

**HOUSE BILL NO. 553**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 4/17/96

Referred: Labor and Commerce, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to letters of credit under the Uniform Commercial Code;  
2 amending Rules 79 and 82, Alaska Rules of Civil Procedure; and providing for  
3 an effective date."

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

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

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

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

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

12 (3) **AS 45.05.116 (applicability of the chapter on letters of credit);**

13 **(4)** AS 45.08.106 (applicability of the chapter on investment securities);

14 **(5)** [(4)] AS 45.09.103 (perfection provisions of the chapter on secured

1 transactions);

2 (6) [(5)] AS 45.12.105 and 45.12.106 (applicability of the chapter on  
3 leases);

4 (7) [(6)] AS 45.14 (funds transfers).

5 \* **Sec. 2.** AS 45.02.512(a) is amended to read:

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

8 (1) the nonconformity appears without inspection; or

9 (2) despite tender of the required documents, the circumstances would  
10 justify injunction against honor under AS 45.05.109(b) [THE PROVISIONS OF  
11 AS 45.05.114].

12 \* **Sec. 3.** AS 45.05.102 is repealed and reenacted to read:

13 Sec. 45.05.102. DEFINITIONS. (a) In this chapter,

14 (1) "adviser" means a person who, at the request of the issuer, a  
15 confirmer, or another adviser, notifies or requests another adviser to notify the  
16 beneficiary that a letter of credit has been issued, confirmed, or amended;

17 (2) "applicant" means a person at whose request or for whose account  
18 a letter of credit is issued; "applicant" includes a person who requests an issuer to issue  
19 a letter of credit on behalf of another if the person making the request undertakes an  
20 obligation to reimburse the issuer;

21 (3) "beneficiary" means a person who under the terms of a letter of  
22 credit is entitled to have the letter of credit's complying presentation honored;  
23 "beneficiary" includes a person to whom drawing rights have been transferred under  
24 a transferable letter of credit;

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

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

31 (6) "document" means a draft or other demand, document of title,

1 investment security, certificate, invoice, or other record, statement, or representation  
2 of fact, law, right, or opinion that is

3 (A) presented in a written or other medium permitted by the  
4 letter of credit or, unless prohibited by the letter of credit, by the standard  
5 practices referred to in AS 45.05.108(e);

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

8 (C) not oral;

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

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

14 (A) upon payment;

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

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

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

22 (10) "letter of credit" means a definite undertaking that satisfies the  
23 requirements of AS 45.05.104 by an issuer to a beneficiary at the request or for the  
24 account of an applicant, or, in the case of a financial institution, to itself or for its own  
25 account, to honor a documentary presentation by payment or delivery of an item of  
26 value;

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

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

30 (B) undertakes by agreement or custom and practice to  
31 reimburse;

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

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

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

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

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

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

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

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

19 \* **Sec. 4.** AS 45.05.103 is repealed and reenacted to read:

20 Sec. 45.05.103. SCOPE. (a) This chapter applies to letters of credit and to  
21 certain rights and obligations arising out of transactions involving letters of credit.

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

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

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

6 \* **Sec. 5.** AS 45.05.104 is repealed and reenacted to read:

7 Sec. 45.05.104. FORMAL REQUIREMENTS. A letter of credit, confirmation,  
8 advice, transfer, amendment, or cancellation may be issued in any form that is a record  
9 and is authenticated

10 (1) by a signature; or

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

13 \* **Sec. 6.** AS 45.05.105 is repealed and reenacted to read:

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

16 \* **Sec. 7.** AS 45.05.106 is repealed and reenacted to read:

17 Sec. 45.05.106. ISSUANCE, AMENDMENT, CANCELLATION, AND  
18 DURATION. (a) A letter of credit is issued and becomes enforceable according to  
19 its terms against the issuer when the issuer sends or otherwise transmits it to the  
20 person requested to advise or to the beneficiary. A letter of credit is revocable only  
21 if it provides that it is revocable.

22 (b) After a letter of credit is issued, rights and obligations of a beneficiary,  
23 applicant, confirmer, and issuer are not affected by an amendment or cancellation to  
24 which the beneficiary, applicant, confirmer, or issuer has not consented, except to the  
25 extent the letter of credit provides that the letter of credit is revocable or that the issuer  
26 may amend or cancel the letter of credit without the consent.

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

31 (d) A letter of credit that states that it is perpetual expires five years after its

1 stated date of issuance, or, if a date of issuance is not stated, after the date on which  
2 the letter of credit is issued.

3 \* **Sec. 8.** AS 45.05.107 is repealed and reenacted to read:

4 Sec. 45.05.107. CONFIRMER, NOMINATED PERSON, AND ADVISER.

5 (a) A confirmer is directly obligated on a letter of credit and has the rights and  
6 obligations of an issuer to the extent of the confirmer's confirmation. The confirmer  
7 also has rights against and obligations to the issuer as if the issuer were an applicant  
8 and the confirmer had issued the letter of credit at the request and for the account of  
9 the issuer.

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

12 (c) A person requested to advise may decline to act as an adviser. An adviser  
13 who is not a confirmer is not obligated to honor or give value for a presentation. An  
14 adviser undertakes to the issuer and to the beneficiary to advise accurately as to the  
15 terms of the letter of credit, confirmation, amendment, or advice received by the  
16 adviser and undertakes to the beneficiary to check the apparent authenticity of the  
17 request to advise. Even if the advice is inaccurate, the letter of credit, confirmation,  
18 or amendment is enforceable as issued.

19 (d) A person who notifies a transferee beneficiary of the terms of a letter of  
20 credit, confirmation, amendment, or advice has the rights and obligations of an adviser  
21 under (c) of this section. The terms in the notice to the transferee beneficiary may  
22 differ from the terms in a notice to the transferor beneficiary to the extent permitted  
23 by the letter of credit, confirmation, amendment, or advice received by the person who  
24 notifies the transferee beneficiary.

25 \* **Sec. 9.** AS 45.05.108 is repealed and reenacted to read:

26 Sec. 45.05.108. ISSUER'S RIGHTS AND OBLIGATIONS. (a) Except as  
27 otherwise provided in AS 45.05.109, an issuer shall honor a presentation that, as  
28 determined by the standard practices referred to in (e) of this section, appears on its  
29 face to comply strictly with the terms and conditions of the letter of credit. Except as  
30 otherwise provided in AS 45.05.113 and unless otherwise agreed with the applicant,  
31 an issuer shall dishonor a presentation that does not appear on its face to comply

1 strictly with the terms and conditions of the letter of credit.

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

5 (1) to honor the presentation;

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

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

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

12 (1) timely notice is not given; or

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

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

18 (e) An issuer shall observe the standard practices of financial institutions that  
19 regularly issue letters of credit. A determination of the issuer's observance of the  
20 standard practices is a matter of interpretation for a court. A court shall offer the  
21 parties a reasonable opportunity to present evidence of the standard practices.

22 (f) An issuer is not responsible for

23 (1) the performance or nonperformance of the underlying contract,  
24 arrangement, or transaction;

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

26 (3) observance or knowledge of the usage of a particular trade, other  
27 than the standard practices referred to in (e) of this section.

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

31 (h) An issuer who dishonors a presentation shall return the documents or hold

1 them at the disposal of, and send advice to that effect to, the presenter.

2 (i) An issuer who honors a presentation as permitted or required by this  
3 chapter

4 (1) is entitled to be reimbursed by the applicant in immediately  
5 available funds not later than the date of the payment of funds;

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

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

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

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

16 \* **Sec. 10.** AS 45.05.109 is repealed and reenacted to read:

17 Sec. 45.05.109. FRAUD AND FORGERY. (a) If a presentation is made that  
18 appears on its face to comply strictly with the terms and conditions of the letter of  
19 credit, but a required document is forged or materially fraudulent, or honor of the  
20 presentation would facilitate a material fraud by the beneficiary on the issuer or  
21 applicant, the issuer

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

23 (A) a nominated person who gives value in good faith and  
24 without notice of forgery or material fraud;

25 (B) a confirmer who honors the confirmation in good faith;

26 (C) a holder in due course of a draft that is drawn under the  
27 letter of credit and that is taken after acceptance by the issuer or nominated  
28 person; or

29 (D) an assignee of the issuer's or nominated person's deferred  
30 obligation if the obligation is taken for value and without notice of forgery or  
31 material fraud after the obligation is incurred by the issuer or nominated

1 person;

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

4 (b) If an applicant claims that a required document is forged or materially  
5 fraudulent or that honor of the presentation would facilitate a material fraud by the  
6 beneficiary on the issuer or applicant, a court of competent jurisdiction may not  
7 temporarily or permanently enjoin the issuer from honoring a presentation or grant  
8 similar relief against the issuer or other persons unless the court finds that

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

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

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

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

19 \* **Sec. 11.** AS 45.05.110 is repealed and reenacted to read:

20 Sec. 45.05.110. WARRANTIES. (a) If a presentation is honored, the  
21 beneficiary warrants to

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

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

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

31 \* **Sec. 12.** AS 45.05.111 is repealed and reenacted to read:

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

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

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

26           (d) An issuer, nominated person, or adviser who is found liable under (a) - (c)  
27 of this section shall pay interest on the amount owed under the liability from the date  
28 of wrongful dishonor or other appropriate date.

29           (e) Reasonable attorney fees and other expenses of litigation shall be awarded  
30 to the prevailing party in an action in which a remedy is sought under this chapter.

31           (f) Damages that would otherwise be payable by a party for breach of an

1 obligation under this chapter may be liquidated by agreement or undertaking, but only  
2 in an amount or by a formula that is reasonable in light of the harm anticipated.

3 \* **Sec. 13.** AS 45.05.112 is repealed and reenacted to read:

4 Sec. 45.05.112. TRANSFER OF LETTER OF CREDIT. (a) Except as  
5 otherwise provided in AS 45.05.113, unless a letter of credit provides that it is  
6 transferable, the right of a beneficiary to draw or otherwise demand performance under  
7 a letter of credit may not be transferred.

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

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

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

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

14 (B) is within the standard practices referred to in

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

16 \* **Sec. 14.** AS 45.05.113 is repealed and reenacted to read:

17 Sec. 45.05.113. TRANSFER BY OPERATION OF LAW. (a) A successor  
18 of a beneficiary may consent to amendments, sign and present documents, and receive  
19 payment or other items of value in the name of the beneficiary without disclosing its  
20 status as a successor.

21 (b) A successor of a beneficiary may consent to amendments, sign and present  
22 documents, and receive payment or other items of value in its own name as the  
23 disclosed successor of the beneficiary. Except as otherwise provided in (e) of this  
24 section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary  
25 in full substitution for the successor's predecessor if there is compliance with

26 (1) the requirements for recognition by the issuer of a transfer of  
27 drawing rights by operation of law under the standard practices in AS 45.05.108(e);  
28 or

29 (2) in the absence of the standard practices under AS 45.05.108(e),  
30 other reasonable procedures sufficient to protect the issuer.

31 (c) An issuer is not obliged to determine whether a purported successor is a

1 successor of a beneficiary or whether the signature of a purported successor is genuine  
2 or authorized.

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

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

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

14 \* **Sec. 15.** AS 45.05.114 is repealed and reenacted to read:

15 Sec. 45.05.114. ASSIGNMENT OF PROCEEDS. (a) A beneficiary may  
16 assign its right to part or all of the proceeds of a letter of credit. Before presentation,  
17 the beneficiary may make the assignment as a present assignment of the right,  
18 contingent upon the beneficiary's compliance with the terms and conditions of the  
19 letter of credit, to receive the proceeds.

20 (b) An issuer or nominated person need not recognize an assignment of  
21 proceeds of a letter of credit until the issuer or nominated person consents to the  
22 assignment.

23 (c) An issuer or nominated person does not have an obligation to give or  
24 withhold its consent to an assignment of proceeds of a letter of credit, but consent may  
25 not be unreasonably withheld if the assignee possesses and exhibits the letter of credit  
26 and if presentation of the letter of credit is a condition to honor.

27 (d) Rights of a transferee beneficiary or nominated person are independent of  
28 the beneficiary's assignment of the proceeds of a letter of credit and are superior to  
29 the assignee's right to the proceeds.

30 (e) Neither the rights recognized by this section between an assignee and an  
31 issuer, transferee beneficiary, or nominated person, nor the issuer's or nominated

1 person's payment of proceeds to an assignee or a third person, affect the rights  
2 between the assignee and a person other than the issuer, transferee beneficiary, or  
3 nominated person. The mode of creating and perfecting a security interest in or  
4 granting an assignment of a beneficiary's rights to proceeds is governed by AS 45.09  
5 or other law. As against a person other than the issuer, transferee beneficiary, or  
6 nominated person, the rights and obligations arising on the creation and perfection of  
7 a security interest or other assignment of a beneficiary's rights to proceeds are  
8 governed by AS 45.09 or other law.

9 (f) In this section, "proceeds of a letter of credit" means the cash, check,  
10 accepted draft, or other item of value paid or delivered upon honor or giving of value  
11 by the issuer or a nominated person under the letter of credit. The term does not  
12 include a beneficiary's drawing rights or documents presented by the beneficiary.

13 \* **Sec. 16.** AS 45.05.115 is repealed and reenacted to read:

14 Sec. 45.05.115. STATUTE OF LIMITATIONS. An action to enforce a right  
15 or obligation arising under this chapter must be commenced within one year after the  
16 expiration date of the relevant letter of credit or one year after the cause of action  
17 accrues, whichever occurs later. A cause of action accrues when the breach occurs,  
18 regardless of the aggrieved party's lack of knowledge of the breach.

19 \* **Sec. 17.** AS 45.05.116 is repealed and reenacted to read:

20 Sec. 45.05.116. CHOICE OF LAW AND FORUM. (a) The liability of an  
21 issuer, nominated person, or adviser for an action or omission is governed by the law  
22 of the jurisdiction chosen by an agreement in the form of a record signed or otherwise  
23 authenticated by the affected parties in the manner provided in AS 45.05.104 or by a  
24 provision in the letter of credit, confirmation, or other undertaking. The jurisdiction  
25 whose law is chosen does not need to bear a relation to the transaction.

26 (b) Unless (a) of this section applies, the liability of an issuer, nominated  
27 person, or adviser for action or omission is governed by the law of the jurisdiction in  
28 which the issuer, nominated person, or adviser is located. The issuer, nominated  
29 person, or adviser is considered to be located at the address indicated in the  
30 undertaking of the issuer, nominated person, or adviser. If more than one address is  
31 indicated, the issuer, nominated person, or adviser is considered to be located at the

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

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

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

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

21 \* **Sec. 18.** AS 45.05.117 is repealed and reenacted to read:

22 Sec. 45.05.117. SUBROGATION OF ISSUER, APPLICANT, AND  
23 NOMINATED PERSON. (a) An issuer who honors a beneficiary's presentation is  
24 subrogated to the rights of

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

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

29 (b) An applicant who reimburses an issuer is subrogated to the rights of the  
30 issuer against a beneficiary, presenter, or nominated person to the same extent as if the  
31 applicant were the secondary obligor of the obligations owed to the issuer, and the

1 applicant has the rights of subrogation of the issuer to the rights of the beneficiary  
2 stated in (a) of this section.

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

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

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

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

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

18 \* **Sec. 19.** AS 45.09.103(a) is amended to read:

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

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

27 (2) if the parties to a transaction creating a purchase money security  
28 interest in goods in one jurisdiction understand at the time that the security interest  
29 attaches that the goods will be kept in another jurisdiction, then the law of the other  
30 jurisdiction governs the perfection and the effect of perfection or nonperfection of the  
31 security interest from the time it attaches until 30 days after the debtor receives

1 possession of the goods and thereafter if the goods are taken to the other jurisdiction  
2 before the end of the 30-day period;

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

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

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

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

20 \* **Sec. 20.** AS 45.09.104 is amended by adding a new paragraph to read:

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

23 \* **Sec. 21.** AS 45.09.105(c) is amended to read:

24 (c) The following definitions apply to this chapter [:]

25 (1) "check" (AS 45.03.104);

26 (2) "contract for sale" (AS 45.02.106);

27 (3) "holder in due course" (AS 45.03.302);

28 (4) **"letter of credit" (AS 45.05.102);**

29 **(5) "proceeds of a letter of credit" (AS 45.05.114(f));**

30 ~~(6)~~ "note" (AS 45.03.104);

31 ~~(7)~~ [(5)] "sale" (AS 45.02.106).

1 \* **Sec. 22.** AS 45.09.106 is amended to read:

2           Sec. 45.09.106. DEFINITIONS: "ACCOUNT"; "GENERAL INTANGIBLES."  
3           "Account" means a right to payment for goods sold or leased or for services rendered  
4           **that** [WHICH] is not evidenced by an instrument or chattel paper, whether or not it  
5           has been earned by performance. "General intangibles" means personal property  
6           (including a thing in action) other than goods, accounts, chattel paper, documents,  
7           instruments, **rights to proceeds of written letters of credit**, and money. All rights  
8           to payment earned or unearned under a charter or other contract involving the use or  
9           hire of a vessel and all rights incident to the charter or contract are accounts.

10 \* **Sec. 23.** AS 45.09.304(a) is amended to read:

11           (a) A security interest in chattel paper or negotiable documents may be  
12           perfected by filing. **A security interest in the rights to proceeds of a written letter**  
13           **of credit can be perfected only by the secured party's taking possession of the**  
14           **letter of credit.** A security interest in money or instruments (other than certificated  
15           securities or instruments that constitute part of chattel paper) can be perfected only  
16           by the secured party's taking possession, except as provided in (d) and (e) of this  
17           section and AS 45.09.306(b) and (c) on proceeds.

18 \* **Sec. 24.** AS 45.09.305 is amended to read:

19           Sec. 45.09.305. WHEN POSSESSION BY SECURED PARTY PERFECTS  
20           SECURITY INTEREST WITHOUT FILING. A security interest in [LETTERS OF  
21           CREDIT AND ADVICES OF CREDIT (AS 45.05.116(b)(1)),] goods, instruments  
22           (other than certificated securities), money, negotiable documents, or chattel paper may  
23           be perfected by the secured party's taking possession of the collateral. **A security**  
24           **interest in the rights to proceeds of a written letter of credit may be perfected by**  
25           **the secured party's taking possession of the letter of credit.** If the collateral, other  
26           than goods covered by a negotiable document, is held by a bailee, the secured party  
27           is considered to have possession from the time the bailee receives notification of the  
28           secured party's interest. A security interest is perfected by possession from the time  
29           possession is taken without relation back and continues only so long as possession is  
30           retained unless otherwise specified in this chapter. The security interest may be  
31           otherwise perfected as provided in this chapter before or after the period of possession

1 by the secured party.

2 \* **Sec. 25.** AMENDMENT OF COURT RULES. AS 45.05.111(e), as enacted by sec. 12  
3 of this Act, amends

4 (1) Rule 79, Alaska Rules of Civil Procedure, by establishing different criteria  
5 for awarding costs;

6 (2) Rule 82, Alaska Rules of Civil Procedure, by establishing a different  
7 criterion for determining the amount of attorney fees to be awarded to a prevailing party.

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

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

17 \* **Sec. 27.** This Act takes effect January 1, 1997.