(3).

Bill Section 11. Amends AS 45.29.316, which addresses the continued perfection of security interests following changes in the governing law caused by changes in the original or a subsequent debtor's location to another state. Adds two new subsections. Subsection (h) addresses the situation where a debtor changes its location to another state. Subsection (i) addresses the situation where a subsequent debtor is located in another state from that of the original debtor. The subsections basically allow the security interest to attach to collateral acquired after the change of location or change of debtor if certain conditions are met.

Bill Section 12. Amends AS 45.29.317(b). Changes a term in the subsection to use "certificated security," which is defined in AS 45.29.102 for AS 45.29. The full definition of the term is found at AS 45.08.102(a).

Bill Section 13. Amends AS 45.29.317(d). Allows certain licensees and buyers of collateral, except for the items listed, to take free of a security interest in the collateral if the licensee or buyer gives value for the collateral, does not know about the security interest, and does this before the security interest is perfected.

Bill Section 14. Amends AS 45.29.326, which relates to the priority of security interests created by a new debtor. Most of the changes handle the addition of AS 45.29.316(i) by bill sec. 11.

Bill Section 15. Amends AS 45.29.406(e). The subsection exempts sales of payment intangibles and promissory notes from the limitations on terms contained in (d). The amendment limits (e)'s exemption by stating that the exemption in (e) does not apply to two situations: a sale under a disposition of collateral after default under AS 45.29.610 and an acceptance of collateral in satisfaction of an obligation under AS 45.29.620.

Bill Section 16. Amends AS 45.29.408(b). The subsection states that (a)(2) (which makes certain terms in certain types of agreements ineffective) applies only to security interests in payment intangibles or promissory notes if the security interest arises out of the sale of the payment intangible or promissory note. The amendment limits (b)'s

application by making two exceptions: a sale under a disposition of collateral after default under AS 45.29.610 and an acceptance of collateral in satisfaction of an obligation under AS 45.29.620.

Bill Section 17. Rewrites AS 45.29.503(a), which relates to the name of the debtor given on a financing statement. Indicates when a financing statement sufficiently provides the debtor's name for different types of debtors, including organizations, individuals, decedents, and trusts.

Bill Section 18. Amends AS 45.29.503(b), which indicates that a financing statement giving the debtor's name as required by (a) of the section is not rendered ineffective by the absence of a trade name, another name of the debtor, or in certain cases the names of partners, members, associates, or other persons making up the debtor. Makes technical changes to reflect the rewriting of (a) (see bill sec. 17) and to correct terminology.

Bill Section 19. Adds new subsections to AS 45.29.503, which addresses the name of the debtor and the secured party. Subsection (f) addresses the name of a decedent with a personal representative. Subsection (g) clarifies that the most recently issued driver's license or identification card is the one to use. Subsection (h) defines "name of the settlor or testator."

Bill Section 20. Amends AS 45.29.507(c). Changes the application of the subsection from a debtor's change of name causing a financing statement to become seriously misleading to the debtor's name becoming insufficient under AS 34.19.503(a), so that the financing statement becomes seriously misleading. Replaces former references to name "change" with the financing statement becoming seriously misleading.

Bill Section 21. Amends AS 45.29.515, which addresses the duration of a financing statement. States that if the debtor is a transmitting utility it is the initial financing statement that is effective until a termination statement is filed.

Bill Section 22. Amends AS 45.29.516(b), which states that filing does not occur when the filing office refuses to accept a record for the reasons listed in the subsection. Replaces "correction statement" with the new term, "information statement." Clarifies that "last name" means "surname." Includes in certain cases a failure to indicate whether the debtor's name provided is the name of an individual or that of an organization. Removes the current requirement that certain details be provided for debtors who are organizations.

Bill Section 23. Amends AS 45.29.518, which addresses claims that filed records are inaccurate or wrongfully filed. Replaces "correction statement" with the new term, "information statement," to refer to the document that is filed to claim that a filed record is inaccurate or wrongfully filed. The new term is used in order to avoid giving the impression that the filing of the statement has the legal effect of correcting the problem.

Bill Section 24. Adds two new subsections to AS 45.29.518, which addresses claims that filed records are inaccurate or wrongfully filed. Subsection (d) allows a secured party to file an information statement about a filed record related to the financing statement, if the secured party believes that the person who filed the record was not entitled to file the record. Subsection (e) describes what an information statement under (d) must contain.

Bill Section 25. Amends AS 45.29.607(b). The change relates to an affidavit a secured party may record to enable the secured party to exercise the right of a debtor to enforce a mortgage nonjudicially for a default. Requires the affidavit to state that the default relates to the obligation secured by the mortgage.

Bill Section 26. Provides an applicability section for the bill.

Bill Sections 27 - 33. These provide transition sections for the bill.

Bill Section 34. Provides instructions for the Department of Natural Resources (department) as it implements the bill. Directs the department to adopt, amend, or repeal regulations to implement the bill. Directs that the listed forms to be filed under AS 45.29, as amended by this bill, be identical to the forms adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws to implement this bill.

Bill Section 35. Provides a saving clause for the bill so that the bill does not affect an action, case, or proceeding started before July 1, 2013.

Bill Section 36. Makes bill sec. 34 effective immediately after enactment so that the department can start preparing the regulations and forms.

Bill Section 37. Gives the bill an effective date of July 1, 2013, except for bill sec. 34.

If I may be of further assistance, please advise.