

**HOUSE BILL NO. 102**

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

**TWENTY-SIXTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Introduced: 1/30/09**

**Referred: Labor and Commerce, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

7    \* **Section 1.** AS 09.80.010(b) is amended to read:

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

9                   (1) a law governing the creation and execution of wills, codicils, or  
10       testamentary trusts;

11                   (2) the Uniform Commercial Code other than **AS 45.01.306, AS 45.02,**  
12       **AS 45.12, and, to the extent allowed by AS 45.07.113(c), AS 45.07** [AS 45.01.107,  
13       45.01.206, AS 45.02, AND AS 45.12].

1 \* **Sec. 2.** AS 09.80.130(c) is amended to read:

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

11 \* **Sec. 3.** AS 45.01 is amended by adding new sections to article 1 to read:

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

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

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

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

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

24 (2) permit the continued expansion of commercial practices through  
25 custom, usage, and agreement of the parties; and

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

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

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

5           **Sec. 45.01.115. Severability.** If a provision or clause of the code or application  
 6 of the clause or provision to a person or circumstances is held invalid, the invalidity  
 7 does not affect other provisions or applications of the code that can be given effect  
 8 without the invalid provision or application, and to this end the provisions of the code  
 9 are severable.

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

13           **Sec. 45.01.117. Section captions.** Notwithstanding AS 01.05.006 and  
 14 01.05.031(b)(2), section captions are part of the code.

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

20 \* **Sec. 4.** AS 45.01 is amended by adding new sections to read:

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

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

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

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

31           (3) "agreement," as distinguished from "contract," means the bargain

1 of the parties in fact, as found in their language or inferred from other circumstances,  
2 including course of performance, course of dealing, or usage of trade as provided in  
3 AS 45.01.303;

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

6 (5) "bearer" means a person in control of a negotiable electronic  
7 document of title or a person in possession of a negotiable instrument, negotiable  
8 tangible document of title, or certificated security that is payable to bearer or endorsed  
9 in blank;

10 (6) "bill of lading" means a document of title evidencing the receipt of  
11 goods for shipment issued by a person engaged in the business of directly or indirectly  
12 transporting or forwarding goods; "bill of lading" does not include a warehouse  
13 receipt;

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

16 (8) "burden of establishing" a fact means the burden of persuading the  
17 trier of fact that the existence of the fact is more probable than its nonexistence;

18 (9) "buyer in ordinary course of business" means a person who buys  
19 goods in good faith, without knowledge that the sale violates the rights of another  
20 person in the goods, and in the ordinary course from a person, other than a  
21 pawnbroker, in the business of selling goods of that kind; a person buys goods in the  
22 ordinary course if the sale to the person comports with the usual or customary  
23 practices in the kind of business in which the seller is engaged or with the seller's own  
24 usual or customary practices; a person who sells oil, gas, or other minerals at the  
25 wellhead or minehead is a person in the business of selling goods of that kind; a buyer  
26 in ordinary course of business may buy for cash, by exchange of other property, or on  
27 secured or unsecured credit, and may acquire goods or documents of title under a  
28 preexisting contract for sale; only a buyer who takes possession of the goods or has a  
29 right to recover the goods from the seller under AS 45.02 may be a buyer in ordinary  
30 course of business; "buyer in ordinary course of business" does not include a person  
31 who acquires goods in a transfer in bulk or as security for or in total or partial

1 satisfaction of a money debt;

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

4 (11) "conspicuous," with reference to a term, means written, displayed,  
5 or presented in a way that a reasonable person against whom it is to operate ought to  
6 have noticed it; whether a term is "conspicuous" or not is a decision for the court;  
7 conspicuous terms include

8 (A) a heading in capitals equal to or greater in size than the  
9 surrounding text, or in contrasting type, font, or color to the surrounding text of  
10 the same or lesser size; and

11 (B) language in the body of a record or display in larger type  
12 than the surrounding text, or in contrasting type, font, or color to the  
13 surrounding text of the same size, or set off from surrounding text of the same  
14 size by symbols or other marks that call attention to the language;

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

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

20 (14) "creditor" includes a general creditor, a secured creditor, a lien  
21 creditor, and a representative of creditors, including an assignee for the benefit of  
22 creditors, a trustee in bankruptcy, a receiver in equity, and an executor or  
23 administrator of an insolvent debtor's or assignor's estate;

24 (15) "defendant" includes a person in the position of defendant in a  
25 counterclaim, cross-claim, or third-party claim;

26 (16) "delivery," with respect to an electronic document of title, means  
27 voluntary transfer of control and, with respect to an instrument, a tangible document of  
28 title, or chattel paper, means voluntary transfer of possession;

29 (17) "document of title"

30 (A) means a record that

31 (i) in the regular course of business or financing, is

1 treated as adequately evidencing that the person in possession or  
 2 control of the record is entitled to receive, control, hold, and dispose of  
 3 the record and the goods the record covers; and

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

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

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

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

12 (20) "fungible goods" means goods

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

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

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

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

19 (23) "holder" means the person in

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

22 (B) possession of a negotiable tangible document of title if the  
 23 goods are deliverable either to bearer or to the order of the person in  
 24 possession; or

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

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

29 (25) "insolvent" means

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

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

2 (C) being insolvent within the meaning of federal bankruptcy

3 law;

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

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

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

11 (29) "person" means an individual, corporation, business trust, estate,  
12 trust, partnership, limited liability company, association, joint venture, government,  
13 governmental subdivision, agency, or instrumentality, public corporation, or another  
14 legal or commercial entity;

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

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

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

23 (31) "purchase" means taking by sale, lease, discount, negotiation,  
24 mortgage, pledge, lien, security interest, issue or reissue, gift, or another voluntary  
25 transaction creating an interest in property;

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

27 (33) "record" means information that is inscribed on a tangible  
28 medium or that is stored in an electronic or other medium and is retrievable in  
29 perceivable form;

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

1 (35) "representative" means a person empowered to act for another,  
2 including an agent, an officer of a corporation or association, and a trustee, executor,  
3 or administrator of an estate;

4 (36) "right" includes remedy;

5 (37) "security interest" means an interest in personal property or  
6 fixtures that secures payment or performance of an obligation; "security interest"  
7 includes an interest of a consignor and a buyer of accounts, chattel paper, a payment  
8 intangible, or a promissory note in a transaction that is subject to AS 45.29; "security  
9 interest" does not include the special property interest of a buyer of goods on  
10 identification of those goods to a contract for sale under AS 45.02.401, but a buyer  
11 may also acquire a security interest by complying with AS 45.29; except as otherwise  
12 provided in AS 45.02.505, the right of a seller or lessor of goods under AS 45.02 or  
13 AS 45.12 to retain or acquire possession of the goods is not a security interest, but a  
14 seller or lessor may also acquire a security interest by complying with AS 45.29; the  
15 retention or reservation of title by a seller of goods notwithstanding shipment or  
16 delivery to the buyer under AS 45.02.401 is limited in effect to a reservation of a  
17 security interest; whether a transaction in the form of a lease creates a security interest  
18 is determined under AS 45.01.213;

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

20 (A) to deposit in the mail or deliver for transmission by a usual  
21 means of communication with postage or cost of transmission provided for and  
22 properly addressed and, in the case of an instrument, to an address specified on  
23 the instrument or otherwise agreed on, or, if an address is not specified on the  
24 instrument or otherwise agreed on, to an address reasonable under the  
25 circumstances; or

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

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

30 (40) "state" means a state of the United States, the District of  
31 Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular



possession subject to the jurisdiction of the United States;

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

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

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

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

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

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

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

(1) has actual knowledge of it;

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

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

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

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

(d) A person "notifies" or "gives" a notice or notification to another person by taking those steps that may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

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

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

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

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

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

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

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

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

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

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

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

(1) present value of the consideration the lessee is obligated to pay the

lessor for the right to possession and use of the goods is substantially equal to or greater than the fair market value of the goods at the time the lease is entered into;

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

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

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

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

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

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

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

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

(e) The remaining economic life of the goods and reasonably predictable fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

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

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

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

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

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

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

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

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

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

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

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

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

(1) AS 45.02.402;

(2) AS 45.04.102;

(3) AS 45.05.116;

(4) AS 45.08.110;

(5) AS 45.12.105 and 45.12.106;

(6) AS 45.14.507;

1 (7) AS 45.29.301 - 45.29.307.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 45.01.305. Remedies to be liberally administered.** (a) The remedies provided by the code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in the code or by other rule of law.

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

**Sec. 45.01.306. Waiver or renunciation of claim or right after breach.** A

claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

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

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

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

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

**Sec. 45.01.310. Subordinated obligations.** An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

\* **Sec. 5.** AS 45.02.103(c)(2) is amended to read:

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

\* **Sec. 6.** AS 45.02.103(c)(3) is amended to read:

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

\* **Sec. 7.** AS 45.02.103(c) is amended by adding a new paragraph to read:

(7) "control" (AS 45.07.116).

\* **Sec. 8.** AS 45.02.104(b) is amended to read:

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

\* **Sec. 9.** AS 45.02.202 is amended to read:

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

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

(2) by evidence of consistent additional terms unless the court finds the writing was intended also as a complete and exclusive statement of the terms of the agreement.

\* **Sec. 10.** AS 45.02.310 is amended to read:

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

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



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

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

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

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

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

\* **Sec. 11.** AS 45.02.323(b) is amended to read:

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

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

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

\* **Sec. 12.** AS 45.02.401 is amended to read:

**Sec. 45.02.401. Passing of title; reservation for security; limited application of this section.** Each provision of this chapter with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties

1 applies irrespective of title to the goods except where the provision refers to the title.  
 2 Insofar as situations are not covered by the other provisions of this chapter and matters  
 3 concerning title become material, the following rules apply:

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

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

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

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

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

24 (A) if the seller is to deliver a **tangible** document of title, title  
 25 passes at the time and place the seller delivers the **document, and, if the seller**  
 26 **is to deliver an electronic document of title, title passes when the seller**  
 27 **delivers the document** [DOCUMENTS]; or

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

31 (4) a rejection or other refusal by the buyer to receive or retain the

goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller; this reversion occurs by operation of law and is not a "sale."

\* **Sec. 13.** AS 45.02.503(d) is amended to read:

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

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

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

\* **Sec. 14.** AS 45.02.503(e) is amended to read:

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

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

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

\* **Sec. 15.** AS 45.02.505 is amended to read:

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

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

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

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

\* **Sec. 16.** AS 45.02.506(b) is amended to read:

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

\* **Sec. 17.** AS 45.02.509(b) is amended to read:

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

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

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

(3) after the buyer's receipt of **possession or control of** a nonnegotiable document of title or other [WRITTEN] direction to deliver **in a record**, as provided in AS 45.02.503(d)(2).

\* **Sec. 18.** AS 45.02.605(b) is amended to read:

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

\* **Sec. 19.** AS 45.02.705(b) is amended to read:

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

(1) receipt of the goods by the buyer;

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

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

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

\* **Sec. 20.** AS 45.02.705(e) is amended to read:

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

\* **Sec. 21.** AS 45.03.103(a)(10) is amended to read:

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

\* **Sec. 22.** AS 45.04.104(c) is amended by adding a new paragraph to read:

(19) "control" (AS 45.07.116).

\* **Sec. 23.** AS 45.04.210(c) is amended to read:

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

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

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

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

\* **Sec. 24.** AS 45.05.103(c) is amended to read:

(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 45.01.302 [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.

\* **Sec. 25.** AS 45.07 is amended by adding new sections to read:

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

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

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

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

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

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

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

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

(7) "issuer" means a bailee who issues a document of title or, in the case of an unaccepted delivery order, the person who orders the possessor of goods to deliver; "issuer" includes a person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive the goods, the goods were misdescribed, or in another respect the agent or employee violated the issuer's instructions;

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

document of title;

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

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

(A) execute or adopt a tangible symbol; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

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

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

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

(2) the person who procured issuance of the electronic document



warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

**Sec. 45.07.116. Control of electronic document of title.** (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to whom the electronic document was issued or transferred.

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

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

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

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

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

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

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and a copy of a copy are readily identifiable as a copy that is not the authoritative copy; and

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

\* **Sec. 26.** AS 45.07.201 is amended to read:

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

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

\* **Sec. 27.** AS 45.07.202 is repealed and reenacted to read:

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

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

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

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

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

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

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

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

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

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

(c) A warehouse may insert in its receipt terms that are not contrary to the

code and do not impair its obligation of delivery under AS 45.07.403 or its duty of care under AS 45.07.204. A contrary provision is ineffective.

\* **Sec. 28.** AS 45.07.203 is amended to read:

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

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

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

\* **Sec. 29.** AS 45.07.204 is amended to read:

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

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage [, AND SETTING OUT A SPECIFIC LIABILITY PER ARTICLE OR ITEM, OR VALUE PER UNIT OF WEIGHT,] beyond which the warehouse is [WAREHOUSEMAN SHALL] not [BE] liable. The limitation is not effective with respect to the warehouse's liability for conversion to its own use. On [, HOWEVER, THIS LIABILITY MAY, ON WRITTEN] request of the bailor in a record at the time of signing the storage

1 agreement, or within a reasonable time after receipt of the warehouse receipt, the  
 2 warehouse's liability may be increased on part or all of the goods covered by the  
 3 storage agreement or [UNDER] the warehouse receipt [OR AGREEMENT]. In this  
 4 event, increased rates may be charged based on an [THE] increased valuation of the  
 5 goods [, BUT NO INCREASE MAY BE PERMITTED CONTRARY TO A  
 6 LAWFUL LIMITATION OF LIABILITY CONTAINED IN THE  
 7 WAREHOUSEMAN'S TARIFF. NO LIMITATION IS EFFECTIVE WITH  
 8 RESPECT TO THE WAREHOUSEMAN'S LIABILITY FOR CONVERSION TO  
 9 THE WAREHOUSEMAN'S OWN USE].

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

13 \* **Sec. 30.** AS 45.07.205 is amended to read:

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

19 \* **Sec. 31.** AS 45.07.206 is amended to read:

20 **Sec. 45.07.206. Termination of storage at warehouse's**  
 21 **[WAREHOUSEMAN'S] option.** (a) A warehouse [WAREHOUSEMAN] may, by  
 22 giving notice to [ON NOTIFYING] the person on whose account the goods are held  
 23 and [ANY] other persons [PERSON] known to claim an interest in the goods, require  
 24 payment of any charges and removal of the goods from the warehouse at the  
 25 termination of the period of storage fixed by the document of title, or, if a [NO] period  
 26 is not fixed, within a stated period not less than 30 days after the warehouse gives  
 27 notice [NOTIFICATION]. If the goods are not removed before the date specified in  
 28 the notice [NOTIFICATION], the warehouse [WAREHOUSEMAN] may sell them  
 29 under AS 45.07.210 [IN ACCORDANCE WITH THE PROVISIONS OF THE  
 30 SECTION ON ENFORCEMENT OF A WAREHOUSEMAN'S LIEN  
 31 (AS 45.07.210)].

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

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

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

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

\* **Sec. 32.** AS 45.07.207 is amended to read:

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

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

\* **Sec. 33.** AS 45.07.208 is amended to read:

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

\* **Sec. 34.** AS 45.07.209 is amended to read:

**Sec. 45.07.209. Lien of warehouse [WAREHOUSEMAN].** (a) A **warehouse** [WAREHOUSEMAN] has a lien against the bailor on the goods covered by a warehouse receipt or **storage agreement or** on the proceeds of the goods in the **warehouse's** [WAREHOUSEMAN'S] possession for charges for storage or transportation, [(] including demurrage and terminal charges [)] , insurance, labor, or **other** charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale under law. If the person on whose account the goods are held is liable for **similar** [LIKE] charges or expenses in relation to other goods [,] whenever deposited and it is stated in the **warehouse** receipt **or storage agreement** that a lien is claimed for charges and expenses in relation to other goods, the **warehouse** [WAREHOUSEMAN] also has a lien against **the goods covered by the warehouse receipt or storage agreement or on the proceeds of the goods in its possession** [THAT PERSON] for these charges and expenses, whether or not the other goods have been delivered by the **warehouse** [WAREHOUSEMAN]. **However, as** [BUT] against a person to whom a negotiable warehouse receipt is duly negotiated, a **warehouse's** [WAREHOUSEMAN'S] lien is limited to charges in an amount or at a rate specified **in** [ON] the **warehouse** receipt or, if no charges are [SO] specified, then to a reasonable charge for storage of the

1 specific goods covered by the receipt after the date of the receipt.

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

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

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

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

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

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

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

24 (d) A warehouse [WAREHOUSEMAN] loses its [THE] lien on any goods  
25 that the warehouse [WAREHOUSEMAN] voluntarily delivers or unjustifiably  
26 refuses to deliver.

27 \* **Sec. 35.** AS 45.07.209 is amended by adding a new subsection to read:

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

1 by the depositor in a dwelling.

2 \* **Sec. 36.** AS 45.07.210(a) is amended to read:

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

22 \* **Sec. 37.** AS 45.07.210(b) is amended to read:

23 (b) A warehouse may enforce its [WAREHOUSEMAN'S] lien on goods,  
 24 other than goods stored by a merchant in the course of the merchant's business, [MAY  
 25 BE ENFORCED] only if the following requirements are satisfied [AS FOLLOWS]:

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

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

31 (3)] the notification must include an itemized statement of the claim, a



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

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

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

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

\* **Sec. 38.** AS 45.07.210(c) is amended to read:

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

\* **Sec. 39.** AS 45.07.210(d) is amended to read:

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

\* **Sec. 40.** AS 45.07.210(e) is amended to read:

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

\* **Sec. 41.** AS 45.07.210(f) is amended to read:

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

\* **Sec. 42.** AS 45.07.210(i) is amended to read:

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

\* **Sec. 43.** AS 45.07.301 is amended to read:

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

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

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

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

1 packages.

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

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

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

22 \* **Sec. 44.** AS 45.07.302 is amended to read:

23 **Sec. 45.07.302. Through bills of lading and similar documents of title.** (a)  
24 The issuer of a through bill of lading, or other document of title embodying an  
25 undertaking to be performed in part by a person [PERSONS] acting as the issuer's  
26 agent [AGENTS] or by a performing carrier, [CONNECTING CARRIERS] is  
27 liable to a person [ANYONE] entitled to recover on the bill or other document for a  
28 breach by the other person [PERSONS] or the performing [BY A CONNECTING]  
29 carrier of its obligation under the bill or other document. However [, BUT], to the  
30 extent that the bill or other document covers an undertaking to be performed  
31 overseas or in territory not contiguous to the continental United States or an

undertaking including matters other than transportation, this liability **for breach by the other person or the performing carrier** may be varied by agreement of the parties.

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

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

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

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

\* **Sec. 45.** AS 45.07.303 is amended to read:

**Sec. 45.07.303. Diversion; reconsignment; change of instructions.** (a) Unless the bill of lading otherwise provides, **a** [THE] carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, **without liability for misdelivery,** on instructions from

(1) the holder of a negotiable bill;

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

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

1 the consignee is in possession of the tangible bill or in control of the electronic bill;  
2 or

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

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

8 \* **Sec. 46.** AS 45.07.304 is amended to read:

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

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

17 (c) If a tangible negotiable bill of lading is lawfully issued in a set of parts  
18 and different parts are negotiated to different persons, the title of the holder to whom  
19 the first due negotiation is made prevails as to both the document of title and the  
20 goods even if [THOUGH] a later holder may have received the goods from the carrier  
21 in good faith and discharged the carrier's obligation by surrendering its  
22 [SURRENDER OF THE LATER HOLDER'S] part.

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

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

30 \* **Sec. 47.** AS 45.07.305(b) is amended to read:

31 (b) Upon request of a person [ANYONE] entitled as against a [THE] carrier

1 to control the goods while in transit and on surrender of **possession or control of** an  
 2 outstanding bill of lading or other receipt covering the goods, the issuer, **subject to**  
 3 **AS 45.07.115**, may procure a substitute bill to be issued at **a** [ANY] place designated  
 4 in the request.

5 \* **Sec. 48.** AS 45.07.307 is amended to read:

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

15 (b) A lien for charges and expenses under (a) of this section on goods that the  
 16 carrier was required by law to receive for transportation is effective against the  
 17 consignor or a person entitled to the goods unless the carrier had notice that the  
 18 consignor lacked authority to subject the goods to the charges and expenses. **Another**  
 19 [ANY OTHER] lien under (a) of this section is effective against the consignor and a  
 20 person who permitted the bailor to have control or possession of the goods unless the  
 21 carrier had notice that the bailor lacked [THE] authority.

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

24 \* **Sec. 49.** AS 45.07.308(a) is amended to read:

25 (a) A carrier's lien **on goods** may be enforced by public or private sale of the  
 26 goods, in **bulk** [BLOCK] or in **packages** [PARCELS], at any time or place, and on  
 27 [ANY] terms that are commercially reasonable, after notifying all persons known to  
 28 claim an interest in the goods. **The** [THIS] notification must include a statement of the  
 29 amount due, the nature of the proposed sale, and the time and place of **any** [A] public  
 30 sale. The fact that a better price could have been obtained by a sale at a different time  
 31 or **by** [IN] a [DIFFERENT] method **different** from that selected by the carrier is not

of itself sufficient to establish that the sale was not made in a commercially reasonable manner. **The** [IF THE] carrier [EITHER] sells [THE] goods in **a commercially reasonable** [THE USUAL] manner **if the carrier sells the goods in the usual manner** in a recognized market for them, [OR IF THE CARRIER] sells at the price current in **that** [THE] market at the time of the sale, or [IF THE CARRIER HAS] otherwise **sells** [SOLD] in conformity with commercially reasonable practices among dealers in the type of goods sold [, THE CARRIER HAS SOLD IN A COMMERCIALY REASONABLE MANNER]. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

\* **Sec. 50.** AS 45.07.308(b) is amended to read:

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

\* **Sec. 51.** AS 45.07.308(c) is amended to read:

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

\* **Sec. 52.** AS 45.07.308(d) is amended to read:

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

\* **Sec. 53.** AS 45.07.308(e) is amended to read:

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

\* **Sec. 54.** AS 45.07.308(h) is amended to read:

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

1 \* **Sec. 55.** AS 45.07.309 is amended to read:

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

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

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

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

21 \* **Sec. 56.** AS 45.07.401 is amended to read:

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

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

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

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

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



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

\* **Sec. 57.** AS 45.07.402 is amended to read:

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

\* **Sec. 58.** AS 45.07.403(a) is amended to read:

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

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

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

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

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

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

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

(7) another [ANY OTHER] lawful excuse.

\* **Sec. 59.** AS 45.07.403(b) is amended to read:

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

\* **Sec. 60.** AS 45.07.403(c) is amended to read:

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

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

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

\* **Sec. 61.** AS 45.07.404 is amended to read:

**Sec. 45.07.404. No liability for good faith delivery under document of title [PURSUANT TO RECEIPT OR BILL].** A bailee who, in good faith, [INCLUDING OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS,] has received goods and delivered or otherwise disposed of the goods [THEM] according to the terms of a [THE] document of title or under this chapter is not liable for the goods [THAT DISPOSAL. THIS RULE APPLIES] even if [THOUGH] the person

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

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

\* **Sec. 62.** AS 45.07.501 is repealed and reenacted to read:

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

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

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

1 the document is negotiated by the named person's endorsement and delivery; after the  
2 named person's endorsement in blank or to bearer, a person may negotiate the  
3 document by delivery alone;

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

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

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

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

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

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

20 (2) if the document's original terms run to the order of a named person  
21 and the named person has control of the document, the effect is the same as if the  
22 document had been negotiated;

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

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

31 (d) The naming in a negotiable bill of lading of a person to be notified of the

1 arrival of the goods does not limit the negotiability of the bill or constitute notice to a  
 2 purchaser of the bill of an interest of that person in the goods.

3 \* **Sec. 63.** AS 45.07.502 is amended to read:

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

8 (1) title to the document;

9 (2) title to the goods;

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

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

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

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

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

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

29 \* **Sec. 64.** AS 45.07.503 is amended to read:

30 **Sec. 45.07.503. Document of title to goods defeated in certain cases.** (a) A  
 31 document of title confers no right in goods against a person who, before issuance of

the document, had a legal interest or a perfected security interest in the goods [THEM] and who did not [NEITHER]

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

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

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

or

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

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

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

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of a person [ANYONE] to whom a bill issued by the freight forwarder is duly negotiated. However, [, BUT] delivery by the carrier in accordance with AS 45.07.401 - 45.07.404 under its own bill of lading discharges the carrier's obligation to deliver.

\* **Sec. 65.** AS 45.07.504 is amended to read:

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

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

1 the transferee may be defeated

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

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

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

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

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

17 (d) Delivery of the goods under a nonnegotiable document of title may be  
18 stopped by a seller under AS 45.02.705 or a lessor under AS 45.12.526, [AND]  
19 subject to the requirement of due notification [SET OUT] in those sections  
20 [AS 45.02.705]. A bailee who honors [HONORING] the seller's or lessor's  
21 instructions is entitled to be indemnified by the seller or lessor against a resulting loss  
22 or expense.

23 \* **Sec. 66.** AS 45.07.505 is amended to read:

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

27 \* **Sec. 67.** AS 45.07.506 is amended to read:

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

endorsement is supplied.

\* **Sec. 68.** AS 45.07.507 is amended to read:

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

(1) [THAT] the document is genuine;

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

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

\* **Sec. 69.** AS 45.07.508 is amended to read:

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

\* **Sec. 70.** AS 45.07.509 is amended to read:

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

\* **Sec. 71.** AS 45.07.601 is repealed and reenacted to read:

**Sec. 45.07.601. Lost, stolen, or destroyed documents of title.** (a) If a

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

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

\* **Sec. 72.** AS 45.07.602 is amended to read:

**Sec. 45.07.602. Judicial process against [ATTACHMENT OF] goods covered by [A] negotiable document of title. Unless A [EXCEPT WHERE THE] document of title was originally issued upon delivery of the goods by a person who did not have [HAD NO] power to dispose of them, a [NO] lien does not attach [ATTACHES] by virtue of a judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or [ITS] negotiation of the document is enjoined. The [, AND THE] bailee may not be compelled to deliver the goods under process until possession or control of the document is surrendered to the bailee or to [IMPOUNDED BY] the court. A purchaser of [ONE WHO PURCHASES] the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.**

\* **Sec. 73.** AS 45.07.603 is amended to read:

**Sec. 45.07.603. Conflicting claims; interpleader.** If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has [HAD] a reasonable time to ascertain the validity of the adverse claims or to



1 commence [BRING] an action for interpleader. The bailee [TO COMPEL ALL  
 2 CLAIMANTS TO INTERPLEAD AND] may assert an [COMPEL THIS]  
 3 interpleader [,] either in defending an action for nondelivery of the goods or by  
 4 original action [, WHICHEVER IS APPROPRIATE].

5 \* **Sec. 74.** AS 45.08.103 is amended by adding a new subsection to read:

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

8 \* **Sec. 75.** AS 45.12.103(a)(1) is amended to read:

9 (1) "buyer in ordinary course of business" means a person who, in  
 10 good faith and without knowledge that the sale to that person is in violation of the  
 11 ownership rights or security interest or leasehold interest of a third party in the goods,  
 12 buys in ordinary course from a person in the business of selling goods of that kind, but  
 13 does not include a pawnbroker; "buying" may be for cash or by exchange of other  
 14 property or on secured or unsecured credit and includes acquiring [RECEIVING]  
 15 goods or documents of title under a preexisting contract for sale, but does not include  
 16 a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

17 \* **Sec. 76.** AS 45.12.103(a)(15) is amended to read:

18 (15) "lessee in ordinary course of business" means a person who, in  
 19 good faith and without knowledge that the lease to that person is in violation of the  
 20 ownership rights or security interest or leasehold interest of a third party in the goods,  
 21 leases in ordinary course from a person in the business of selling or leasing goods of  
 22 that kind, but does not include a pawnbroker; "leasing" may be for cash or by  
 23 exchange of other property or on secured or unsecured credit and includes acquiring  
 24 [RECEIVING] goods or documents of title under a preexisting lease contract, but does  
 25 not include a transfer in bulk or as security for or in total or partial satisfaction of a  
 26 money debt;

27 \* **Sec. 77.** AS 45.12.304(b) is amended to read:

28 (b) A subsequent lessee in [THE] ordinary course of business from a lessor  
 29 who is a merchant dealing in goods of that kind to whom the goods were entrusted by  
 30 the existing lessee of that lessor before the interest of the subsequent lessee became  
 31 enforceable against that lessor obtains, to the extent of the leasehold interest

transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

\* **Sec. 78.** AS 45.12.305(b) is amended to read:

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

\* **Sec. 79.** AS 45.12.310(d) is amended to read:

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

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

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

\* **Sec. 80.** AS 45.12.501(d) is amended to read:

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

\* **Sec. 81.** AS 45.12.514(b) is amended to read:

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

\* **Sec. 82.** AS 45.12.518(b) is amended to read:

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

1 lessee may recover from the lessor as damages

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

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

9 \* **Sec. 83.** AS 45.12.519(a) is amended to read:

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

21 \* **Sec. 84.** AS 45.12.526(b) is amended to read:

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

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

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

27 (3) [SUCH] an acknowledgment to the lessee **under (1) or (2) of this**  
28 **subsection** by a carrier **by** [VIA] reshipment or as **a warehouse**  
29 [WAREHOUSEMAN].

30 \* **Sec. 85.** AS 45.12.527(b) is amended to read:

31 (b) Except as otherwise provided with respect to damages liquidated in the

1 lease agreement under AS 45.12.504 or otherwise determined under agreement of the  
 2 parties under **AS 45.01.302** [AS 45.01.102(c)] and AS 45.12.503, if the disposition is  
 3 by lease agreement substantially similar to the original lease agreement and the new  
 4 lease agreement is made in good faith and in a commercially reasonable manner, the  
 5 lessor may recover from the lessee as damages

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

8 (2) the present value, as of the same date, of the total rent for the then  
 9 remaining lease term of the original lease agreement minus the present value, as of the  
 10 same date, of the rent under the new lease agreement applicable to that period of the  
 11 new lease term that is comparable to the then remaining term of the original lease  
 12 agreement; and

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

15 \* **Sec. 86.** AS 45.12.528(a) is amended to read:

16 (a) Except as otherwise provided with respect to damages liquidated in the  
 17 lease agreement under AS 45.12.504 or otherwise determined under agreement of the  
 18 parties under **AS 45.01.302** [AS 45.01.102(c)] and AS 45.12.503, if a lessor elects to  
 19 retain the goods or a lessor elects to dispose of the goods and the disposition is by  
 20 lease agreement that for any reason does not qualify for treatment under  
 21 AS 45.12.527(b), or is by sale or otherwise, the lessor may recover from the lessee as  
 22 damages for a default described in AS 45.12.523(a) or (c)(1), or, if agreed, for other  
 23 default of the lessee

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

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

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

\* **Sec. 87.** AS 45.14.105(a)(7) is amended to read:

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

\* **Sec. 88.** AS 45.14.106(a) is amended to read:

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

\* **Sec. 89.** AS 45.14.204(b) is amended to read:

(b) Reasonable time under (a) of this section may be fixed by agreement as stated in **AS 45.01.302(b)** [AS 45.01.204(a)], but the obligation of a receiving bank to refund payment as stated in (a) of this section may not otherwise be varied by agreement.

\* **Sec. 90.** AS 45.29.102(a)(59) is amended to read:

(59) "issuer," with respect to a

(A) letter of credit or letter-of-credit right, has the meaning given in AS 45.05.102(a);

(B) security, has the meaning given in AS 45.08.201;

**(C) document of title, has the meaning given in**

**AS 45.07.112;**

\* **Sec. 91.** AS 45.29.102(a) is amended by adding a new paragraph to read:

(104) "control" has the meaning given in AS 45.07.116.

\* **Sec. 92.** AS 45.29.203(b) is amended to read:

(b) Except as otherwise provided in (c) - (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under AS 45.29.313 under the debtor's security agreement;

(C) the collateral is a certificated security in registered form, and the security certificate has been delivered to the secured party under AS 45.08.301 under the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, [OR] letter-of-credit rights, **or electronic documents,** and the secured party has control under **AS 45.07.116,** AS 45.29.104, 45.29.105, 45.29.106, or 45.29.107 under the debtor's security agreement.

\* **Sec. 93.** AS 45.29.207(c) is amended to read:

(c) Except as otherwise provided in (d) of this section, a secured party having possession of collateral or control of collateral under **AS 45.07.116,** AS 45.29.104, 45.29.105, 45.29.106, or 45.29.107

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation unless remitted to the debtor; and

(3) may create a security interest in the collateral.

\* **Sec. 94.** AS 45.29.208(b) is amended to read:

(b) Within 10 days after receiving an authenticated demand by the debtor, a secured party

(1) having control of a deposit account under AS 45.29.104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from further obligation to comply with instructions originated by the secured party;

(2) having control of a deposit account under AS 45.29.104(a)(3) shall

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) other than a buyer, having control of electronic chattel paper under AS 45.29.105 shall

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) having control of investment property under AS 45.08.106(d)(2) or AS 45.29.106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity

intermediary from further obligation to comply with entitlement orders or directions originated by the secured party; [AND]

(5) having control of a letter-of-credit right under AS 45.29.107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

**(6) having control of an electronic document shall**

**(A) give control of the electronic document to the debtor or its designated custodian;**

**(B) if the debtor designates a custodian who is the designated custodian with whom the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and**

**(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.**

\* **Sec. 95.** AS 45.29.301 is amended to read:

**Sec. 45.29.301. Law governing perfection and priority of security interests.**

Except as otherwise provided in AS 45.29.303 - 45.29.306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral;

(2) while collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral;



(3) except as otherwise provided in (4) of this section, while **tangible** negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral;

(4) the local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

\* **Sec. 96.** AS 45.29.310(b) is amended to read:

(b) The filing of a financing statement is not necessary to perfect a security interest

(1) that is perfected under AS 45.29.308(d), (e), (f), or (g);

(2) that is perfected under AS 45.29.309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in AS 45.29.311(a);

(4) in goods in possession of a bailee that is perfected under AS 45.29.312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments that is perfected without filing, **control**, or possession under AS 45.29.312(e), (f), or (g);

(6) in collateral in the secured party's possession under AS 45.29.313;

(7) in a certificated security that is perfected by delivery of the security certificate to the secured party under AS 45.29.313;

(8) in deposit accounts, electronic chattel paper, **electronic documents**, investment property, or letter-of-credit rights that is perfected by control under AS 45.29.314;

(9) in proceeds that is perfected under AS 45.29.315; or

(10) that is perfected under AS 45.29.316.

\* **Sec. 97.** AS 45.29.312(e) is amended to read:

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time the security interest attaches to the extent that it arises for new value given under an authenticated security agreement.

\* **Sec. 98.** AS 45.29.313(a) is amended to read:

(a) Except as otherwise provided in (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under AS 45.08.301.

\* **Sec. 99.** AS 45.29.314(a) is amended to read:

(a) A security interest in deposit accounts, electronic chattel paper, investment property, [OR] letter-of-credit rights, or electronic documents may be perfected by control of the collateral under AS 45.07.116, AS 45.29.104, 45.29.105, 45.29.106, or 45.29.107.

\* **Sec. 100.** AS 45.29.314(b) is amended to read:

(b) A security interest in deposit accounts, electronic chattel paper, [OR] letter-of-credit rights, or electronic documents is perfected by control under AS 45.07.116, AS 45.29.104, 45.29.105, or 45.29.107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

\* **Sec. 101.** AS 45.29.317(b) is amended to read:

(b) Except as otherwise provided in (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

\* **Sec. 102.** AS 45.29.317(d) is amended to read:

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before

1 it is perfected.

2 \* **Sec. 103.** AS 45.29.338 is amended to read:

3 **Sec. 45.29.338. Priority of security interest or agricultural lien perfected**  
 4 **by filed financing statement providing certain incorrect information.** If a security  
 5 interest or agricultural lien is perfected by a filed financing statement providing  
 6 information described in AS 45.29.516(b)(5) that is incorrect at the time the financing  
 7 statement is filed,

8 (1) the security interest or agricultural lien is subordinate to a  
 9 conflicting perfected security interest in the collateral to the extent that the holder of  
 10 the conflicting security interest gives value in reasonable reliance upon the incorrect  
 11 information; and

12 (2) a purchaser, other than a secured party, of the collateral takes free  
 13 of the security interest or agricultural lien to the extent that, in reasonable reliance  
 14 upon the incorrect information, the purchaser gives value and, in the case of **tangible**  
 15 chattel paper, **tangible** documents, goods, instruments, or a security certificate,  
 16 receives delivery of the collateral.

17 \* **Sec. 104.** AS 45.29.601(b) is amended to read:

18 (b) A secured party in possession of collateral or control of collateral under  
 19 **AS 45.07.116**, AS 45.29.104, 45.29.105, 45.29.106, or 45.29.107 has the rights and  
 20 duties provided in AS 45.29.207.

21 \* **Sec. 105.** AS 45.35.099(4) is amended to read:

22 (4) "lease-purchase agreement"

23 (A) means an agreement for the use of personal property  
 24 primarily for personal, family, or household purposes if the agreement is for an  
 25 initial period of four months or less, is automatically renewable with each  
 26 payment after the initial period, does not obligate or require the consumer to  
 27 continue leasing or using the property beyond the initial period, and permits  
 28 the consumer to become the owner of the property;

29 (B) does not include

30 (i) an agreement primarily for commercial or  
 31 agricultural purposes;

(ii) a lease or bailment of personal property if the lease or bailment is incidental to the lease of real property and provides that the consumer does not have an option to purchase the leased personal property;

(iii) a lease of a motor vehicle;

(iv) a security interest as defined under AS 45.01.211 [AS 45.01.201];

(v) a retail installment transaction under AS 45.10;

(vi) a lease under AS 45.12;

**\* Sec. 106.** AS 45.65.250(4) is amended to read:

(4) "creditor" has the meaning given in AS 45.01.211 [AS 45.01.201];

**\* Sec. 107.** AS 45.01.101, 45.01.102, 45.01.103, 45.01.104, 45.01.105, 45.01.106, 45.01.107, 45.01.108, 45.01.109, 45.01.201, 45.01.202, 45.01.203, 45.01.204, 45.01.205, 45.01.206, 45.01.207, 45.01.208; AS 45.02.103(a)(2), 45.02.208; AS 45.03.103(a)(4); AS 45.04.104(c)(7); AS 45.07.101, 45.07.102, 45.07.103, 45.07.104, 45.07.105, 45.07.403(d), 45.07.650; AS 45.08.102(a)(11); AS 45.12.103(c)(9), 45.12.207; AS 45.14.105(a)(6); and AS 45.29.102(a)(51) are repealed.

**\* Sec. 108.** The uncoded law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE CHANGES. (a) The provisions of AS 45.01.303(g), enacted by sec. 4 of this Act, have the effect of amending Rule 403, Alaska Rules of Evidence, by requiring the exclusion of certain relevant evidence relating to usage of trade unless certain conditions are met.

(b) The provisions of AS 45.01.307, enacted by sec. 4 of this Act, have the effect of amending Rule 902, Alaska Rules of Evidence, by establishing the authenticity and stated facts of certain documents.

**\* Sec. 109.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act

1 even if the document of title or bailment would be subject to this Act if the document of title  
2 was issued or the bailment arose on or after the effective date of this Act.

3 (b) This Act does not apply to a right of action that has accrued before the effective  
4 date of this Act.

5 \* **Sec. 110.** The uncoded law of the State of Alaska is amended by adding a new section  
6 to read:

7 SAVING CLAUSE. A document of title issued or a bailment that arises before the  
8 effective date of this Act and the rights, obligations, and interests flowing from that document  
9 or bailment are governed by a statute amended or repealed by this Act as if the amendment or  
10 repeal had not occurred and may be terminated, completed, consummated, or enforced under  
11 that statute.

12 \* **Sec. 111.** The uncoded law of the State of Alaska is amended by adding a new section  
13 to read:

14 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the  
15 catch line of

16 (1) AS 45.07.210 from "Enforcement of warehouseman's lien" to  
17 "Enforcement of warehouse's lien"; and

18 (2) AS 45.07.403 from "Obligation of warehouseman or carrier to deliver;  
19 excuse" to "Obligation of bailee to deliver; excuse."

20 \* **Sec. 112.** The uncoded law of the State of Alaska is amended by adding a new section  
21 to read:

22 CONDITIONAL EFFECT. AS 45.01.303(g), enacted by sec. 4 of this Act, and  
23 AS 45.01.307, enacted by sec. 4 of this Act, take effect only if sec. 108 of this Act receives  
24 the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the  
25 State of Alaska.

26 \* **Sec. 113.** This Act takes effect January 1, 2010.