



Alaska State Legislature

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Senate Bill 252

Sectional Overview and Analysis — Version N

Digital Assets. A new chapter, AS 45.36 (*Section 183*), provides rules for transactions involving certain new types of digital assets, including cryptocurrency and non-fungible tokens (NFTs). Under the Uniform Commercial Code (UCC), these intangible assets are called “controllable electronic records,” or “CERs.” To ensure that the UCC remains relevant, CERs are defined to include not only assets created using today’s distributed ledger or “blockchain” technology, but also any assets that may function similarly using future technologies.

- **Control of Digital Assets.** AS 45.36.105 (*Section 183*) introduces the concept of “control” as it applies to intangible property such as cryptocurrency. Control of an electronic record is analogous to possession of a tangible asset – the person with control has the power to “spend” the intangible asset by transferring it to another person in exchange for goods or services. The person with control can also prevent anyone else from using the property. The person with control can be anonymous, but must be positively identifiable in some manner, such as through the use of a cryptographic key.
- **Security Interests in Digital Assets.** Amendments to AS 49.29 (*Sections 108-115*) will facilitate the use of digital assets as collateral for loans. Previously, there was no effective way for a lender to perfect a security interest in digital assets except by filing a financing statement, and no way to ensure priority of the security interest without obtaining a release or subordination from all other secured parties, if they are even disclosed. The amendments provide that a lender with control of digital assets has a perfected security interest with priority over the interests of any other lenders who do not have control.
- **Governing Law.** Because digital assets have no physical location, conflict of laws questions may arise. The UCC amendments (*Sections 41-43, 51-52, 101-106, 116-117, 139, and 183*) will allow the parties to a transaction involving digital assets to choose the law that applies to their transaction for commercial law purposes and incorporate the choice into their CER or the system in which the CER is recorded. If the parties do not choose a governing law in the CER or system, the law of the District of Columbia will apply.

Tangible and Electronic Money. “Money” is defined under the UCC as a medium of exchange authorized by a domestic or foreign government and was presumed under many UCC rules drafted in the last century to exist only in tangible form. Recently, some foreign nations’ central banks have proposed creating virtual currencies to supplement or replace traditional forms of money, and at least two countries have adopted the virtual currency Bitcoin as an alternate form of legal tender. An amendment to the definition of “money” (*Section 20*) clarifies that governmentally created forms of money may be either tangible or electronic, and that non-

governmental virtual currencies, like Bitcoin, are subject to the new rules created for CERs rather than the old commercial law rules that governed tangible coins and bills. Amendments to UCC Article 9 (*Section 88*) provide that a security interest in “electronic money,” i.e. virtual currency created by a foreign government’s central bank, like a security interest in a CER can only be perfected through control.

Chattel Paper. “Chattel paper” was previously defined as a record containing both a monetary obligation and a security interest in goods, e.g. the documents governing an automobile loan. The 2022 amendments (*Section 79*) modify this definition to refer to the right to payment evidenced by the record, rather than to the record itself. This makes the rules for chattel paper more consistent with the new rules for CERs. Similarly, the rule governing control of electronic chattel paper is amended for consistency with the rule governing control of CERs.

Hybrid Transactions. Articles 2 and 2A of the UCC apply to the sale and lease of goods, respectively, and not to contracts for services. The line between these categories has blurred with the emergence of transactions involving both the sale or lease of goods and the provision of other property or services. As a result, a new rule is needed for these hybrid transactions. The UCC amendments (*Sections 28-30, 54-56*) provide that, absent the parties’ agreement otherwise, the UCC rules will apply to a hybrid transaction if the sale/lease of goods is the predominant purpose of the transaction. If the sale of services or provision of other property predominates, the UCC rules will apply only to aspects of the transaction that involve the sale or lease of goods. Whether or not the lease of goods aspects of the transaction predominate, the finance lease provisions of Article 2A will apply to those aspects of the transaction.

Negotiable Instruments. Changes to Article 3 (*Sections 37, 77, 81, 131*) clarify that a choice-of-law or choice-of-forum clause included in an instrument does not affect the negotiability of the instrument, and that an image of a negotiable instrument (i.e., photos of the front and back of a check) may be substituted for the actual instrument in accordance with federal banking regulations.

Terminology. Various UCC provisions are amended to replace obsolete terms that applied only to transactions on paper. For example, the term “sign” is redefined to include electronic signatures, the term “record” is substituted for “writing” to encompass electronic documents, and the term “conspicuous” is redefined to apply more broadly to the terms of both paper and electronic agreements.

Transition rules. (*Section 183*) The UCC amendments will be effective on the effective date in the enacting legislation. However, to protect any lenders who hold a security interest in digital assets that were perfected under the prior rules, there will be a transition period during which the lender’s priority established on the effective date will be maintained. This provides a grace period of at least one year during which the parties to a pre-existing loan agreement can renegotiate terms as necessary and comply with provisions of the new law to ensure that their respective interests remain protected.

Secured Transactions. (*Sections 141-150*) The 2018 amendments to Article 9 maintain the “pick-your-partner principle” amending rules for general partnerships, limited partnerships, and limited liability companies.

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Sections 1-16 *AS 09.25.060, AS 09.25.909, AS 09.80.190, AS 14.42.220, AS 14.42.250, AS 25.27.279, AS 28.10.491, AS 29.35.625, AS 29.35.825, AS 36.30.860, AS 44.83.100, AS 44.83.120, AS 44.85.140, AS 44.88.090, AS 45.01.111, AS 45.01.211*
Conforming changes.

Section 17-24 *AS 45.01.211*
Amends the definitions of “conspicuous,” “delivery,” “holder,” “money,” “person,” “send,” “signing,” and “signature.”

Section 25-27 *AS 45.01.214, AS 45.01.301, AS 45.01.306*
Conforming changes.

Section 28-29 *AS 45.02.102*
Amends scope of practice language for sales and transactions in goods; adds provisions for hybrid transactions.

Section 30 *AS 45.02.106*
Adds a new subsection to define a hybrid transaction.

Sections 30-36 *AS 45.02.201, AS 45.02.202, AS 45.02.203, AS 45.02.205, AS 45.02.209*
Adds language to include digital record-keeping.

Section 37 *AS 45.03.104*
Amends the definition of “negotiable instrument.”

Section 38 *AS 45.03.105*
Amends the definition of “issue” to include the first delivery to anyone by the drawer or maker, not only a holder or remitter.

Section 39 *AS 45.03.604*
Adds a new subsection clarifying the obligation of a party to pay a check.

Section 40 *AS 45.05.104*
This section was revised pursuant to the Uniform Commercial Code Amendments (2022). The reference in the pre-2022 text of this section to authentication by agreement of the parties or standard practice referred to in Section 5-108(e) is no longer necessary. Those forms of authentication are subsumed by the revised and expanded definition of “sign” in Section 1-201(b)(37), which is broad and flexible.

Section 41 *AS 45.03.604*
Conforms with language from section 41 regarding how a record may be signed.

Section 42 *AS 45.05.116*
Conforming changes.

Section 43 *AS 45.05.116*

Adds an old subsection from Section 42 and a new subsection clarifying where a bank branch is considered to be located when there are multiple branches.

Section 44 *AS 45.07.116*

Updates outdated language, replacing the word “assigned” or “assignee” with “transfer” or “transferee.”

Section 45 *AS 45.05.116*

Adds new subsection relating to control of electronic document of title. Preserves subsection (a), the general rule, and subsection (b), “safe harbor” from the pre-2022 section. The minor stylistic revisions are not substantive. The other revisions add a second “safe harbor” in subsection (c), explanatory provisions relating to exclusivity of powers in subsections (d) and (e), a presumption of exclusivity of powers in subsection (f), and a new subsection (g) on control through another person.

Section 46-47 *AS 45.08.102*

Amends the definition of “communicate” and conforming changes.

Section 48 *AS 45.08.103*

Adds a new subsection clarifying what is a financial asset.

Section 49-50 *AS 45.08.106*

Amends and adds subsections to specify how a purchaser can obtain control of a security entitlement.

Section 51-52 *AS 45.08.110*

Applies local law of the issuer’s jurisdiction to transactions and it is not conditioned that the chosen law bear a “reasonable relation” to the jurisdiction.

Section 53 *AS 45.08.303*

Deletes the reference to the acquisition of the rights of a purchaser but does not diminish the protected purchasers’ rights under AS 45.09.302.

Section 54-56 *AS 45.12.102, AS 45.12.103*

Amends and adds a subsection to apply to lease-of-goods aspects in hybrid leases and defines a hybrid lease.

Section 57-65 *AS 45.12.107, AS 45.12.201, AS 45.12.202, AS 45.12.203, AS 45.12.205, AS 45.12.208, AS 45.14.103*

Updates language indicating writing and records.

Section 66 *AS 45.14.201*

Includes new forms of identity verification and security procedures for payment orders and excludes the requirement that payment be sent from a known address as a security procedure.

Section 67-68 *AS 45.14.202*

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Ensures that a bank is obligated under a security procedure when receiving payment orders.
Section 69-75 *AS 45.14.203, 45.14.207, 45.14.208, 45.14.210, 45.14.211, 45.14.305*
Updates language indicating writing and records.

Section 76-84 *AS 45.29.104*

Amends and adds definitions for “account,” “account debtor,” “accounting,” “chattel paper,” “general intangible,” “instrument,” “payment intangible,” “proposal,” “assignee,” “assignor,” “controllable account,” “controllable electronic record,” “controllable payment intangible,” “electronic money,” “money,” “protected purchaser,” “qualifying purchaser,” and “tangible money.”

Section 85 *AS 45.29.104*

Provides for a secured party to obtain control of a deposit account by virtue of the acknowledgment by another person, other than the debtor, in control of the deposit account.

Section 86 *AS 45.29.105*

Repeals and reenacts this section to address control of electronic copies of record evidencing chattel paper.

Section 87 *AS 45.29.111, 45.29.112, 45.29.113*

Adds new subsections providing when a person has control of electronic money, controllable electronic records, controllable accounts, or controllable payments intangible.

Section 88 *AS 45.29.203*

Adds language for controllable accounts, controllable electronic records, controllable payment intangibles, or chattel paper as collateral in certain secured transactions.

Section 89-90 *AS 45.29.204*

Adds and amends sections to clarify when an after-acquired property clause is not effective.

Section 91 *AS 45.29.207*

Conforming change.

Section 92 *AS 45.29.208*

This section imposes duties on a secured party who has control of a deposit account, an electronic copy of a record evidencing chattel paper, investment property, a letter-of-credit right, an electronic document of title, electronic money, or a controllable electronic record.

Section 93-100 *AS 45.29.209, AS 45.29.210*

Replaces “authenticated” with “signed” consistent with revisions.

Section 101 *AS 45.29.301*

Conforming changes.

Section 102-104 *AS 45.29.304, AS 45.29.305*

The local law of the issuer’s jurisdiction or securities intermediary’s jurisdiction governs even if a matter or transaction bears no relation to that jurisdiction.

Section 105-107 *AS 45.29.305, AS 45.29.306, AS 45.29.307*
Conforming changes.

Section 108 *AS 45.29.310*
Updates the security interests for which filing is not required as a condition of perfection.

Section 109-114 *AS 45.29.312, AS 45.29.313*
Updates how security interests in controllable accounts, controllable electronic records, controllable payment intangibles, tangible money, negotiable documents, or electronic money may be perfected.

Section 115 *AS 45.29.314*
Provides for perfection by control with respect to controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, and letter-of-credit rights.

Section 116 *AS 45.29.316*
Conforming change.

Section 117 *AS 45.29.316*
Addresses changes in jurisdiction for chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles.

Section 118-120 *AS 45.29.317*
Amends and adds new subsections to afford priority over an unperfected security interest to certain buyers (other than secured parties) of collateral.

Section 121-122 *AS 45.29.319, AS 45.29.322*
Conforming changes.

Section 123-124 *AS 45.29.323*
Under subsections (d) and (e), a buyer will not take subject to a security interest to the extent it secures advances made after the secured party has knowledge that the buyer has purchased the collateral or more than 45 days after the purchase unless the advances were made pursuant to a commitment entered into before the expiration of the 45-day period and without knowledge of the purchase. Subsections (f) and (g) provide an analogous rule for lessees.

Section 125-127 *AS 45.29.324, AS 45.29.326*
Conforming changes.

Section 128-130 *AS 45.29.316*
This section permits a security interest to be perfected in chattel paper either by filing or by the secured party's possession and control under Section 9314A and in instruments either by filing or by the secured party's taking possession under Sections 312-313.

Section 131-132 *AS 45.29.331*

The state-law Uniform Electronic Transactions Act (UETA) and the federal Electronic Signature in Global and National Commerce Act, 15 U.S.C. §§ 7001 *et seq.* (E-SIGN), provide certain rules for records referred to and defined as “transferable records.” Refers to the rights and defenses of a purchaser. As a matter of the application of the Uniform Commercial Code, those are not the only sections of the Uniform Commercial Code that would logically be affected by UETA and E-SIGN. For example, the rights of a holder in due course under Section 331(a) would also be covered by the application of those acts, when the conditions for applicability have been satisfied.

Section 133-34 *AS 45.29.332*

Affords protection for transferees of money and of funds from a deposit account to take free of a security interest.

Section 135-138 *AS 45.29.334, AS 45.29.335, AS 45.29.336, AS 45.29.341*

Conforming changes.

Section 139 *AS 45.29*

Adds new sections to determine the law governing perfection and priority of security interests in chattel paper. Establishes that the governing law is that of the controllable electronic record’s jurisdiction. Under subsection (b) the local law of the jurisdiction of the debtor’s location governs perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing (but not priority, as to which subsection (a) would apply).

Section 140 *AS 45.29.404*

Conforming change.

Section 141-146 *AS 45.29.406*

Conforming changes referencing subsections added in section 147.

Section 147 *AS 45.29.406*

Adds new subsections to establish that this section does not apply to an ownership interest in a limited liability company, limited partnership, or general partnership.

Section 148-149 *AS 45.29.408*

Conforming changes referencing subsections added in section 150.

Section 150 *AS 45.29.408*

Adds new subsections to establish that this section does not apply to an ownership interest in a limited liability company, limited partnership, or general partnership.

Section 151-154 *AS 45.29.509, AS 45.29.513*

Replaces the word “authenticated” with the word “signed” in conforming changes.

Section 155 *AS 45.29.601*

Conforming change.

Section 156-157 *AS 45.29.605*

Adds and amends sections to relieve a secured party from duties owed to a debtor or obligor if the secured party does not know about the debtor or obligor. Similarly, it relieves a secured party from duties owed to a secured party or lienholder who has filed a financing statement against the debtor if the secured party does not know about the debtor.

Section 158-162 *AS 45.29.608, AS 45.29.611*

Replaces the word “authenticated” with the word “signed” in conforming changes.

Section 163 *AS 45.29.613*

Repeals and reenacts this section to re-format the notification of disposition of collateral. No change in substance is intended.

Section 164 *AS 45.29.614*

Repeals and reenacts this section to re-format the notification of disposition of collateral in a consumer goods transaction. No change in substance is intended except that in furtherance of medium neutrality references to “electronic record” and “electronic communication method” have been added to the form.

Section 165-175 *AS 45.29.615, AS 45.29.616, AS 45.29.619, AS 45.29.620, AS 45.29.621, AS 45.29.624*

Conforming changes to update language.

Section 176-178 *AS 45.29.628*

Amends and adds subsections to relieve a secured party from duties owed to a debtor or obligor if the secured party does not know about the debtor or obligor, along with Sections 156-157 . Similarly, it relieves a secured party from duties owed to a secured party or lienholder who has filed a financing statement against the debtor if the secured party does not know about the debtor.

Section 179-182 *AS 45.29.705, AS 45.29.707*

Conforming changes.

Section 183 *AS 45.36*

Adds a new chapter, “Controllable Electronic Records.”

- Provides definitions for “account debtor,” “chattel paper,” “controllable account,” “controllable electronic record,” “controllable payment intangible,” “deposit account,” “electronic money,” “investment property,” “qualifying purchaser,” “transferable record,” and “value.”
- Creates a legal regime that is meant to apply more broadly than to electronic (intangible) assets that are created using existing technologies such as distributed ledger technology (DLT), including blockchain technology, which records transactions in bitcoin and other digital assets. It also aspires to apply to electronic assets that may be created using technologies that have yet to be developed or even imagined.
- The principal function of Article 12 is to specify certain rights of a *purchaser* of a controllable electronic record. A purchaser is a person that acquires an interest in property by a voluntary transaction, such as a sale. Purchasers include both buyers and secured parties.

Section 184-187 *AS 45.50.541, AS 45.63.030, AS 45.66.230*

Adds references to Chapter AS 45.36 in statute.

Section 188

Repeals AS 45.03.401(b), AS 45.07.112(a)(10), AS 45.29.102(a)(8), 45.29.102(a)(38), 45.29.102(a)(98), and 45.29.102(a)(102).