

**SENATE BILL NO. 300**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Introduced: 2/19/96**

**Referred: Labor and Commerce**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the Uniform Commercial Code, primarily to investment  
2 securities; amending Rule 8(d), Alaska Rules of Civil Procedure; and providing for  
3 an effective date."

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

5 \* **Section 1.** AS 45.01.105(b) is amended to read:

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

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

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

12 (3) **AS 45.08.110** [AS 45.08.106] (applicability of the chapter on  
13 investment securities);

14 (4) AS 45.09.103 (perfection provisions of the chapter on secured

1 transactions);

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

3 (6) AS 45.14 (funds transfers).

4 \* **Sec. 2.** AS 45.01.206(b) is amended to read:

5 (b) Subsection (a) of this section does not apply to contracts for the sale of  
6 goods (AS 45.02.201) or securities (AS 45.08.113) [(AS 45.08.319)], or to security  
7 agreements (AS 45.09.203).

8 \* **Sec. 3.** AS 45.04.104(a)(6) is amended to read:

9 (6) "documentary draft" means a draft to be presented for acceptance  
10 or payment if specified documents, certificated securities under AS 45.08.102, [OR]  
11 instructions for uncertificated securities under AS 45.08.102 [AS 45.08.308], or other  
12 certificates, statements, or the like are to be received by the drawee or other payor  
13 before acceptance or payment of the draft;

14 \* **Sec. 4.** AS 45.05.114(b) is amended to read:

15 (b) Unless otherwise agreed, if documents appear on their face to comply with  
16 the terms of a credit but a required document does not in fact conform to the  
17 warranties made on negotiation or transfer of a document of title (AS 45.07.507) or  
18 of a certificated security (AS 45.08.108) [(AS 45.08.306)] or is forged or fraudulent  
19 or there is fraud in the transaction [;]

20 (1) the issuer must honor the draft or demand for payment if honor is  
21 demanded by a negotiating bank or other holder of the draft or demand that [WHICH]  
22 has taken the draft or demand under the credit and under circumstances that [WHICH]  
23 would make it a holder in due course (AS 45.03.302) and in an appropriate case would  
24 make it a person to whom a document of title has been duly negotiated (AS 45.07.502)  
25 or a bona fide purchaser of a certificated security (AS 45.08.302); and

26 (2) in all other cases as against its customer, an issuer acting in good  
27 faith may honor the draft or demand for payment despite notification from the  
28 customer of fraud, forgery, or other defect not apparent on the face of the documents,  
29 but a court of appropriate jurisdiction may enjoin this honor.

30 \* **Sec. 5.** AS 45.08.102 is repealed and reenacted to read:

31 Sec. 45.08.102. DEFINITIONS. (a) In this chapter,

1 (1) "adverse claim" means a claim that a claimant has a property  
2 interest in a financial asset and that it is a violation of the rights of the claimant for  
3 another person to hold, transfer, or deal with the financial asset;

4 (2) "bearer form," as applied to a certificated security, means a form  
5 in which the security is payable to the bearer of the security certificate according to  
6 its terms but not by reason of an endorsement;

7 (3) "broker" means a person defined as a broker or dealer under the  
8 federal securities laws, but without excluding a bank acting in that capacity;

9 (4) "certificated security" means a security that is represented by a  
10 certificate;

11 (5) "clearing corporation" means

12 (A) a person who is registered as a "clearing agency" under the  
13 federal securities laws;

14 (B) a federal reserve bank; or

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

21 (6) "communicate" means to

22 (A) send a signed writing; or

23 (B) transmit information by any mechanism agreed upon by the  
24 persons transmitting and receiving the information;

25 (7) "endorsement" means a signature that alone or accompanied by  
26 other words is made on a security certificate in registered form or on a separate  
27 document for the purpose of assigning, transferring, or redeeming the security or  
28 granting a power to assign, transfer, or redeem it;

29 (8) "entitlement holder" means a person identified in the records of a  
30 securities intermediary as the person having a security entitlement against the securities  
31 intermediary; if a person acquires a security entitlement by virtue of

AS 45.08.501(a)(2) or (3), that person is the entitlement holder;

(9) "entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;

(10) "financial asset," except as otherwise provided in AS 45.08.103, means

(A) a security;

(B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, that is, or is of a type, dealt in or traded on financial markets, or that is recognized in any area in which it is issued or dealt in as a medium for investment; or

(C) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter; as context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement;

(11) "good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing;

(12) "instruction" means a notification communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed;

(13) "registered form," as applied to a certificated security, means a form in which

(A) the security certificate specifies a person entitled to the security; and

(B) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate states that a transfer of the security may be registered upon books

maintained for that purpose by or on behalf of the issuer;

(14) "securities intermediary" means

(A) a clearing corporation; or

(B) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;

(15) "security," except as otherwise provided in AS 45.08.103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer, if the obligation, share, participation, or interest

(A) is represented by a security certificate in bearer or registered form, or if the transfer of the obligation, share, participation, or interest may be registered upon books maintained for that purpose by or on behalf of the issuer;

(B) is one of a class or series or by its terms is divisible into a class or series of shares, participations, obligations, or interests; and

(C) is, or is of a type, dealt in or traded on securities exchanges or securities markets, or is a medium for investment and the terms of the obligation, share, participation, or interest expressly provide that the obligation, share, participation, or interest is a security governed by this chapter;

(16) "security certificate" means a certificate representing a security;

(17) "security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in AS 45.08.501 - 45.08.511;

(18) "uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this chapter and the sections in which they appear are

(1) "appropriate person" (AS 45.08.107);

(2) "control" (AS 45.08.106);

(3) "delivery" (AS 45.08.301);

(4) "investment company security" (AS 45.08.103);

- 1 (5) "issuer" (AS 45.08.201);  
2 (6) "overissue" (AS 45.08.210);  
3 (7) "protected purchaser" (AS 45.08.303);  
4 (8) "securities account" (AS 45.08.501).

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

7 (d) The characterization of a person, business, or transaction for purposes of  
8 this chapter does not determine the characterization of the person, business, or  
9 transaction for purposes of another law, regulation, or rule.

10 \* **Sec. 6.** AS 45.08.103 is repealed and reenacted to read:

11 Sec. 45.08.103. RULES FOR DETERMINING WHETHER CERTAIN  
12 OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.

13 (a) A share or similar equity interest issued by a corporation, business trust, joint  
14 stock company, or similar entity is a security.

15 (b) An investment company security is a security. In this section, "investment  
16 company security" means a share or similar equity interest issued by an entity that is  
17 registered as an investment company under federal investment company laws, an  
18 interest in a unit investment trust that is registered as an investment company under  
19 federal investment company laws, or a face-amount certificate issued by a face-amount  
20 certificate company that is registered as an investment company under federal  
21 investment company laws. Investment company security does not include an insurance  
22 policy or endowment policy or annuity contract issued by an insurance company.

23 (c) An interest in a partnership or limited liability company is not a security  
24 unless it is dealt in or traded on securities exchanges or in securities markets, its terms  
25 expressly provide that it is a security governed by this chapter, or it is an investment  
26 company security. However, an interest in a partnership or limited liability company  
27 is a financial asset if it is held in a securities account.

28 (d) A writing that is a security certificate is governed by this chapter and not  
29 by AS 45.03, even though it also meets the requirements of AS 45.03. However, a  
30 negotiable instrument governed by AS 45.03 is a financial asset if it is held in a  
31 securities account.

1 (e) An option or similar obligation issued by a clearing corporation to its  
2 participants is not a security but is a financial asset.

3 (f) A commodity contract, as defined in AS 45.09.115, is not a security or a  
4 financial asset.

5 \* **Sec. 7.** AS 45.08.104 is repealed and reenacted to read:

6 Sec. 45.08.104. ACQUISITION OF SECURITY OR FINANCIAL ASSET OR  
7 INTEREST IN SECURITY OR FINANCIAL ASSET. (a) A person acquires a  
8 security or an interest in a security under this chapter if the person

9 (1) is a purchaser to whom a security is delivered under AS 45.08.301;  
10 or

11 (2) acquires a security entitlement to the security under AS 45.08.501.

12 (b) A person acquires a financial asset other than a security or an interest in  
13 a financial asset other than a security, under this chapter if the person acquires a  
14 security entitlement to the financial asset.

15 (c) A person who acquires a security entitlement to a security or other  
16 financial asset has the rights specified in AS 45.08.501 - 45.08.511, but is a purchaser  
17 of a security, security entitlement, or other financial asset held by the securities  
18 intermediary only to the extent provided in AS 45.08.503.

19 (d) Unless the context shows that a different meaning is intended, a person  
20 who is required by other law, regulation, rule, or agreement to transfer, deliver,  
21 present, surrender, exchange, or otherwise put in the possession of another person a  
22 security or financial asset satisfies that requirement by causing the other person to  
23 acquire an interest in the security or financial asset under (a) or (b) of this section.

24 \* **Sec. 8.** AS 45.08.105 is repealed and reenacted to read:

25 Sec. 45.08.105. NOTICE OF ADVERSE CLAIM. (a) A person has notice  
26 of an adverse claim if

27 (1) the person knows of the adverse claim;

28 (2) the person is aware of facts sufficient to indicate that there is a  
29 significant probability that the adverse claim exists and deliberately avoids information  
30 that would establish the existence of the adverse claim; or

31 (3) the person has a duty, imposed by statute or regulation, to

1 investigate whether an adverse claim exists, and the investigation required would  
2 establish the existence of the adverse claim.

3 (b) Having knowledge that a financial asset or interest in a financial asset is  
4 or has been transferred by a representative does not impose a duty of inquiry into the  
5 rightfulness of a transaction and is not notice of an adverse claim. However, a person  
6 who knows that a representative has transferred a financial asset or interest in a  
7 financial asset in a transaction that is, or whose proceeds are being used, for the  
8 individual benefit of the representative or otherwise in breach of duty has notice of an  
9 adverse claim.

10 (c) An act or event that creates a right to immediate performance of the  
11 principal obligation represented by a security certificate or sets a date on or after which  
12 the certificate is to be presented or surrendered for redemption or exchange does not  
13 itself constitute notice of an adverse claim except in the case of a transfer more than

14 (1) one year after a date set for presentment or surrender for  
15 redemption or exchange; or

16 (2) six months after a date set for payment of money against  
17 presentation or surrender of the certificate, if money was available for payment on that  
18 date.

19 (d) A purchaser of a certificated security has notice of an adverse claim if the  
20 security certificate

21 (1) whether in bearer or registered form, has been endorsed "for  
22 collection" or "for surrender" or for some other purpose not involving transfer; or

23 (2) is in bearer form and has on it an unambiguous statement that it is  
24 the property of a person other than the transferor, but the mere writing of a name on  
25 the certificate does not constitute this statement.

26 (e) Filing of a financing statement under AS 45.09 is not notice of an adverse  
27 claim to a financial asset.

28 \* **Sec. 9.** AS 45.08.106 is repealed and reenacted to read:

29 Sec. 45.08.106. **CONTROL.** (a) A purchaser has control of a certificated  
30 security in bearer form if the certificated security is delivered to the purchaser.

31 (b) A purchaser has control of a certificated security in registered form if the



1       certificated security is delivered to the purchaser, and the certificate is  
2               (1) endorsed to the purchaser or in blank by an effective endorsement;  
3       or  
4               (2) registered in the name of the purchaser, upon original issue or  
5       registration of transfer by the issuer.

6       (c) A purchaser has control of an uncertificated security if  
7               (1) the uncertificated security is delivered to the purchaser; or  
8               (2) the issuer has agreed that the issuer will comply with instructions  
9       originated by the purchaser without further consent by the registered owner.

10       (d) A purchaser has control of a security entitlement if  
11               (1) the purchaser becomes the entitlement holder; or  
12               (2) the securities intermediary has agreed that the securities  
13       intermediary will comply with entitlement orders originated by the purchaser without  
14       further consent by the entitlement holder.

15       (e) If an interest in a security entitlement is granted by the entitlement holder  
16       to the entitlement holder's own securities intermediary, the securities intermediary has  
17       control.

18       (f) A purchaser who has satisfied the requirements of (c)(2) or (d)(2) of this  
19       section has control even if the registered owner in the case of (c)(2) of this section or  
20       the entitlement holder in the case of (d)(2) of this section retains the right to make  
21       substitutions for the uncertificated security or security entitlement, to originate  
22       instructions or entitlement orders to the issuer or securities intermediary, or otherwise  
23       to deal with the uncertificated security or security entitlement.

24       (g) An issuer or a securities intermediary may not enter into an agreement  
25       described in (c)(2) or (d)(2) of this section without the consent of the registered owner  
26       or entitlement holder, but an issuer or a securities intermediary is not required to enter  
27       into an agreement even though the registered owner or entitlement holder directs the  
28       issuer or securities intermediary to enter into the agreement. An issuer or securities  
29       intermediary that has entered into an agreement is not required to confirm the existence  
30       of the agreement to another party unless requested to do so by the registered owner or  
31       entitlement holder. In this subsection, "agreement" means an agreement described in

1 (c)(2) or (d)(2) of this section.

2 \* **Sec. 10.** AS 45.08.107 is repealed and reenacted to read:

3 Sec. 45.08.107. WHETHER ENDORSEMENT, INSTRUCTION, OR  
4 ENTITLEMENT ORDER IS EFFECTIVE. (a) An endorsement, instruction, or  
5 entitlement order is effective if

6 (1) it is made by the appropriate person;

7 (2) it is made by a person who has power under the law of agency to  
8 transfer the security or financial asset on behalf of the appropriate person, including,  
9 in the case of an instruction or entitlement order, a person who has control under  
10 AS 45.08.106(c)(2) or (d)(2); or

11 (3) the appropriate person has ratified it or is otherwise precluded from  
12 asserting its ineffectiveness.

13 (b) An endorsement, instruction, or entitlement order made by a representative  
14 is effective even if

15 (1) the representative has failed to comply with a controlling instrument  
16 or with the law of the state having jurisdiction of the representative relationship,  
17 including a law requiring the representative to obtain court approval of the transaction;  
18 or

19 (2) the representative's action in making the endorsement, instruction,  
20 or entitlement order or using the proceeds of the transaction is otherwise a breach of  
21 duty.

22 (c) If a security is registered in the name of or specially endorsed to a person  
23 described as a representative, or if a securities account is maintained in the name of  
24 a person described as a representative, an endorsement, instruction, or entitlement order  
25 made by the person is effective even though the person no longer serves in the  
26 described capacity.

27 (d) Effectiveness of an endorsement, instruction, or entitlement order is  
28 determined as of the date the endorsement, instruction, or entitlement order is made,  
29 and an endorsement, instruction, or entitlement order does not become ineffective by  
30 reason of any later change of circumstances.

31 (e) In this chapter, "appropriate person" means

1 (1) with respect to an endorsement, the person specified by a security  
2 certificate or by an effective special endorsement to be entitled to the security;

3 (2) with respect to an instruction, the registered owner of an  
4 uncertificated security;

5 (3) with respect to an entitlement order, the entitlement holder;

6 (4) if the person designated in (1), (2), or (3) of this subsection is  
7 deceased, the designated person's successor taking under other law or the designated  
8 person's personal representative acting for the estate of the decedent; or

9 (5) if the person designated in (1), (2), or (3) of this subsection lacks  
10 capacity, the designated person's guardian, conservator, or other similar representative  
11 who has power under other law to transfer the security or financial asset.

12 \* **Sec. 11.** AS 45.08.108 is repealed and reenacted to read:

13 Sec. 45.08.108. WARRANTIES IN DIRECT HOLDING. (a) A person who  
14 transfers a certificated security to a purchaser for value warrants to the purchaser, and  
15 an endorser, if the transfer is by endorsement, warrants to any subsequent purchaser,  
16 that

17 (1) the certificate is genuine and has not been materially altered;

18 (2) the transferor or endorser does not know of a fact that might impair  
19 the validity of the security;

20 (3) there is no adverse claim to the security;

21 (4) the transfer does not violate any restriction on transfer;

22 (5) if the transfer is by endorsement, the endorsement is made by an  
23 appropriate person, or if the endorsement is by an agent, the agent has actual authority  
24 to act on behalf of the appropriate person; and

25 (6) the transfer is otherwise effective and rightful.

26 (b) A person who originates an instruction for registration of transfer of an  
27 uncertificated security to a purchaser for value warrants to the purchaser that

28 (1) the instruction is made by an appropriate person, or if the  
29 instruction is by an agent, the agent has actual authority to act on behalf of the  
30 appropriate person;

31 (2) the security is valid;

1 (3) there is no adverse claim to the security; and  
2 (4) at the time the instruction is presented to the issuer,  
3 (A) the purchaser will be entitled to the registration of transfer;  
4 (B) the transfer will be registered by the issuer free from all  
5 liens, security interests, restrictions, and claims other than those specified in the  
6 instruction;  
7 (C) the transfer will not violate any restriction on transfer; and  
8 (D) the requested transfer will otherwise be effective and  
9 rightful.

10 (c) A person who transfers an uncertificated security to a purchaser for value  
11 and does not originate an instruction in connection with the transfer warrants that  
12 (1) the uncertificated security is valid;  
13 (2) there is no adverse claim to the security;  
14 (3) the transfer does not violate any restriction on transfer; and  
15 (4) the transfer is otherwise effective and rightful.

16 (d) A person who endorses a security certificate warrants to the issuer that  
17 (1) there is no adverse claim to the security; and  
18 (2) the endorsement is effective.

19 (e) A person who originates an instruction for registration of transfer of an  
20 uncertificated security warrants to the issuer that  
21 (1) the instruction is effective; and  
22 (2) at the time the instruction is presented to the issuer, the purchaser  
23 will be entitled to the registration of transfer.

24 (f) A person who presents a certificated security for registration of transfer or  
25 for payment or exchange warrants to the issuer that the person is entitled to the  
26 registration, payment, or exchange, but a purchaser for value and without notice of  
27 adverse claims to whom transfer is registered warrants only that the person does not  
28 have knowledge of an unauthorized signature in a necessary endorsement.

29 (g) If a person acts as agent of another in delivering a certificated security to  
30 a purchaser, the identity of the principal was known to the person to whom the  
31 certificate was delivered, and the certificate delivered by the agent was received by the

1 agent from the principal or received by the agent from another person at the direction  
2 of the principal, the person delivering the security certificate warrants only that the  
3 delivering person has authority to act for the principal and does not know of an  
4 adverse claim to the certificated security.

5 (h) A secured party who redelivers a security certificate received, or after  
6 payment and on order of the debtor delivers the security certificate to another person,  
7 makes only the warranties of an agent under (g) of this section.

8 (i) Except as otherwise provided in (g) of this section, a broker acting for a  
9 customer makes to the issuer and a purchaser the warranties provided in (a) - (f) of  
10 this section. A broker that delivers a security certificate to its customer, or causes its  
11 customer to be registered as the owner of an uncertificated security, makes to the  
12 customer the warranties provided in (a) or (b) of this section, and has the rights and  
13 privileges of a purchaser under this section. The warranties of and in favor of the  
14 broker acting as an agent are in addition to applicable warranties given by and in favor  
15 of the customer.

16 \* **Sec. 12.** AS 45.08 is amended by adding new sections to article 1 to read:

17 Sec. 45.08.109. **WARRANTIES IN INDIRECT HOLDING.** (a) A person  
18 who originates an entitlement order to a securities intermediary warrants to the  
19 securities intermediary that

20 (1) the entitlement order is made by an appropriate person, or if the  
21 entitlement order is by an agent, the agent has actual authority to act on behalf of the  
22 appropriate person; and

23 (2) there is no adverse claim to the security entitlement.

24 (b) A person who delivers a security certificate to a securities intermediary for  
25 credit to a securities account or originates an instruction with respect to an  
26 uncertificated security directing that the uncertificated security be credited to a  
27 securities account makes to the securities intermediary the warranties specified in  
28 AS 45.08.108(a) or (b).

29 (c) If a securities intermediary delivers a security certificate to its entitlement  
30 holder or causes its entitlement holder to be registered as the owner of an  
31 uncertificated security, the securities intermediary makes to the entitlement holder the

warranties specified in AS 45.08.108(a) or (b).

Sec. 45.08.110. APPLICABILITY; CHOICE OF LAW. (a) The local law of the issuer's jurisdiction, as specified in (f) of this section, governs

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

(b) The local law of the securities intermediary's jurisdiction, as specified in (e) of this section, governs

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

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

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

- (1) if an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction,

1 that jurisdiction is the securities intermediary's jurisdiction;

2 (2) if an agreement between the securities intermediary and its  
3 entitlement holder does not specify the governing law as provided in (1) of this  
4 subsection, but expressly specifies that the securities account is maintained at an office  
5 in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;

6 (3) if an agreement between the securities intermediary and its  
7 entitlement holder does not specify a jurisdiction as provided in (1) or (2) of this  
8 subsection, the securities intermediary's jurisdiction is the jurisdiction in which is  
9 located the office identified in an account statement as the office serving the  
10 entitlement holder's account;

11 (4) if an agreement between the securities intermediary and its  
12 entitlement holder does not specify a jurisdiction as provided in (1) or (2) of this  
13 subsection and an account statement does not identify an office serving the entitlement  
14 holder's account as provided in (3) of this subsection, the securities intermediary's  
15 jurisdiction is the jurisdiction in which is located the chief executive office of the  
16 securities intermediary.

17 (e) A securities intermediary's jurisdiction is not determined by the physical  
18 location of certificates representing financial assets, by the jurisdiction in which is  
19 organized the issuer of the financial asset with respect to which an entitlement holder  
20 has a security entitlement, or by the location of facilities for data processing or other  
21 record keeping concerning the account.

22 (f) In this chapter, "issuer's jurisdiction" means the jurisdiction under which  
23 the issuer of the security is organized or, if permitted by the law of that jurisdiction,  
24 the law of another jurisdiction specified by the issuer. An issuer organized under the  
25 law of this state may specify the law of another jurisdiction as the law governing the  
26 matters specified in (a)(2) - (5) of this section.

27 Sec. 45.08.111. CLEARING CORPORATION RULES. A rule adopted by a  
28 clearing corporation governing rights and obligations among the clearing corporation  
29 and its participants in the clearing corporation is effective even if the rule conflicts  
30 with this chapter and affects another party who does not consent to the rule.

31 Sec. 45.08.112. CREDITOR'S LEGAL PROCESS. (a) The interest of a

1 debtor in a certificated security may be reached by a creditor only by actual seizure  
2 of the security certificate by the officer making the attachment or levy, except as  
3 otherwise provided in (d) of this section. However, a certificated security for which  
4 the certificate has been surrendered to the issuer may be reached by a creditor by legal  
5 process upon the issuer.

6 (b) The interest of a debtor in an uncertificated security may be reached by a  
7 creditor only by legal process upon the issuer at its chief executive office in the United  
8 States, except as otherwise provided in (d) of this section.

9 (c) The interest of a debtor in a security entitlement may be reached by a  
10 creditor only by legal process upon the securities intermediary with whom the debtor's  
11 securities account is maintained, except as otherwise provided in (d) of this section.

12 (d) The interest of a debtor in a certificated security for which the certificate  
13 is in the possession of a secured party, or in an uncertificated security registered in the  
14 name of a secured party, or a security entitlement maintained in the name of a secured  
15 party, may be reached by a creditor by legal process upon the secured party.

16 (e) A creditor whose debtor is the owner of a certificated security,  
17 uncertificated security, or security entitlement is entitled to aid from a court of  
18 competent jurisdiction, by injunction or otherwise, in reaching the certificated security,  
19 uncertificated security, or security entitlement or in satisfying the claim by means  
20 allowed at law or in equity in regard to property that cannot readily be reached by  
21 other legal process.

22 Sec. 45.08.113. STATUTE OF FRAUDS INAPPLICABLE. A contract or  
23 modification of a contract for the sale or purchase of a security is enforceable whether  
24 or not there is a writing signed or record authenticated by a party against whom  
25 enforcement is sought, even if the contract or modification is not capable of  
26 performance within one year of its making.

27 Sec. 45.08.114. EVIDENTIARY RULES CONCERNING CERTIFICATED  
28 SECURITIES. The following rules apply in an action on a certificated security against  
29 the issuer:

30 (1) unless specifically denied in the pleadings, each signature on a  
31 security certificate or in a necessary endorsement is admitted;



1 (2) if the effectiveness of a signature is put in issue, the burden of  
2 establishing effectiveness is on the party claiming under the signature, but the signature  
3 is presumed to be genuine or authorized;

4 (3) if signatures on a security certificate are admitted or established,  
5 production of the certificate entitles a holder to recover on it unless the defendant  
6 establishes a defense or a defect going to the validity of the security;

7 (4) if it is shown that a defense or defect exists, the plaintiff has the  
8 burden of establishing that the plaintiff or some person under whom the plaintiff  
9 claims is a person against whom the defense or defect cannot be asserted.

10 Sec. 45.08.115. SECURITIES INTERMEDIARY AND OTHERS NOT  
11 LIABLE TO ADVERSE CLAIMANT. A securities intermediary that has transferred  
12 a financial asset under an effective entitlement order, or a broker or other agent or  
13 bailee that has dealt with a financial asset at the direction of its customer or principal,  
14 is not liable to a person having an adverse claim to the financial asset, unless the  
15 securities intermediary, broker, other agent, or bailee

16 (1) took the action after it had been served with an injunction,  
17 restraining order, or other legal process enjoining it from doing so, issued by a court  
18 of competent jurisdiction, and had a reasonable opportunity to act on the injunction,  
19 restraining order, or other legal process;

20 (2) acted in collusion with the wrongdoer in violating the rights of the  
21 adverse claimant; or

22 (3) in the case of a security certificate that has been stolen, acted with  
23 notice of the adverse claim.

24 Sec. 45.08.116. SECURITIES INTERMEDIARY AS PURCHASER FOR  
25 VALUE. A securities intermediary that receives a financial asset and establishes a  
26 security entitlement to the financial asset in favor of an entitlement holder is a  
27 purchaser for value of the financial asset. A securities intermediary that acquires a  
28 security entitlement to a financial asset from another securities intermediary acquires  
29 the security entitlement for value if the securities intermediary acquiring the security  
30 entitlement establishes a security entitlement to the financial asset in favor of an  
31 entitlement holder.

1     \* **Sec. 13.** AS 45.08.201 is amended to read:

2             Sec. 45.08.201. "ISSUER." (a) With respect to obligations on or defenses to  
3     a security, "issuer" includes a person who

4                 (1) places or authorizes the placing of the person's name on a  
5     [CERTIFICATED] security certificate, other [(OTHERWISE] than as authenticating  
6     trustee, registrar, transfer agent, or the like, [)] to evidence [THAT IT REPRESENTS]  
7     a share, participation, or other interest in the person's property or in an enterprise, or  
8     to evidence the person's duty to perform an obligation represented by the certificate  
9     [CERTIFICATED SECURITY];

10                (2) creates shares, participations, or other interests in that person's  
11     property or in an enterprise, or undertakes obligations, if the [WHICH] shares,  
12     participations, interests, or obligations are uncertificated securities;

13                (3) directly or indirectly creates fractional interests in the person's  
14     rights or property, if the [WHICH] fractional interests are represented by security  
15     certificates [CERTIFICATED SECURITIES]; or

16                (4) becomes responsible for, or in place of, another person described  
17     as an issuer in this section.

18             (b) With respect to obligations on or defenses to a security, a guarantor is an  
19     issuer to the extent of the guarantor's guarantee [GUARANTY], whether or not the  
20     guarantor's [PERSON'S] obligation is noted on a [CERTIFICATED] security  
21     certificate [OR ON STATEMENTS OF UNCERTIFICATED SECURITIES SENT  
22     UNDER AS 45.08.408].

23             (c) With respect to registration of a transfer, [PLEDGE, OR RELEASE  
24     (AS 45.08.401 - 45.08.406),] "issuer" means a person on whose behalf transfer books  
25     are maintained.

26     \* **Sec. 14.** AS 45.08.202(a) is repealed and reenacted to read:

27             (a) Even against a purchaser for value and without notice, the terms of a  
28     certificated security include terms stated on the certificate and terms made part of the  
29     security by reference on the certificate to another instrument, indenture, or document  
30     or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent  
31     the terms referred to do not conflict with terms stated on the certificate. A reference

1 under this subsection does not of itself charge a purchaser for value with notice of a  
2 defect going to the validity of the security, even if the certificate expressly states that  
3 a person accepting it admits notice. The terms of an uncertificated security include  
4 those stated in an instrument, indenture, or document or in a constitution, statute,  
5 ordinance, rule, regulation, order, or the like, under which the security is issued.

6 \* **Sec. 15.** AS 45.08.202(b) is repealed and reenacted to read:

7 (b) The following rules apply if an issuer asserts that a security is not valid:

8 (1) a security other than one issued by a government or governmental  
9 subdivision, agency, or instrumentality, even though issued with a defect going to its  
10 validity, is valid in the hands of a purchaser for value and without notice of the  
11 particular defect unless the defect involves a violation of a constitutional provision. In  
12 that case, the security is valid in the hands of a purchaser for value and without notice  
13 of the defect, other than one who takes by original issue;

14 (2) paragraph (1) of this subsection applies to an issuer that is a  
15 government or governmental subdivision, agency, or instrumentality only if there has  
16 been substantial compliance with the legal requirements governing the issue or the  
17 issuer has received a substantial consideration for the issue as a whole or for the  
18 particular security and a stated purpose of the issue is one for which the issuer has  
19 power to borrow money or issue the security.

20 \* **Sec. 16.** AS 45.08.202(c) is amended to read:

21 (c) Except as otherwise provided in [THE CASE OF CERTAIN  
22 UNAUTHORIZED SIGNATURES (JAS 45.08.205 )], lack of genuineness of a  
23 certificated security [OR AN INITIAL TRANSACTION STATEMENT] is a complete  
24 defense, even against a purchaser for value and without notice.

25 \* **Sec. 17.** AS 45.08.202(d) is amended to read:

26 (d) All other defenses of the issuer of a [CERTIFICATED OR  
27 UNCERTIFICATED] security, including nondelivery and conditional delivery of a  
28 certificated security, are ineffective against a purchaser for value who has taken the  
29 certificated security without notice of the particular defense.

30 \* **Sec. 18.** AS 45.08.202(e) is amended to read:

31 (e) **This section does not affect** [NOTHING IN THIS SECTION AFFECTS]

1 the right of a party to cancel a contract for a security [A] "when, as, and if issued"  
2 or a "when distributed" [CONTRACT TO CANCEL THE CONTRACT] in the event  
3 of a material change in the character of the security that is the subject of the contract  
4 or in the plan or arrangement under which the security is to be issued or distributed.

5 \* **Sec. 19.** AS 45.08.202 is amended by adding a new subsection to read:

6 (f) If a security is held by a securities intermediary against whom an  
7 entitlement holder has a security entitlement with respect to the security, the issuer  
8 may not assert a defense that the issuer could not assert if the entitlement holder held  
9 the security directly.

10 \* **Sec. 20.** AS 45.08.203(a) is amended to read:

11 (a) After an act or event, other than a call that has been revoked, creating  
12 a right to immediate performance of the principal obligation represented by a  
13 certificated security or setting [THAT SETS] a date on or after which the security is  
14 to be presented or surrendered for redemption or exchange, a purchaser is charged with  
15 notice of any defect in the security's issue or defense of the issuer, if the act or event

16 (1) requires [THE ACT OR EVENT IS ONE REQUIRING] the  
17 payment of money, the delivery of certificated securities, the registration of transfer  
18 of uncertificated securities, or any of these on presentation or surrender of the  
19 [CERTIFICATED] security certificate, the money [FUNDS] or securities are  
20 available on the date set for payment or exchange, and the purchaser takes the security  
21 more than one year after that date; or [AND]

22 (2) [THE ACT OR EVENT] is not covered by (1) of this subsection  
23 and the purchaser takes the security more than two years after the date set for  
24 surrender or presentation or the date on which performance became due.

25 \* **Sec. 21.** AS 45.08.204 is amended to read:

26 Sec. 45.08.204. EFFECT OF ISSUER'S RESTRICTION [RESTRICTIONS]  
27 ON TRANSFER. A restriction on transfer of a security imposed by the issuer, even  
28 though otherwise lawful, is ineffective against a person without [ACTUAL]  
29 knowledge of the restriction [IT] unless [(1)] the security

30 (1) is certificated and the restriction is noted conspicuously on the  
31 security certificate; or

(2) [THE SECURITY] is uncertificated and [A NOTATION OF THE RESTRICTION IS CONTAINED IN THE INITIAL TRANSACTION STATEMENT SENT TO THE PERSON OR, IF THAT PERSON'S INTEREST IS TRANSFERRED TO THAT PERSON OTHER THAN BY REGISTRATION OF TRANSFER, PLEDGE, OR RELEASE, THE INITIAL TRANSACTION STATEMENT SENT TO] the registered owner has been notified of the restriction [OR THE REGISTERED PLEDGEE].

\* **Sec. 22.** AS 45.08.205 is amended to read:

Sec. 45.08.205. EFFECT OF UNAUTHORIZED SIGNATURE ON [CERTIFICATED] SECURITY CERTIFICATE [OR INITIAL TRANSACTION STATEMENT]. An unauthorized signature placed on a [CERTIFICATED] security certificate before or in the course of issue [OR PLACED ON AN INITIAL TRANSACTION STATEMENT] is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security [OR A PURCHASER FOR VALUE OF AN UNCERTIFICATED SECURITY TO WHOM THE INITIAL TRANSACTION STATEMENT HAS BEEN SENT,] if the purchaser is without notice of the lack of authority and the signing has been done by

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or [,] of similar security certificates, [SECURITIES, OR OF INITIAL TRANSACTION STATEMENTS] or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of a person listed in (1) of this section [ANY OF THE FOREGOING], entrusted with responsible handling of the security certificate [OR INITIAL TRANSACTION STATEMENT].

\* **Sec. 23.** AS 45.08.206(a) is amended to read:

(a) If a [CERTIFICATED] security certificate contains the signatures necessary to its issue or transfer but is incomplete in another respect,

(1) a person may complete it by filling in the blanks as authorized; and  
(2) even if [THOUGH] the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who takes it for value and without notice of the incorrectness.

1     \* **Sec. 24.** AS 45.08.206(b) is amended to read:

2             (b) A complete [CERTIFICATED] security **certificate** that has been  
3             improperly altered, even **if** [THOUGH] fraudulently, remains enforceable, but only  
4             according to its original terms.

5     \* **Sec. 25.** AS 45.08.207(a) is amended to read:

6             (a) Before due presentment for registration of transfer of a certificated security  
7             in registered form **or of an instruction requesting registration of transfer of an**  
8             **uncertificated security**, the issuer or indenture trustee may treat the registered owner  
9             as the person exclusively entitled to vote, to receive notifications, and otherwise to  
10            exercise all the rights and powers of an owner.

11    \* **Sec. 26.** AS 45.08.207(g) is amended to read:

12            (g) **This** [NOTHING IN THIS] chapter **does not affect** [AFFECTS] the  
13            liability of the registered owner of a security for calls, assessments, or the like.

14    \* **Sec. 27.** AS 45.08.208 is amended to read:

15            Sec. 45.08.208. EFFECT OF SIGNATURE OF AUTHENTICATING  
16            TRUSTEE, REGISTRAR, OR TRANSFER AGENT. (a) A person **signing**  
17            [PLACING THE PERSON'S SIGNATURE UPON] a [CERTIFICATED] security  
18            **certificate** [OR AN INITIAL TRANSACTION STATEMENT] as authenticating  
19            trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the  
20            certificated security [OR A PURCHASER FOR VALUE OF AN UNCERTIFICATED  
21            SECURITY TO WHOM THE INITIAL TRANSACTION STATEMENT HAS BEEN  
22            SENT], if the purchaser is without notice of the particular defect, that

23                    (1) the **certificate** [CERTIFICATED SECURITY OR INITIAL  
24                    TRANSACTION STATEMENT] is genuine;

25                    (2) the person's **own** participation in the issue [OR REGISTRATION]  
26                    of the [TRANSFER, PLEDGE, OR RELEASE OF THE] security is within the  
27                    person's capacity and within the scope of the authority received by the person from  
28                    the issuer; and

29                    (3) the person has reasonable grounds to believe that the **certificated**  
30                    security is in the form and within the amount the issuer is authorized to issue.

31            (b) Unless otherwise agreed, a person **signing under (a) of this section** [BY

1 SO PLACING THE PERSON'S SIGNATURE] does not assume responsibility for the  
2 validity of the security in other respects.

3 \* **Sec. 28.** AS 45.08 is amended by adding new sections to article 2 to read:

4 Sec. 45.08.209. ISSUER'S LIEN. A lien in favor of an issuer upon a  
5 certificated security is valid against a purchaser only if the right of the issuer to the  
6 lien is noted conspicuously on the security certificate.

7 Sec. 45.08.210. OVERISSUE. (a) Except as otherwise provided in (b) and  
8 (c) of this section, the provisions of AS 45.08.201 - 45.08.210 that validate a security  
9 or compel its issue or reissue do not apply to the extent that validation, issue, or  
10 reissue would result in overissue.

11 (b) If an identical security not constituting an overissue is reasonably available  
12 for purchase, a person entitled to issue or validation may compel the issuer to purchase  
13 the security and deliver it if certificated or register its transfer if uncertificated, against  
14 surrender of any security certificate the person holds.

15 (c) If a security is not reasonably available for purchase, a person entitled to  
16 issue or validation may recover from the issuer the price the person or the last  
17 purchaser for value paid for it with interest from the date of the person's demand.

18 (d) In this section, "overissue" means the issue of securities in excess of the  
19 amount the issuer has corporate power to issue, but an overissue does not occur if  
20 appropriate action has cured the overissue.

21 \* **Sec. 29.** AS 45.08.301 is repealed and reenacted to read:

22 Sec. 45.08.301. DELIVERY. (a) Delivery of a certificated security to a  
23 purchaser occurs when

24 (1) the purchaser acquires possession of the security certificate;

25 (2) another person, other than a securities intermediary, either acquires  
26 possession of the security certificate on behalf of the purchaser or, having previously  
27 acquired possession of the certificate, acknowledges that it holds for the purchaser; or

28 (3) a securities intermediary acting on behalf of the purchaser acquires  
29 possession of the security certificate, only if the certificate is in registered form and  
30 has been specially endorsed to the purchaser by an effective endorsement.

31 (b) Delivery of an uncertificated security to a purchaser occurs when

1 (1) the issuer registers the purchaser as the registered owner, upon  
2 original issue or registration of transfer; or

3 (2) another person, other than a securities intermediary, either becomes  
4 the registered owner of the uncertificated security on behalf of the purchaser or, having  
5 previously become the registered owner, acknowledges that it holds for the purchaser.

6 \* **Sec. 30.** AS 45.08.302 is repealed and reenacted to read:

7 Sec. 45.08.302. RIGHTS OF PURCHASER. (a) Except as otherwise provided  
8 in (b) and (c) of this section, upon delivery of a certificated or uncertificated security  
9 to a purchaser, the purchaser acquires all rights in the security that the transferor had  
10 or had power to transfer.

11 (b) A purchaser of a limited interest acquires rights only to the extent of the  
12 interest purchased.

13 (c) A purchaser of a certificated security who as a previous holder had notice  
14 of an adverse claim does not improve its position by taking from a protected  
15 purchaser.

16 \* **Sec. 31.** AS 45.08.303 is repealed and reenacted to read:

17 Sec. 45.08.303. PROTECTED PURCHASER. (a) In this chapter, "protected  
18 purchaser" means a purchaser of a certificated or uncertificated security, or of an  
19 interest in the security, who gives value, does not have notice of an adverse claim to  
20 the security, and obtains control of the certificated or uncertificated security.

21 (b) In addition to acquiring the rights of a purchaser, a protected purchaser  
22 also acquires the interest in the security free of any adverse claim.

23 \* **Sec. 32.** AS 45.08.304 is repealed and reenacted to read:

24 Sec. 45.08.304. ENDORSEMENT. (a) An endorsement may be in blank or  
25 special. An endorsement in blank includes an endorsement to bearer. A special  
26 endorsement specifies to whom a security is to be transferred or who has power to  
27 transfer it. A holder may convert a blank endorsement to a special endorsement.

28 (b) An endorsement purporting to be only of part of a security certificate  
29 representing units intended by the issuer to be separately transferable is effective to the  
30 extent of the endorsement.

31 (c) An endorsement, whether special or in blank, does not constitute a transfer



1 until delivery of the certificate on which it appears or, if the endorsement is on a  
2 separate document, until delivery of both the document and the certificate.

3 (d) If a security certificate in registered form has been delivered to a purchaser  
4 without a necessary endorsement, the purchaser may become a protected purchaser  
5 only when the endorsement is supplied. However, against a transferor, a transfer is  
6 complete upon delivery and the purchaser has a specifically enforceable right to have  
7 any necessary endorsement supplied.

8 (e) An endorsement of a security certificate in bearer form may give notice of  
9 an adverse claim to the certificate, but it does not otherwise affect a right to  
10 registration that the holder possesses.

11 (f) Unless otherwise agreed, a person making an endorsement assumes only  
12 the obligations provided in AS 45.08.108 and not an obligation that the security will  
13 be honored by the issuer.

14 \* **Sec. 33.** AS 45.08.305 is repealed and reenacted to read:

15 Sec. 45.08.305. INSTRUCTION. (a) If an instruction has been originated by  
16 an appropriate person but is incomplete in another respect, any person may complete  
17 the instruction as authorized and the issuer may rely on the instruction as completed,  
18 even though the instruction has been completed incorrectly.

19 (b) Unless otherwise agreed, a person initiating an instruction assumes only  
20 the obligations imposed by AS 45.08.108 and not an obligation that the security will  
21 be honored by the issuer.

22 \* **Sec. 34.** AS 45.08.306 is repealed and reenacted to read:

23 Sec. 45.08.306. EFFECT OF GUARANTEEING SIGNATURE,  
24 ENDORSEMENT, OR INSTRUCTION. (a) A person who guarantees a signature of  
25 an endorser of a security certificate warrants that at the time of signing

26 (1) the signature was genuine;

27 (2) the signer was an appropriate person to endorse, or if the signature  
28 is by an agent, the agent had actual authority to act on behalf of the appropriate  
29 person; and

30 (3) the signer had legal capacity to sign.

31 (b) A person who guarantees a signature of the originator of an instruction

warrants that at the time of signing

(1) the signature was genuine;

(2) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, but the signature guarantor does not make a warranty that the person specified in the instruction as the registered owner was, in fact, the registered owner; and

(3) the signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under (b) of this section and also warrants that at the time the instruction is presented to the issuer

(1) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under (a) and (b) of this section or a special guarantor under (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor under (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under (c) of this section and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guarantee of signature, a guarantee of endorsement, or a guarantee of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for loss resulting from their breach. An endorser or originator of an instruction whose signature, endorsement, or instruction has been guaranteed is liable to a guarantor for

1           loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

2   \* **Sec. 35.** AS 45.08.307 is repealed and reenacted to read:

3           Sec. 45.08.307.     PURCHASER'S RIGHT TO REQUISITES FOR  
4   REGISTRATION OF TRANSFER. Unless otherwise agreed, the transferor of a  
5   security on due demand shall supply the purchaser with proof of authority to transfer  
6   or with any other requisite necessary to obtain registration of the transfer of the  
7   security, but if the transfer is not for value, a transferor does not need to comply unless  
8   the purchaser pays the necessary expenses. If the transferor fails within a reasonable  
9   time to comply with the demand, the purchaser may reject or rescind the transfer.

10   \* **Sec. 36.** AS 45.08.401(a) is repealed and reenacted to read:

11           (a) If a certificated security in registered form is presented to the issuer with  
12   a request to register transfer or an instruction is presented to the issuer with a request  
13   to register transfer of an uncertificated security, the issuer shall register the transfer as  
14   requested if

15                   (1) under the terms of the security the person seeking registration of  
16   transfer is eligible to have the security registered in the person's name;

17                   (2) the endorsement or instruction is made by the appropriate person  
18   or by an agent who has actual authority to act on behalf of the appropriate person;

19                   (3) reasonable assurance is given under AS 45.08.402 that the  
20   endorsement or instruction is genuine and authorized;

21                   (4) applicable law relating to the collection of taxes has been complied  
22   with;

23                   (5) the transfer does not violate a restriction on transfer imposed by the  
24   issuer under AS 45.08.204;

25                   (6) a demand that the issuer not register transfer has not become  
26   effective under AS 45.08.403, or the issuer has complied with AS 45.08.403(b) but  
27   legal process or indemnity bond is not obtained under AS 45.08.403(d); and

28                   (7) the transfer is in fact rightful or is to a protected purchaser.

29   \* **Sec. 37.** AS 45.08.401(b) is amended to read:

30           (b) If an issuer is under a duty to register a transfer [, PLEDGE, OR  
31   RELEASE] of a security, the issuer is [ALSO] liable to a [THE] person presenting a

1       certificated security or an instruction for registration or **to the** [THAT] person's  
2       principal for loss resulting from an unreasonable delay in registration or [FROM]  
3       failure or refusal to register the transfer [, PLEDGE, OR RELEASE].

4       \* **Sec. 38.** AS 45.08.402(a) is amended to read:

5               (a) **An** [THE] issuer may require the following assurance that each necessary  
6       endorsement [OF A CERTIFICATED SECURITY] or each instruction  
7       [(AS 45.08.308)] is genuine and **authorized** [EFFECTIVE]:

8               (1) in all cases, a guarantee of the signature [(AS 45.08.312(a)OR (b))]  
9       of the person **making an endorsement** [ENDORISING A CERTIFICATED  
10      SECURITY] or originating an instruction including, in the case of an instruction, [A  
11      WARRANTY OF THE TAXPAYER IDENTIFICATION NUMBER OR, IN THE  
12      ABSENCE OF ONE, OTHER] reasonable assurance of identity;

13              (2) if the endorsement is made or the instruction is originated by an  
14      agent, appropriate assurance of **actual** authority to sign;

15              (3) if the endorsement is made or the instruction is originated by a  
16      fiduciary **under AS 45.08.107(e)(4) or (5)**, appropriate evidence of appointment or  
17      incumbency;

18              (4) if there is more than one fiduciary, reasonable assurance that all  
19      who are required to sign have done so; and

20              (5) if the endorsement is made or the instruction is originated by a  
21      person not covered by **another provision of this subsection** [ANY OF THE  
22      FOREGOING], assurance appropriate to the case corresponding as nearly as may be  
23      to the **provisions of this subsection** [FOREGOING].

24       \* **Sec. 39.** AS 45.08.402(c) is amended to read:

25              (c) **In this section,**

26              (1) **"appropriate** ["APPROPRIATE] evidence of appointment or  
27      incumbency" [IN (a) OF THIS SECTION] means

28              **(A)** [(1)] in the case of a fiduciary appointed or qualified by a  
29      court, a certificate issued by or under the direction or supervision of **the**  
30      [THAT] court or an officer of the court and dated within 60 days before the  
31      date of presentation for transfer [, PLEDGE, OR RELEASE]; or

1                    **(B)** [(2)] in any other case, a copy of a document showing the  
2                    appointment or a certificate issued by or on behalf of a person reasonably  
3                    believed by the issuer to be responsible or, in the absence of **that** [SUCH A]  
4                    document or certificate, other evidence [REASONABLY CONSIDERED BY]  
5                    the issuer **reasonably considers** to be appropriate;

6                    **(2) "guarantee of the signature" means a guarantee signed by or**  
7                    **on behalf of a person reasonably believed by the issuer to be responsible; an**  
8                    [THE] issuer may adopt standards with respect to **responsibility** [THE EVIDENCE,]  
9                    if the standards are not manifestly unreasonable [; THE ISSUER IS NOT CHARGED  
10                  WITH NOTICE OF THE CONTENTS OF A DOCUMENT OBTAINED UNDER  
11                  THIS PARAGRAPH EXCEPT TO THE EXTENT THAT THE CONTENTS RELATE  
12                  DIRECTLY TO THE APPOINTMENT OR INCUMBENCY].

13       \* **Sec. 40.** AS 45.08.402(d) is amended to read:

14                  (d) **An** [THE] issuer may elect to require reasonable assurance beyond that  
15                  specified in this section [, BUT IF IT DOES SO AND, FOR A PURPOSE OTHER  
16                  THAN THAT SPECIFIED IN (c)(2) OF THIS SECTION, BOTH REQUIRES AND  
17                  OBTAINS A COPY OF A WILL, TRUST, INDENTURE, ARTICLES OF  
18                  COPARTNERSHIP, BYLAWS, OR OTHER CONTROLLING INSTRUMENT, IT IS  
19                  CHARGED WITH NOTICE OF ALL MATTERS CONTAINED THEREIN  
20                  AFFECTING THE TRANSFER, PLEDGE, OR RELEASE].

21       \* **Sec. 41.** AS 45.08.403 is repealed and reenacted to read:

22                  Sec. 45.08.403. DEMAND THAT ISSUER NOT REGISTER TRANSFER.

23                  (a) A person who is an appropriate person to make an endorsement or originate an  
24                  instruction may demand that the issuer not register transfer of a security by  
25                  communicating to the issuer a notification that identifies the registered owner and the  
26                  issue of which the security is a part and provides an address for communications  
27                  directed to the person making the demand. The demand is effective only if it is  
28                  received by the issuer at a time and in a manner affording the issuer reasonable  
29                  opportunity to act on it.

30                  (b) If a certificated security in registered form is presented to an issuer with  
31                  a request to register transfer or an instruction is presented to an issuer with a request

1 to register transfer of an uncertificated security after a demand that the issuer not  
2 register transfer has become effective, the issuer shall promptly communicate to the  
3 person who initiated the demand at the address provided in the demand and to the  
4 person who presented the security for registration of transfer or initiated the instruction  
5 requesting registration of transfer a notification stating that

6 (1) the certificated security has been presented for registration of  
7 transfer or the instruction for registration of transfer of the uncertificated security has  
8 been received;

9 (2) a demand that the issuer not register transfer had previously been  
10 received; and

11 (3) the issuer will withhold registration of transfer for a period of time  
12 stated in the notification in order to provide the person who initiated the demand an  
13 opportunity to obtain legal process or an indemnity bond.

14 (c) The period described in (b)(3) of this section may not exceed 30 days after  
15 the date of communication of the notification. A shorter period may be specified by  
16 the issuer if it is not manifestly unreasonable.

17 (d) An issuer is not liable to a person who initiated a demand that the issuer  
18 not register transfer for loss the person suffers as a result of registration of a transfer  
19 under an effective endorsement or instruction if the person who initiated the demand  
20 does not, within the time stated in the issuer's communication, either

21 (1) obtain an appropriate restraining order, injunction, or other process  
22 from a court of competent jurisdiction enjoining the issuer from registering the  
23 transfer; or

24 (2) file with the issuer an indemnity bond, sufficient in the issuer's  
25 judgment to protect the issuer and any transfer agent, registrar, or other agent of the  
26 issuer involved from a loss the issuer, transfer agent, registrar, or other agent of the  
27 issuer may suffer by refusing to register the transfer.

28 (e) This section does not relieve an issuer from liability for registering transfer  
29 under an endorsement or instruction that was not effective.

30 \* **Sec. 42.** AS 45.08.404 is repealed and reenacted to read:

31 Sec. 45.08.404. **WRONGFUL REGISTRATION.** (a) Except as otherwise

provided in AS 45.08.406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to the security and the transfer was registered

(1) under an ineffective endorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under AS 45.08.403(a) and the issuer did not comply with AS 45.08.403(b);

(3) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) by an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by AS 45.08.210.

(c) Except as otherwise provided in (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made under an effective endorsement or instruction.

\* **Sec. 43.** AS 45.08.405(b) is amended to read:

(b) If the owner of a certificated security, **whether in registered or bearer form,** claims that the **certificate** [SECURITY] has been lost, destroyed, or wrongfully taken, the issuer shall issue a new **certificate** [SECURITY IN PLACE OF THE ORIGINAL SECURITY,] if the owner

(1) so requests before the issuer has notice that the **certificate** [SECURITY] has been acquired by a **protected** [BONA FIDE] purchaser;

(2) files with the issuer a sufficient indemnity bond; and

(3) satisfies [ANY] other reasonable requirements imposed by the issuer.

1     \* **Sec. 44.** AS 45.08.405(c) is repealed and reenacted to read:

2             ( c) If, after the issue of a new security certificate, a protected purchaser of  
3     the original certificate presents the original certificate for registration of transfer, the  
4     issuer shall register the transfer unless an overissue would result. In that case, the  
5     issuer's liability is governed by AS 45.08.210. In addition to rights on the indemnity  
6     bond, an issuer may recover the new certificate from a person to whom it was issued  
7     or a person taking under that person, except a protected purchaser.

8     \* **Sec. 45.** AS 45.08.406 is repealed and reenacted to read:

9             Sec. 45.08.406. OBLIGATION TO NOTIFY ISSUER OF LOST,  
10     DESTROYED, OR WRONGFULLY TAKEN SECURITY CERTIFICATE. If a  
11     security certificate has been lost, apparently destroyed, or wrongfully taken, the owner  
12     fails to notify the issuer of the loss, destruction, or taking within a reasonable time  
13     after the owner has notice of the loss, destruction, or taking, and the issuer registers  
14     a transfer of the security before receiving notification, the owner may not assert against  
15     the issuer a claim for registering the transfer under AS 45.08.404 or a claim to a new  
16     security certificate under AS 45.08.405.

17     \* **Sec. 46.** AS 45.08.407 is repealed and reenacted to read:

18             Sec. 45.08.407. AUTHENTICATING TRUSTEE, TRANSFER AGENT, AND  
19     REGISTRAR. A person acting as authenticating trustee, transfer agent, registrar, or  
20     other agent for an issuer in the registration of a transfer of its securities, in the issue  
21     of new security certificates or uncertificated securities, or in the cancellation of  
22     surrendered security certificates has the same obligation to the holder or owner of a  
23     certificated or uncertificated security with regard to the particular functions performed  
24     as the issuer has in regard to those functions.

25     \* **Sec. 47.** AS 45.08 is amended by adding new sections to read:

26             ARTICLE 5. SECURITY ENTITLEMENTS.

27             Sec. 45.08.501. ACQUISITION OF SECURITY ENTITLEMENT FROM  
28     SECURITIES INTERMEDIARY; SECURITIES ACCOUNT. (a) Except as otherwise  
29     provided in (b) and (c) of this section, a person acquires a security entitlement if a  
30     securities intermediary

31             (1) indicates by book entry that a financial asset has been credited to



1 the person's securities account;

2 (2) receives a financial asset from the person or acquires a financial  
3 asset for the person and, in either case, accepts the asset for credit to the person's  
4 securities account; or

5 (3) becomes obligated under another law, regulation, or rule to credit  
6 a financial asset to the person's securities account.

7 (b) If a condition of (a) of this section has been met, a person has a security  
8 entitlement even if the securities intermediary does not itself hold the financial asset.

9 (c) If a securities intermediary holds a financial asset for another person, and  
10 the financial asset is registered in the name of, payable to the order of, or specially  
11 endorsed to the other person, and has not been endorsed to the securities intermediary  
12 or in blank, the other person is treated as holding the financial asset directly rather  
13 than as having a security entitlement with respect to the financial asset.

14 (d) Issuance of a security is not establishment of a security entitlement.

15 (e) In this chapter, "securities account" means an account to which a financial  
16 asset is or may be credited in accordance with an agreement under which the person  
17 maintaining the account undertakes to treat the person for whom the account is  
18 maintained as entitled to exercise the rights that comprise the financial asset.

19 Sec. 45.08.502. ASSERTION OF ADVERSE CLAIM AGAINST  
20 ENTITLEMENT HOLDER. An action based on an adverse claim to a financial asset,  
21 whether framed in conversion, replevin, constructive trust, equitable lien, or other  
22 theory, may not be asserted against a person who acquires a security entitlement under  
23 AS 45.08.501 for value and without notice of the adverse claim.

24 Sec. 45.08.503. PROPERTY INTEREST OF ENTITLEMENT HOLDER IN  
25 FINANCIAL ASSET HELD BY SECURITIES INTERMEDIARY. (a) To the extent  
26 necessary for a securities intermediary to satisfy all security entitlements with respect  
27 to a particular financial asset, all interests in that financial asset held by the securities  
28 intermediary are held by the securities intermediary for the entitlement holders, are not  
29 property of the securities intermediary, and are not subject to claims of creditors of the  
30 securities intermediary, except as otherwise provided in AS 45.08.511.

31 (b) An entitlement holder's property interest with respect to a particular

1 financial asset under (a) of this section is a pro rata property interest in all interests  
2 in that financial asset held by the securities intermediary, without regard to the time  
3 the entitlement holder acquired the security entitlement or the time the securities  
4 intermediary acquired the interest in that financial asset.

5 (c) An entitlement holder's property interest with respect to a particular  
6 financial asset under (a) of this section may not be enforced against the securities  
7 intermediary unless the interest is enforced by exercising the entitlement holder's rights  
8 under AS 45.08.505 - 45.08.508.

9 (d) An entitlement holder's property interest with respect to a particular  
10 financial asset under (a) of this section may not be enforced against a purchaser of the  
11 financial asset or of an interest in the financial asset, unless

12 (1) insolvency proceedings have been initiated by or against the  
13 securities intermediary;

14 (2) the securities intermediary does not have sufficient interests in the  
15 financial asset to satisfy the security entitlements of all of the intermediary's  
16 entitlement holders to that financial asset;

17 (3) the securities intermediary violated the intermediary's obligations  
18 under AS 45.08.504 by transferring the financial asset or interest in the financial asset  
19 to the purchaser; and

20 (4) the purchaser is not protected under (f) of this section.

21 (e) Under (d) of this section, the trustee or other liquidator, acting on behalf  
22 of all entitlement holders having security entitlements with respect to a particular  
23 financial asset, may recover the financial asset, or the interest in the financial asset,  
24 from the purchaser; if the trustee or other liquidator elects not to pursue this right of  
25 recovery, an entitlement holder whose security entitlement remains unsatisfied has the  
26 right to recover the entitlement holder's interest in the financial asset from the  
27 purchaser.

28 (f) An action based on the entitlement holder's property interest with respect  
29 to a particular financial asset under (a) of this section, whether framed in conversion,  
30 replevin, constructive trust, equitable lien, or other theory, may not be asserted against  
31 a purchaser of a financial asset or an interest in a financial asset who gives value,

1 obtains control, and does not act in collusion with the securities intermediary in  
2 violating the securities intermediary's obligations under AS 45.08.504.

3 Sec. 45.08.504. DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN  
4 FINANCIAL ASSET. (a) A securities intermediary shall promptly obtain and  
5 maintain a financial asset in a quantity corresponding to the aggregate of all security  
6 entitlements the securities intermediary has established in favor of the securities  
7 intermediary's entitlement holders with respect to that financial asset. The securities  
8 intermediary may maintain those financial assets directly or through one or more other  
9 securities intermediaries.

10 (b) Except to the extent otherwise agreed by its entitlement holder, a securities  
11 intermediary may not grant a security interest in a financial asset the securities  
12 intermediary is obligated to maintain under (a) of this section.

13 (c) A securities intermediary satisfies the duty in (a) of this section if

14 (1) the securities intermediary acts with respect to the duty as agreed  
15 upon by the entitlement holder and the securities intermediary; or

16 (2) in the absence of agreement, the securities intermediary exercises  
17 due care in accordance with reasonable commercial standards to obtain and maintain  
18 the financial asset.

19 (d) This section does not apply to a clearing corporation if the clearing  
20 corporation is the obligor of an option or similar obligation to which the entitlement  
21 holders of the clearing corporation have security entitlements.

22 Sec. 45.08.505. DUTY OF SECURITIES INTERMEDIARY WITH RESPECT  
23 TO PAYMENTS AND DISTRIBUTIONS. (a) A securities intermediary shall take  
24 action to obtain a payment or distribution made by the issuer of a financial asset. A  
25 securities intermediary satisfies the duty if

26 (1) the securities intermediary acts with respect to the duty as agreed  
27 upon by the entitlement holder and the securities intermediary; or

28 (2) in the absence of agreement, the securities intermediary exercises  
29 due care in accordance with reasonable commercial standards to attempt to obtain the  
30 payment or distribution.

31 (b) A securities intermediary is obligated to the securities intermediary's

entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

Sec. 45.08.506. DUTY OF SECURITIES INTERMEDIARY TO EXERCISE RIGHTS AS DIRECTED BY ENTITLEMENT HOLDER. A securities intermediary shall exercise rights with respect to a financial asset if directed by an entitlement holder to exercise the rights. A securities intermediary satisfies the duty if

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Sec. 45.08.507. DUTY OF SECURITIES INTERMEDIARY TO COMPLY WITH ENTITLEMENT ORDER. (a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset under an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to the entitlement order, and pay or credit payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

Sec. 45.08.508. DUTY OF SECURITIES INTERMEDIARY TO CHANGE

1 ENTITLEMENT HOLDER'S POSITION TO OTHER FORM OF SECURITY  
2 HOLDING. A securities intermediary shall act at the direction of an entitlement  
3 holder to change a security entitlement into another available form of holding for  
4 which the entitlement holder is eligible or to cause the financial asset to be transferred  
5 to a securities account of the entitlement holder with another securities intermediary.  
6 A securities intermediary satisfies the duty if

7 (1) the securities intermediary acts as agreed upon by the entitlement  
8 holder and the securities intermediary; or

9 (2) in the absence of agreement, the securities intermediary exercises  
10 due care in accordance with reasonable commercial standards to follow the direction  
11 of the entitlement holder.

12 Sec. 45.08.509. SPECIFICATION OF DUTIES OF SECURITIES  
13 INTERMEDIARY BY OTHER STATUTE, REGULATION, OR RULE; MANNER  
14 OF PERFORMANCE OF DUTIES OF SECURITIES INTERMEDIARY AND  
15 EXERCISE OF RIGHTS OF ENTITLEMENT HOLDER. (a) If the substance of a  
16 duty imposed upon a securities intermediary by AS 45.08.504 - 45.08.508 is the  
17 subject of other statute, regulation, or rule, compliance with that statute, regulation, or  
18 rule satisfies the duty.

19 (b) To the extent that specific standards for the performance of the duties of  
20 a securities intermediary or the exercise of the rights of an entitlement holder are not  
21 specified by other statute, regulation, or rule or by agreement between the securities  
22 intermediary and entitlement holder, the securities intermediary shall perform the duties  
23 of the securities intermediary and the entitlement holder shall exercise the rights of the  
24 entitlement holder in a commercially reasonable manner.

25 (c) The obligation of a securities intermediary to perform the duties imposed  
26 by AS 45.08.504 - 45.08.508 is subject to the rights of the securities intermediary

27 (1) arising out of a security interest under a security agreement with the  
28 entitlement holder or otherwise; and

29 (2) under other law, regulation, rule, or agreement to withhold  
30 performance of the duties of the securities intermediary as a result of unfulfilled  
31 obligations of the entitlement holder to the securities intermediary.

(d) AS 45.08.504 - 45.08.508 do not require a securities intermediary to take action that is prohibited by other statute, regulation, or rule.

Sec. 45.08.510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER. (a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under AS 45.08.502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from the entitlement holder.

(c) In a case not covered by the priority rules in AS 45.09, a purchaser for value of a security entitlement, or an interest in a security entitlement, who obtains control has priority over a purchaser of a security entitlement, or an interest in a security entitlement, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Sec. 45.08.511. PRIORITY AMONG SECURITY INTERESTS AND ENTITLEMENT HOLDERS. (a) Except as otherwise provided in (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both the securities intermediary's obligations to entitlement holders who have security entitlements to that financial asset and the securities intermediary's obligation to a creditor of the securities intermediary who has a security interest in the financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with

1 respect to the financial asset if the creditor has control over the financial asset.

2 (c) If a clearing corporation does not have sufficient financial assets to satisfy  
3 both the clearing corporation's obligations to entitlement holders who have security  
4 entitlements with respect to a financial asset and the clearing corporation's obligation  
5 to a creditor of the clearing corporation who has a security interest in the financial  
6 asset, the claim of the creditor has priority over the claims of entitlement holders.

7 \* **Sec. 48.** AS 45.09.103(f) is repealed and reenacted to read:

8 (f) With regard to investment property,

9 (1) except as otherwise provided in (5) of this subsection, during the  
10 time that a security certificate is located in a jurisdiction, perfection of a security  
11 interest, the effect of perfection or nonperfection, and the priority of a security interest  
12 in the certificated security represented by the security certificate are governed by the  
13 local law of that jurisdiction;

14 (2) except as otherwise provided in (5) of this subsection, perfection  
15 of a security interest, the effect of perfection or nonperfection, and the priority of a  
16 security interest in an uncertificated security are governed by the local law of the  
17 issuer's jurisdiction as specified in AS 45.08.110(f);

18 (3) except as otherwise provided in (5) of this subsection, perfection  
19 of a security interest, the effect of perfection or nonperfection, and the priority of a  
20 security interest in a security entitlement or securities account are governed by the  
21 local law of the securities intermediary's jurisdiction as specified in AS 45.08.110(f);

22 (4) except as otherwise provided in (5) of this subsection, perfection  
23 of a security interest, the effect of perfection or nonperfection, and the priority of a  
24 security interest in a commodity contract or commodity account are governed by the  
25 local law of the commodity intermediary's jurisdiction; the following rules determine  
26 a commodity intermediary's jurisdiction for purposes of this paragraph:

27 (A) if an agreement between the commodity intermediary and  
28 commodity customer specifies that it is governed by the law of a particular  
29 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

30 (B) if an agreement between the commodity intermediary and  
31 commodity customer does not specify the governing law as provided in (A) of

1 this paragraph, but expressly specifies that the commodity account is  
2 maintained at an office in a particular jurisdiction, that jurisdiction is the  
3 commodity intermediary's jurisdiction;

4 (C) if an agreement between the commodity intermediary and  
5 commodity customer does not specify a jurisdiction as provided in (A) or (B)  
6 of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction  
7 in which is located the office identified in an account statement as the office  
8 serving the commodity customer's account;

9 (D) if an agreement between the commodity intermediary and  
10 commodity customer does not specify a jurisdiction as provided in (A) or (B)  
11 of this paragraph and an account statement does not identify an office serving  
12 the commodity customer's account as provided in (C) of this paragraph, the  
13 commodity intermediary's jurisdiction is the jurisdiction in which is located the  
14 chief executive office of the commodity intermediary;

15 (5) perfection of a security interest by filing, automatic perfection of  
16 a security interest in investment property granted by a broker or securities  
17 intermediary, and automatic perfection of a security interest in a commodity contract  
18 or commodity account granted by a commodity intermediary are governed by the local  
19 law of the jurisdiction in which the debtor is located; the rules in (c)(2) - (4) of this  
20 section apply to security interests to which this paragraph applies.

21 \* **Sec. 49.** AS 45.09.105(a)(8) is amended to read:

22 (8) "goods" includes all things that [WHICH] are movable at the time  
23 the security interest attaches or that [WHICH] are fixtures (AS 45.09.313), but does  
24 not include money, documents, instruments, investment property, accounts, chattel  
25 paper, general intangibles [TANGIBLES], or minerals or the like (including oil and  
26 gas) before extraction; "goods" also includes the unborn young of animals, growing  
27 crops, and standing timber that [WHICH] is to be cut and removed under a  
28 conveyance or contract for sale;

29 \* **Sec. 50.** AS 45.09.105(a)(9) is amended to read:

30 (9) "instrument" means a negotiable instrument as [(] defined in  
31 AS 45.03.104 [)], [OR A CERTIFICATED SECURITY (DEFINED IN AS 45.08.102),]



1 or any other writing that evidences a right to the payment of money and is not itself  
2 a security agreement or lease and is of a type that is in ordinary course of business  
3 transferred by delivery with any necessary endorsement or assignment; **"instrument"**  
4 **does not include investment property;**

5 \* **Sec. 51.** AS 45.09.105(b) is amended to read:

6 (b) Other definitions applying to this chapter and the sections in which they  
7 appear are:

- 8 (1) "account" (AS 45.09.106)
- 9 (2) "attach" (**AS 45.09.203**) [(AS 45.09.204)]
- 10 (3) **"commodity contract" (AS 45.09.115)**
- 11 **(4) "commodity customer" (AS 45.09.115)**
- 12 **(5) "commodity intermediary" (AS 45.09.115)**
- 13 **(6) "construction mortgage" (AS 45.09.313)**
- 14 **(7) [(4)] "consumer goods" (AS 45.09.109(1))**
- 15 **(8) "control" (AS 45.09.115)**
- 16 **(9) [(5)] "equipment" (AS 45.09.109(2))**
- 17 **(10) [(6)] "farm products" (AS 45.09.109(3))**
- 18 **(11) [(7)] "fixture" (AS 45.09.313(a)(1))**
- 19 **(12) [(8)] "fixture filing" (AS 45.09.313(a))**
- 20 **(13) [(9)] "general intangibles" (AS 45.09.106)**
- 21 **(14) [(10)] "inventory" (AS 45.09.109(4))**
- 22 **(15) "investment property" (AS 45.09.115)**
- 23 **(16) [(11)] "lien creditor" (AS 45.09.301(c))**
- 24 **(17) [(12)] "proceeds" (AS 45.09.306(a))**
- 25 **(18) [(13)] "purchase money security interest" (AS 45.09.107)**
- 26 **(19) [(14)] "United States" (AS 45.09.103).**

27 \* **Sec. 52.** AS 45.09.105(c) is amended to read:

28 (c) The following definitions apply to this chapter:

- 29 (1) **"broker" (AS 45.08.102)**
- 30 **(2) "certificated security" (AS 45.08.102)**
- 31 **(3) "check" (AS 45.03.104)**

- 1                   **(4) "clearing corporation" (AS 45.08.102)**  
2                   **(5) [(2)] "contract for sale" (AS 45.02.106)**  
3                   **(6) "control" (AS 45.08.106)**  
4                   **(7) "delivery" (AS 45.08.301)**  
5                   **(8) "entitlement holder" (AS 45.08.102)**  
6                   **(9) "financial asset" (AS 45.08.102)**  
7                   **(10) [(3)] "holder in due course" (AS 45.03.302)**  
8                   **(11) [(4)] "note" (AS 45.03.104)**  
9                   **(12) [(5)] "sale" (AS 45.02.106)**  
10                  **(13) "securities intermediary" (AS 45.08.102)**  
11                  **(14) "security" (AS 45.08.102)**  
12                  **(15) "security certificate" (AS 45.08.102)**  
13                  **(16) "security entitlement" (AS 45.08.102)**  
14                  **(17) "uncertificated security" (AS 45.08.102).**

15       \* **Sec. 53.** AS 45.09.106 is amended to read:

16               Sec. 45.09.106. DEFINITIONS: "ACCOUNT"; "GENERAL INTANGIBLES."

17       "Account" means a right to payment for goods sold or leased or for services rendered  
18       **that** [WHICH] is not evidenced by an instrument or chattel paper, whether or not it  
19       has been earned by performance. "General intangibles" means personal property  
20       (including a thing in action) other than goods, accounts, chattel paper, documents,  
21       instruments, **investment property**, and money. All rights to payment earned or  
22       unearned under a charter or other contract involving the use or hire of a vessel and all  
23       rights incident to the charter or contract are accounts.

24       \* **Sec. 54.** AS 45.09 is amended by adding new sections to article 1 to read:

25               Sec. 45.09.115. INVESTMENT PROPERTY. (a) In AS 45.09,

26               (1) "commodity account" means an account maintained by a commodity  
27       intermediary in which a commodity contract is carried for a commodity customer;

28               (2) "commodity contract" means a commodity futures contract, an  
29       option on a commodity futures contract, a commodity option, or other contract that,  
30       in each case, is traded on

31               (A) or subject to the rules of a board of trade that has been

1 designated under federal commodities laws as a contract market for that type  
2 of contract; or

3 (B) a foreign commodity board of trade, exchange, or market,  
4 and is carried on the books of a commodity intermediary for a commodity  
5 customer;

6 (3) "commodity customer" means a person for whom a commodity  
7 intermediary carries a commodity contract on its books;

8 (4) "commodity intermediary" means a person who

9 (A) is registered as a futures commission merchant under the  
10 federal commodities laws; or

11 (B) in the ordinary course of its business provides clearance or  
12 settlement services for a board of trade that has been designated as a contract  
13 market under federal commodities laws;

14 (5) "control" with respect to a certificated security, uncertificated  
15 security, or security entitlement has the meaning given in AS 45.08.106; a secured  
16 party has control over a commodity contract if by agreement among the commodity  
17 customer, the commodity intermediary, and the secured party, the commodity  
18 intermediary has agreed that the commodity intermediary will apply any value  
19 distributed on account of the commodity contract as directed by the secured party  
20 without further consent by the commodity customer; if a commodity customer grants  
21 a security interest in a commodity contract to the commodity customer's own  
22 commodity intermediary, the commodity intermediary as secured party has control; a  
23 secured party has control over a securities account or commodity account if the  
24 secured party has control over all security entitlements or commodity contracts carried  
25 in the securities account or commodity account;

26 (6) "investment property" means

27 (A) a security, whether certificated or uncertificated;

28 (B) a security entitlement;

29 (C) a securities account;

30 (D) a commodity contract; or

31 (E) a commodity account.

1 (b) Attachment or perfection of a security interest in a securities account is  
2 also attachment or perfection of a security interest in all security entitlements carried  
3 in the securities account. Attachment or perfection of a security interest in a  
4 commodity account is also attachment or perfection of a security interest in all  
5 commodity contracts carried in the commodity account.

6 (c) A description of collateral in a security agreement or financing statement  
7 is sufficient to create or perfect a security interest in a certificated security,  
8 uncertificated security, security entitlement, securities account, commodity contract, or  
9 commodity account whether it describes the collateral by those terms, or as investment  
10 property, or by description of the underlying security, financial asset, or commodity  
11 contract. A description of investment property collateral in a security agreement or  
12 financing statement is sufficient if it identifies the collateral by specific listing, by  
13 category, by quantity, by a computational or allocational formula or procedure, or by  
14 another method, if the identity of the collateral is objectively determinable.

15 (d) Perfection of a security interest in investment property is governed by the  
16 following rules:

17 (1) a security interest in investment property may be perfected by  
18 control;

19 (2) except as otherwise provided in (3) and (4) of this subsection, a  
20 security interest in investment property may be perfected by filing;

21 (3) if the debtor is a broker or securities intermediary, a security  
22 interest in investment property is perfected when it attaches; the filing of a financing  
23 statement with respect to a security interest in investment property granted by a broker  
24 or securities intermediary does not affect the perfection or priority with respect to the  
25 security interest;

26 (4) if a debtor is a commodity intermediary, a security interest in a  
27 commodity contract or a commodity account is perfected when it attaches; the filing  
28 of a financing statement with respect to a security interest in a commodity contract or  
29 a commodity account granted by a commodity intermediary does not affect the  
30 perfection or priority with respect to the security interest.

31 (e) Priority between conflicting security interests in the same investment

property is governed by the following rules:

(1) a security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property;

(2) except as otherwise provided in (3) and (4) of this subsection, conflicting security interests of secured parties rank equally if each of the secured parties has control;

(3) except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over a security interest granted by the debtor to another secured party;

(4) except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over a security interest granted by the debtor to another secured party;

(5) conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary that are perfected without control rank equally;

(6) in all other cases, priority between conflicting security interests in investment property is governed by AS 45.09.312(e) - (g); AS 45.09.312(d) does not apply to investment property.

(f) If a security certificate in registered form is delivered to a secured party under an agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary endorsement is lacking.

Sec. 45.09.116. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET. (a) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and if the securities intermediary credits the financial asset to the buyer's securities account

1 before the buyer pays the securities intermediary, the securities intermediary has a  
2 security interest in the buyer's security entitlement securing the buyer's obligation to  
3 pay. A security agreement is not required for attachment or enforceability of the  
4 security interest, and the security interest is automatically perfected.

5 (b) If a certificated security, or other financial asset represented by a writing  
6 that in the ordinary course of business is transferred by delivery with any necessary  
7 endorsement or assignment, is delivered under an agreement between persons in the  
8 business of dealing with that type of security or financial asset and the agreement calls  
9 for delivery versus payment, the person delivering the certificate or other financial  
10 asset has a security interest in the certificated security or other financial asset securing  
11 the seller's right to receive payment. A security agreement is not required for  
12 attachment or enforceability of the security interest, and the security interest is  
13 automatically perfected.

14 \* **Sec. 55.** AS 45.09.203(a) is amended to read:

15 (a) Subject to the provisions of AS 45.04.210 on the security interest of a  
16 collecting bank, AS 45.09.115 - 45.09.116 [AS 45.08.321] on security interests in  
17 **investment property** [SECURITIES], and AS 45.09.113 on a security interest arising  
18 under AS 45.02, a security interest is not enforceable against the debtor or third parties  
19 with respect to the collateral and does not attach unless

20 (1) the collateral is in the possession of the secured party under an  
21 agreement, **the collateral is investment property and the secured party has control**  
22 **under an agreement**, or the debtor has signed a security agreement that contains a  
23 description of the collateral, and, in addition, if the security interest covers crops  
24 growing or to be grown or timber to be cut, a description of the land concerned;

25 (2) value has been given; and

26 (3) the debtor has rights in the collateral.

27 \* **Sec. 56.** AS 45.09.301(a) is amended to read:

28 (a) Except as otherwise provided in (b) of this section, an unperfected security  
29 interest is subordinate to the rights of

30 (1) persons entitled to priority under AS 45.09.312;

31 (2) a person who becomes a lien creditor before it is perfected;

(3) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party, and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that the person gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(4) in the case of accounts, [AND] general intangibles, **and investment property**, a person who is not a secured party and who is a transferee to the extent that the person gives value without knowledge of the security interest and before **the security interest** [IT] is perfected.

\* **Sec. 57.** AS 45.09.302(a) is amended to read:

(a) A financing statement must be filed to perfect all security interests except the following:

(1) a security interest in collateral in possession of the secured party under AS 45.09.305;

(2) a security interest temporarily perfected in instruments, **certificated securities**, or documents without delivery under AS 45.09.304 or in proceeds for a 10-day period under AS 45.09.306;

(3) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(4) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in AS 45.09.313;

(5) an assignment of accounts that does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(6) a security interest of a collecting bank under AS 45.04.210, [OR IN SECURITIES UNDER AS 45.08.321,] or arising under AS 45.02 (see AS 45.09.113) or covered in (c) of this section;

(7) as assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee;

1                               **(8) a security interest in investment property that is perfected**  
2                               **without filing under AS 45.09.115 or 45.09.116.**

3       \* **Sec. 58.** AS 45.09.303(a) is amended to read:

4                       (a) A security interest is perfected when it has attached and when all of the  
5                       applicable steps required for perfection have been taken. These steps are specified in  
6                       **AS 45.09.115, 45.09.302,** [AS 45.09.302] and 45.09.304 - 45.09.306. If these steps  
7                       are taken before the security interest attaches, **the security interest** [IT] is perfected  
8                       when **the security interest** [IT] attaches.

9       \* **Sec. 59.** AS 45.09.304(a) is amended to read:

10                      (a) A security interest in chattel paper or negotiable documents may be  
11                      perfected by filing. A security interest in money or instruments, [(] other than  
12                      [CERTIFICATED SECURITIES OR] instruments that constitute part of chattel paper,  
13                      [)] can be perfected only by the secured party's taking possession, except as provided  
14                      in (d) and (e) of this section and AS 45.09.306(b) and (c) on proceeds.

15       \* **Sec. 60.** AS 45.09.304(d) is amended to read:

16                      (d) A security interest in instruments, [(OTHER THAN] certificated securities,  
17                      [)] or negotiable documents is perfected without filing or the taking of possession for  
18                      a period of 21 days from the time it attaches to the extent that it arises for new value  
19                      given under a written security agreement.

20       \* **Sec. 61.** AS 45.09.304(e) is amended to read:

21                      (e) A security interest remains perfected for a period of 21 days without filing  
22                      if a secured party has a perfected security interest in an instrument, [(OTHER THAN]  
23                      a certificated security [)], a negotiable document, or goods in possession of a bailee  
24                      other than one who has issued a negotiable document for the goods, and

25                               (1) makes the goods or documents representing the goods available to  
26                               the debtor for ultimate sale or exchange or to load, unload, store, ship, transship,  
27                               manufacture, process, or otherwise dealing with them in a manner preliminary to their  
28                               sale or exchange, but priority between conflicting security interests in the goods is  
29                               subject to AS 45.09.312; or

30                               (2) delivers the instrument **or certified security** to the debtor for  
31                               ultimate sale, exchange, presentation, collection, renewal, or registration of transfer.



1     \* **Sec. 62.** AS 45.09.305 is amended to read:

2             Sec. 45.09.305. WHEN POSSESSION BY SECURED PARTY PERFECTS  
3     SECURITY INTEREST WITHOUT FILING. A security interest in letters of credit  
4     and advices of credit (AS 45.05.116(b)(1)), goods, instruments [(OTHER THAN  
5     CERTIFICATED SECURITIES)], money, negotiable documents, or chattel paper may  
6     be perfected by the secured party's taking possession of the collateral. If the collateral,  
7     other than goods covered by a negotiable document, is held by a bailee, the secured  
8     party is considered to have possession from the time the bailee receives notification  
9     of the secured party's interest. A security interest is perfected by possession from the  
10    time possession is taken without relation back and continues only so long as possession  
11    is retained unless otherwise specified in this chapter. The security interest may be  
12    otherwise perfected as provided in this chapter before or after the period of possession  
13    by the secured party.

14    \* **Sec. 63.** AS 45.09.306(a) is amended to read:

15            (a) "Proceeds" includes what is received when collateral or proceeds are sold,  
16    exchanged, collected, or otherwise disposed of. Insurance payable by reason of loss  
17    or damage to the collateral is "proceeds," except to the extent that it is payable to a  
18    person other than a party to the security agreement. **Payments or distributions made**  
19    **with respect to investment property collateral are "proceeds."** Money, checks,  
20    deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash  
21    proceeds."

22    \* **Sec. 64.** AS 45.09.306(c) is amended to read:

23            (c) **Except as provided in this section, a security interest in proceeds can**  
24    **be perfected only by the methods or under the circumstances permitted in this**  
25    **chapter for original collateral of the same type.** The security interest in proceeds  
26    is a continuously perfected security interest if the interest in the original collateral was  
27    perfected, but **the security interest** [IT] ceases to be a perfected security interest and  
28    becomes unperfected 10 days after receipt of the proceeds by the debtor unless

29            (1) a filed financing statement covers the original collateral and the  
30    proceeds are collateral in which a security interest may be perfected by filing in the  
31    office [OR OFFICES] where the financing statement has been filed and, if the

proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(2) the security interest in the proceeds is perfected before the expiration of the 10-day period; [OR]

(3) **the original collateral was investment property and the proceeds are identifiable cash proceeds; or**

(4) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds.

\* **Sec. 65.** AS 45.09.309 is amended to read:

Sec. 45.09.309. PROTECTION OF PURCHASERS OF INSTRUMENTS, [AND] DOCUMENTS, AND SECURITIES. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (AS 45.03.302) or a holder to whom a negotiable document of title has been duly negotiated (AS 45.07.501) or a **protected** [BONA FIDE] purchaser of a security (**AS 45.08.303**) [(AS 45.08.302)], and the holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to the holders or purchasers.

\* **Sec. 66.** AS 45.09.312(a) is amended to read:

(a) The rules of priority stated in AS 45.09.301 - 45.09.318 and in the following sections govern where applicable: AS 45.04.210 with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; AS 45.09.103 on security interests related to other jurisdictions; AS 45.09.114 on consignments; **and AS 45.09.115 on security interests in investment property.**

\* **Sec. 67.** AS 45.09.312(g) is amended to read:

(g) If future advances are made while a security interest is perfected by filing or the taking of possession, or perfected under **AS 45.09.115 or 45.09.116 on investment property** [AS 45.08.321 ON SECURITIES], the security interest has the same priority for the purposes of (e) of this section **or AS 45.09.115(e)** with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has

1           the same priority with respect to advances made under the commitment. In other cases  
2           a perfected security interest has priority from the date the advance is made.

3       \* **Sec. 68.** AS 45.08.203(b), 45.08.206(c), 45.08.206(d), 45.08.207(b), 45.08.207(c),  
4 45.08.207(d), 45.08.207(e), 45.08.207(f), 45.08.308, 45.08.309, 45.08.310, 45.08.311,  
5 45.08.312, 45.08.313, 45.08.314, 45.08.315, 45.08.316, 45.08.317, 45.08.318, 45.08.319,  
6 45.08.320, 45.08.321, 45.08.402(b), 45.08.405(a), and 45.08.408 are repealed.

7       \* **Sec. 69.** SAVINGS CLAUSE. (a) This Act does not affect an action or proceeding  
8 commenced before the effective date of this Act.

9           (b) If a security interest in a security is perfected before the effective date of this Act  
10 and the action by which the security interest was perfected would suffice to perfect a security  
11 interest under this Act, further action is not required to continue perfection. If a security  
12 interest in a security is perfected before the effective date of this Act but the action by which  
13 the security interest was perfected would not suffice to perfect a security interest under this  
14 Act, the security interest remains perfected for a period of four months after the effective date  
15 of this Act and continues perfected after this four-month period if appropriate action to perfect  
16 under this Act is taken within the four-month period. If a security interest is perfected before  
17 the effective date of this Act and the security interest can be perfected by filing under this  
18 Act, a financing statement signed by the secured party instead of the debtor may be filed  
19 within four months after the effective date of this Act to continue perfection or may be filed  
20 after the four-month period to perfect.

21       \* **Sec. 70.** COURT RULE CHANGE. AS 45.08.114, added by sec. 12 of this Act, amends  
22 Rule 8, Alaska Rules of Civil Procedure, by requiring that a denial of a signature be specific  
23 or the signature is admitted, and by requiring a denial even if a responsive pleading is not  
24 required.

25       \* **Sec. 71.** This Act takes effect January 1, 1997.