

HOUSE BILL NO. 79

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/3/99

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to letters of credit under the Uniform Commercial Code; and
2 providing for an effective date."

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

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

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

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

13 (b) Where one of the following provisions of the code specifies the applicable
14 law, that provision governs and a contrary agreement is effective only to the extent

permitted by the law, including the conflict of laws rules, so specified:

- (1) AS 45.02.402 (rights of creditors against sold goods);
- (2) AS 45.04.102 (applicability of the chapter on bank deposits and collections);
- (3) **AS 45.05.116 (applicability of the chapter on letters of credit);**
- (4)** AS 45.08.110 (applicability of the chapter on investment securities);
- (5)** [(4)] AS 45.09.103 (perfection provisions of the chapter on secured transactions);
- (6)** [(5)] AS 45.12.105 and 45.12.106 (applicability of the chapter on leases);
- (7)** [(6)] AS 45.14 (funds transfers).

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

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

- (1) the nonconformity appears without inspection; or
- (2) despite tender of the required documents, the circumstances would justify injunction against honor under **AS 45.05.109(b)** [THE PROVISIONS OF AS 45.05.114].

* **Sec. 4.** AS 45.05.102 is repealed and reenacted to read:

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

- (1) "adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended;
- (2) "applicant" means a person at whose request or for whose account a letter of credit is issued; "applicant" includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer;
- (3) "beneficiary" means a person who under the terms of a letter of credit is entitled to have the letter of credit's complying presentation honored; "beneficiary" includes a person to whom drawing rights have been transferred under a transferable letter of credit;

1 (4) "confirmer" means a nominated person who undertakes, at the
 2 request or with the consent of the issuer, to honor a presentation under a letter of
 3 credit issued by another;

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

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

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

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

15 (C) not oral;

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

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

21 (A) upon payment;

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

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

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

29 (10) "letter of credit" means a definite undertaking that satisfies the
 30 requirements of AS 45.05.104 by an issuer to a beneficiary at the request or for the
 31 account of an applicant, or, in the case of a financial institution, to itself or for its own

1 account, to honor a documentary presentation by payment or delivery of an item of
2 value;

3 (11) "nominated person" means a person whom the issuer

4 (A) designates or authorizes to pay, accept, negotiate, or
5 otherwise give value under a letter of credit; and

6 (B) undertakes by agreement or custom and practice to
7 reimburse;

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

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

12 (14) "record" means information that is inscribed on a tangible medium,
13 or that is stored in an electronic or other medium and is retrievable in perceivable
14 form;

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

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

22 (1) "accept" or "acceptance" (AS 45.03.409);

23 (2) "value" (AS 45.03.303 and AS 45.04.211).

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

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

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

29 (b) The statement of a rule in this chapter does not by itself require, imply, or
30 negate application of the same or a different rule to a situation not provided for, or to
31 a person not specified, in this chapter.

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

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

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

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

(1) by a signature; or

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

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

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

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

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

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which the beneficiary, applicant, confirmer, or issuer has not consented, except to the

1 extent the letter of credit provides that the letter of credit is revocable or that the issuer
2 may amend or cancel the letter of credit without the consent.

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

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

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

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

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

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

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

31 * **Sec. 10.** AS 45.05.108 is repealed and reenacted to read:

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

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

10 (1) to honor the presentation;

11 (2) if the letter of credit provides for honor to be completed more than
 12 seven business days after presentation, to accept a draft or incur a deferred obligation;
 13 or

14 (3) to give notice to the presenter of discrepancies in the presentation.

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

17 (1) timely notice is not given; or

18 (2) the discrepancy is not stated in the notice, if timely notice is given.

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

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

27 (f) An issuer is not responsible for

28 (1) the performance or nonperformance of the underlying contract,
 29 arrangement, or transaction;

30 (2) an act or omission of others; or

31 (3) observance or knowledge of the usage of a particular trade, other

1 than the standard practice referred to in (e) of this section.

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

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

7 (i) An issuer that honors a presentation as permitted or required by this chapter
8 (1) is entitled to be reimbursed by the applicant in immediately
9 available funds not later than the date of the payment of funds;

10 (2) takes the documents free of claims of the beneficiary or presenter;

11 (3) is precluded from asserting a right of recourse on a draft under
12 AS 45.03.414 - 45.03.415;

13 (4) except as otherwise provided in AS 45.05.110 and 45.05.117, is
14 precluded from restitution of money paid or other value given by mistake to the extent
15 the mistake concerns discrepancies in the documents or tender that are apparent on the
16 face of the presentation; and

17 (5) is discharged to the extent of the issuer's performance under the
18 letter of credit unless the issuer honored a presentation in which a required signature
19 of a beneficiary was forged.

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

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

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

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

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

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

1 person; or

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

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

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

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

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

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

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

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

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

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

29 (2) the applicant that the drawing does not violate an agreement
30 between the applicant and beneficiary or another agreement intended by them to be
31 augmented by the letter of credit.

(b) The warranties in (a) of this section are in addition to warranties arising under AS 45.03, AS 45.04, AS 45.07, and AS 45.08 because of the presentation or transfer of documents covered by those chapters.

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

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

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

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

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

1 of wrongful dishonor or other appropriate date.

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

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

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

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

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

15 (1) the transfer would violate applicable law; or

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

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

19 (B) is within the standard practice referred to in

20 AS 45.05.108(e) or is otherwise reasonable under the circumstances.

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

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

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

31 (1) the requirements for recognition by the issuer of a transfer of

1 drawing rights by operation of law under the standard practice in AS 45.05.108(e); or
2 (2) in the absence of the standard practice referred to in
3 AS 45.05.108(e), other reasonable procedures sufficient to protect the issuer.

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

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

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

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

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

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

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

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

31 (d) An issuer or nominated person does not have an obligation to give or

1 withhold its consent to an assignment of proceeds of a letter of credit, but consent may
 2 not be unreasonably withheld if the assignee possesses and exhibits the letter of credit
 3 and if presentation of the letter of credit is a condition to honor.

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

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

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

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

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

24 **Sec. 45.05.116. Choice of law and forum.** (a) The liability of an issuer,
 25 nominated person, or adviser for an action or omission is governed by the law of the
 26 jurisdiction chosen by an agreement in the form of a record signed or otherwise
 27 authenticated by the affected parties in the manner provided in AS 45.05.104 or by a
 28 provision in the letter of credit, confirmation, or other undertaking. The jurisdiction
 29 whose law is chosen does not need to bear a relation to the transaction.

30 (b) Unless (a) of this section applies, the liability of an issuer, nominated
 31 person, or adviser for action or omission is governed by the law of the jurisdiction in

which the issuer, nominated person, or adviser is located. The issuer, nominated person, or adviser is considered to be located at the address indicated in the undertaking of the issuer, nominated person, or adviser. If more than one address is indicated, the issuer, nominated person, or adviser is considered to be located at the address from which the undertaking of the issuer, nominated person, or adviser was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities, and a bank is considered to be located at the place where the bank's relevant branch is considered to be located under this subsection.

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

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

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

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

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

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

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

(2) the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

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

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

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

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

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

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

(1) except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected;

(2) if the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest

attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period;

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

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

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

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

*** Sec. 21.** AS 45.09.104 is amended by adding a new paragraph to read:

(14) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.

*** Sec. 22.** AS 45.09.105(c) is amended to read:

(c) The following definitions apply to this chapter:

- (1) "broker" (AS 45.08.102);
- (2) "certificated security" (AS 45.08.102);
- (3) "check" (AS 45.03.104);
- (4) "clearing corporation" (AS 45.08.102);

- 1 (5) "contract for sale" (AS 45.02.106);
- 2 (6) "control" (AS 45.08.106);
- 3 (7) "delivery" (AS 45.08.301);
- 4 (8) "entitlement holder" (AS 45.08.102);
- 5 (9) "financial asset" (AS 45.08.102);
- 6 (10) "holder in due course" (AS 45.03.302);
- 7 (11) **"letter of credit" (AS 45.05.102);**
- 8 **(12) "note" (AS 45.03.104);**
- 9 **(13) "proceeds of a letter of credit" (AS 45.05.114(a));**
- 10 **(14) [(12)] "sale" (AS 45.02.106);**
- 11 **(15) [(13)] "securities intermediary" (AS 45.08.102);**
- 12 **(16) [(14)] "security" (AS 45.08.102);**
- 13 **(17) [(15)] "security certificate" (AS 45.08.102);**
- 14 **(18) [(16)] "security entitlement" (AS 45.08.102);**
- 15 **(19) [(17)] "uncertificated security" (AS 45.08.102).**

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

17 **Sec. 45.09.106. Definitions: "account"; "general intangibles."** "Account"

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

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

27 (a) A security interest in chattel paper or negotiable documents may be
 28 perfected by filing. **A security interest in the rights to proceeds of a written letter**
 29 **of credit can be perfected only by the secured party's taking possession of the**
 30 **letter of credit.** A security interest in money or instruments (other than instruments
 31 that constitute part of chattel paper) can be perfected only by the secured party's taking

possession, except as provided in (d) and (e) of this section and AS 45.09.306(b) and (c) on proceeds.

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

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

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

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

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

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