

HOUSE BILL NO. 239

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MURKOWSKI BY REQUEST

Introduced: 5/14/99

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

5 * **Section 1.** AS 45.09 is repealed and reenacted to read:

6 **Chapter 09. Secured Transactions.**

7 **Article 1. General Provisions.**

8 **Sec. 45.09.101. Short title.** This chapter may be cited as Uniform
9 Commercial Code - Secured Transactions.

10 **Sec. 45.09.102. Definitions.** (a) In this chapter,

11 (1) "accession" means goods that are physically united with other goods
12 in a manner so that the identity of the original goods is not lost;

13 (2) "account," except as used in "account for,"

14 (A) means a right to payment of a monetary obligation, whether

1 or not earned by performance,

2 (i) for property that has been or is to be sold, leased,
3 licensed, assigned, or otherwise disposed of;

4 (ii) for services rendered or to be rendered;

5 (iii) for a policy of insurance issued or to be issued;

6 (iv) for a secondary obligation incurred or to be
7 incurred;

8 (v) for energy provided or to be provided;

9 (vi) for the use or hire of a vessel under a charter or
10 other contract;

11 (vii) arising out of the use of a credit or charge card or
12 information contained on or for use with the card; or

13 (viii) as winnings in a lottery or other game of chance
14 operated or sponsored by a state, a governmental unit of a state, or a
15 person licensed or authorized to operate the game by a state or a
16 governmental unit of a state;

17 (B) includes health care insurance receivables;

18 (C) does not include rights to payment evidenced by chattel
19 paper or by an instrument, commercial tort claims, deposit accounts, investment
20 property, letter-of-credit rights or letters of credit, or rights to payment for
21 money or funds advanced or sold, other than rights arising out of the use of a
22 credit or charge card or information contained on or for use with the card;

23 (3) "account debtor" means a person obligated on an account, chattel
24 paper, or general intangible, except that "account debtor" does not include persons
25 obligated to pay a negotiable instrument even if the instrument constitutes part of
26 chattel paper;

27 (4) "accounting," except as used in "accounting for," means a record

28 (A) authenticated by a secured party;

29 (B) indicating the aggregate unpaid secured obligations as of a
30 date not more than 35 days earlier or 35 days later than the date of the record;
31 and

1 (C) identifying the components of the obligations in reasonable
2 detail;

3 (5) "agricultural lien" means an interest, other than a security interest,
4 in farm products

5 (A) that secures payment or performance of an obligation for
6 (i) goods or services furnished in connection with a
7 debtor's farming operation; or

8 (ii) rent on real property leased by a debtor in
9 connection with the debtor's farming operation;

10 (B) that is created by statute in favor of a person who

11 (i) in the ordinary course of its business, furnished goods
12 or services to a debtor in connection with the debtor's farming
13 operation; or

14 (ii) leased real property to a debtor in connection with
15 the debtor's farming operation; and

16 (C) whose effectiveness does not depend on the person's
17 possession of the personal property;

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

22 (7) "as-extracted collateral" means

23 (A) oil, gas, or other minerals that are subject to a security
24 interest that

25 (i) is created by a debtor having an interest in the
26 minerals before extraction; and

27 (ii) attaches to the minerals as extracted; or

28 (B) accounts arising out of the sale at the wellhead or minehead
29 of oil, gas, or other minerals in which the debtor had an interest before
30 extraction;

31 (8) "authenticate" means to

1 (A) sign; or

2 (B) execute or otherwise adopt a symbol, or to encrypt or
3 similarly process a record in whole or in part, with the present intent of the
4 authenticating person to identify the person and adopt or accept a record;

5 (9) "bank" means an organization that is engaged in the business of
6 banking, including a savings bank, savings and loan association, credit union, and trust
7 company;

8 (10) "beneficiary" means a person who, under the terms of a letter of
9 credit, is entitled to have its complying presentation honored, including a person to
10 whom drawing rights have been transferred under a transferable letter of credit;

11 (11) "broker" has the meaning given in AS 45.08.102(a);

12 (12) "cash proceeds" means proceeds that are money, checks, deposit
13 accounts, or the like;

14 (13) "certificated security" has the meaning given in AS 45.08.102(a);

15 (14) "certificate of title" means a certificate of title with respect to
16 which a statute provides for the security interest in question to be indicated on the
17 certificate as a condition or result of the security interest's obtaining priority over the
18 rights of a lien creditor with respect to the collateral;

19 (15) "chattel paper" means a record or records that evidence both a
20 monetary obligation and a security interest in specific goods, a security interest in
21 specific goods and software used in the goods, or a lease of specific goods, except that
22 "chattel paper" does not include charters or other contracts involving the use or hire
23 of a vessel; if a transaction is evidenced both by a security agreement or lease and by
24 an instrument or series of instruments, the group of records taken together constitutes
25 chattel paper;

26 (16) "check" has the meaning given in AS 45.03.104(f);

27 (17) "collateral" means the property subject to a security interest or
28 agricultural lien, including

29 (A) proceeds to which a security interest attaches;

30 (B) accounts, chattel paper, payment intangibles, and promissory
31 notes that have been sold; and

1 (C) goods that are the subject of a consignment;

2 (18) "commercial tort claim" means a claim arising in tort with respect
3 to which the claimant is

4 (A) an organization; or

5 (B) an individual and the claim

6 (i) arose in the course of the claimant's business or
7 profession; and

8 (ii) does not include damages arising out of personal
9 injury to or the death of an individual;

10 (19) "commodity account" means an account maintained by a
11 commodity intermediary in which a commodity contract is carried for a commodity
12 customer;

13 (20) "commodity contract" means a commodity futures contract, an
14 option on a commodity futures contract, a commodity option, or another contract if the
15 contract or option is traded on

16 (A) or subject to the rules of a board of trade that has been
17 designated as a contract market for the contract under federal commodities
18 laws; or

19 (B) a foreign commodity board of trade, exchange, or market
20 and is carried on the books of a commodity intermediary for a commodity
21 customer;

22 (21) "commodity customer" means a person for whom a commodity
23 intermediary carries a commodity contract on its books;

24 (22) "commodity intermediary" means a person who

25 (A) is registered as a futures commission merchant under
26 federal commodities law; or

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

30 (23) "communicate" means

31 (A) to send a written or other tangible record;

1 (B) to transmit a record by any means agreed upon by the
2 persons sending and receiving the record; or

3 (C) in the case of transmission of a record to or by a filing
4 office, to transmit a record by any means prescribed by filing office regulation;

5 (24) "consignee" means a merchant to whom goods are delivered in a
6 consignment;

7 (25) "consignment" means a transaction, regardless of its form, in
8 which a person delivers goods to a merchant for the purpose of sale and

9 (A) the merchant

10 (i) deals in goods of that kind under a name other than
11 the name of the person making delivery;

12 (ii) is not an auctioneer; and

13 (iii) is not generally known by the merchant's creditors
14 to be substantially engaged in selling the goods of others;

15 (B) with respect to each delivery, the aggregate value of the
16 goods is \$1,000 or more at the time of delivery;

17 (C) the goods are not consumer goods immediately before
18 delivery; and

19 (D) the transaction does not create a security interest that
20 secures an obligation;

21 (26) "consignor" means a person who delivers goods to a consignee in
22 a consignment;

23 (27) "consumer goods" means goods that are used or bought for use
24 primarily for personal, family, or household purposes;

25 (28) "consumer goods transaction" means a consumer transaction in
26 which

27 (A) an individual incurs an obligation primarily for personal,
28 family, or household purposes; and

29 (B) a security interest in consumer goods secures the obligation;

30 (29) "consumer obligor" means an obligor who is an individual and
31 who incurred the obligation as part of a transaction entered into primarily for personal,

1 family, or household purposes;

2 (30) "consumer transaction" means a transaction, including a consumer
3 goods transaction, in which

4 (A) an individual incurs an obligation primarily for personal,
5 family, or household purposes;

6 (B) a security interest secures the obligation; and

7 (C) the collateral is held or acquired primarily for personal,
8 family, or household purposes;

9 (31) "continuation statement" means an amendment of a financing
10 statement that

11 (A) identifies, by its file number, the initial financing statement
12 to which it relates; and

13 (B) indicates that it is a continuation statement for, or that it is
14 filed to continue the effectiveness of, the identified financing statement;

15 (32) "contract for sale" has the meaning given in AS 45.02.106(a);

16 (33) "customer" has the meaning given in AS 45.04.104(a);

17 (34) "debtor" means

18 (A) a person having an interest, other than a security interest or
19 other lien, in the collateral whether or not the person is an obligor;

20 (B) a seller of accounts, chattel paper, payment intangibles, or
21 promissory notes; or

22 (C) a consignee;

23 (35) "deposit account" means a demand, time, savings, passbook, or
24 similar account maintained with a bank except that the term does not include
25 investment property or accounts evidenced by an instrument;

26 (36) "document" means a document of title or a receipt of the type
27 described in AS 45.07.201(b);

28 (37) "electronic chattel paper" means chattel paper evidenced by a
29 record or records consisting of information stored in an electronic medium;

30 (38) "encumbrance" means a right, other than an ownership interest, in
31 real property, including mortgages and other liens on real property;

- 1 (39) "entitlement holder" has the meaning given in AS 45.08.102(a);
- 2 (40) "equipment" means goods other than inventory, farm products, or
3 consumer goods;
- 4 (41) "farm products" means goods, other than standing timber, with
5 respect to which the debtor is engaged in a farming operation and that are
- 6 (A) crops grown, growing, or to be grown, including
- 7 (i) crops produced on trees, vines, and bushes; and
- 8 (ii) aquatic goods produced in aquacultural operations;
- 9 (B) livestock, born or unborn, including aquatic goods produced
10 in aquacultural operations;
- 11 (C) supplies used or produced in a farming operation; or
- 12 (D) products of crops or livestock in their unmanufactured
13 states;
- 14 (42) "farming operation" means raising, cultivating, propagating,
15 fattening, grazing, or other farming, livestock, or aquacultural operation.
- 16 (43) "file number" means the number assigned to an initial financing
17 statement under AS 45.09.519(a);
- 18 (44) "filing office" means an office designated in AS 45.09.501 as the
19 place to file a financing statement;
- 20 (45) "filing office regulation" means a regulation adopted under
21 AS 44.37.027;
- 22 (46) "financial asset" has the meaning given in AS 45.08.102(a);
- 23 (47) "financing statement" means a record or records composed of an
24 initial financing statement and any filed record relating to the initial financing
25 statement;
- 26 (48) "fixture filing" means the filing of a financing statement covering
27 goods that are or are to become fixtures and satisfying AS 45.09.502(a) and (b),
28 including the filing of a financing statement covering goods of a transmitting utility
29 that are or are to become fixtures;
- 30 (49) "fixtures" means goods that have become so related to particular
31 real property that an interest in them arises under real property law;

1 (50) "general intangible" means personal property, including payment
2 intangibles, software, and things in action, other than accounts, chattel paper,
3 commercial tort claims, deposit accounts, documents, goods, instruments, investment
4 property, letter-of-credit rights, letters of credit, money, and, before extraction, oil, gas,
5 or other minerals;

6 (51) "good faith" means honesty in fact and the observance of
7 reasonable commercial standards of fair dealing;

8 (52) "goods" means things that are movable when a security interest
9 attaches; the term includes (A) fixtures; (B) standing timber that is to be cut and
10 removed under a conveyance or contract for sale; (C) the unborn young of animals;
11 (D) crops grown, growing, or to be grown, even if the crops are produced on trees,
12 vines, or bushes; and (E) manufactured homes; the term also includes a computer
13 program embedded in goods and supporting information provided in connection with
14 a transaction relating to the program if the program is associated with the goods in
15 such a manner that it customarily is considered part of the goods or if, by becoming
16 the owner of the goods, a person acquires a right to use the program in connection
17 with the goods; the term does not include a computer program embedded in goods that
18 consist solely of the medium with which the program is embedded; the term also does
19 not include accounts, chattel paper, commercial tort claims, deposit accounts,
20 documents, general intangibles, instruments, investment property, letter-of-credit rights,
21 letters of credit, money, or, before extraction, oil, gas, or other minerals;

22 (53) "governmental unit" means

23 (A) a subdivision, agency, department, county, parish,
24 municipality, or other unit of the government of the United States, a state, or
25 a foreign country;

26 (B) an organization having a separate corporate existence if the
27 organization is eligible to issue debt on which interest is exempt from income
28 taxation under the laws of the United States;

29 (54) "health care insurance receivable" means an interest in or claim
30 under a policy of insurance that is a right to payment of a monetary obligation for
31 health-care goods or services provided;

- 1 (55) "holder in due course" has the meaning given in AS 45.03.302;
- 2 (56) "instrument" means a negotiable instrument or other writing that
3 evidences a right to the payment of a monetary obligation and is not itself a security
4 agreement or lease and is of a type that in ordinary course of business is transferred
5 by delivery with any necessary endorsement or assignment; the term does not include
- 6 (A) investment property;
- 7 (B) letters of credit; or
- 8 (C) writings that evidence a right to payment arising out of the
9 use of a credit or charge card or information contained on or for use with the
10 card;
- 11 (57) "inventory" means goods, other than farm products, that
- 12 (A) are leased by a person as lessor;
- 13 (B) are held by a person for sale or lease or to be furnished
14 under a contract of service;
- 15 (C) are furnished by a person under a contract of service; or
- 16 (D) consist of raw materials, work in process, or materials used
17 or consumed in a business;
- 18 (58) "investment property" means a security, whether certificated or
19 uncertificated, security entitlement, securities account, commodity contract, or
20 commodity account;
- 21 (59) "issuer," with respect to a
- 22 (A) letter of credit or letter-of-credit right, means a bank or
23 other person that issues a letter of credit, except that the term does not include
24 an individual who makes an engagement for personal, family, or household
25 purposes;
- 26 (B) security, has the meaning given in AS 45.08.201(a);
- 27 (60) "jurisdiction of organization," with respect to a registered
28 organization, means the jurisdiction under whose law the organization is organized;
- 29 (61) "lease," "lease agreement," "lease contract," "leasehold interest,"
30 "lessee," "lessee in ordinary course of business," "lessor," and "lessor's residual
31 interest" have the meanings given in AS 45.12.103(a);

1 (62) "letter of credit" means a definite undertaking that satisfies the
2 requirements of AS 45.05.104 by an issuer to a beneficiary at the request or for the
3 account of an applicant or, in the case of a financial institution, to itself or for its own
4 account, to honor a documentary presentation by payment or delivery of an item of
5 value;

6 (63) "letter-of-credit right" means a right to payment and performance
7 under a letter of credit whether or not the beneficiary has demanded or is at the time
8 entitled to demand payment or performance; the term does not include the right of a
9 beneficiary to demand payment or performance under a letter of credit;

10 (64) "lien creditor" means

11 (A) a creditor who has acquired a lien on the property involved
12 by attachment, levy, or the like;

13 (B) an assignee for benefit of creditors from the time of
14 assignment;

15 (C) a trustee in bankruptcy from the date of the filing of the
16 petition; or

17 (D) a receiver in equity from the time of appointment;

18 (65) "manufactured home" means a structure, transportable in one or
19 more sections, that, in the traveling mode, is eight body feet or more in width or 40
20 body feet or more in length, or, when erected on site, is 320 or more square feet, and
21 that is built on a permanent chassis and designed to be used as a dwelling with or
22 without a permanent foundation when connected to the required utilities, and includes
23 the plumbing, heating, air-conditioning, and electrical systems contained in the
24 structure; the term includes a structure that meets all of the requirements of this
25 paragraph except the size requirements and with respect to which the manufacturer
26 voluntarily files a certification required by the United States Secretary of Housing and
27 Urban Development and complies with the standards established under Title 42, United
28 States Code;

29 (66) "manufactured home transaction" means a secured transaction

30 (A) that creates a purchase money security interest in a
31 manufactured home, other than a manufactured home held as inventory; or

1 (B) in which a manufactured home, other than a manufactured
2 home held as inventory, is the primary collateral;

3 (67) "merchant" has the meaning given in AS 45.02.104(a);

4 (68) "mortgage" means a consensual interest in real property, including
5 fixtures, that secures payment or performance of an obligation;

6 (69) "negotiable instrument" has the meaning given in AS 45.03.104;

7 (70) "new debtor" means a person who becomes bound as debtor under
8 AS 45.09.203(d) by a security agreement previously entered into by another person;

9 (71) "new value" means (A) money, (B) money's worth in property,
10 services, or new credit; or (C) release by a transferee of an interest in property
11 previously transferred to the transferee; the term does not include an obligation
12 substituted for another obligation;

13 (72) "nominated person" means a person whom the issuer

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

16 (B) undertakes by agreement or custom and practice to
17 reimburse;

18 (73) "noncash proceeds" means proceeds other than cash proceeds;

19 (74) "note" has the meaning given in AS 45.03.104;

20 (75) "obligor" means a person who, with respect to an obligation
21 secured by a security interest in or an agricultural lien on the collateral; (A) owes
22 payment or other performance of the obligation; (B) has provided property other than
23 the collateral to secure payment or other performance of the obligation; or (C) is
24 otherwise accountable in whole or in part for payment or other performance of the
25 obligation; the term does not include issuers or nominated persons under a letter of
26 credit;

27 (76) "original debtor" means a person who, as debtor, entered into a
28 security agreement to which a new debtor has become bound under AS 45.09.203(d);

29 (77) "payment intangible" means a general intangible under which the
30 account debtor's principal obligation is a monetary obligation;

31 (78) "person related to," with respect to an

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(A) individual, means

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; or

(iv) another relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual;

(B) an organization, means

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in (i) of this subparagraph;

(iv) the spouse of an individual described in (i), (ii), or (iii) of this subparagraph; or

(v) an individual who is related by blood or marriage to an individual described in (i), (ii), (iii), or (iv) of this subparagraph and shares the same home with the individual;

(79) "proceeds" means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; or

1 (E) to the extent of the value of collateral and to the extent
 2 payable to the debtor or the secured party, insurance payable by reason of the
 3 loss or nonconformity of, defects or infringement of rights in, or damage to, the
 4 collateral;

5 (80) "proceeds of the letter of credit" means the cash, check, accepted
 6 draft, or other item of value paid or delivered upon honor or giving of value by the
 7 issuer or any nominated person under the letter of credit, except that the term does not
 8 include a beneficiary's drawing rights or documents presented by the beneficiary;

9 (81) "promissory note" means an instrument that evidences a promise
 10 to pay a monetary obligation, does not evidence an order to pay, and does not contain
 11 an acknowledgment by a bank that the bank has received for deposit a sum of money
 12 or funds;

13 (82) "proposal" means a record authenticated by a secured party that
 14 includes the terms on which the secured party is willing to accept collateral in full or
 15 partial satisfaction of the obligation it secures under AS 45.09.620 - 45.09.622;

16 (83) "prove" has the meaning given in AS 45.03.103(a);

17 (84) "public finance transaction" means a secured transaction in
 18 connection with which

19 (A) debt securities are issued;

20 (B) all or a portion of the securities issued have an initial stated
 21 maturity of at least 20 years; and

22 (C) the debtor, obligor, secured party, account debtor or other
 23 person obligated on collateral, assignor or assignee of a secured obligation, or
 24 assignor or assignee of a security interest is a state or a governmental unit of
 25 a state;

26 (85) "pursuant to a commitment," with respect to an advance made or
 27 other value given by a secured party, means in accordance with a secured party's
 28 obligation, whether or not a subsequent event of default or other event not within the
 29 secured party's control has relieved or may relieve the secured party from its
 30 obligation;

31 (86) "record," except as used in "for record," "of record," "record or

1 legal title," and "record owner," means information that is inscribed on a tangible
 2 medium or that is stored in an electronic or other medium and is retrievable in
 3 perceivable form;

4 (87) "registered organization" means an organization organized solely
 5 under the law of a single state or the United States and as to which the state or the
 6 United States must maintain a public record showing the organization to have been
 7 organized;

8 (88) "sale" has the meaning given in AS 45.02.106(a);

9 (89) "secondary obligor" means an obligor to the extent that

10 (A) the obligor's obligation is secondary; or

11 (B) the obligor has a right of recourse with respect to an
 12 obligation secured by collateral against the debtor or another obligor, or
 13 property of either;

14 (90) "secured party" means

15 (A) a person in whose favor a security interest is created or
 16 provided for under a security agreement, whether or not an obligation to be
 17 secured is outstanding;

18 (B) a person that holds an agricultural lien;

19 (C) a consignor;

20 (D) a person to which accounts, chattel paper, payment
 21 intangibles, or promissory notes have been sold;

22 (E) a trustee, indenture trustee, agent, collateral agent, or other
 23 representative in whose favor a security interest or agricultural lien is created
 24 or provided for; or

25 (F) a person who holds a security interest arising under
 26 AS 45.02.401, 45.02.505, 45.02.711(c), AS 45.04.210, AS 45.05.118, or
 27 AS 45.12.508(e);

28 (91) "securities account" has the meaning given in AS 45.08.501(e);

29 (92) "securities intermediary" has the meaning given in
 30 AS 45.08.102(a);

31 (93) "security" has the meaning given in AS 45.08.102(a);

1 (94) "security agreement" means an agreement that creates or provides
2 for a security interest;

3 (95) "security certificate" has the meaning given in AS 45.08.102(a);

4 (96) "security entitlement" has the meaning given in AS 45.08.102(a);

5 (97) "send," in connection with a record or notification, means to

6 (A) deposit in the mail, deliver for transmission, or transmit by
7 another usual means of communication, with postage or cost of transmission
8 provided for, addressed to an address reasonable under the circumstances; or

9 (B) cause the record or notification to be received within the
10 time that it would have been received if properly sent under (A) of this
11 paragraph;

12 (98) "software" means a computer program and supporting information
13 provided in connection with a transaction relating to the program; the term does not
14 include a computer program that is included in the definition of "goods";

15 (99) "state" means a state of the United States, the District of
16 Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular
17 possession subject to the jurisdiction of the United States;

18 (100) "supporting obligation" means a letter-of-credit right or secondary
19 obligation that supports the payment or performance of an account, chattel paper, a
20 document, a general intangible, an instrument, or investment property;

21 (101) "tangible chattel paper" means chattel paper evidenced by a
22 record or records consisting of information that is inscribed on a tangible medium;

23 (102) "termination statement" means an amendment of a financing
24 statement that

25 (A) identifies by its file number the initial financing statement
26 to which it relates; and

27 (B) indicates either that it is a termination statement or that the
28 identified financing statement is no longer effective;

29 (103) "transmitting utility" means a person primarily engaged in the
30 business of

31 (A) operating a railroad, subway, street railway, or trolley bus;

1 (B) transmitting communications electrically,
2 electromagnetically, or by light;

3 (C) transmitting goods by pipeline or sewer; or

4 (D) transmitting or producing and transmitting electricity, steam,
5 gas, or water;

6 (104) "uncertificated security" has the meaning given in
7 AS 45.08.102(a).

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

10 **Sec. 45.09.103. Purchase money security interest; application of payments;
11 burden of establishing.** (a) In this section,

12 (1) "purchase money collateral" means goods or software that secures
13 a purchase money obligation incurred with respect to that collateral; and

14 (2) "purchase money obligation" means an obligation of an obligor
15 incurred as all or part of the price of the collateral or for value given to enable the
16 debtor to acquire rights in or the use of the collateral if the value is in fact so used.

17 (b) A security interest in goods is a purchase money security interest

18 (1) to the extent that the goods are purchase money collateral with
19 respect to that security interest;

20 (2) if the security interest is in inventory that is or was purchase money
21 collateral, to the extent that the security interest secures a purchase money obligation
22 incurred with respect to other inventory in which the secured party holds or held a
23 purchase money security interest; and

24 (3) to the extent that the security interest secures a purchase money
25 obligation incurred with respect to software in which the secured party holds or held
26 a purchase money security interest.

27 (c) A security interest in software is a purchase money security interest to the
28 extent that the security interest also secures a purchase money obligation incurred with
29 respect to goods in which the secured party holds or held a purchase money security
30 interest if the debtor acquired its interest in the software

31 (1) in an integrated transaction in which it acquired an interest in the

1 goods; and

2 (2) for the principal purpose of using the software in the goods.

3 (d) The security interest of a consignor in goods that are the subject of a
4 consignment is a purchase money security interest in inventory.

5 (e) In a transaction other than a consumer goods transaction, if the extent to
6 which a security interest is a purchase money security interest depends on the
7 application of a payment to a particular obligation, the payment must be applied

8 (1) in accordance with any reasonable method of application to which
9 the parties agree;

10 (2) in the absence of the parties' agreement to a reasonable method, in
11 accordance with an intention of the obligor manifested at or before the time of
12 payment; or

13 (3) in the absence of an agreement to a reasonable method and a timely
14 manifestation of the obligor's intention, in the following order:

15 (A) to obligations that are not secured; and

16 (B) if more than one obligation is secured, to obligations
17 secured by purchase money security interests in the order in which those
18 obligations were incurred.

19 (f) In a transaction, other than a consumer goods transaction, a purchase
20 money security interest does not lose its status as such even if

21 (1) the purchase money collateral also secures an obligation that is not
22 a purchase money obligation;

23 (2) collateral that is not purchase money collateral also secures the
24 purchase money obligation; or

25 (3) the purchase money obligation has been renewed, refinanced,
26 consolidated, or restructured.

27 (g) In a transaction other than a consumer goods transaction, a secured party
28 claiming a purchase money security interest has the burden of establishing the extent
29 to which the security interest is a purchase money security interest.

30 (h) The limitation of the rules in (e) - (g) of this section to transactions other
31 than consumer goods transactions is intended to leave to the court the determination

1 of the proper rules in consumer goods transactions. The court may not infer from that
2 limitation the nature of the proper rule in consumer goods transactions and may
3 continue to apply established approaches.

4 **Sec. 45.09.104. Control of deposit account.** (a) A secured party has control
5 of a deposit account if

6 (1) the secured party is the bank with which the deposit account is
7 maintained;

8 (2) the debtor, secured party, and bank have agreed in an authenticated
9 record that the bank will comply with instructions originated by the secured party
10 directing disposition of the funds in the account without further consent by the debtor;
11 or

12 (3) the secured party becomes the bank's customer with respect to the
13 deposit account.

14 (b) A secured party that has satisfied (a) of this section has control even if the
15 debtor retains the right to direct the disposition of funds from the deposit account.

16 **Sec. 45.09.105. Control of electronic chattel paper.** A secured party has
17 control of electronic chattel paper if the record or records comprising the chattel paper
18 are created, stored, and assigned in such a manner that

19 (1) a single authoritative copy of the record or records exists that is
20 unique, identifiable, and, except as otherwise provided in (4) - (6) of this section,
21 unalterable;

22 (2) the authoritative copy identifies the secured party as the assignee
23 of the record or records;

24 (3) the authoritative copy is communicated to and maintained by the
25 secured party or its designated custodian;

26 (4) copies or revisions that add or change an identified assignee of the
27 authoritative copy can be made only with the participation of the secured party;

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

30 (6) any revision of the authoritative copy is readily identifiable as an
31 authorized or unauthorized revision.

1 **Sec. 45.09.106. Control of investment property.** (a) A person has control
2 of a certificated security, uncertificated security, or security entitlement as provided in
3 AS 45.08.106.

4 (b) A secured party has control of a commodity contract if

5 (1) the secured party is the commodity intermediary with which the
6 commodity contract is carried; or

7 (2) the commodity customer, secured party, and commodity
8 intermediary have agreed that the commodity intermediary will apply any value
9 distributed on account of the commodity contract as directed by the secured party
10 without further consent by the commodity customer.

11 (c) A secured party having control of all security entitlements or commodity
12 contracts carried in a securities account or commodity account has control over the
13 securities account or commodity account.

14 **Sec. 45.09.107. Control of letter-of-credit right.** A secured party has control
15 of a letter-of-credit right to the extent of any right to payment or performance by the
16 issuer or a nominated person if the issuer or nominated person has consented to an
17 assignment of proceeds of the letter of credit under AS 45.05.114(c) or otherwise
18 applicable law or practice.

19 **Sec. 45.09.108. Sufficiency of description.** (a) Except as otherwise provided
20 in (c) - (e) of this section, a description of personal or real property is sufficient,
21 whether or not it is specific, if it reasonably identifies what is described.

22 (b) Except as otherwise provided in (d) of this section, a description of
23 collateral reasonably identifies the collateral if it identifies the collateral by

24 (1) specific listing;

25 (2) category;

26 (3) except as otherwise provided in (e) of this section, a type of
27 collateral defined in AS 45.01 - AS 45.09, AS 45.12, or AS 45.14 (Uniform
28 Commercial Code);

29 (4) quantity;

30 (5) computational or allocational formula or procedure; or

31 (6) except as otherwise provided in (c) of this section, another method

1 if the identity of the collateral is objectively determinable.

2 (c) A description of collateral as "all the debtor's assets" or "all the debtor's
3 personal property" or using words of similar import does not reasonably identify the
4 collateral.

5 (d) Except as otherwise provided in (e) of this section, a description of a
6 security entitlement, securities account, or commodity account is sufficient if it
7 describes

8 (1) the collateral by those terms or as investment property; or

9 (2) the underlying financial asset or commodity contract.

10 (e) A description only by type of collateral defined in AS 45.01 - AS 45.09,
11 AS 45.12, or AS 45.14 (Uniform Commercial Code) is an insufficient description of

12 (1) a commercial tort claim; or

13 (2) in a consumer transaction, consumer goods, a security entitlement,
14 a securities account, or a commodity account.

15 **Sec. 45.09.109. Scope.** (a) Except as otherwise provided in (c) and (d) of this
16 section, this chapter applies to

17 (1) a transaction, regardless of its form, that creates a security interest
18 in personal property or fixtures by contract;

19 (2) an agricultural lien;

20 (3) a sale of accounts, chattel paper, payment intangibles, or promissory
21 notes;

22 (4) a consignment;

23 (5) a security interest arising under AS 45.02.401, 45.02.505,
24 45.02.711(c), or AS 45.12.508(e), as provided in AS 45.09.110; and

25 (6) a security interest arising under AS 45.04.210 or AS 45.05.118.

26 (b) The application of this chapter to a security interest in a secured obligation
27 is not affected by the fact that the obligation is itself secured by a transaction or
28 interest to which this chapter does not apply.

29 (c) This chapter does not apply to the extent that

30 (1) a statute, regulation, or treaty of the United States preempts this
31 chapter;

1 (2) another statute of this state expressly governs the creation,
2 perfection, priority, or enforcement of a security interest created by this state or a
3 governmental unit of this state;

4 (3) a statute of another state, a foreign country, or a governmental unit
5 of another state or a foreign country, other than a statute generally applicable to
6 security interests, expressly governs creation, perfection, priority, or enforcement of
7 a security interest created by the state, country, or governmental unit; or

8 (4) the rights of a transferee beneficiary or nominated person under a
9 letter of credit are independent and superior under AS 45.05.114.

10 (d) This chapter does not apply to

11 (1) a landlord's lien, other than an agricultural lien;

12 (2) a lien, other than an agricultural lien, given by statute or other rule
13 of law for services or materials, but AS 45.09.333 applies with respect to priority of
14 the lien;

15 (3) an assignment of a claim for wages, salary, or other compensation
16 of an employee;

17 (4) a sale of accounts, chattel paper, payment intangibles, or promissory
18 notes as part of a sale of the business out of which they arose;

19 (5) an assignment of accounts, chattel paper, payment intangibles, or
20 promissory notes that is for the purpose of collection only;

21 (6) an assignment of a right to payment under a contract to an assignee
22 that is also obligated to perform under the contract;

23 (7) an assignment of a single account, payment intangible, or
24 promissory note to an assignee in full or partial satisfaction of a preexisting
25 indebtedness;

26 (8) a transfer of an interest in or an assignment of a claim under a
27 policy of insurance, other than an assignment by or to a health care provider of a
28 health care insurance receivable and any subsequent assignment of the right to
29 payment, but AS 45.09.315 and 45.09.322 apply with respect to proceeds and priorities
30 in proceeds;

31 (9) an assignment of a right represented by a judgment, other than a

1 judgment taken on a right to payment that was collateral;

2 (10) a right of recoupment or setoff, but

3 (A) AS 45.09.340 applies with respect to the effectiveness of
4 rights of recoupment or setoff against deposit accounts; and

5 (B) AS 45.09.404 applies with respect to defenses or claims of
6 an account debtor;

7 (11) the creation or transfer of an interest in or lien on real property,
8 including a lease or rents thereunder, except to the extent that provision is made for

9 (A) liens on real property in AS 45.09.203 and 45.09.308;

10 (B) fixtures in AS 45.09.334;

11 (C) fixture filings in AS 45.09.501, 45.09.502, 45.09.512,
12 45.09.516, and 45.09.519; and

13 (D) security agreements covering personal and real property in
14 AS 45.09.604;

15 (12) an assignment of a claim arising in tort, other than a commercial
16 tort claim, but AS 45.09.315 and 45.09.322 apply with respect to proceeds and
17 priorities in proceeds; or

18 (13) an assignment of a deposit account in a consumer transaction, but
19 AS 45.09.315 and 45.09.322 apply with respect to proceeds and priorities in proceeds.

20 **Sec. 45.09.110. Security interests arising under AS 45.02 or AS 45.12.** A
21 security interest arising under AS 45.02.401, 45.02.505, 45.02.711(c), or
22 AS 45.12.508(e) is subject to this chapter. However, until the debtor obtains
23 possession of the goods,

24 (1) the security interest is enforceable even if AS 45.09.203(b)(3) has
25 not been satisfied;

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

27 (3) the rights of the secured party after default by the debtor are
28 governed by AS 45.02 or AS 45.12; and

29 (4) the security interest has priority over a conflicting security interest
30 created by the debtor.

31 **Article 2. Security Agreements; Security Interests.**

1 **Sec. 45.09.201. General effectiveness of security agreement.** (a) Except as
 2 otherwise provided in AS 45.01 - AS 45.09, AS 45.12, and AS 45.14 (the Uniform
 3 Commercial Code), a security agreement is effective according to its terms between
 4 the parties, against purchasers of the collateral, and against creditors.

5 (b) A transaction subject to this chapter is subject to

6 (1) an applicable rule of law that establishes a different rule for
 7 consumers;

8 (2) another statute or regulation that regulates the rates, charges,
 9 agreements, and practices for loans, credit sales, or other extensions of credit; and

10 (3) consumer protection statutes or regulations.

11 (c) In case of conflict between this chapter and a rule of law, statute, or
 12 regulation described in (b) of this section, the rule of law, statute, or regulation
 13 controls. Failure to comply with a statute or regulation described in (b) of this section
 14 has only the effect the statute or regulation specifies.

15 (d) This chapter does not

16 (1) validate a rate, charge, agreement, or practice that violates a rule
 17 of law, statute, or regulation described in (b) of this section; or

18 (2) extend the application of the rule of law, statute, or regulation to
 19 a transaction not otherwise subject to it.

20 **Sec. 45.09.202. Title to collateral immaterial.** Except as otherwise provided
 21 with respect to consignments or sales of accounts, chattel paper, payment intangibles,
 22 or promissory notes, the provisions of this chapter with regard to rights and obligations
 23 apply whether title to collateral is in the secured party or the debtor.

24 **Sec. 45.09.203. Attachment and enforceability of security interest;**
 25 **proceeds; supporting obligations; formal requisites.** (a) A security interest attaches
 26 to collateral when it becomes enforceable against the debtor with respect to the
 27 collateral unless an agreement expressly postpones the time of attachment.

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

31 (1) value has been given;

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

3 (3) one of the following conditions is met:

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

7 (B) the collateral is not a certificated security and is in the
8 possession of the secured party under AS 45.09.313 under the debtor's security
9 agreement;

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

13 (D) the collateral is deposit accounts, electronic chattel paper,
14 investment property, or letter-of-credit rights, and the secured party has control
15 under AS 45.09.104, 45.09.105, 45.09.106, or 45.09.107 under the debtor's
16 security agreement.

17 (c) The provisions of (b) of this section are subject to

18 (1) AS 45.04.210 on the security interest of a collecting bank;

19 (2) AS 45.05.118 on the security interest of a letter-of-credit issuer or
20 nominated person;

21 (3) AS 45.09.110 on a security interest arising under AS 45.02 or
22 AS 45.12; and

23 (4) AS 45.09.206 on security interests in investment property.

24 (d) A person becomes bound as debtor by a security agreement entered into
25 by another person if, by operation of law other than this chapter or by contract,

26 (1) the security agreement becomes effective to create a security
27 interest in the person's property; or

28 (2) the person becomes generally obligated for the obligations of the
29 other person, including the obligation secured under the security agreement, and
30 acquires or succeeds to all or substantially all of the assets of the other person.

31 (e) If a new debtor becomes bound as debtor by a security agreement entered

1 into by another person,

2 (1) the agreement satisfies (b)(3) of this section with respect to existing
3 or after-acquired property of the new debtor to the extent the property is described in
4 the agreement; and

5 (2) another agreement is not necessary to make a security interest in
6 the property enforceable.

7 (f) The attachment of a security interest in collateral gives the secured party
8 the rights to proceeds provided by AS 45.09.315 and is also attachment of a security
9 interest in a supporting obligation for the collateral.

10 (g) The attachment of a security interest in a right to payment or performance
11 secured by a security interest or other lien on personal or real property is also
12 attachment of a security interest in the security interest, mortgage, or other lien.

13 (h) The attachment of a security interest in a securities account is also
14 attachment of a security interest in the security entitlement carried in the securities
15 account.

16 (i) The attachment of a security interest in a commodity account is also
17 attachment of a security interest in the commodity contracts carried in the commodity
18 account.

19 **Sec. 45.09.204. After-acquired property; future advances.** (a) Except as
20 otherwise provided in (b) of this section, a security agreement may create or provide
21 for a security interest in after-acquired collateral.

22 (b) A security interest does not attach under a term constituting an
23 after-acquired property clause to

24 (1) consumer goods, other than an accession when given as additional
25 security, unless the debtor acquires rights in them within 10 days after the secured
26 party gives value; or

27 (2) a commercial tort claim.

28 (c) A security agreement may provide that collateral secures, or that accounts,
29 chattel paper, payment intangibles, or promissory notes are sold in connection with,
30 future advances or other value, whether or not the advances or value are given
31 pursuant to a commitment.

1 **Sec. 45.09.205. Use or disposition of collateral permissible.** (a) A security
2 interest is not invalid or fraudulent against creditors solely because

3 (1) the debtor has the right or ability to

4 (A) use, commingle, or dispose of all or part of the collateral,
5 including returned or repossessed goods;

6 (B) collect, compromise, enforce, or otherwise deal with
7 collateral;

8 (C) accept the return of collateral or make repossessions; or

9 (D) use, commingle, or dispose of proceeds; or

10 (2) the secured party fails to require the debtor to account for proceeds
11 or replace collateral.

12 (b) This section does not relax the requirements of possession if attachment,
13 perfection, or enforcement of a security interest depends upon possession of the
14 collateral by the secured party.

15 **Sec. 45.09.206. Security interest arising in purchase or delivery of financial**
16 **asset.** (a) A security interest in favor of a securities intermediary attaches to a
17 person's security entitlement if

18 (1) the person buys a financial asset through the securities intermediary
19 in a transaction in which the person is obligated to pay the purchase price to the
20 securities intermediary at the time of the purchase; and

21 (2) the securities intermediary credits the financial asset to the buyer's
22 securities account before the buyer pays the securities intermediary.

23 (b) The security interest described in (a) of this section secures the person's
24 obligation to pay for the financial asset.

25 (c) A security interest in favor of a person who delivers a certificated security
26 or other financial asset represented by a writing attaches to the security or other
27 financial asset if

28 (1) the security or other financial asset

29 (A) in the ordinary course of business, is transferred by delivery
30 with any necessary endorsement or assignment; and

31 (B) is delivered under an agreement between persons in the

1 business of dealing with such securities or financial assets; and

2 (2) the agreement calls for delivery against payment.

3 (d) The security interest described in (c) of this section secures the obligation
4 to make payment for the delivery.

5 **Sec. 45.09.207. Rights and duties of secured party having possession or**
6 **control of collateral.** (a) Except as otherwise provided in (d) of this section, a
7 secured party shall use reasonable care in the custody and preservation of collateral in
8 the secured party's possession. In the case of chattel paper or an instrument,
9 reasonable care includes taking necessary steps to preserve rights against prior parties
10 unless otherwise agreed.

11 (b) Except as otherwise provided in (d) of this section, if a secured party has
12 possession of collateral,

13 (1) reasonable expenses, including the cost of insurance and payment
14 of taxes or other charges, incurred in the custody, preservation, use, or operation of the
15 collateral are chargeable to the debtor and are secured by the collateral;

16 (2) the risk of accidental loss or damage is on the debtor to the extent
17 of a deficiency in any effective insurance coverage;

18 (3) the secured party shall keep the collateral identifiable, but fungible
19 collateral may be commingled; and

20 (4) the secured party may use or operate the collateral

21 (A) for the purpose of preserving the collateral or its value;

22 (B) as permitted by an order of a court having competent
23 jurisdiction; or

24 (C) except in the case of consumer goods, in the manner and
25 to the extent agreed by the debtor.

26 (c) Except as otherwise provided in (d) of this section, a secured party having
27 possession of collateral or control of collateral under AS 45.09.104, 45.09.105,
28 45.09.106, or 45.09.107

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

31 (2) shall apply money or funds received from the collateral to reduce

1 the secured obligation unless remitted to the debtor; and

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

3 (d) If the secured party is a buyer of accounts, chattel paper, payment
4 intangibles, or promissory notes or a consignor,

5 (1) the provisions of (a) of this section do not apply unless the secured
6 party is entitled under an agreement

7 (A) to charge back uncollected collateral; or

8 (B) otherwise to full or limited recourse against the debtor or
9 a secondary obligor based on the nonpayment or other default of an account
10 debtor or other obligor on the collateral; and

11 (2) the provisions of (b) and (c) of this section do not apply.

12 **Sec. 45.09.208. Additional duties of secured party having control of**
13 **collateral.** (a) This section applies to a case in which there is no outstanding secured
14 obligation and the secured party is not committed to make advances, incur obligations,
15 or otherwise give value.

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

18 (1) having control of a deposit account under AS 45.09.104(a)(2) shall
19 send to the bank with which the deposit account is maintained an authenticated
20 statement that releases the bank from further obligation to comply with instructions
21 originated by the secured party;

22 (2) having control of a deposit account under AS 45.09.104(a)(3) shall

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

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

27 (3) other than a buyer, having control of electronic chattel paper under
28 AS 45.09.105 shall

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

31 (B) if the debtor designates a custodian that is the designated

1 custodian with which the authoritative copy of the electronic chattel paper is
 2 maintained for the secured party, communicate to the custodian an
 3 authenticated record releasing the designated custodian from further obligation
 4 to comply with instructions originated by the secured party and instructing the
 5 custodian to comply with instructions originated by the debtor; and

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

10 (4) having control of investment property under AS 45.08.106(d)(2) or
 11 AS 45.09.106(b) shall send to the securities intermediary or commodity intermediary
 12 with which the security entitlement or commodity contract is maintained an
 13 authenticated record that releases the securities intermediary or commodity
 14 intermediary from further obligation to comply with entitlement orders or directions
 15 originated by the secured party; and

16 (5) having control of a letter-of-credit right under AS 45.09.107 shall
 17 send to each person having an unfulfilled obligation to pay or deliver proceeds of the
 18 letter of credit to the secured party an authenticated release from further obligation to
 19 pay or deliver proceeds of the letter of credit to the secured party.

20 **Sec. 45.09.209. Duties of secured party if account debtor has been notified**
 21 **of assignment.** (a) Except as otherwise provided in (c) of this section, this section
 22 applies to a case in which

23 (1) there is no outstanding secured obligation; and

24 (2) the secured party is not committed to make advances, incur
 25 obligations, or otherwise give value.

26 (b) Within 10 days after receiving an authenticated demand by the debtor, a
 27 secured party shall send to an account debtor that has received notification of an
 28 assignment to the secured party as assignee under AS 45.09.406(a) an authenticated
 29 record that releases the account debtor from further obligation to the secured party.

30 (c) This section does not apply to an assignment constituting the sale of an
 31 account, chattel paper, or payment intangible.

1 **Sec. 45.09.210. Request for accounting; request regarding list of collateral**
2 **or statement of account.** (a) In this section,

3 (1) "request" means a record of a type described in (2), (3), or (4) of
4 this subsection;

5 (2) "request for an accounting" means a record authenticated by a
6 debtor requesting that the recipient provide an accounting of the unpaid obligations
7 secured by collateral and reasonably identifying the transaction or relationship that is
8 the subject of the request;

9 (3) "request regarding a list of collateral" means a record authenticated
10 by a debtor requesting that the recipient approve or correct a list of what the debtor
11 believes to be the collateral securing an obligation and reasonably identifying the
12 transaction or relationship that is the subject of the request;

13 (4) "request regarding a statement of account" means a record
14 authenticated by a debtor requesting that the recipient approve or correct a statement
15 indicating what the debtor believes to be the aggregate amount of unpaid obligations
16 secured by collateral as of a specified date and reasonably identifying the transaction
17 or relationship that is the subject of the request.

18 (b) Subject to (c) - (f) of this section, a secured party, other than a buyer of
19 accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall
20 comply with a request within 14 days after receipt

21 (1) in the case of a request for an accounting, by authenticating and
22 sending to the debtor an accounting; and

23 (2) in the case of a request regarding a list of collateral or a request
24 regarding a statement of account, by authenticating and sending to the debtor an
25 approval or correction.

26 (c) A secured party that claims a security interest in all of a particular type of
27 collateral owned by the debtor may comply with a request regarding a list of collateral
28 by sending to the debtor an authenticated record including a statement to that effect
29 within 14 days after receipt.

30 (d) A person who receives a request regarding a list of collateral, who claims
31 no interest in the collateral when the person receives the request, and who claimed an

1 interest in the collateral at an earlier time shall comply with the request within 14 days
2 after receipt by sending to the debtor an authenticated record

3 (1) disclaiming interest in the collateral; and

4 (2) if known to the recipient, providing the name and mailing address
5 of an assignee of or successor to the recipient's security interest in the collateral.

6 (e) A person who receives a request for an accounting or a request regarding
7 a statement of account, who claims no interest in the obligations when the person
8 receives the request, and who claimed an interest in the obligations at an earlier time
9 shall comply with the request within 14 days after receipt by sending to the debtor an
10 authenticated record

11 (1) disclaiming interest in the obligations; and

12 (2) if known to the recipient, providing the name and mailing address
13 of an assignee of or successor to the recipient's interest in the obligations.

14 (f) A debtor is entitled without charge to one response to a request under this
15 section during a six-month period. The secured party may require payment of a charge
16 not exceeding \$25 for each additional response.

17 **Article 3. Perfection and Priority.**

18 **Sec. 45.09.301. Law governing perfection and priority of security interests.**

19 Except as otherwise provided in AS 45.09.303 - 45.09.306, the following rules
20 determine the law governing perfection, the effect of perfection or nonperfection, and
21 the priority of a security interest in collateral:

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

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

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

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

1 fixture filing;

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

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

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

8 **Sec. 45.09.302. Law governing perfection and priority of agricultural liens.**

9 While farm products are located in a jurisdiction, the local law of that jurisdiction
10 governs perfection, the effect of perfection or nonperfection, and the priority of an
11 agricultural lien on the farm products.

12 **Sec. 45.09.303. Law governing perfection and priority of security interests
13 in goods covered by a certificate of title.** (a) This section applies to goods covered

14 by a certificate of title even if there is no other relationship between the jurisdiction
15 under whose certificate of title the goods are covered and the goods or the debtor.

16 (b) Goods become covered by a certificate of title when a valid application for
17 the certificate of title and the applicable fee are delivered to the appropriate authority.

18 Goods cease to be covered by a certificate of title at the earlier of the time

19 (1) the certificate of title ceases to be effective under the law of the
20 issuing jurisdiction; or

21 (2) the goods become covered subsequently by a certificate of title
22 issued by another jurisdiction.

23 (c) The local law of the jurisdiction under whose certificate of title the goods
24 are covered governs perfection, the effect of perfection or nonperfection, and the
25 priority of a security interest in goods covered by a certificate of title from the time
26 the goods become covered by the certificate of title until the goods cease to be covered
27 by the certificate of title.

28 **Sec. 45.09.304. Law governing perfection and priority of security interests
29 in deposit accounts.** (a) The local law of a bank's jurisdiction governs perfection,

30 the effect of perfection or nonperfection, and the priority of a security interest in a
31 deposit account maintained with that bank.

1 (b) The following rules determine a bank's jurisdiction for purposes of
2 AS 45.09.301 - 45.09.342:

3 (1) if an agreement between the bank and the debtor governing the
4 deposit account expressly provides that a particular jurisdiction is the bank's
5 jurisdiction for purposes of AS 45.09.301 - 45.09.342, this chapter, or AS 45.01 -
6 AS 45.09, AS 45.12, or AS 45.14 (Uniform Commercial Code), that jurisdiction is the
7 bank's jurisdiction;

8 (2) if (1) of this subsection does not apply and an agreement between
9 the bank and its customer governing the deposit account expressly provides that the
10 agreement is governed by the law of a particular jurisdiction, that jurisdiction is the
11 bank's jurisdiction;

12 (3) if neither (1) nor (2) of this subsection applies and an agreement
13 between the bank and its customer governing the deposit account expressly provides
14 that the deposit account is maintained at an office in a particular jurisdiction, that
15 jurisdiction is the bank's jurisdiction;

16 (4) if (1), (2), or (3) of this subsection does not apply, the bank's
17 jurisdiction is the jurisdiction in which the office identified in an account statement as
18 the office serving the customer's account is located;

19 (5) if (1), (2), (3), or (4) of this subsection does not apply, the bank's
20 jurisdiction is the jurisdiction in which the chief executive office of the bank is
21 located.

22 **Sec. 45.09.305. Law governing perfection and priority of security interests**
23 **in investment property.** (a) Except as otherwise provided in (c) of this section, the
24 following rules apply:

25 (1) while a security certificate is located in a jurisdiction, the local law
26 of that jurisdiction governs perfection, the effect of perfection or nonperfection, and
27 the priority of a security interest in the certificated security represented by the security
28 certificate;

29 (2) the local law of the issuer's jurisdiction as specified in
30 AS 45.08.110 governs perfection, the effect of perfection or nonperfection, and the
31 priority of a security interest in an uncertificated security;

1 (3) the local law of the securities intermediary's jurisdiction as specified
2 in AS 45.08.110(e) governs perfection, the effect of perfection or nonperfection, and
3 the priority of a security interest in a security entitlement or securities account;

4 (4) the local law of the commodity intermediary's jurisdiction governs
5 perfection, the effect of perfection or nonperfection, and the priority of a security
6 interest in a commodity contract or commodity account.

7 (b) The following rules determine a commodity intermediary's jurisdiction for
8 purposes of AS 45.09.301 - 45.09.342:

9 (1) if an agreement between the commodity intermediary and
10 commodity customer governing the commodity account expressly provides that a
11 particular jurisdiction is the commodity intermediary's jurisdiction for purposes of
12 AS 45.09.301 - 45.09.342, this chapter, or AS 45.01 - AS 45.09, AS 45.12, or
13 AS 45.14 (Uniform Commercial Code), that jurisdiction is the commodity
14 intermediary's jurisdiction;

15 (2) if (1) of this subsection does not apply and an agreement between
16 the commodity intermediary and commodity customer governing the commodity
17 account expressly provides that the agreement is governed by the law of a particular
18 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

19 (3) if neither (1) nor (2) of this subsection applies and an agreement
20 between the commodity intermediary and commodity customer governing the
21 commodity account expressly provides that the commodity account is maintained at
22 an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's
23 jurisdiction;

24 (4) if (1), (2), or (3) of this subsection does not apply, the commodity
25 intermediary's jurisdiction is the jurisdiction in which the office identified in an
26 account statement as the office serving the commodity customer's account is located;

27 (5) if (1), (2), (3), or (4) of this subsection does not apply, the
28 commodity intermediary's jurisdiction is the jurisdiction in which the chief executive
29 office of the commodity intermediary is located.

30 (c) The local law of the jurisdiction in which the debtor is located governs

31 (1) perfection of a security interest in investment property by filing;

1 (2) automatic perfection of a security interest in investment property
2 created by a broker or securities intermediary; and

3 (3) automatic perfection of a security interest in a commodity contract
4 or commodity account created by a commodity intermediary.

5 **Sec. 45.09.306. Law governing perfection and priority of security interests**
6 **in letter-of-credit rights.** (a) Subject to (c) of this section, the local law of the
7 issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect
8 of perfection or nonperfection, and the priority of a security interest in a letter-of-credit
9 right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

10 (b) For purposes of AS 45.09.301 - 45.09.342, an issuer's jurisdiction or
11 nominated person's jurisdiction is the jurisdiction whose law governs the liability of
12 the issuer or nominated person with respect to the letter-of-credit right as provided in
13 AS 45.05.116.

14 (c) This section does not apply to a security interest that is perfected only
15 under AS 45.09.308(d).

16 **Sec. 45.09.307. Location of debtor.** (a) In this section, "place of business"
17 means a place where a debtor conducts its affairs.

18 (b) Except as otherwise provided in this section, the following rules determine
19 a debtor's location:

20 (1) an debtor who is an individual is located at the individual's principal
21 residence;

22 (2) a debtor that is an organization and has only one place of business
23 is located at its place of business;

24 (3) a debtor that is an organization and has more than one place of
25 business is located at its chief executive office.

26 (c) The provisions of (b) of this section apply only if a debtor's residence,
27 place of business, or chief executive office, as applicable, is located in a jurisdiction
28 whose law generally requires information concerning the existence of a nonpossessory
29 security interest to be made generally available in a filing, recording, or registration
30 system as a condition or result of the security interest's obtaining priority over the
31 rights of a lien creditor with respect to the collateral. If (b) of this section does not

1 apply, the debtor is located in the District of Columbia.

2 (d) A person that ceases to exist, have a residence, or have a place of business
3 continues to be located in the jurisdiction specified by (b) and (c) of this section.

4 (e) A registered organization that is organized under the law of a state is
5 located in that state.

6 (f) Except as otherwise provided in (i) of this section, a registered organization
7 that is organized under the law of the United States and a branch or agency of a bank
8 that is not organized under the law of the United States or a state are located

9 (1) in the state that the law of the United States designates if the law
10 designates a state of location;

11 (2) in the state that the registered organization, branch, or agency
12 designates if the law of the United States authorizes the registered organization,
13 branch, or agency to designate its state of location; or

14 (3) in the District of Columbia if neither (1) nor (2) of this subsection
15 applies.

16 (g) A registered organization continues to be located in the jurisdiction
17 specified by (e) or (f) of this section notwithstanding

18 (1) the suspension, revocation, forfeiture, or lapse of the registered
19 organization's status as such in its jurisdiction of organization; or

20 (2) the dissolution, winding up, or cancellation of the existence of the
21 registered organization.

22 (h) The United States is located in the District of Columbia.

23 (i) A branch or agency of a bank that is not organized under the law of the
24 United States or a state is located in the state in which the branch or agency is licensed
25 if all branches and agencies of the bank are licensed in only one state.

26 (j) A foreign air carrier, under the Federal Aviation Act of 1958, as amended,
27 is located at the designated office of the agent upon which service of process may be
28 made on behalf of the carrier.

29 (k) This section applies only for purposes of AS 45.09.301 - 45.09.342.

30 **Sec. 45.09.308. When security interest or agricultural lien is perfected;**
31 **continuity of perfection.** (a) Except as otherwise provided in this section and

1 AS 45.09.309, a security interest is perfected if it has attached and all of the applicable
 2 requirements for perfection in AS 45.09.310 - 45.09.316 have been satisfied. A
 3 security interest is perfected when it attaches if the applicable requirements are
 4 satisfied before the security interest attaches.

5 (b) An agricultural lien is perfected if it has become effective and all of the
 6 applicable requirements for perfection in AS 45.09.310 have been satisfied. An
 7 agricultural lien is perfected when it becomes effective if the applicable requirements
 8 are satisfied before the agricultural lien becomes effective.

9 (c) A security interest or agricultural lien is perfected continuously if it is
 10 originally perfected by one method under this chapter and is later perfected by another
 11 method under this chapter, without an intermediate period when it was unperfected.

12 (d) Perfection of a security interest in collateral also perfects a security interest
 13 in a supporting obligation for the collateral.

14 (e) Perfection of a security interest in a right to payment or performance also
 15 perfects a security interest in a security interest, mortgage, or other lien on personal
 16 or real property securing the right.

17 (f) Perfection of a security interest in a securities account also perfects a
 18 security interest in the security entitlements carried in the securities account.

19 (g) Perfection of a security interest in a commodity account also perfects a
 20 security interest in the commodity contracts carried in the commodity account.

21 **Sec. 45.09.309. Security interest perfected upon attachment.** The following
 22 security interests are perfected when they attach:

23 (1) a purchase money security interest in consumer goods, except as
 24 otherwise provided in AS 45.09.311(b) with respect to consumer goods that are subject
 25 to a statute or treaty described in AS 45.09.311(a);

26 (2) an assignment of accounts or payment intangibles that does not, by
 27 itself or in conjunction with other assignments to the same assignee, transfer a
 28 significant part of the assignor's outstanding accounts or payment intangibles;

29 (3) a sale of a payment intangible;

30 (4) a sale of a promissory note;

31 (5) a security interest created by the assignment of a health care

1 insurance receivable to the provider of the health care goods or services;

2 (6) a security interest arising under AS 45.02.401, 45.02.505,
3 45.02.711(c), or AS 45.12.508(e), until the debtor obtains possession of the collateral;

4 (7) a security interest of a collecting bank arising under AS 45.04.210;

5 (8) a security interest of an issuer or nominated person arising under
6 AS 45.05.118;

7 (9) a security interest arising in the delivery of a financial asset under
8 AS 45.09.206(c);

9 (10) a security interest in investment property created by a broker or
10 securities intermediary;

11 (11) a security interest in a commodity contract or a commodity
12 account created by a commodity intermediary;

13 (12) an assignment for the benefit of all creditors of the transferor and
14 subsequent transfers by the assignee thereunder; and

15 (13) a security interest created by an assignment of a beneficial interest
16 in a decedent's estate.

17 **Sec. 45.09.310. When filing required to perfect security interest or**
18 **agricultural lien; security interests and agricultural liens to which filing provisions**
19 **do not apply.** (a) Except as otherwise provided in (b) of this section and
20 AS 45.09.312(b), a financing statement must be filed to perfect all security interests
21 and agricultural liens.

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

24 (1) that is perfected under AS 45.09.308(d), (e), (f), or (g);

25 (2) that is perfected under AS 45.09.309 when it attaches;

26 (3) in property subject to a statute, regulation, or treaty described in
27 AS 45.09.311(a);

28 (4) in goods in possession of a bailee that is perfected under
29 AS 45.09.312(d)(1) or (2);

30 (5) in certificated securities, documents, goods, or instruments that is
31 perfected without filing or possession under AS 45.09.312(e), (f), or (g);

- 1 (6) in collateral in the secured party's possession under AS 45.09.313;
 2 (7) in a certificated security that is perfected by delivery of the security
 3 certificate to the secured party under AS 45.09.313;
 4 (8) in deposit accounts, electronic chattel paper, investment property,
 5 or letter-of-credit rights that is perfected by control under AS 45.09.314;
 6 (9) in proceeds that is perfected under AS 45.09.315; or
 7 (10) that is perfected under AS 45.09.316.

8 (c) If a secured party assigns a perfected security interest or agricultural lien,
 9 a filing under this chapter is not required to continue the perfected status of the
 10 security interest against creditors of and transferees from the original debtor.

11 **Sec. 45.09.311. Perfection of security interests in property subject to**
 12 **certain statutes, regulations, and treaties.** (a) Except as otherwise provided in (d)
 13 of this section, the filing of a financing statement is not necessary or effective to
 14 perfect a security interest in property subject to

15 (1) a statute, regulation, or treaty of the United States whose
 16 requirements for a security interest's obtaining priority over the rights of a lien creditor
 17 with respect to the property preempt AS 45.09.310(a);

18 (2) AS 28.10; however, during a period in which collateral is inventory
 19 held for sale by a person who is in the business of selling goods of that kind, the filing
 20 provisions of AS 45.09.501 - 45.09.527 apply to a security interest in that collateral
 21 created by that person as debtor; or

22 (3) a certificate-of-title statute of another jurisdiction that provides for
 23 a security interest to be indicated on the certificate as a condition or result of the
 24 security interest's obtaining priority over the rights of a lien creditor with respect to the
 25 property.

26 (b) Compliance with the requirements of a statute, regulation, or treaty
 27 described in (a) of this section for obtaining priority over the rights of a lien creditor
 28 is equivalent to the filing of a financing statement under this chapter. Except as
 29 otherwise provided in (d) of this section, AS 45.09.313, and 45.09.316(d) and (e) for
 30 goods covered by a certificate of title, a security interest in property subject to a
 31 statute, regulation, or treaty described in (a) of this section may be perfected only by

1 compliance with those requirements, and a security interest so perfected remains
 2 perfected notwithstanding a change in the use or transfer of possession of the
 3 collateral.

4 (c) Except as otherwise provided in (d) of this section and AS 45.09.316(d)
 5 and (e), duration and renewal of perfection of a security interest perfected by
 6 compliance with the requirements prescribed by a statute, regulation, or treaty
 7 described in (a) of this section are governed by the statute, regulation, or treaty. In
 8 other respects, the security interest is subject to this chapter.

9 (d) During a period in which collateral is inventory held for sale or lease by
 10 a person or leased by that person as lessor and that person is in the business of selling
 11 or leasing goods of that kind, this section does not apply to a security interest in that
 12 collateral created by that person as debtor.

13 **Sec. 45.09.312. Perfection of security interests in chattel paper, deposit**
 14 **accounts, documents, goods covered by documents, instruments, investment**
 15 **property, letter-of-credit rights, and money; perfection by permissive filing;**
 16 **temporary perfection without filing or transfer of possession.** (a) A security
 17 interest in chattel paper, negotiable documents, instruments, or investment property
 18 may be perfected by filing.

19 (b) Except as otherwise provided in AS 45.09.315(c) and (d) for proceeds,

20 (1) a security interest in a deposit account may be perfected only by
 21 control under AS 45.09.314;

22 (2) and except as otherwise provided in AS 45.09.308(d), a security
 23 interest in a letter-of-credit right may be perfected only by control under AS 45.09.314;
 24 and

25 (3) a security interest in money may be perfected only by the secured
 26 party's taking possession under AS 45.09.313.

27 (c) While goods are in the possession of a bailee that has issued a negotiable
 28 document covering the goods, a security interest

29 (1) in the goods may be perfected by perfecting a security interest in
 30 the document; and

31 (2) perfected in the document has priority over a security interest that

1 becomes perfected in the goods by another method during that time.

2 (d) While goods are in the possession of a bailee that has issued a
3 nonnegotiable document covering the goods, a security interest in the goods may be
4 perfected by

5 (1) issuance of a document in the name of the secured party;

6 (2) the bailee's receipt of notification of the secured party's interest; or

7 (3) filing as to the goods.

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

12 (f) A perfected security interest in a negotiable document or goods in
13 possession of a bailee, other than one that has issued a negotiable document for the
14 goods, remains perfected for 20 days without filing if the secured party makes
15 available to the debtor the goods or documents representing the goods for the purpose
16 of

17 (1) ultimate sale or exchange; or

18 (2) loading, unloading, storing, shipping, transshipping, manufacturing,
19 processing, or otherwise dealing with the goods or documents representing the goods
20 in a manner preliminary to their sale or exchange.

21 (g) A perfected security interest in a certificated security or instrument remains
22 perfected for 20 days without filing if the secured party delivers the security certificate
23 or instrument to the debtor for the purpose of

24 (1) ultimate sale or exchange; or

25 (2) presentation, collection, enforcement, renewal, or registration of
26 transfer.

27 (h) After the 20-day period specified in (e), (f), or (g) of this section expires,
28 perfection depends upon compliance with this chapter.

29 **Sec. 45.09.313. When possession by or delivery to secured party perfects**
30 **security interest without filing.** (a) Except as otherwise provided in (b) of this
31 section, a secured party may perfect a security interest in negotiable documents, goods,

1 instruments, money, or tangible chattel paper by taking possession of the collateral.
2 A secured party may perfect a security interest in certificated securities by taking
3 delivery of the certificated securities under AS 45.08.301.

4 (b) With respect to goods covered by a certificate of title issued by this state,
5 a secured party may perfect a security interest in the goods by taking possession of the
6 goods only in the circumstances described in AS 45.09.316(d).

7 (c) With respect to collateral other than certificated securities and goods
8 covered by a document, a secured party takes possession of collateral in the possession
9 of a person other than the debtor, the secured party, or a lessee of the collateral from
10 the debtor in the ordinary course of the debtor's business, when the person

11 (1) in possession authenticates a record acknowledging that the person
12 holds possession of the collateral for the secured party's benefit; or

13 (2) takes possession of the collateral after having authenticated a record
14 acknowledging that it will hold possession of collateral for the secured party's benefit.

15 (d) If perfection of a security interest depends upon possession of the collateral
16 by a secured party, perfection occurs no earlier than the time the secured party takes
17 possession and continues only while the secured party retains possession.

18 (e) A security interest in a certificated security in registered form is perfected
19 by delivery when delivery of the certificated security occurs under AS 45.08.301 and
20 remains perfected by delivery until the debtor obtains possession of the security
21 certificate.

22 (f) A person in possession of collateral is not required to acknowledge that it
23 holds possession for a secured party's benefit.

24 (g) If a person acknowledges that it holds possession for the secured party's
25 benefit,

26 (1) the acknowledgment is effective under (c) of this section or
27 AS 45.08.301(a), even if the acknowledgment violates the rights of a debtor; and

28 (2) unless the person otherwise agrees or law other than this chapter
29 otherwise provides, the person does not owe a duty to the secured party and is not
30 required to confirm the acknowledgment to another person.

31 (h) A secured party having possession of collateral does not relinquish

1 possession by delivering the collateral to a person other than the debtor or a lessee of
 2 the collateral from the debtor in the ordinary course of the debtor's business if the
 3 person was instructed before the delivery or is instructed contemporaneously with the
 4 delivery to

- 5 (1) hold possession of the collateral for the secured party's benefit; or
- 6 (2) redeliver the collateral to the secured party.

7 (i) A secured party does not relinquish possession, even if a delivery under (h)
 8 of this section violates the rights of a debtor. A person to whom collateral is delivered
 9 under (h) of this section does not owe a duty to the secured party and is not required
 10 to confirm the delivery to another person unless the person otherwise agrees or law
 11 other than this chapter otherwise provides.

12 **Sec. 45.09.314. Perfection by control.** (a) A security interest in deposit
 13 accounts, electronic chattel paper, investment property, or letter-of-credit rights, or may
 14 be perfected by control of the collateral under AS 45.09.104, 45.09.105, 45.09.106, or
 15 45.09.107.

16 (b) A security interest in deposit accounts, electronic chattel paper, or letter-of-
 17 credit rights is perfected by control under AS 45.09.104, 45.09.105, or 45.09.107 when
 18 the secured party obtains control and remains perfected by control only while the
 19 secured party retains control.

20 (c) A security interest in investment property is perfected by control under
 21 AS 45.09.106 from the time the secured party obtains control and remains perfected
 22 by control until

- 23 (1) the secured party does not have control; and
- 24 (2) one of the following occurs:

25 (A) if the collateral is a certificated security, the debtor has or
 26 acquires possession of the security certificate;

27 (B) if the collateral is an uncertificated security, the issuer has
 28 registered or registers the debtor as the registered owner; or

29 (C) if the collateral is a security entitlement, the debtor is or
 30 becomes the entitlement holder.

31 **Sec. 45.09.315. Secured party's rights on disposition of collateral and in**

1 **proceeds.** (a) Except as otherwise provided in this chapter,

2 (1) a security interest or agricultural lien continues in collateral
3 notwithstanding sale, lease, license, exchange, or other disposition of the security
4 interest or agricultural lien unless the secured party authorized the disposition free of
5 the security interest or agricultural lien; and

6 (2) a security interest attaches to any identifiable proceeds of collateral.

7 (b) Proceeds that are commingled with other property are identifiable proceeds
8 if the proceeds

9 (1) are goods, to the extent provided by AS 45.09.336; and

10 (2) are not goods, to the extent that the secured party identifies the
11 proceeds by a method of tracing, including application of equitable principles, that is
12 permitted under law other than this chapter with respect to commingled property of the
13 type involved.

14 (c) A security interest in proceeds is a perfected security interest if the security
15 interest in the original collateral was perfected.

16 (d) A perfected security interest in proceeds becomes unperfected on the 21st
17 day after the security interest attaches to the proceeds unless

18 (1) the following conditions are satisfied

19 (A) a filed financing statement covers the original collateral;

20 (B) the proceeds are collateral in which a security interest may
21 be perfected by filing in the office in which the financing statement has been
22 filed; and

23 (C) the proceeds are not acquired with cash proceeds;

24 (2) the proceeds are identifiable cash proceeds; or

25 (3) the security interest in the proceeds is perfected other than under
26 (c) of this section when the security interest attaches to the proceeds or within 20 days
27 thereafter.

28 (e) If a filed financing statement covers the original collateral, a security
29 interest in proceeds that remains perfected under (d)(1) of this section becomes
30 unperfected at the later of

31 (1) when the effectiveness of the filed financing statement lapses under

1 AS 45.09.515 or is terminated under AS 45.09.513; or

2 (2) the 21st day after the security interest attaches to the proceeds.

3 **Sec. 45.09.316. Continued perfection of security interest following change**
4 **in governing law.** (a) A security interest perfected under the law of the jurisdiction
5 designated in AS 45.09.301(1) or 45.09.305(c) remains perfected until the earliest of

6 (1) the time perfection would have ceased under the law of that
7 jurisdiction;

8 (2) the expiration of four months after a change of the debtor's location
9 to another jurisdiction;

10 (3) the expiration of one year after a transfer of collateral to a person
11 who thereby becomes a debtor and is located in another jurisdiction; or

12 (4) the expiration of one year after a new debtor located in another
13 jurisdiction becomes bound under AS 45.09.203(d).

14 (b) If a security interest described in (a) of this section becomes perfected
15 under the law of the other jurisdiction before the earliest time or event described in (a)
16 of this section, it remains perfected thereafter. If the security interest does not become
17 perfected under the law of the other jurisdiction before the earliest time or event, it
18 becomes unperfected and is considered never to have been perfected as against a
19 purchaser of the collateral for value.

20 (c) A possessory security interest in collateral, other than goods covered by a
21 certificate of title and as-extracted collateral consisting of goods, remains continuously
22 perfected if

23 (1) the collateral is located in one jurisdiction and subject to a security
24 interest perfected under the law of that jurisdiction;

25 (2) after the event described in (1) of this subsection occurs, the
26 collateral is brought into another jurisdiction; and

27 (3) upon entry into the other jurisdiction, the security interest is
28 perfected under the law of the other jurisdiction.

29 (d) Except as otherwise provided in (e) of this section, a security interest in
30 goods covered by a certificate of title that is perfected by a method under the law of
31 another jurisdiction when the goods become covered by a certificate of title from this

1 state remains perfected until the security interest would have become unperfected under
2 the law of the other jurisdiction had the goods not become so covered.

3 (e) A security interest described in (d) of this section becomes unperfected as
4 against a purchaser of the goods for value and is considered never to have been
5 perfected as against a purchaser of the goods for value if the applicable requirements
6 for perfection under AS 45.09.311(b) or 45.09.313 are not satisfied before the earlier
7 of

8 (1) the time the security interest would have become unperfected under
9 the law of the other jurisdiction had the goods not become covered by a certificate of
10 title from this state; or

11 (2) the expiration of four months after the goods had become so
12 covered.

13 (f) A security interest in deposit accounts, letter-of-credit rights, or investment
14 property that is perfected under the law of the bank's jurisdiction, the issuer's
15 jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction,
16 or the commodity intermediary's jurisdiction, as applicable, remains perfected until the
17 earlier of

18 (1) the time the security interest would have become unperfected under
19 the law of that jurisdiction; or

20 (2) the expiration of four months after a change of the applicable
21 jurisdiction to another jurisdiction.

22 (g) If a security interest described in (f) of this section becomes perfected
23 under the law of the other jurisdiction before the earlier of the time or the end of the
24 period described in (f) of this section, it remains perfected thereafter. If the security
25 interest does not become perfected under the law of the other jurisdiction before the
26 earlier of that time or the end of that period, it becomes unperfected and is considered
27 never to have been perfected as against a purchaser of the collateral for value.

28 **Sec. 45.09.317. Interests that take priority over or take free of unperfected**
29 **security interest or agricultural lien.** (a) An unperfected security interest or
30 agricultural lien is subordinate to the rights of a person

31 (1) entitled to priority under AS 45.09.322; and

1 (2) who becomes a lien creditor before the earlier of the time the
2 security interest or agricultural lien is perfected or a financing statement covering the
3 collateral is filed.

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

9 (c) Except as otherwise provided in (e) of this section, a lessee of goods takes
10 free of a security interest or agricultural lien if the lessee gives value and receives
11 delivery of the collateral without knowledge of the security interest or agricultural lien
12 and before it is perfected.

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

17 (e) Except as otherwise provided in AS 45.09.320 and 45.09.321, if a person
18 files a financing statement with respect to a purchase money security interest before
19 or within 20 days after the debtor receives delivery of the collateral, the security
20 interest takes priority over the rights of a buyer, lessee, or lien creditor that arise
21 between the time the security interest attaches and the time of filing.

22 **Sec. 45.09.318. No interest retained in right to payment that is sold; rights**
23 **and title of seller of account or chattel paper with respect to creditors and**
24 **purchasers.** (a) A debtor that has sold an account, chattel paper, payment intangible,
25 or promissory note does not retain a legal or equitable interest in the collateral sold.

26 (b) For purposes of determining the rights of creditors of, and purchasers for
27 value of an account or chattel paper from, a debtor that has sold an account or chattel
28 paper, while the buyer's security interest is unperfected, the debtor is considered to
29 have rights and title to the account or chattel paper identical to those the debtor sold.

30 **Sec. 45.09.319. Rights and title of consignee with respect to creditors and**
31 **purchasers.** (a) Except as otherwise provided in (b) of this section, for purposes of

1 determining the rights of creditors of, and purchasers for value of goods from, a
 2 consignee, while the goods are in the possession of the consignee, the consignee has
 3 rights and title to the goods identical to those the consignor had or had power to
 4 transfer.

5 (b) For purposes of determining the rights of a creditor of a consignee, law
 6 other than this chapter determines the rights and title of a consignee while goods are
 7 in the consignee's possession if, under AS 45.09.301 - 45.09.342, a perfected security
 8 interest held by the consignor would have priority over the rights of the creditor.

9 **Sec. 45.09.320. Buyer of goods.** (a) Except as otherwise provided in (e) of
 10 this section, a buyer in ordinary course of business, other than a person buying farm
 11 products from a person engaged in farming operations, takes free of a security interest
 12 created by the buyer's seller, even if the security interest is perfected and the buyer
 13 knows of its existence.

14 (b) Except as otherwise provided in (e) of this section, a buyer of goods from
 15 a person who used or bought the goods for use primarily for personal, family, or
 16 household purposes takes free of a security interest, even if perfected, if the buyer buys

17 (1) without knowledge of the security interest;

18 (2) for value;

19 (3) primarily for the buyer's personal, family, or household purposes;

20 and

21 (4) before the filing of a financing statement covering the goods.

22 (c) To the extent that it affects the priority of a security interest over a buyer
 23 of goods under (b) of this section, the period of effectiveness of a filing made in the
 24 jurisdiction in which the seller is located is governed by AS 45.09.316(a) and (b).

25 (d) A buyer in ordinary course of business buying oil, gas, or other minerals
 26 at the wellhead or minehead or after extraction takes free of an interest arising out of
 27 an encumbrance.

28 (e) The provisions of (a) and (b) of this section do not affect a security interest
 29 in goods in the possession of the secured party under AS 45.09.313.

30 **Sec. 45.09.321. Licensee of general intangible and lessee of goods in**
 31 **ordinary course of business.** (a) In this section, "licensee in ordinary course of

1 business" means a person who becomes a licensee of a general intangible in good
 2 faith, without knowledge that the license violates the rights of another person in the
 3 general intangible, and in the ordinary course from a person in the business of
 4 licensing general intangibles of that kind. A person becomes a licensee in the ordinary
 5 course if the license to the person comports with the usual or customary practices in
 6 the kind of business in which the licensor is engaged or with the licensor's own usual
 7 or customary practices.

8 (b) A licensee in ordinary course of business takes its rights under the license
 9 free of a security interest in the general intangible created by the licensor even if the
 10 security interest is perfected and the licensee knows of its existence.

11 (c) A lessee in ordinary course of business takes its leasehold interest free of
 12 a security interest in the goods created by the lessor even if the security interest is
 13 perfected and the lessee knows of its existence.

14 **Sec. 45.09.322. Priorities among conflicting security interests in and**
 15 **agricultural liens on same collateral.** (a) Except as otherwise provided in this
 16 section, priority among conflicting security interests and agricultural liens in the same
 17 collateral is determined according to the following rules:

18 (1) conflicting perfected security interests and agricultural liens rank
 19 according to priority in time of filing or perfection; priority dates from the earlier of
 20 the time a filing covering the collateral is first made or the security interest or
 21 agricultural lien is first perfected if there is no period thereafter when there is neither
 22 filing nor perfection;

23 (2) a perfected security interest or agricultural lien has priority over a
 24 conflicting unperfected security interest or agricultural lien;

25 (3) the first security interest or agricultural lien to attach or become
 26 effective has priority if conflicting security interests and agricultural liens are
 27 unperfected.

28 (b) For the purposes of (a)(1) of this section, the time of filing or perfection
 29 as to a security interest in collateral

30 (1) is also the time of filing or perfection as to a security interest in
 31 proceeds; and

1 (2) supported by a supporting obligation is also the time of filing or
2 perfection as to a security interest in the supporting obligation.

3 (c) Except as otherwise provided in (f) of this section, a security interest in
4 collateral that qualifies for priority over a conflicting security interest under
5 AS 45.09.327, 45.09.328, 45.09.329, 45.09.330, or 45.09.331 also has priority over a
6 conflicting security interest in

7 (1) supporting obligation for the collateral; and

8 (2) proceeds of the collateral if

9 (A) the security interest in proceeds is perfected;

10 (B) the proceeds are cash proceeds or of the same type as the
11 collateral; and

12 (C) in the case of proceeds that are proceeds of proceeds, all
13 intervening proceeds are cash proceeds, proceeds of the same type as the
14 collateral, or an account relating to the collateral.

15 (d) Subject to (e) of this section and except as otherwise provided in (f) of this
16 section, if a security interest in chattel paper, deposit accounts, negotiable documents,
17 instruments, investment property, or letter-of-credit rights is perfected by a method
18 other than filing, conflicting perfected security interests in proceeds of the collateral
19 rank according to priority in time of filing.

20 (e) The provisions of (d) of this section apply only if the proceeds of the
21 collateral are not cash proceeds, chattel paper, negotiable documents, instruments,
22 investment property, or letter-of-credit rights.

23 (f) The provisions of (a) - (e) of this section are subject to

24 (1) the provisions of (g) of this section and the other provisions of
25 AS 45.09.301 - 45.09.342;

26 (2) AS 45.04.210 with respect to a security interest of a collecting
27 bank;

28 (3) AS 45.05.118 with respect to a security interest of an issuer or
29 nominated person; and

30 (4) AS 45.09.110 with respect to a security interest arising under
31 AS 45.02 or AS 45.12.

1 (g) A perfected agricultural lien on collateral has priority over a conflicting
 2 security interest in or agricultural lien on the same collateral if the statute creating the
 3 agricultural lien so provides.

4 **Sec. 45.09.323. Future advances.** (a) Except as otherwise provided in (c) of
 5 this section, for purposes of determining the priority of a perfected security interest
 6 under AS 45.09.322(a)(1), perfection of the security interest dates from the time an
 7 advance is made to the extent that the security interest secures an advance that

8 (1) is made while the security interest is perfected only

9 (A) under AS 45.09.309 when it attaches; or

10 (B) temporarily under AS 45.09.312(e), (f), or (g); and

11 (2) not made pursuant to a commitment entered into before or while
 12 the security interest is perfected by a method other than under AS 45.09.309 or
 13 45.09.312(e), (f), or (g).

14 (b) Except as otherwise provided in (c) of this section, a security interest is
 15 subordinate to the rights of a person who becomes a lien creditor while the security
 16 interest is perfected only to the extent that the security interest secures advances made
 17 more than 45 days after the person becomes a lien creditor unless the advance is made

18 (1) without knowledge of the lien; or

19 (2) pursuant to a commitment entered into without knowledge of the
 20 lien.

21 (c) The provisions of (a) and (b) of this section do not apply to a security
 22 interest held by a secured party that is a buyer of accounts, chattel paper, payment
 23 intangibles, or promissory notes or a consignor.

24 (d) Except as otherwise provided in (e) of this section, a buyer of goods other
 25 than a buyer in ordinary course of business takes free of a security interest to the
 26 extent that it secures advances made after the earlier of

27 (1) the time the secured party acquires knowledge of the buyer's
 28 purchase; or

29 (2) 45 days after the purchase.

30 (e) The provisions of (d) of this section do not apply if the advance is made
 31 pursuant to a commitment entered into without knowledge of the buyer's purchase and

1 before the expiration of the 45-day period.

2 (f) Except as otherwise provided in (g) of this section, a lessee of goods, other
3 than a lessee in ordinary course of business, takes the leasehold interest free of a
4 security interest to the extent that it secures advances made after the earlier of

5 (1) the time the secured party acquires knowledge of the lease; or

6 (2) 45 days after the lease contract becomes enforceable.

7 (g) The provisions of (f) of this section do not apply if the advance is made
8 pursuant to a commitment entered into without knowledge of the lease and before the
9 expiration of the 45-day period.

10 **Sec. 45.09.324. Priority of purchase money security interests.** (a) Except
11 as otherwise provided in (g) of this section, a perfected purchase money security
12 interest in goods other than inventory or livestock has priority over a conflicting
13 security interest in the same goods, and, except as otherwise provided in AS 45.09.327,
14 a perfected security interest in its identifiable proceeds also has priority if the purchase
15 money security interest is perfected when the debtor receives possession of the
16 collateral or within 20 days thereafter.

17 (b) Subject to (c) of this section and except as otherwise provided in (g) of this
18 section, a perfected purchase money security interest in inventory has priority over a
19 conflicting security interest in the same inventory, has priority over a conflicting
20 security interest in chattel paper or an instrument constituting proceeds of the inventory
21 and in proceeds of the chattel paper if so provided in AS 45.09.330, and, except as
22 otherwise provided in AS 45.09.327, also has priority in identifiable cash proceeds of
23 the inventory to the extent the identifiable cash proceeds are received on or before the
24 delivery of the inventory to a buyer if

25 (1) the purchase money security interest is perfected when the debtor
26 receives possession of the inventory;

27 (2) the purchase money secured party sends an authenticated
28 notification to the holder of the conflicting security interest;

29 (3) the holder of the conflicting security interest receives the
30 notification within five years before the debtor receives possession of the inventory;
31 and

1 (4) the notification states that the person sending the notification has
2 or expects to acquire a purchase money security interest in inventory of the debtor and
3 describes the inventory.

4 (c) The provisions of (b)(2) - (4) of this section apply only if the holder of the
5 conflicting security interest had filed a financing statement covering the same types of
6 inventory if the purchase money security interest is

7 (1) perfected by filing, before the date of the filing; or

8 (2) temporarily perfected without filing or possession under
9 AS 45.09.312(f) before the beginning of the 20-day period under AS 45.09.312(f).

10 (d) Subject to (e) of this section and except as otherwise provided in (g) of this
11 section, a perfected purchase money security interest in livestock that are farm
12 products has priority over a conflicting security interest in the same livestock, and,
13 except as otherwise provided in AS 45.09.327, a perfected security interest in their
14 identifiable proceeds and identifiable products in their unmanufactured states also has
15 priority if

16 (1) the purchase money security interest is perfected when the debtor
17 receives possession of the livestock;

18 (2) the purchase money secured party sends an authenticated
19 notification to the holder of the conflicting security interest;

20 (3) the holder of the conflicting security interest receives the
21 notification within six months before the debtor receives possession of the livestock;
22 and

23 (4) the notification states that the person sending the notification has
24 or expects to acquire a purchase money security interest in livestock of the debtor and
25 describes the livestock.

26 (e) The provisions of (d)(2) - (4) of this section apply only if the holder of the
27 conflicting security interest had filed a financing statement covering the same types of
28 livestock if the purchase money security interest is

29 (1) perfected by filing before the date of the filing; or

30 (2) temporarily perfected without filing or possession under
31 AS 45.09.312(f) before the beginning of the 20-day period under AS 45.09.312(f).

1 (f) Except as otherwise provided in (g) of this section, a perfected purchase-
 2 money security interest in software has priority over a conflicting security interest in
 3 the same collateral, and, except as otherwise provided in AS 45.09.327, a perfected
 4 security interest in its identifiable proceeds also has priority to the extent that the
 5 purchase money security interest in the goods in which the software was acquired for
 6 use has priority in the goods and proceeds of the goods under this section.

7 (g) If more than one security interest qualifies for priority in the same
 8 collateral under (a), (b), (d), or (f) of this section,

9 (1) a security interest securing an obligation incurred as all or part of
 10 the price of the collateral has priority over a security interest securing an obligation
 11 incurred for value given to enable the debtor to acquire rights in or the use of
 12 collateral; and

13 (2) in all other cases, AS 45.09.322(a) applies to the qualifying security
 14 interests.

15 **Sec. 45.09.325. Priority of security interests in transferred collateral.** (a)
 16 Except as otherwise provided in (b) of this section, a security interest created by a
 17 debtor is subordinate to a security interest in the same collateral created by another
 18 person if

19 (1) the debtor acquired the collateral subject to the security interest
 20 created by the other person;

21 (2) the security interest created by the other person was perfected when
 22 the debtor acquired the collateral; and

23 (3) there is no period after the events described in (1) and (2) of this
 24 subsection when the security interest is unperfected.

25 (b) The provisions of (a) of this section subordinate a security interest only if
 26 the security interest

27 (1) otherwise would have priority solely under AS 45.09.322(a) or
 28 45.09.324; or

29 (2) arose solely under AS 45.02.711(c) or AS 45.12.508(e).

30 **Sec. 45.09.326. Priority of security interests created by new debtor.** (a)
 31 Subject to (b) of this section, a security interest created by a new debtor that is

1 perfected by a filed financing statement that is effective solely under AS 45.09.508 in
2 collateral in which a new debtor has or acquires rights is subordinate to a security
3 interest in the same collateral that is perfected by another method.

4 (b) If more than one security interest in the same collateral is subordinate
5 under (a) of this section, the other provisions of AS 45.09.301 - 45.09.342 determine
6 the priority among the subordinated security interests.

7 **Sec. 45.09.327. Priority of security interests in deposit account.** The
8 following rules govern priority among conflicting security interests in the same deposit
9 account:

10 (1) a security interest held by a secured party having control of the
11 deposit account under AS 45.09.104 has priority over a conflicting security interest
12 held by a secured party that does not have control;

13 (2) except as otherwise provided in (3) and (4) of this section, security
14 interests perfected by control under AS 45.09.314 rank according to priority in time
15 of obtaining control;

16 (3) except as otherwise provided in (4) of this section, a security
17 interest held by the bank with which the deposit account is maintained has priority
18 over a conflicting security interest held by another secured party;

19 (4) a security interest perfected by control under AS 45.09.104(a)(3)
20 has priority over a security interest held by the bank with which the deposit account
21 is maintained.

22 **Sec. 45.09.328. Priority of security interests in investment property.** The
23 following rules govern priority among conflicting security interests in the same
24 investment property:

25 (1) a security interest held by a secured party having control of
26 investment property under AS 45.09.106 has priority over a security interest held by
27 a secured party that does not have control of the investment property;

28 (2) except as otherwise provided in (3) and (4) of this section,
29 conflicting security interests held by secured parties each of which has control under
30 AS 45.09.106 rank according to priority in time, if the collateral is

31 (A) a security, of obtaining control;

1 (B) a security entitlement carried in a securities account and if
2 the secured party obtained control

3 (i) under AS 45.08.106(d)(1), of the secured party's
4 becoming the person for which the securities account is maintained;

5 (ii) under AS 45.08.106(d)(2), of the securities
6 intermediary's agreement to comply with the secured party's entitlement
7 orders with respect to security entitlements carried or to be carried in
8 the securities account; or

9 (iii) through another person under AS 45.08.106(d)(3),
10 of the time on which priority would be based under this paragraph if
11 the other person were the secured party; or

12 (C) a commodity contract carried with a commodity
13 intermediary, of the satisfaction of the requirement for control specified in
14 AS 45.09.106(b)(2) with respect to commodity contracts carried or to be carried
15 with the commodity intermediary;

16 (3) a security interest held by a securities intermediary in a security
17 entitlement or a securities account maintained with the securities intermediary has
18 priority over a conflicting security interest held by another secured party;

19 (4) a security interest held by a commodity intermediary in a
20 commodity contract or a commodity account maintained with the commodity
21 intermediary has priority over a conflicting security interest held by another secured
22 party;

23 (5) a security interest in a certificated security in registered form that
24 is perfected by taking delivery under AS 45.09.313(a) and not by control under
25 AS 45.09.314 has priority over a conflicting security interest perfected by a method
26 other than control;

27 (6) conflicting security interests created by a broker, securities
28 intermediary, or commodity intermediary that are perfected without control under
29 AS 45.09.106 rank equally;

30 (7) in all other cases, priority among conflicting security interests in
31 investment property is governed by AS 45.09.322 and 45.09.323.

1 **Sec. 45.09.329. Priority of security interests in letter-of-credit right.** The
2 following rules govern priority among conflicting security interests in the same letter-
3 of-credit right:

4 (1) a security interest held by a secured party having control of the
5 letter-of-credit right under AS 45.09.107 has priority to the extent of its control over
6 a conflicting security interest held by a secured party that does not have control;

7 (2) security interests perfected by control under AS 45.09.314 rank
8 according to priority in time of obtaining control.

9 **Sec. 45.09.330. Priority of purchaser of chattel paper or instrument.** (a)
10 A purchaser of chattel paper has priority over a security interest in the chattel paper
11 that is claimed merely as proceeds of inventory subject to a security interest if

12 (1) in good faith and in the ordinary course of the purchaser's business,
13 the purchaser gives new value and takes possession of the chattel paper or obtains
14 control of the chattel paper under AS 45.09.105; and

15 (2) the chattel paper does not indicate that it has been assigned to an
16 identified assignee other than the purchaser.

17 (b) A purchaser of chattel paper has priority over a security interest in the
18 chattel paper that is claimed other than merely as proceeds of inventory subject to a
19 security interest if the purchaser gives new value and takes possession of the chattel
20 paper or obtains control of the chattel paper under AS 45.09.105 in good faith, in the
21 ordinary course of the purchaser's business, and without knowledge that the purchase
22 violates the rights of the secured party.

23 (c) Except as otherwise provided in AS 45.09.327, a purchaser having priority
24 in chattel paper under (a) or (b) of this section also has priority in proceeds of the
25 chattel paper to the extent that

26 (1) AS 45.09.322 provides for priority in the proceeds; or

27 (2) the proceeds consist of the specific goods covered by the chattel
28 paper or cash proceeds of the specific goods even if the purchaser's security interest
29 in the proceeds is unperfected.

30 (d) Except as otherwise provided in AS 45.09.331(a), a purchaser of an
31 instrument has priority over a security interest in the instrument perfected by a method

1 other than possession if the purchaser gives value and takes possession of the
 2 instrument in good faith and without knowledge that the purchase violates the rights
 3 of the secured party.

4 (e) For purposes of (a) and (b) of this section, the holder of a purchase money
 5 security interest in inventory gives new value for chattel paper constituting proceeds
 6 of the inventory.

7 (f) For purposes of (b) and (d) of this section, if chattel paper or an instrument
 8 indicates that it has been assigned to an identified secured party other than the
 9 purchaser, a purchaser of the chattel paper or instrument has knowledge that the
 10 purchase violates the rights of the secured party.

11 **Sec. 45.09.331. Priority of rights of purchasers of instruments, documents,**
 12 **and securities under other chapters; priority of interests in financial assets and**
 13 **security entitlements under AS 45.08.** (a) This chapter does not limit the rights of
 14 a holder in due course of a negotiable instrument, a holder to which a negotiable
 15 document of title has been duly negotiated, or a protected purchaser of a security.
 16 These holders or purchasers take priority over an earlier security interest, even if
 17 perfected, to the extent provided in AS 45.03, AS 45.07, and AS 45.08.

18 (b) This chapter does not limit the rights of or impose liability on a person to
 19 the extent that the person is protected against the assertion of an adverse claim under
 20 AS 45.08.

21 (c) Filing under this chapter does not constitute notice of a claim or defense
 22 to the holders, purchasers, or persons described in (a) and (b) of this section.

23 **Sec. 45.09.332. Transfer of money; transfer of funds from deposit account.**

24 (a) A transferee of money takes the money free of a security interest unless the
 25 transferee acts in collusion with the debtor in violating the rights of the secured party.

26 (b) A transferee of funds from a deposit account takes the funds free of a
 27 security interest in the deposit account unless the transferee acts in collusion with the
 28 debtor in violating the rights of the secured party.

29 **Sec. 45.09.333. Priority of certain liens arising by operation of law.** (a)
 30 In this section, "possessory lien" means an interest, other than a security interest or an
 31 agricultural lien,

1 (1) that secures payment or performance of an obligation for services
 2 or materials furnished with respect to goods by a person in the ordinary course of the
 3 person's business;

4 (2) that is created by statute or rule of law in favor of the person; and

5 (3) whose effectiveness depends on the person's possession of the
 6 goods.

7 (b) A possessory lien on goods has priority over a security interest in the
 8 goods unless the lien is created by a statute that expressly provides otherwise.

9 **Sec. 45.09.334. Priority of security interests in fixtures and crops.** (a) A
 10 security interest under this chapter may be created in goods that are fixtures or may
 11 continue in goods that become fixtures. A security interest does not exist under this
 12 chapter in ordinary building materials incorporated into an improvement on land.

13 (b) This chapter does not prevent creation of an encumbrance upon fixtures
 14 under real property law.

15 (c) In cases not governed by (d) - (h) of this section, a security interest in
 16 fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the
 17 related real property other than the debtor.

18 (d) Except as otherwise provided in (h) of this section, a perfected security
 19 interest in fixtures has priority over a conflicting interest of an encumbrancer or owner
 20 of the real property if the debtor has an interest of record in or is in possession of the
 21 real property and

22 (1) the security interest is a purchase money security interest;

23 (2) the interest of the encumbrancer or owner arises before the goods
 24 become fixtures; and

25 (3) the security interest is perfected by a fixture filing before the goods
 26 become fixtures or within 20 days after the goods become fixtures.

27 (e) A perfected security interest in fixtures has priority over a conflicting
 28 interest of an encumbrancer or owner of the real property if

29 (1) the debtor has an interest of record in the real property or is in
 30 possession of the real property and the security interest

31 (A) is perfected by a fixture filing before the interest of the

1 encumbrancer or owner is of record; and

2 (B) has priority over any conflicting interest of a predecessor
3 in title of the encumbrancer or owner;

4 (2) before the goods become fixtures, the security interest is perfected
5 by a method permitted by this chapter and the fixtures are readily removable

6 (A) factory or office machines;

7 (B) equipment that is not primarily used or leased for use in the
8 operation of the real property; or

9 (C) replacements of domestic appliances that are consumer
10 goods;

11 (3) the conflicting interest is a lien on the real property obtained by
12 legal or equitable proceedings after the security interest was perfected by a method
13 permitted by this chapter; or

14 (4) the security interest is

15 (A) created in a manufactured home in a manufactured home
16 transaction; and

17 (B) perfected under a statute described in AS 45.09.311(a)(2).

18 (f) A security interest in fixtures, whether or not perfected, has priority over
19 a conflicting interest of an encumbrancer or owner of the real property if

20 (1) the encumbrancer or owner has, in an authenticated record,
21 consented to the security interest or disclaimed an interest in the goods as fixtures; or

22 (2) the debtor has a right to remove the goods as against the
23 encumbrancer or owner.

24 (g) The priority of the security interest under (f) of this section continues for
25 a reasonable time if the debtor's right to remove the goods as against the encumbrancer
26 or owner terminates.

27 (h) A mortgage is a construction mortgage to the extent that it secures an
28 obligation incurred for the construction of an improvement on land, including the
29 acquisition cost of the land if a recorded record of the mortgage so indicates. Except
30 as otherwise provided in (e) and (f) of this section, a security interest in fixtures is
31 subordinate to a construction mortgage if a record of the mortgage is recorded before

1 the goods become fixtures and the goods become fixtures before the completion of the
 2 construction. A mortgage has this priority to the same extent as a construction
 3 mortgage to the extent that it is given to refinance a construction mortgage.

4 (i) A perfected security interest in crops growing on real property has priority
 5 over a conflicting interest of an encumbrancer or owner of the real property if the
 6 debtor has an interest of record in or is in possession of the real property.

7 (j) The provisions of (i) of this section prevail over an inconsistent statute
 8 unless that statute contains an exemption that refers specifically to this section.

9 **Sec. 45.09.335. Accessions.** (a) A security interest may be created in an
 10 accession and continues in collateral that becomes an accession.

11 (b) If a security interest is perfected when the collateral becomes an accession,
 12 the security interest remains perfected in the collateral.

13 (c) Except as otherwise provided in (d) of this section, the other provisions of
 14 AS 45.09.301 - 45.09.342 determine the priority of a security interest in an accession.

15 (d) A security interest in an accession is subordinate to a security interest in
 16 the whole that is perfected by compliance with the requirements of a certificate of title
 17 statute under AS 45.09.311(b).

18 (e) After default, subject to AS 45.09.601 - 45.09.628, a secured party may
 19 remove an accession from other goods if the security interest in the accession has
 20 priority over the claims of every person having an interest in the whole.

21 (f) A secured party that removes an accession from other goods under (e) of
 22 this section shall promptly reimburse an encumbrancer or owner of the whole or of the
 23 other goods, other than the debtor, for the cost of repair of a physical injury to the
 24 whole or the other goods. The secured party need not reimburse the encumbrancer or
 25 owner for diminution in value of the whole or the other goods caused by the absence
 26 of the accession removed or by a necessity for replacing it. A person entitled to
 27 reimbursement may refuse permission to remove until the secured party gives adequate
 28 assurance for the performance of the obligation to reimburse.

29 **Sec. 45.09.336. Commingled goods.** (a) In this section, "commingled goods"
 30 means goods that are physically united with other goods in a manner so that their
 31 identity is lost in a product or mass.

1 (b) A security interest does not exist in commingled goods as such. However,
 2 a security interest may attach to a product or mass that results when goods become
 3 commingled goods.

4 (c) If collateral becomes commingled goods, a security interest attaches to the
 5 product or mass.

6 (d) If a security interest in collateral is perfected before the collateral becomes
 7 commingled goods, the security interest that attaches to the product or mass under (c)
 8 of this section is perfected.

9 (e) Except as otherwise provided in (f) of this section, the other provisions of
 10 AS 45.09.301 - 45.09.342 determine the priority of a security interest that attaches to
 11 the product or mass under (c) of this section.

12 (f) If more than one security interest attaches to the product or mass under (c)
 13 of this section, the following rules determine priority:

14 (1) a security interest that is perfected under (d) of this section has
 15 priority over a security interest that is unperfected at the time the collateral becomes
 16 commingled goods;

17 (2) if more than one security interest is perfected under (d) of this
 18 section, the security interests rank equally in proportion to the value of the collateral
 19 at the time it became commingled goods.

20 **Sec. 45.09.337. Priority of security interests in goods covered by certificate**
 21 **of title.** If, while a security interest in goods is perfected by a method under the law
 22 of another jurisdiction, this state issues a certificate of title that does not show that the
 23 goods are subject to the security interest or contain a statement that the goods may be
 24 subject to security interests not shown on the certificate,

25 (1) a buyer of the goods, other than a person in the business of selling
 26 goods of that kind, takes free of the security interest if the buyer gives value and
 27 receives delivery of the goods after issuance of the certificate and without knowledge
 28 of the security interest; and

29 (2) the security interest is subordinate to a conflicting security interest
 30 in the goods that attaches, and is perfected under AS 45.09.311(b) after issuance of the
 31 certificate and without the conflicting secured party's knowledge of the security

1 interest.

2 **Sec. 45.09.338. Priority of security interest or agricultural lien perfected**
 3 **by filed financing statement providing certain incorrect information.** If a security
 4 interest or agricultural lien is perfected by a filed financing statement providing
 5 information described in AS 45.09.516(b)(5) that is incorrect at the time the financing
 6 statement is filed,

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

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

16 **Sec. 45.09.339. Priority subject to subordination.** This chapter does not
 17 preclude subordination by agreement by a person entitled to priority.

18 **Sec. 45.09.340. Effectiveness of right of recoupment or setoff against**
 19 **deposit account.** (a) Except as otherwise provided in (c) of this section, a bank with
 20 which a deposit account is maintained may exercise a right of recoupment or setoff
 21 against a secured party that holds a security interest in the deposit account.

22 (b) Except as otherwise provided in (c) of this section, the application of this
 23 chapter to a security interest in a deposit account does not affect a right of recoupment
 24 or setoff of the secured party as to a deposit account maintained with the secured
 25 party.

26 (c) The exercise by a bank of a setoff against a deposit account is ineffective
 27 against a secured party that holds a security interest in the deposit account that is
 28 perfected by control under AS 45.09.104(a)(3) if the setoff is based on a claim against
 29 the debtor.

30 **Sec. 45.09.341. Bank's rights and duties with respect to deposit account.**
 31 Except as otherwise provided in AS 45.09.340(c), and unless the bank otherwise agrees

1 in an authenticated record, a bank's rights and duties with respect to a deposit account
 2 maintained with the bank are not terminated, suspended, or modified by

3 (1) the creation, attachment, or perfection of a security interest in the
 4 deposit account;

5 (2) the bank's knowledge of the security interest; or

6 (3) the bank's receipt of instructions from the secured party.

7 **Sec. 45.09.342. Bank's right to refuse to enter into or disclose existence of**
 8 **control agreement.** This chapter does not require a bank to enter into an agreement
 9 of the kind described in AS 45.09.104(a)(2), even if its customer so requests or directs.
 10 A bank that has entered into such an agreement is not required to confirm the
 11 existence of the agreement to another person unless requested to do so by its customer.

12 **Article 4. Rights of Third Parties.**

13 **Sec. 45.09.401. Alienability of debtor's rights.** (a) Except as otherwise
 14 provided in (b) of this section and AS 45.09.406 - 45.09.409, whether a debtor's rights
 15 in collateral may be voluntarily or involuntarily transferred is governed by law other
 16 than this chapter.

17 (b) An agreement between the debtor and secured party that prohibits a
 18 transfer of the debtor's rights in collateral or makes the transfer a default does not
 19 prevent the transfer from taking effect.

20 **Sec. 45.09.402. Secured party not obligated on contract of debtor or in**
 21 **tort.** The existence of a security interest, agricultural lien, or authority given to a
 22 debtor to dispose of or use collateral, without more, does not subject a secured party
 23 to liability in contract or tort for the debtor's acts or omissions.

24 **Sec. 45.09.403. Agreement not to assert defenses against assignee.** (a) In
 25 this section, the issue of whether an assignment is taken for value is governed by the
 26 provisions of AS 45.03.303(a).

27 (b) Except as otherwise provided in this section, an agreement between an
 28 account debtor and an assignor not to assert against an assignee a claim or defense that
 29 the account debtor may have against the assignor is enforceable by an assignee that
 30 takes an assignment

31 (1) for value;

1 (2) in good faith;

2 (3) without notice of a claim of a property or possessory right to the
3 property assigned; and

4 (4) without notice of a defense or claim in recoupment of the type that
5 may be asserted against a person entitled to enforce a negotiable instrument under
6 AS 45.03.305(a).

7 (c) The provisions of (b) of this section do not apply to defenses of a type that
8 may be asserted against a holder in due course of a negotiable instrument under
9 AS 45.03.305(b).

10 (d) In a consumer transaction, if a record evidences the account debtor's
11 obligation, if law other than this chapter requires that the record include a statement
12 to the effect that the rights of an assignee are subject to claims or defenses that the
13 account debtor could assert against the original obligee, and if the record does not
14 include the statement,

15 (1) the record has the same effect as if the record included the a
16 statement; and

17 (2) the account debtor may assert against an assignee the claims and
18 defenses that would have been available if the record included the statement.

19 (e) This section is subject to law other than this chapter that establishes a
20 different rule for an account debtor who is an individual and who incurred the
21 obligation primarily for personal, family, or household purposes.

22 (f) Except as otherwise provided in (d) of this section, this section does not
23 displace law other than this chapter that gives effect to an agreement by an account
24 debtor not to assert a claim or defense against an assignee.

25 **Sec. 45.09.404. Rights acquired by assignee; claims and defenses against**
26 **assignee.** (a) Unless an account debtor has made an enforceable agreement not to
27 assert defenses or claims, and subject to (b) - (e) of this section, the rights of an
28 assignee are subject to

29 (1) all terms of the agreement between the account debtor and assignor
30 and a defense or claim in recoupment arising from the transaction that gave rise to the
31 contract; and

1 (2) any other defense or claim of the account debtor against the
2 assignor that accrues before the account debtor receives a notification of the
3 assignment authenticated by the assignor or the assignee.

4 (b) Subject to (c) of this section and except as otherwise provided in (d) of this
5 section, the claim of an account debtor against an assignor may be asserted against an
6 assignee under (a) of this section only to reduce the amount the account debtor owes.

7 (c) This section is subject to law other than this chapter that establishes a
8 different rule for an account debtor who is an individual and who incurred the
9 obligation primarily for personal, family, or household purposes.

10 (d) In a consumer transaction, if a record evidences the account debtor's
11 obligation, law other than this chapter requires that the record include a statement to
12 the effect that the account debtor's recovery against an assignee with respect to claims
13 and defenses against the assignor may not exceed amounts paid by the account debtor
14 under the record, and the record does not include the statement, the extent to which
15 a claim of an account debtor against the assignor may be asserted against an assignee
16 is determined as if the record included the statement.

17 (e) This section does not apply to an assignment of a health care insurance
18 receivable.

19 **Sec. 45.09.405. Modification of assigned contract.** (a) A modification of
20 or substitution for an assigned contract is effective against an assignee if made in good
21 faith. The assignee acquires corresponding rights under the modified or substituted
22 contract. The assignment may provide that the modification or substitution is a breach
23 of contract by the assignor. This subsection is subject to (b) - (d) of this section.

24 (b) The provisions of (a) of this section apply to the extent that the right to
25 payment or the right to partial payment

26 (1) under an assigned contract has not been fully earned by
27 performance; or

28 (2) has been fully earned by performance and the account debtor has
29 not received notification of the assignment under AS 45.09.406(a).

30 (c) This section is subject to law other than this chapter that establishes a
31 different rule for an account debtor who is an individual and who incurred the

1 obligation primarily for personal, family, or household purposes.

2 (d) This section does not apply to an assignment of a health care insurance
3 receivable.

4 **Sec. 45.09.406. Discharge of account debtor; notification of assignment;
5 identification and proof of assignment; term prohibiting assignment ineffective.**

6 (a) Subject to (b) - (h) of this section, an account debtor on an account,
7 chattel paper, or a payment intangible may discharge its obligation by paying the
8 assignor until, but not after, the account debtor receives a notification, authenticated
9 by the assignor or the assignee, that the amount due or to become due has been
10 assigned and that payment is to be made to the assignee. After receipt of the
11 notification, the account debtor may discharge its obligation by paying the assignee
12 and may not discharge its obligation by paying the assignor.

13 (b) Subject to (g) of this section, notification is ineffective under (a) of this
14 section

15 (1) if it does not reasonably identify the rights assigned;

16 (2) to the extent that an agreement between an account debtor and a
17 seller of a payment intangible limits the account debtor's duty to pay a person other
18 than the seller and the limitation is effective under law other than this chapter; or

19 (3) at the option of an account debtor, if the notification notifies the
20 account debtor to make less than the full amount of any installment or other periodic
21 payment to the assignee even if

22 (A) only a portion of the account, chattel paper, or general
23 intangible has been assigned to that assignee;

24 (B) a portion has been assigned to another assignee; or

25 (C) the account debtor knows that the assignment to that
26 assignee is limited.

27 (c) Subject to (g) of this section, if requested by the account debtor, an
28 assignee shall seasonably furnish reasonable proof that the assignment has been made.
29 Unless the assignee complies, the account debtor may discharge its obligation by
30 paying the assignor even if the account debtor has received a notification under (a) of
31 this section.

1 (d) Except as otherwise provided in (e) of this section, AS 45.09.407, and
 2 AS 45.12.303, and subject to (g) of this section, a term in an agreement between an
 3 account debtor and an assignor or in a promissory note is ineffective to the extent that
 4 it

5 (1) prohibits, restricts, or requires the consent of the account debtor or
 6 person obligated on the promissory note to the assignment or transfer of, or the
 7 creation, attachment, perfection, or enforcement of a security interest in, the account,
 8 chattel paper, payment intangible, or promissory note; or

9 (2) provides that the creation, attachment, perfection, or enforcement
 10 of the security interest may give rise to a default, breach, right of recoupment, claim,
 11 defense, termination, right of termination, or remedy under the account, chattel paper,
 12 payment intangible, or promissory note.

13 (e) The provisions of (d) of this section do not apply to the sale of a payment
 14 intangible or promissory note.

15 (f) Subject to (g) of this section, an account debtor may not waive or vary its
 16 option under (b)(3) of this section.

17 (g) This section is subject to law other than this chapter that establishes a
 18 different rule for an account debtor who is an individual and who incurred the
 19 obligation primarily for personal, family, or household purposes.

20 (h) This section does not apply to an assignment of a health care insurance
 21 receivable.

22 **Sec. 45.09.407. Restrictions on creation or enforcement of security interest**
 23 **in leasehold interest or in lessor's residual interest.** (a) Except as otherwise
 24 provided in (b) of this section, a term in a lease agreement is ineffective to the extent
 25 that it

26 (1) prohibits, restricts, or requires the consent of a party to the lease
 27 to the creation, attachment, perfection, or enforcement of a security interest in an
 28 interest of a party under the lease contract or in the lessor's residual interest in the
 29 goods; or

30 (2) provides that the creation, attachment, perfection, or enforcement
 31 of the security interest may give rise to a default, breach, right of recoupment, claim,

1 defense, termination, right of termination, or remedy under the lease.

2 (b) Except as otherwise provided in AS 45.12.303(g), a term described in
3 (a)(2) of this section is effective to the extent that there is

4 (1) a transfer by the lessee of the lessee's right of possession or use of
5 the goods in violation of the term; or

6 (2) a delegation of a material performance of either party to the lease
7 contract in violation of the term.

8 (c) The creation, attachment, perfection, or enforcement of a security interest
9 in the lessor's interest under the lease contract or the lessor's residual interest in the
10 goods is not a transfer that materially impairs the lessee's prospect of obtaining return
11 performance or materially changes the duty of or materially increases the burden or
12 risk imposed on the lessee within the purview of AS 45.12.303(d) unless, and then
13 only to the extent that, enforcement actually results in a delegation of material
14 performance of the seller. Even in that event, the creation, attachment, perfection, and
15 enforcement of the security interest remain effective.

16 **Sec. 45.09.408. Restrictions on assignment of promissory notes, health-**
17 **care-insurance receivables, and certain general intangibles ineffective.** (a) Except
18 as otherwise provided in (b) of this section, a term in a promissory note or in an
19 agreement between an account debtor and a debtor that relates to a health care
20 insurance receivable or a general intangible, including a contract, permit, license, or
21 franchise, and that prohibits, restricts, or requires the consent of the person obligated
22 on the promissory note or the account debtor to the assignment or transfer of, or
23 creation, attachment, or perfection of a security interest in the promissory note, health
24 care insurance receivable, or general intangible is ineffective to the extent that the term

25 (1) would impair the creation, attachment, or perfection of a security
26 interest; or

27 (2) provides that the creation, attachment, or perfection of the security
28 interest may give rise to a default, breach, right of recoupment, claim, defense,
29 termination, right of termination, or remedy under the promissory note, health care
30 insurance receivable, or general intangible.

31 (b) The provisions of (a) of this section apply to a security interest in a

1 payment intangible or promissory note only if the security interest arises out of a sale
2 of the payment intangible or promissory note.

3 (c) A rule of law, statute, or regulation, that prohibits, restricts, or requires the
4 consent of a government, governmental body or official, person obligated on a
5 promissory note, or account debtor to the assignment or transfer of or creation of a
6 security interest in a promissory note, health care insurance receivable, or general
7 intangible, including a contract, permit, license, or franchise between an account debtor
8 and a debtor, is ineffective to the extent that the rule of law, statute, or regulation

9 (1) would impair the creation, attachment, or perfection of a security
10 interest; or

11 (2) provides that the creation, attachment, or perfection of the security
12 interest may give rise to a default, breach, right of recoupment, claim, defense,
13 termination, right of termination, or remedy under the promissory note, health-care-
14 insurance receivable, or general intangible.

15 (d) To the extent that a term in a promissory note or in an agreement between
16 an account debtor and a debtor that relates to a health care insurance receivable or
17 general intangible or a rule of law, statute, or regulation described in (c) of this section
18 would be effective under law other than this chapter but is ineffective under (a) or (c)
19 of this section, the creation, attachment, or perfection of a security interest in the
20 promissory note, health care insurance receivable, or general intangible

21 (1) is not enforceable against the person obligated on the promissory
22 note or the account debtor;

23 (2) does not impose a duty or obligation on the person obligated on the
24 promissory note or the account debtor;

25 (3) does not require the person obligated on the promissory note or the
26 account debtor to recognize the security interest, pay or render performance to the
27 secured party, or accept payment or performance from the secured party;

28 (4) does not entitle the secured party to use or assign the debtor's rights
29 under the promissory note, health care insurance receivable, or general intangible,
30 including related information or materials furnished to the debtor in the transaction
31 giving rise to the promissory note, health care insurance receivable, or general

1 intangible;

2 (5) does not entitle the secured party to use, assign, possess, or have
3 access to trade secrets or confidential information of the person obligated on the
4 promissory note or the account debtor; and

5 (6) does not entitle the secured party to enforce the security interest in
6 the promissory note, health care insurance receivable, or general intangible.

7 (e) This section prevails over inconsistent provisions of other statutes unless
8 the other statute contains an exemption that refers specifically to this section.

9 **Sec. 45.09.409. Restrictions on assignment of letter-of-credit rights**
10 **ineffective.** (a) A term in a letter of credit or a rule of law, statute, regulation,
11 custom, or practice applicable to the letter of credit that prohibits, restricts, or requires
12 the consent of an applicant, issuer, or nominated person to a beneficiary's assignment
13 of or creation of a security interest in a letter-of-credit right is ineffective to the extent
14 that the term or rule of law, statute, regulation, custom, or practice

15 (1) would impair the creation, attachment, or perfection of a security
16 interest in the letter-of-credit right; or

17 (2) provides that the creation, attachment, or perfection of the security
18 interest may give rise to a default, breach, right of recoupment, claim, defense,
19 termination, right of termination, or remedy under the letter-of-credit right.

20 (b) To the extent that a term in a letter of credit is ineffective under (a) of this
21 section but would be effective under law other than this chapter or a custom or
22 practice applicable to the letter of credit, to the transfer of a right to draw or otherwise
23 demand performance under the letter of credit, or to the assignment of a right to
24 proceeds of the letter of credit, the creation, attachment, or perfection of a security
25 interest in the letter-of-credit right

26 (1) is not enforceable against the applicant, issuer, nominated person,
27 or transferee beneficiary;

28 (2) imposes no duties or obligations on the applicant, issuer, nominated
29 person, or transferee beneficiary; and

30 (3) does not require the applicant, issuer, nominated person, or
31 transferee beneficiary to recognize the security interest, pay or render performance to

1 the secured party, or accept payment or other performance from the secured party.

2 **Article 5. Filing.**

3 **Sec. 45.09.501. Filing office.** (a) Except as otherwise provided in (b) of this
4 section, if the law of this state governs perfection of a security interest or agricultural
5 lien, the office in which to file a financing statement to perfect the security interest or
6 agricultural lien is

7 (1) the office designated for the filing or recording of a record of a
8 mortgage on the related real property if

9 (A) the collateral is as-extracted collateral or timber to be cut;

10 or

11 (B) the financing statement is filed as a fixture filing and the
12 collateral is goods that are or are to become fixtures; or

13 (2) the central filing office of the Department of Natural Resources
14 established under AS 44.37.027 in all other cases, including a case in which the
15 collateral consists of goods that are or are to become fixtures and the financing
16 statement is not filed as a fixture filing.

17 (b) Subject to AS 45.09.311, the office in which to file a financing statement
18 to perfect a security interest in collateral, including fixtures, of a transmitting utility
19 is the central filing office of the Department of Natural Resources established under
20 AS 44.37.027. The financing statement also constitutes a fixture filing as to the
21 collateral indicated in the financing statement that is or is to become fixtures.

22 **Sec. 45.09.502. Contents of financing statement; record of mortgage as**
23 **financing statement; time of filing financing statement.** (a) Subject to (b) of this
24 section, a financing statement is sufficient only if it

25 (1) provides the name of the debtor;

26 (2) provides the name of the secured party or a representative of the
27 secured party; and

28 (3) indicates the collateral covered by the financing statement.

29 (b) Except as otherwise provided in AS 45.09.501(b), to be sufficient, a
30 financing statement that covers as-extracted collateral or timber to be cut, or that is
31 filed as a fixture filing and covers goods that are or are to become fixtures, must

- 1 (1) satisfy (a) of this section;
- 2 (2) indicate that the financing statement covers this type of collateral;
- 3 (3) indicate that the financing statement is to be filed in the real
4 property records;
- 5 (4) provide a description of the real property to which the collateral is
6 related sufficient to give constructive notice of a mortgage under the law of this state
7 if the description were contained in a record of the mortgage of the real property; and
- 8 (5) if the debtor does not have an interest of record in the real property,
9 provide the name of a record owner.

10 (c) A record of a mortgage is effective from the date of recording as a
11 financing statement filed as a fixture filing or as a financing statement covering as-
12 extracted collateral or timber to be cut only if

- 13 (1) the record indicates the goods or accounts that it covers;
- 14 (2) the goods are or are to become fixtures related to the real property
15 described in the record or the collateral is related to the real property described in the
16 record and is as-extracted collateral or timber to be cut;
- 17 (3) the record complies with the requirements for a financing statement
18 in this section other than an indication that it is to be filed in the real property records;
19 and
- 20 (4) the record is recorded.

21 (d) A financing statement may be filed before a security agreement is made
22 or a security interest otherwise attaches.

23 **Sec. 45.09.503. Name of debtor and secured party.** (a) A financing
24 statement sufficiently provides the name of the debtor

- 25 (1) if the debtor is a registered organization, only if the financing
26 statement provides the name of the debtor indicated on the public record of the debtor's
27 jurisdiction of organization that shows the debtor to have been organized;
- 28 (2) if the debtor is a decedent's estate, only if the financing statement
29 provides the name of the decedent and indicates that the debtor is an estate;
- 30 (3) if the debtor is a trust or a trustee acting with respect to property
31 held in trust, only if the financing statement

1 (A) provides the name specified for the trust in its organic
 2 documents or, if no name is specified, provides the name of the settlor and
 3 additional information sufficient to distinguish the debtor from other trusts
 4 having one or more of the same settlors; and

5 (B) indicates, in the debtor's name or otherwise, that the debtor
 6 is a trust or is a trustee acting with respect to property held in trust; and

7 (4) in other cases, if the debtor

8 (A) has a name, only if the financing statement provides the
 9 individual or organizational name of the debtor; and

10 (B) does not have a name, only if the financing statement
 11 provides the names of the partners, members, associates, or other persons
 12 making up the debtor.

13 (b) A financing statement that provides the name of the debtor in accordance
 14 with (a) of this section is not rendered ineffective by the absence of

15 (1) a trade name or other name of the debtor; or

16 (2) unless required under (a)(4)(B) of this section, names of partners,
 17 members, associates, or other persons comprising the debtor.

18 (c) A financing statement that provides only the debtor's trade name does not
 19 sufficiently provide the name of the debtor.

20 (d) Failure to indicate the representative capacity of a secured party or
 21 representative of a secured party does not affect the sufficiency of a financing
 22 statement.

23 (e) A financing statement may provide the name of more than one debtor and
 24 the name of more than one secured party.

25 **Sec. 45.09.504. Indication of collateral.** A financing statement sufficiently
 26 indicates the collateral that it covers only if the financing statement provides

27 (1) a description of the collateral that is sufficient under AS 45.09.108;
 28 or

29 (2) an indication that the financing statement covers all assets or all
 30 personal property.

31 **Sec. 45.09.505. Filing and compliance with other statutes and treaties for**

1 **consignments, leases, other bailments, and other transactions.** (a) A consignor,
 2 lessor, or other bailor of goods or a buyer of a payment intangible or promissory note
 3 may file a financing statement or may comply with a statute or treaty described in
 4 AS 45.09.311(a) using the terms "consignor," "consignee," "lessor," "lessee," "bailor,"
 5 "bailee," "owner," "registered owner," "buyer," "seller," or words of similar import
 6 instead of the terms "secured party" and "debtor."

7 (b) AS 45.09.501 - 45.09.525 apply to the filing of a financing statement under
 8 (a) of this section and, as appropriate, to compliance that is equivalent to filing a
 9 financing statement under AS 45.09.311(b), but the filing or compliance is not of itself
 10 a factor in determining whether the collateral secures an obligation. If it is determined
 11 for another reason that the collateral secures an obligation, a security interest held by
 12 the consignor, lessor, bailor, owner, or buyer that attaches to the collateral is perfected
 13 by the filing or compliance.

14 **Sec. 45.09.506. Effect of errors or omissions.** (a) A financing statement
 15 substantially satisfying the requirements of AS 45.09.501 - 45.09.525 is effective, even
 16 if it has minor errors or omissions, unless the errors or omissions make the financing
 17 statement seriously misleading.

18 (b) Except as otherwise provided in (c) of this section, a financing statement
 19 that fails sufficiently to provide the name of the debtor in accordance with
 20 AS 45.09.503(a) is seriously misleading.

21 (c) If a search of the records of the filing office under the debtor's correct
 22 name, using the filing office's standard search logic, if any, would disclose a financing
 23 statement that fails sufficiently to provide the name of the debtor in accordance with
 24 AS 45.09.503(a), the name provided does not make the financing statement seriously
 25 misleading.

26 (d) For purposes of AS 45.09.508(b), the "debtor's correct name" in (c) of this
 27 section means the correct name of the new debtor.

28 **Sec. 45.09.507. Effect of certain events on effectiveness of financing**
 29 **statement.** (a) A filed financing statement remains effective with respect to collateral
 30 that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a
 31 security interest or agricultural lien continues even if the secured party knows of or

1 consents to the disposition.

2 (b) Except as otherwise provided in (c) of this section and AS 45.09.508, a
3 financing statement is not rendered ineffective if, after the financing statement is filed,
4 the information provided in the financing statement becomes seriously misleading
5 under AS 45.09.506.

6 (c) If a debtor changes its name sufficiently to cause a filed financing
7 statement to become seriously misleading under AS 45.09.506, the financing statement
8 is

9 (1) effective to perfect a security interest in collateral acquired by the
10 debtor before, or within four months after, the change; and

11 (2) not effective to perfect a security interest in collateral acquired by
12 the debtor more than four months after the change unless an amendment to the
13 financing statement that renders the financing statement not seriously misleading is
14 filed within four months after the change.

15 **Sec. 45.09.508. Effectiveness of financing statement if new debtor becomes**
16 **bound by security agreement.** (a) Except as otherwise provided in this section, a
17 filed financing statement naming an original debtor is effective to perfect a security
18 interest in collateral in which a new debtor has or acquires rights to the extent that the
19 financing statement would have been effective had the original debtor acquired rights
20 in the collateral.

21 (b) If the difference between the name of the original debtor and that of the
22 new debtor causes a filed financing statement that is effective under (a) of this section
23 to be seriously misleading under AS 45.09.506, the financing statement is

24 (1) effective to perfect a security interest in collateral acquired by the
25 new debtor before, and within four months after, the new debtor becomes bound under
26 AS 45.09.203(d); and

27 (2) not effective to perfect a security interest in collateral acquired by
28 the new debtor more than four months after the new debtor becomes bound under
29 AS 45.09.203(d) unless an initial financing statement providing the name of the new
30 debtor is filed before the expiration of that time.

31 (c) This section does not apply to collateral as to which a filed financing

1 statement remains effective against the new debtor under AS 45.09.507(a).

2 **Sec. 45.09.509. Persons entitled to file a record.** (a) A person may file an
3 initial financing statement, amendment that adds collateral covered by a financing
4 statement, or amendment that adds a debtor to a financing statement only if

5 (1) the debtor authorizes the filing in an authenticated record; or

6 (2) the person holds an agricultural lien that has become effective at
7 the time of filing and the financing statement covers only collateral in which the
8 person holds an agricultural lien.

9 (b) By authenticating a security agreement, a debtor authorizes the filing of an
10 initial financing statement and an amendment covering

11 (1) the collateral described in the security agreement; and

12 (2) property that becomes collateral under AS 45.09.315(a)(2), whether
13 or not the security agreement expressly covers proceeds.

14 (c) A person may file an amendment other than an amendment that adds
15 collateral covered by a financing statement or an amendment that adds a debtor to a
16 financing statement only if

17 (1) the secured party of record authorizes the filing; or

18 (2) the amendment is a termination statement for a financing statement
19 as to which the secured party of record has failed to file or send a termination
20 statement required under AS 45.09.513(a) or (c), the debtor authorizes the filing, and
21 the termination statement indicates that the debtor authorized it to be filed.

22 (d) If there is more than one secured party of record for a financing statement,
23 each secured party of record may authorize the filing of an amendment under (c) of
24 this section.

25 **Sec. 45.09.510. Effectiveness of filed record.** (a) A filed record is effective
26 only to the extent that it was filed by a person who may file it under AS 45.09.509.

27 (b) A record authorized by one secured party of record does not affect the
28 financing statement with respect to another secured party of record.

29 (c) A continuation statement that is not filed within the six-month period
30 prescribed by AS 45.09.515(d) is ineffective.

31 **Sec. 45.09.511. Secured party of record.** (a) A secured party of record with

1 respect to a financing statement is a person whose name is provided as the name of
2 the secured party or a representative of the secured party in an initial financing
3 statement that has been filed. If an initial financing statement is filed under
4 AS 45.09.514(a), the assignee named in the initial financing statement is the secured
5 party of record with respect to the financing statement.

6 (b) If an amendment of a financing statement that provides the name of a
7 person as a secured party or a representative of a secured party is filed, the person
8 named in the amendment is a secured party of record. If an amendment is filed under
9 AS 45.09.514(b), the assignee named in the amendment is a secured party of record.

10 (c) A person remains a secured party of record until the filing of an
11 amendment of the financing statement that deletes the person.

12 **Sec. 45.09.512. Amendment of financing statement.** (a) Subject to
13 AS 45.09.509, a person may add or delete collateral covered by, continue or terminate
14 the effectiveness of, or, subject to (e) of this section, otherwise amend the information
15 provided in, a financing statement by filing an amendment that

16 (1) identifies by its file number the initial financing statement to which
17 the amendment relates; and

18 (2) if the amendment relates to an initial financing statement filed in
19 a filing office described in AS 45.09.501(a)(1), provides the date and time that the
20 initial financing statement was filed and the information specified in AS 45.09.502(b).

21 (b) Except as otherwise provided in AS 45.09.515, the filing of an amendment
22 does not extend the period of effectiveness of the financing statement.

23 (c) A financing statement that is amended by an amendment that adds
24 collateral is effective as to the added collateral only from the date of the filing of the
25 amendment.

26 (d) A financing statement that is amended by an amendment that adds a debtor
27 is effective as to the added debtor only from the date of the filing of the amendment.

28 (e) An amendment is ineffective to the extent it purports to delete all

29 (1) debtors and fails to provide the name of a debtor to be covered by
30 the financing statement; or

31 (2) secured parties of record and fails to provide the name of a new

1 secured party of record.

2 **Sec. 45.09.513. Termination statement.** (a) A secured party shall cause the
3 secured party of record for a financing statement to file a termination statement for the
4 financing statement if the financing statement covers consumer goods and

5 (1) there is no obligation secured by the collateral covered by the
6 financing statement and no commitment to make an advance, incur an obligation, or
7 otherwise give value; or

8 (2) the debtor did not authorize the filing of the initial financing
9 statement.

10 (b) To comply with (a) of this section, a secured party shall cause the secured
11 party of record to file the termination statement

12 (1) within one month after there is no obligation secured by the
13 collateral covered by the financing statement and no commitment to make an advance,
14 incur an obligation, or otherwise give value; or

15 (2) if earlier, within 20 days after the secured party receives an
16 authenticated demand from a debtor.

17 (c) In cases not governed by (a) of this section, within 20 days after a secured
18 party receives an authenticated demand from a debtor, the secured party shall cause
19 the secured party of record for a financing statement to send to the debtor a
20 termination statement for the financing statement or file the termination statement in
21 the filing office if

22 (1) except in the case of a financing statement covering accounts or
23 chattel paper that has been sold or goods that are the subject of a consignment, there
24 is no obligation secured by the collateral covered by the financing statement and no
25 commitment to make an advance, incur an obligation, or otherwise give value;

26 (2) the financing statement covers accounts or chattel paper that has
27 been sold but as to which the account debtor or other person obligated has discharged
28 its obligation;

29 (3) the financing statement covers goods that were the subject of a
30 consignment to the debtor but are not in the debtor's possession; or

31 (4) the debtor did not authorize the filing of the initial financing

1 statement.

2 (d) Except as otherwise provided in AS 45.09.510, upon the filing of a
3 termination statement with the filing office, the financing statement to which the
4 termination statement relates ceases to be effective.

5 **Sec. 45.09.514. Assignment of powers of secured party of record.** (a)
6 Except as otherwise provided in (c) of this section, an initial financing statement may
7 reflect an assignment of all of the secured party's power to authorize an amendment
8 to the financing statement by providing the name and mailing address of the assignee
9 as the name and address of the secured party.

10 (b) Except as otherwise provided in (c) of this section, a secured party of
11 record may assign of record all or part of its power to authorize an amendment to a
12 financing statement by filing in the filing office an amendment of the financing
13 statement that

14 (1) identifies by its file number the initial financing statement to which
15 it relates;

16 (2) provides the name of the assignor; and

17 (3) provides the name and mailing address of the assignee.

18 (c) An assignment of record of a security interest in a fixture covered by a
19 record of a mortgage that is effective as a financing statement filed as a fixture filing
20 under AS 45.09.502(c) may be made only by an assignment of record of the mortgage
21 in the manner provided by law of this state other than AS 45.01 - AS 45.09, AS 45.12,
22 and AS 45.14 (Uniform Commercial Code).

23 **Sec. 45.09.515. Duration and effectiveness of financing statement; effect**
24 **of lapsed financing statement.** (a) Except as otherwise provided in (b) and (e) - (g)
25 of this section, a filed financing statement is effective for a period of five years after
26 the date of filing.

27 (b) Except as otherwise provided in (e) - (g) of this section, an initial financing
28 statement filed in connection with a public finance transaction or manufactured home
29 transaction is effective for a period of 30 years after the date of filing if it indicates
30 that it is filed in connection with a public finance transaction or manufactured home
31 transaction.

1 (c) The effectiveness of a filed financing statement lapses on the expiration of
2 the period of its effectiveness unless, before the lapse, a continuation statement is filed
3 under (d) of this section. Upon lapse, a financing statement ceases to be effective and
4 a security interest or agricultural lien that was perfected by the financing statement
5 becomes unperfected unless the security interest is perfected without filing. If the
6 security interest or agricultural lien becomes unperfected upon lapse, it is considered
7 never to have been perfected as against a purchaser of the collateral for value.

8 (d) A continuation statement may be filed only within six months before the
9 expiration of the five-year period specified in (a) of this section or the 30-year period
10 specified in (b) of this section, whichever is applicable.

11 (e) Except as otherwise provided in AS 45.09.510, upon timely filing of a
12 continuation statement, the effectiveness of the initial financing statement continues for
13 a period of five years beginning on the day on which the financing statement would
14 have become ineffective in the absence of the filing. Upon the expiration of the five-
15 year period, the financing statement lapses in the same manner as provided in (c) of
16 this section unless, before the lapse, another continuation statement is filed under (d)
17 of this section. Succeeding continuation statements may be filed in the same manner
18 to continue the effectiveness of the initial financing statement.

19 (f) If a debtor is a transmitting utility and a filed financing statement so
20 indicates, the financing statement is effective until a termination statement is filed.

21 (g) A record of a mortgage that is effective as a financing statement filed as
22 a fixture filing under AS 45.09.502(c) remains effective as a financing statement filed
23 as a fixture filing until the mortgage is released or satisfied of record or its
24 effectiveness otherwise terminates as to the real property.

25 **Sec. 45.09.516. What constitutes filing; effectiveness of filing.** (a) Except
26 as otherwise provided in (b) of this section, communication of a record to a filing
27 office and tender of the filing fee or acceptance of the record by the filing office
28 constitutes filing.

29 (b) Filing does not occur with respect to a record that a filing office refuses
30 to accept because

31 (1) the record is not communicated by a method or medium of

1 communication authorized by the filing office;

2 (2) an amount equal to or greater than the applicable filing fee is not
3 tendered;

4 (3) the filing office is unable to index the record because, in the case
5 of

6 (A) an initial financing statement, the record does not provide
7 a name for the debtor;

8 (B) an amendment or correction statement, the record

9 (i) does not identify the initial financing statement as
10 required by AS 45.09.512 or 45.09.518, as applicable; or

11 (ii) identifies an initial financing statement whose
12 effectiveness has lapsed under AS 45.09.515;

13 (C) an initial financing statement that provides the name of a
14 debtor identified as an individual or an amendment that provides a name of a
15 debtor identified as an individual that was not previously provided in the
16 financing statement to which the record relates, the record does not identify the
17 debtor's last name; or

18 (D) a record filed in the filing office described in
19 AS 45.09.501(a)(1), the record does not provide a sufficient description of the
20 real property to which it relates;

21 (4) in the case of an initial financing statement or an amendment that
22 adds a secured party of record, the record does not provide a name and mailing
23 address for the secured party of record;

24 (5) in the case of an initial financing statement or an amendment that
25 provides a name of a debtor that was not previously provided in the financing
26 statement to which the amendment relates, the record does not

27 (A) provide a mailing address for the debtor;

28 (B) indicate whether the debtor is an individual or an
29 organization; or

30 (C) if the financing statement indicates that the debtor is an
31 organization, provide

1 (i) a type of organization for the debtor;
 2 (ii) a jurisdiction of organization for the debtor; or
 3 (iii) an organizational identification number for the
 4 debtor or indicate that the debtor does not have an organizational
 5 identification number;

6 (6) in the case of an assignment reflected in an initial financing
 7 statement under AS 45.09.514(a) or an amendment filed under AS 45.09.514(b), the
 8 record does not provide a name and mailing address for the assignee; or

9 (7) in the case of a continuation statement, the record is not filed within
 10 the six-month period prescribed by AS 45.09.515(d).

11 (c) For purposes of (b) of this section, a record

12 (1) does not provide information if the filing office is unable to read
 13 or decipher the information; and

14 (2) that does not indicate that it is an amendment or identify an initial
 15 financing statement to which it relates as required by AS 45.09.512, 45.09.514, or
 16 45.09.518 is an initial financing statement.

17 (d) A record that is communicated to the filing office with tender of the filing
 18 fee, but which the filing office refuses to accept for a reason other than one set out in
 19 (b) of this section, is effective as a filed record except as against a purchaser of the
 20 collateral who gives value in reasonable reliance on the absence of the record from the
 21 files.

22 **Sec. 45.09.517. Effect of indexing errors.** The failure of the filing office to
 23 index a record correctly does not affect the effectiveness of the filed record.

24 **Sec. 45.09.518. Claim concerning inaccurate or wrongfully filed record.**

25 (a) A person may file in the filing office a correction statement with respect
 26 to a record indexed there under the person's name if the person believes that the record
 27 is inaccurate or was wrongfully filed.

28 (b) A correction statement must

29 (1) identify the record to which it relates by

30 (A) the file number assigned to the initial financing statement
 31 to which the record relates; and

1 (B) if the correction statement relates to a record filed in a
2 filing office described in AS 45.09.501(a)(1), the date and time that the initial
3 financing statement was filed and the information specified in AS 45.09.502(b);

4 (2) indicate that it is a correction statement; and

5 (3) provide the basis for the person's belief that the record is inaccurate
6 and indicate the manner in which the person believes the record should be amended
7 to cure the inaccuracy or provide the basis for the person's belief that the record was
8 wrongfully filed.

9 (c) The filing of a correction statement does not affect the effectiveness of an
10 initial financing statement or other filed record.

11 **Sec. 45.09.519. Numbering, maintaining, and indexing records;**
12 **communicating information provided in records.** (a) For each record filed in a
13 filing office, the filing office shall

14 (1) assign a unique number to the filed record;

15 (2) create a record that bears the number assigned to the filed record
16 and the date and time of filing;

17 (3) maintain the filed record for public inspection; and

18 (4) index the filed record in accordance with (c) - (e) of this section.

19 (b) A file number assigned after January 1, 2002, must include a digit that

20 (1) is mathematically derived from or related to the other digits of the
21 file number; and

22 (2) enables the filing office to detect whether a number communicated
23 as the file number includes a single digit or transpositional error.

24 (c) Except as otherwise provided in (d) and (e) of this section, the filing office
25 shall index

26 (1) an initial financing statement according to the name of the debtor
27 and index all filed records relating to the initial financing statement in a manner that
28 associates with one another an initial financing statement and all filed records relating
29 to the initial financing statement; and

30 (2) a record that provides a name of a debtor that was not previously
31 provided in the financing statement to which the record relates also according to the

1 name that was not previously provided.

2 (d) If a financing statement is filed as a fixture filing or covers as-extracted
3 collateral or timber to be cut, it must be filed for record and the filing office shall
4 index it

5 (1) under the names of the debtor and of each owner of record shown
6 on the financing statement as if they were the mortgagors under a mortgage of the real
7 property described; and

8 (2) to the extent that the law of this state provides for indexing of
9 records of mortgages under the name of the mortgagee, under the name of the secured
10 party as if the secured party were the mortgagee thereunder, or, if indexing is by
11 description, as if the financing statement were a record of a mortgage of the real
12 property described.

13 (e) If a financing statement is filed as a fixture filing or covers as-extracted
14 collateral or timber to be cut, the filing office shall index an assignment filed under
15 AS 45.09.514(a) or an amendment filed under AS 45.09.514(b)

16 (1) under the name of the assignor as grantor; and

17 (2) to the extent that the law of this state provides for indexing a record
18 of the assignment of a mortgage under the name of the assignee, under the name of
19 the assignee.

20 (f) The filing office shall maintain a capability to

21 (1) retrieve a record by the name of the debtor and, if the filing office
22 is described in

23 (A) AS 45.09.501(a)(1), by the file number assigned to the
24 initial financing statement to which the record relates and the date and time that
25 the record was filed; or

26 (B) AS 45.09.501(a)(2), by the file number assigned to the
27 initial financing statement to which the record relates; and

28 (2) associate and retrieve with one another an initial financing statement
29 and each filed record relating to the initial financing statement.

30 (g) The filing office may not remove a debtor's name from the index until one
31 year after the effectiveness of a financing statement naming the debtor lapses under

1 AS 45.09.515 with respect to all secured parties of record.

2 (h) The filing office shall perform the acts required by (a) - (e) of this section
3 at the time and in the manner prescribed by filing office regulations, but not later than
4 two business days after the filing office receives the record in question.

5 **Sec. 45.09.520. Acceptance and refusal to accept record.** (a) A filing office
6 shall refuse to accept a record for filing for a reason set out in AS 45.09.516(b) and
7 may refuse to accept a record for filing only for a reason set out in AS 45.09.516(b).

8 (b) If a filing office refuses to accept a record for filing, the filing office shall
9 communicate to the person who presented the record the fact of and reason for the
10 refusal and the date and time the record would have been filed had the filing office
11 accepted it. The communication must be made at the time and in the manner
12 prescribed by filing office regulation no more than two business days after the filing
13 office receives the record.

14 (c) A filed financing statement satisfying AS 45.09.502(a) and (b) is effective
15 even if the filing office is required to refuse to accept it for filing under (a) of this
16 section. However, AS 45.09.338 applies to a filed financing statement providing
17 information described in AS 45.09.516(b)(5) that is incorrect at the time the financing
18 statement is filed.

19 (d) If a record communicated to a filing office provides information that relates
20 to more than one debtor, AS 45.09.501 - 45.09.525 applies as to each debtor
21 separately.

22 **Sec. 45.09.521. Uniform form of written financing statement and**
23 **amendment.** (a) A filing office that accepts written records may not refuse to accept
24 a written initial financing statement in the form and format developed by the
25 Department of Natural Resources under AS 44.37.027(d) except for a reason set out
26 in AS 45.09.516(b).

27 (b) A filing office that accepts written records may not refuse to accept a
28 written record in the form and format developed by the Department of Natural
29 Resources under AS 44.37.027(d) except for a reason set out in AS 45.09.516(b).

30 **Sec. 45.09.522. Maintenance and destruction of records.** (a) The filing
31 office shall maintain a record of the information provided in a filed financing statement

1 for at least one year after the effectiveness of the financing statement has lapsed under
2 AS 45.09.515 with respect to all secured parties of record. The record must be
3 retrievable by using the name of the debtor and, if the record was filed in the filing
4 office described in

5 (1) AS 45.09.501(a)(1), by using the file number assigned to the initial
6 financing statement to which the record relates and the date and time that the record
7 was filed; or

8 (2) AS 45.09.501(a)(2), by using the file number assigned to the initial
9 financing statement to which the record relates.

10 (b) Except to the extent that a statute governing disposition of public records
11 provides otherwise, the filing office immediately may destroy a written record
12 evidencing a financing statement. However, if the filing office destroys a written
13 record, it shall maintain another record of the financing statement that complies with
14 (a) of this section.

15 **Sec. 45.09.523. Information from filing office; sale or license of records.**

16 (a) If a person who files a written record requests an acknowledgment of the
17 filing, the filing office shall send to the person an image of the record showing the
18 number assigned to the record under AS 45.09.519(a)(1) and the date and time of the
19 filing of the record. However, if the person furnishes a copy of the record to the filing
20 office, the filing office may instead

21 (1) note on the copy the number assigned to the record under
22 AS 45.09.519(a)(1) and the date and time of the filing of the record; and

23 (2) send the copy to the person.

24 (b) If a person files a record other than a written record, the filing office shall
25 communicate to the person an acknowledgment that provides

26 (1) the information in the record;

27 (2) the number assigned to the record under AS 45.09.519(a)(1); and

28 (3) the date and time of the filing of the record.

29 (c) The filing office shall communicate or otherwise make available in a record
30 the following information to a person that requests it:

31 (1) whether there is on file on a date and time specified by the filing

1 office, but not a date earlier than three business days before the filing office receives
2 the request, a financing statement that

3 (A) designates a particular debtor or, if the request so states,
4 designates a particular debtor at the address specified in the request;

5 (B) has not lapsed under AS 45.09.515 with respect to all
6 secured parties of record; and

7 (C) if the request so states, has lapsed under AS 45.09.515 and
8 a record of which is maintained by the filing office under AS 45.09.522(a);

9 (2) the date and time of filing of each financing statement; and

10 (3) the information provided in each financing statement.

11 (d) In complying with its duty under (c) of this section, the filing office may
12 communicate information in any medium. However, if requested, the filing office
13 shall communicate information by issuing a record that can be admitted into evidence
14 in the courts of this State without extrinsic evidence of its authenticity.

15 (e) The filing office shall perform the acts required by (a) - (d) of this section
16 at the time and in the manner prescribed by filing office regulations, but not later than
17 two business days after the filing office receives the request.

18 (f) At least weekly, the Department of Natural Resources shall offer to sell or
19 license to the public on a nonexclusive basis, in bulk, copies of all records filed in it
20 under AS 45.09.501 - 45.09.525, in every medium from time to time available to the
21 filing office.

22 **Sec. 45.09.524. Delay by filing office.** Delay by the filing office beyond a
23 time limit prescribed in AS 45.09.501 - 45.09.525 is excused if

24 (1) the delay is caused by interruption of communication or computer
25 facilities, war, emergency conditions, failure of equipment, or other circumstances
26 beyond control of the filing office; and

27 (2) the filing office exercises reasonable diligence under the
28 circumstances.

29 **Sec. 45.09.525. Fees.** The filing office shall adopt regulations that set the fees
30 for

31 (1) filing and indexing a record under AS 45.09.501 - 45.09.525; and

1 (2) responding to a request for information from the filing office,
 2 including for communicating whether there is on file a financing statement naming a
 3 particular debtor.

4 **Article 6. Default.**

5 **Sec. 45.09.601. Rights after default; judicial enforcement; consignor or**
 6 **buyer of accounts, chattel paper, payment intangibles, or promissory notes.** (a)
 7 After default, a secured party has the rights provided in AS 45.09.601 - 45.09.628 and,
 8 except as otherwise provided in AS 45.09.602, those provided by agreement of the
 9 parties. A secured party

10 (1) may reduce a claim to judgment, foreclose, or otherwise enforce the
 11 claim, security interest, or agricultural lien by available judicial procedures; and

12 (2) if the collateral is documents, may proceed either as to the
 13 documents or as to the goods the documents cover.

14 (b) A secured party in possession of collateral or control of collateral under
 15 AS 45.09.104, 45.09.105, 45.09.106, or 45.09.107 has the rights and duties provided
 16 in AS 45.09.207.

17 (c) The rights under (a) and (b) of this section are cumulative and may be
 18 exercised simultaneously.

19 (d) Except as otherwise provided in (g) of this section and AS 45.09.605, after
 20 default, a debtor and an obligor have the rights provided in this part and by agreement
 21 of the parties.

22 (e) If a secured party has reduced its claim to judgment, the lien of a levy that
 23 may be made upon the collateral by virtue of an execution based on the judgment
 24 relates back to the earliest of the date

25 (1) of perfection of the security interest or agricultural lien in the
 26 collateral;

27 (2) of filing a financing statement covering the collateral; or

28 (3) specified in a statute under which the agricultural lien was created.

29 (f) A sale pursuant to an execution is a foreclosure of the security interest or
 30 agricultural lien by judicial procedure within the meaning of this section. A secured
 31 party may purchase at the sale and thereafter hold the collateral free of any other

1 requirements of this chapter.

2 (g) Except as otherwise provided in AS 45.09.607(c), AS 45.09.601 -
3 45.09.628 imposes no duties on a secured party that is a consignor or is a buyer of
4 accounts, chattel paper, payment intangibles, or promissory notes.

5 **Sec. 45.09.602. Waiver and variance of rights and duties.** Except as
6 otherwise provided in AS 45.09.624, to the extent that they give rights to a debtor or
7 obligor and impose duties on a secured party, the debtor or obligor may not waive or
8 vary the rules stated in the following sections:

9 (1) AS 45.09.207(b)(4)(C), which deals with use and operation of the
10 collateral by the secured party;

11 (2) AS 45.09.210, which deals with requests for an accounting and
12 requests concerning a list of collateral and statement of account;

13 (3) AS 45.09.607(c), which deals with collection and enforcement of
14 collateral;

15 (4) AS 45.09.608(a) and 45.09.615(c) to the extent that they deal with
16 application or payment of noncash proceeds of collection, enforcement, or disposition;

17 (5) AS 45.09.608(a) and 45.09.615(d) to the extent that they require
18 accounting for or payment of surplus proceeds of collateral;

19 (6) AS 45.09.609 to the extent that it imposes on a secured party that
20 takes possession of collateral without judicial process the duty to do so without breach
21 of the peace;

22 (7) AS 45.09.610(b), 45.09.611, 45.09.613, and 45.09.614, which deal
23 with disposition of collateral;

24 (8) AS 45.09.615(f), which deals with calculation of a deficiency or
25 surplus when a disposition is made to the secured party, a person related to the secured
26 party, or a secondary obligor;

27 (9) AS 45.09.616, which deals with explanation of the calculation of
28 a surplus or deficiency;

29 (10) AS 45.09.620 - 45.09.622, which deal with acceptance of collateral
30 in satisfaction of obligation;

31 (11) AS 45.09.623, which deals with redemption of collateral;

1 (12) AS 45.09.624, which deals with permissible waivers; and
2 (13) AS 45.09.625 and 45.09.626, which deal with the secured party's
3 liability for failure to comply with this chapter.

4 **Sec. 45.09.603. Agreement on standards concerning rights and duties.** (a)
5 The parties may determine by agreement the standards measuring the fulfillment of the
6 rights of a debtor or obligor and the duties of a secured party under a rule stated in
7 AS 45.09.602 if the standards are not manifestly unreasonable.

8 (b) The provisions of (a) of this section do not apply to the duty under
9 AS 45.09.609 to refrain from breaching the peace.

10 **Sec. 45.09.604. Procedure if security agreement covers real property or**
11 **fixtures.** (a) If a security agreement covers both personal and real property, a secured
12 party may proceed

13 (1) under AS 45.09.601 - 45.09.628 as to the personal property without
14 prejudicing any rights with respect to the real property; or

15 (2) as to both the personal property and the real property in accordance
16 with the rights with respect to the real property, in which case the other provisions of
17 AS 45.09.601 - 45.09.628 do not apply.

18 (b) Subject to (c) of this section, if a security agreement covers goods that are
19 or become fixtures, a secured party may proceed

20 (1) under AS 45.09.601 - 45.09.628; or

21 (2) in accordance with the rights with respect to real property, in which
22 case the other provisions of AS 45.09.601 - 45.09.628 do not apply.

23 (c) Subject to the other provisions of AS 45.09.601 - 45.09.628, if a secured
24 party holding a security interest in fixtures has priority over all owners and
25 encumbrancers of the real property, the secured party, after default, may remove the
26 collateral from the real property.

27 (d) A secured party that removes collateral shall promptly reimburse an
28 encumbrancer or owner of the real property, other than the debtor, for the cost of
29 repair of physical injury caused by the removal. The secured party need not reimburse
30 the encumbrancer or owner for diminution in value of the real property caused by the
31 absence of the goods removed or by the necessity of replacing them. A person entitled

1 to reimbursement may refuse permission to remove until the secured party gives
2 adequate assurance for the performance of the obligation to reimburse.

3 **Sec. 45.09.605. Unknown debtor or secondary obligor.** A secured party
4 does not owe a duty based on its status as secured party to

5 (1) a person that is a debtor or obligor unless the secured party knows

6 (A) that the person is a debtor or obligor;

7 (B) the identity of the person; and

8 (C) how to communicate with the person; or

9 (2) a secured party or lienholder that has filed a financing statement
10 against a person unless the secured party knows

11 (A) that the person is a debtor; and

12 (B) the identity of the person.

13 **Sec. 45.09.606. Time of default for agricultural lien.** For purposes of
14 AS 45.09.601 - 45.09.628, a default occurs in connection with an agricultural lien at
15 the time the secured party becomes entitled to enforce the lien in accordance with the
16 statute under which it was created.

17 **Sec. 45.09.607. Collection and enforcement by secured party.** (a) If so
18 agreed and, in any event, after default, a secured party

19 (1) may notify an account debtor or other person obligated on collateral
20 to make payment or otherwise render performance to or for the benefit of the secured
21 party;

22 (2) may take proceeds to which the secured party is entitled under
23 AS 45.09.315;

24 (3) may enforce the obligations of an account debtor or other person
25 obligated on collateral and exercise the rights of the debtor with respect to the
26 obligation of the account debtor or other person obligated on collateral to make
27 payment or otherwise render performance to the debtor and with respect to property
28 that secures the obligations of the account debtor or other person obligated on the
29 collateral;

30 (4) if it holds a security interest in a deposit account perfected by
31 control under AS 45.09.104(a)(1), may apply the balance of the deposit account to the

1 obligation secured by the deposit account; and

2 (5) if it holds a security interest in a deposit account perfected by
3 control under AS 45.09.104(a)(2) or (3), may instruct the bank to pay the balance of
4 the deposit account to or for the benefit of the secured party.

5 (b) If necessary to enable a secured party to exercise under (a)(3) of this
6 section the right of a debtor to enforce a mortgage nonjudicially, the secured party may
7 record in the office in which a record of the mortgage is recorded

8 (1) a copy of the security agreement that creates or provides for a
9 security interest in the obligation secured by the mortgage; and

10 (2) the secured party's sworn affidavit in recordable form stating that

11 (A) a default has occurred; and

12 (B) the secured party is entitled to enforce the mortgage
13 nonjudicially.

14 (c) A secured party shall proceed in a commercially reasonable manner if the
15 secured party

16 (1) undertakes to collect from or enforce an obligation of an account
17 debtor or other person obligated on collateral; and

18 (2) is entitled to charge back uncollected collateral or otherwise to full
19 or limited recourse against the debtor or a secondary obligor.

20 (d) A secured party may deduct from the collections made under (c) of this
21 section reasonable expenses of collection and enforcement, including reasonable
22 attorney fees and legal expenses incurred by the secured party.

23 (e) This section does not determine whether an account debtor, bank, or other
24 person obligated on collateral owes a duty to a secured party.

25 **Sec. 45.09.608. Application of proceeds of collection or enforcement;**
26 **liability for deficiency and right to surplus.** (a) If a security interest or agricultural
27 lien secures payment or performance of an obligation, the following rules apply:

28 (1) a secured party shall apply or pay over for application the cash
29 proceeds of collection or enforcement under this section in the following order to

30 (A) the reasonable expenses of collection and enforcement and,
31 to the extent provided for by agreement and not prohibited by law, reasonable

1 attorney fees and legal expenses incurred by the secured party;

2 (B) the satisfaction of obligations secured by the security
3 interest or agricultural lien under which the collection or enforcement is made;
4 and

5 (C) the satisfaction of obligations secured by a subordinate
6 security interest in or other lien on the collateral subject to the security interest
7 or agricultural lien under which the collection or enforcement is made if the
8 secured party receives an authenticated demand for proceeds before distribution
9 of the proceeds is completed;

10 (2) if requested by a secured party, a holder of a subordinate security
11 interest or other lien shall furnish reasonable proof of the interest or lien within a
12 reasonable time; unless the holder complies, the secured party need not comply with
13 the holder's demand under (1)(C) of this subsection;

14 (3) a secured party need not apply or pay over for application noncash
15 proceeds of collection and enforcement under this subsection unless the failure to do
16 so would be commercially unreasonable; a secured party that applies or pays over for
17 application noncash proceeds shall do so in a commercially reasonable manner;

18 (4) a secured party shall account to and pay a debtor for any surplus,
19 and the obligor is liable for any deficiency.

20 (b) If the underlying transaction is a sale of accounts, chattel paper, payment
21 intangibles, or promissory notes, the debtor is not entitled to any surplus, and the
22 obligor is not liable for any deficiency.

23 **Sec. 45.09.609. Secured party's right to take possession after default.** (a)
24 After default, a secured party

25 (1) may take possession of the collateral; and

26 (2) without removal, may render equipment unusable and dispose of
27 collateral on a debtor's premises under AS 45.09.610.

28 (b) A secured party may proceed under subsection (a) of this section

29 (1) in accordance with judicial process; or

30 (2) without judicial process if it proceeds without breach of the peace.

31 (c) If so agreed and, in any event, after default, a secured party may require

1 the debtor to assemble the collateral and make it available to the secured party at a
2 place to be designated by the secured party that is reasonably convenient to both
3 parties.

4 **Sec. 45.09.610. Disposition of collateral after default.** (a) After default, a
5 secured party may sell, lease, license, or otherwise dispose of any or all of the
6 collateral in its present condition or following commercially reasonable preparation or
7 processing.

8 (b) Every aspect of a disposition of collateral, including the method, manner,
9 time, place, and other terms, must be commercially reasonable. If commercially
10 reasonable, a secured party may dispose of collateral by public or private proceedings,
11 by one or more contracts, as a unit or in parcels, and at any time and place and on any
12 terms.

13 (c) A secured party may purchase collateral

14 (1) at a public disposition; or

15 (2) at a private disposition only if the collateral is of a kind that is
16 customarily sold on a recognized market or the subject of widely distributed standard
17 price quotations.

18 (d) A contract for sale, lease, license, or other disposition includes the
19 warranties relating to title, possession, quiet enjoyment, and the like that by operation
20 of law accompany a voluntary disposition of property of the kind subject to the
21 contract.

22 (e) A secured party may disclaim or modify warranties under (d) of this
23 section

24 (1) in a manner that would be effective to disclaim or modify the
25 warranties in a voluntary disposition of property of the kind subject to the contract of
26 disposition; or

27 (2) by communicating to the purchaser a record evidencing the contract
28 for disposition and including an express disclaimer or modification of the warranties.

29 (f) A record is sufficient to disclaim warranties under (e) of this section if it
30 indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like
31 in this disposition" or uses words of similar import.

1 **Sec. 45.09.611. Notification before disposition of collateral.** (a) In this
2 section, "notification date" means the earlier of the date on which

3 (1) a secured party sends to the debtor and any secondary obligor an
4 authenticated notification of disposition; or

5 (2) the debtor and any secondary obligor waive the right to notification.

6 (b) Except as otherwise provided in (d) of this section, a secured party that
7 disposes of collateral under AS 45.09.610 shall send to the persons specified in (c) of
8 this section a reasonable authenticated notification of disposition.

9 (c) To comply with (b) of this section, the secured party shall send an
10 authenticated notification of disposition to

11 (1) the debtor;

12 (2) any secondary obligor; and

13 (3) if the collateral is other than consumer goods,

14 (A) any other person from which the secured party has received,
15 before the notification date, an authenticated notification of a claim of an
16 interest in the collateral;

17 (B) any other secured party or lienholder that, 10 days before
18 the notification date, held a security interest in or other lien on the collateral
19 perfected by the filing of a financing statement that

20 (i) identified the collateral;

21 (ii) was indexed under the debtor's name as of that date;

22 and

23 (iii) was filed in the office in which to file a financing
24 statement against the debtor covering the collateral as of that date; and

25 (C) any other secured party that, 10 days before the notification
26 date, held a security interest in the collateral perfected by compliance with a
27 statute, regulation, or treaty described in AS 45.09.311(a).

28 (d) The provisions of (b) of this section do not apply if the collateral is
29 perishable or threatens to decline speedily in value or is of a type customarily sold on
30 a recognized market.

31 (e) A secured party complies with the requirement for notification prescribed

1 in (c)(3)(B) of this section if

2 (1) not later than 20 days or earlier than 30 days before the notification
3 date, the secured party requests, in a commercially reasonable manner, information
4 concerning financing statements indexed under the debtor's name in the office indicated
5 in (c)(3)(B) of this section; and

6 (2) before the notification date, the secured party

7 (A) did not receive a response to the request for information;

8 or

9 (B) received a response to the request for information and sent
10 an authenticated notification of disposition to each secured party named in that
11 response whose financing statement covered the collateral.

12 **Sec. 45.09.612. Timeliness of notification before disposition of collateral.**

13 (a) Except as otherwise provided in (b) of this section, whether a notification is sent
14 within a reasonable time is a question of fact.

15 (b) In a transaction other than a consumer transaction, a notification of
16 disposition sent after default and 10 days or more before the earliest time of
17 disposition set out in the notification is sent within a reasonable time before the
18 disposition.

19 **Sec. 45.09.613. General notification before disposition of collateral.** Except
20 in a consumer goods transaction, the following rules apply:

21 (1) the contents of a notification of disposition are sufficient if the
22 notification

23 (A) describes the debtor and the secured party;

24 (B) describes the collateral that is the subject of the intended
25 disposition;

26 (C) states the method of intended disposition;

27 (D) states that the debtor is entitled to an accounting of the
28 unpaid indebtedness and states the charge, if any, for an accounting; and

29 (E) states the time and place of a public sale or the time after
30 which any other disposition is to be made;

31 (2) whether the contents of a notification that lacks any of the

1 information specified in (1) of this section are nevertheless sufficient is a question of
2 fact;

3 (3) the contents of a notification providing substantially the information
4 specified in (1) of this section are sufficient even if the notification includes

5 (A) information not specified by that paragraph; or

6 (B) minor errors that are not seriously misleading;

7 (4) a particular phrasing of the notification is not required;

8 (5) the following form of notification and the form appearing in
9 AS 45.09.614(3), when completed, each provides sufficient information:

10 NOTIFICATION OF DISPOSITION OF COLLATERAL

11 To: (Name of debtor, obligor, or other person to which the
12 notification is sent)

13 From: (Name, address, and telephone number of secured party)

14 Name of Debtor(s): (Include only if debtor(s) are not an
15 addressee)

16 (For a public disposition:)

17 We will sell (or lease or license, as applicable) the (describe
18 collateral) (to the highest qualified bidder) in public as follows:

19 Day and Date: _____

20 Time: _____

21 Place: _____

22 (For a private disposition:)

23 We will sell (or lease or license, as applicable) the (describe
24 collateral) privately sometime after (day and date).

25 You are entitled to an accounting of the unpaid indebtedness secured by
26 the property that we intend to sell (or lease or license, as applicable)
27 (for a charge of \$ _____). You may request an accounting by
28 calling us at (telephone number).

29 **Sec. 45.09.614. Notification before disposition of collateral in consumer**
30 **goods transaction.** In a consumer goods transaction, the following rules apply:

31 (1) a notification of disposition must provide the following information:

- 1 (A) the information specified in AS 45.09.613(1);
- 2 (B) a description of any liability for a deficiency of the person
- 3 to which the notification is sent;
- 4 (C) a telephone number from which the amount that must be
- 5 paid to the secured party to redeem the collateral under AS 45.09.623 is
- 6 available; and
- 7 (D) a telephone number or mailing address from which
- 8 additional information concerning the disposition and the obligation secured is
- 9 available.

- 10 (2) a particular phrasing of the notification is not required;
- 11 (3) the following form of notification, when completed, provides
- 12 sufficient information:

13 (Name and address of secured party)

14 (Date)

15 NOTICE OF OUR PLAN TO SELL PROPERTY

16 (Name and address of any obligor who is also a debtor)

17 Subject: (Identification of Transaction)

18 We have your (describe collateral), because you broke

19 promises in our agreement.

20 (For a public disposition:)

21 We will sell (describe collateral) at public sale. A sale could

22 include a lease or license. The sale will be held as follows:

23 Date: _____

24 Time: _____

25 Place: _____

26 You may attend the sale and bring bidders if you want.

27 (For a private disposition:)

28 We will sell (describe collateral) at private sale sometime after

29 (date). A sale could include a lease or license.

30 The money that we get from the sale, after paying our costs, will reduce

31 the amount you owe. If we get less money than you owe, you (will

1 or will not, as applicable still owe us the difference. If we get
 2 more money than you owe, you will get the extra money, unless we
 3 must pay it to someone else.

4 You can get the property back at any time before we sell it by paying
 5 us the full amount you owe (not just the past due payments), including
 6 our expenses. To learn the exact amount you must pay, call us at
 7 (telephone number).

8 If you want us to explain to you in writing how we have figured the
 9 amount that you owe us, you may call us at (telephone number)
 10 (or write us at (secured party's address)) and request a written
 11 explanation. (We will charge you \$ _____ for the explanation if we
 12 sent you another written explanation of the amount you owe us within
 13 the last six months.)

14 If you need more information about the sale call us at (telephone
 15 number) (or write us at (secured party's address)).

16 We are sending this notice to the following other people who have an
 17 interest in (describe collateral) or who owe money under your
 18 agreement:

19 (Names of all other debtors and obligors, if any).

20 (4) a notification in the form of (3) of this section is sufficient even if
 21 additional information appears at the end of the form;

22 (5) a notification in the form of (3) of this section is sufficient even if
 23 it includes errors in information not required by (1) of this section unless the error is
 24 misleading with respect to rights arising under this chapter;

25 (6) if a notification under this section is not in the form set out in (3)
 26 of this section, law other than this chapter determines the effect of including
 27 information not required by (1) of this section.

28 **Sec. 45.09.615. Application of proceeds of disposition; liability for**
 29 **deficiency and right to surplus.** (a) A secured party shall apply or pay over for
 30 application the cash proceeds of disposition in the following order:

31 (1) the reasonable expenses of retaking, holding, preparing for

1 disposition, processing, and disposing and, to the extent provided for by agreement and
2 not prohibited by law, reasonable attorney fees and legal expenses incurred by the
3 secured party;

4 (2) the satisfaction of obligations secured by the security interest or
5 agricultural lien under which the disposition is made;

6 (3) the satisfaction of obligations secured by any subordinate security
7 interest in or other subordinate lien on the collateral if

8 (A) the secured party receives from the holder of the
9 subordinate security interest or other lien an authenticated demand for proceeds
10 before distribution of the proceeds is completed; and

11 (B) in a case in which a consignor has an interest in the
12 collateral, the subordinate security interest or other lien is senior to the interest
13 of the consignor; and

14 (4) a secured party that is a consignor of the collateral if the secured
15 party receives from the consignor an authenticated demand for proceeds before
16 distribution of the proceeds is completed.

17 (b) If requested by a secured party, a holder of a subordinate security interest
18 or other lien shall furnish reasonable proof of the interest or lien within a reasonable
19 time. Unless the holder does so, the secured party need not comply with the holder's
20 demand under (a)(3) of this section.

21 (c) A secured party need not apply or pay over for application noncash
22 proceeds of disposition under this section unless the failure to do so would be
23 commercially unreasonable. A secured party that applies or pays over for application
24 noncash proceeds shall do so in a commercially reasonable manner.

25 (d) If the security interest under which a disposition is made secures payment
26 or performance of an obligation, after making the payments and applications required
27 by (a) of this section and permitted by (c) of this section,

28 (1) unless (a)(4) of this section requires the secured party to apply or
29 pay over cash proceeds to a consignor, the secured party shall account to and pay a
30 debtor for any surplus; and

31 (2) the obligor is liable for any deficiency.

1 (e) If the underlying transaction is a sale of accounts, chattel paper, payment
2 intangibles, or promissory notes,

3 (1) the debtor is not entitled to any surplus; and

4 (2) the obligor is not liable for any deficiency.

5 (f) The surplus or deficiency after a disposition is calculated based on the
6 amount of proceeds that would have been realized in a disposition complying with
7 AS 45.09.601 - 45.09.628 to a transferee other than the secured party, a person related
8 to the secured party, or a secondary obligor if

9 (1) the transferee in the disposition is the secured party, a person
10 related to the secured party, or a secondary obligor; and

11 (2) the amount of proceeds of the disposition is significantly below the
12 range of proceeds that a complying disposition to a person other than the secured
13 party, a person related to the secured party, or a secondary obligor would have
14 brought.

15 (g) A secured party who receives cash proceeds of a disposition in good faith
16 and without knowledge that the receipt violates the rights of the holder of a security
17 interest or other lien that is not subordinate to the security interest or agricultural lien
18 under which the disposition is made

19 (1) takes the cash proceeds free of the security interest or other lien;

20 (2) is not obligated to apply the proceeds of the disposition to the
21 satisfaction of obligations secured by the security interest or other lien; and

22 (3) is not obligated to account to or pay the holder of the security
23 interest or other lien for any surplus.

24 **Sec. 45.09.616. Explanation of calculation of surplus or deficiency.** (a) In
25 this section,

26 (1) "explanation" means a writing that

27 (A) states the amount of the surplus or deficiency;

28 (B) provides an explanation in accordance with (c) of this
29 section of how the secured party calculated the surplus or deficiency;

30 (C) states, if applicable, that future debits, credits, charges,
31 including additional credit service charges or interest, rebates, and expenses

1 may affect the amount of the surplus or deficiency; and

2 (D) provides a telephone number or mailing address from which
3 additional information concerning the transaction is available;

4 (2) "request" means a record

5 (A) authenticated by a debtor or consumer obligor;

6 (B) requesting that the recipient provide an explanation; and

7 (C) sent after disposition of the collateral under AS 45.09.610.

8 (b) In a consumer goods transaction in which the debtor is entitled to a surplus
9 or a consumer obligor is liable for a deficiency under AS 45.09.615, the secured party
10 shall

11 (1) send an explanation to the debtor or consumer obligor, as
12 applicable, after the disposition and

13 (A) before or when the secured party accounts to the debtor and
14 pays any surplus or first makes written demand on the consumer obligor after
15 the disposition for payment of the deficiency; and

16 (B) within 14 days after receipt of a request; or

17 (2) in the case of a consumer obligor who is liable for a deficiency,
18 within 14 days after receipt of a request, send to the consumer obligor a record
19 waiving the secured party's right to a deficiency.

20 (c) To comply with (a)(1)(B) of this section, a writing must provide the
21 following information in the following order:

22 (1) the aggregate amount of obligations secured by the security interest
23 under which the disposition was made, and, if the amount reflects a rebate of unearned
24 interest or credit service charge, an indication of that fact, calculated as of a specified
25 date

26 (A) if the secured party takes or receives possession of the
27 collateral after default, not more than 35 days before the secured party takes
28 or receives possession; or

29 (B) if the secured party takes or receives possession of the
30 collateral before default or does not take possession of the collateral, not more
31 than 35 days before the disposition;

- 1 (2) the amount of proceeds of the disposition;
- 2 (3) the aggregate amount of the obligations after deducting the amount
- 3 of proceeds;
- 4 (4) the amount, in the aggregate or by type, and types of expenses,
- 5 including expenses of retaking, holding, preparing for disposition, processing, and
- 6 disposing of the collateral, and attorney fees secured by the collateral that are known
- 7 to the secured party and relate to the current disposition;
- 8 (5) the amount, in the aggregate or by type, and types of credits,
- 9 including rebates of interest or credit service charges, to which the obligor is known
- 10 to be entitled and that are not reflected in the amount in (1) of this subsection; and
- 11 (6) the amount of the surplus or deficiency.

12 (d) A particular phrasing of the explanation is not required. An explanation

13 complying substantially with the requirements of (a) of this section is sufficient even

14 if it includes minor errors that are not seriously misleading.

15 (e) A debtor or consumer obligor is entitled without charge to one response

16 to a request under this section during any six-month period in which the secured party

17 did not send to the debtor or consumer obligor an explanation under (b)(1) of this

18 section. The secured party may require payment of a charge not exceeding \$25 for

19 each additional response.

20 **Sec. 45.09.617. Rights of transferee of collateral.** (a) A secured party's

21 disposition of collateral after default

22 (1) transfers to a transferee for value all of the debtor's rights in the

23 collateral;

24 (2) discharges the security interest under which the disposition is made;

25 and

26 (3) discharges any subordinate security interest or other subordinate

27 lien.

28 (b) A transferee who acts in good faith takes free of the rights and interests

29 described in (a) of this section even if the secured party fails to comply with this

30 chapter or the requirements of a judicial proceeding.

31 (c) If a transferee does not take free of the rights and interests described in (a)

1 of this section, the transferee takes the collateral subject to

- 2 (1) the debtor's rights in the collateral;
 3 (2) the security interest or agricultural lien under which the disposition
 4 is made; and
 5 (3) any security interest or other lien.

6 **Sec. 45.09.618. Rights and duties of certain secondary obligors.** (a) A
 7 secondary obligor acquires the rights and becomes obligated to perform the duties of
 8 the secured party after the secondary obligor

- 9 (1) receives an assignment of a secured obligation from the secured
 10 party;
 11 (2) receives a transfer of collateral from the secured party and agrees
 12 to accept the rights and assume the duties of the secured party; or
 13 (3) is subrogated to the rights of a secured party with respect to
 14 collateral.

15 (b) An assignment, transfer, or subrogation described in (a) of this section

- 16 (1) is not a disposition of collateral under AS 45.09.610; and
 17 (2) relieves the secured party of further duties under this chapter.

18 **Sec. 45.09.619. Transfer of record or legal title.** (a) In this section,
 19 "transfer statement" means a record authenticated by a secured party stating

- 20 (1) that the debtor has defaulted in connection with an obligation
 21 secured by specified collateral;
 22 (2) that the secured party has exercised its post-default remedies with
 23 respect to the collateral;
 24 (3) that, by reason of the exercise, a transferee has acquired the rights
 25 of the debtor in the collateral; and
 26 (4) the name and mailing address of the secured party, debtor, and
 27 transferee.

28 (b) A transfer statement entitles the transferee to the transfer of record of all
 29 rights of the debtor in the collateral specified in the statement in an official filing,
 30 recording, registration, or certificate-of-title system covering the collateral. If a
 31 transfer statement is presented with the applicable fee and request form to the official

1 or office responsible for maintaining the system, the official or office shall

2 (1) accept the transfer statement;

3 (2) promptly amend its records to reflect the transfer; and

4 (3) if applicable, issue a new appropriate certificate of title in the name
5 of transferee.

6 (c) A transfer of the record or legal title to collateral to a secured party under
7 (b) of this section or otherwise is not of itself a disposition of collateral under this
8 chapter and does not of itself relieve the secured party of its duties under this chapter.

9 **Sec. 45.09.620. Acceptance of collateral in full or partial satisfaction of**
10 **obligation; compulsory disposition of collateral.** (a) Except as otherwise provided
11 in (g) of this section, a secured party may accept collateral in full or partial satisfaction
12 of the obligation it secures only if

13 (1) the debtor consents to the acceptance under (c) of this section;

14 (2) the secured party does not receive, within the time set out in (d) of
15 this section, a notification of objection to the proposal authenticated by

16 (A) a person to which the secured party was required to send
17 a proposal under AS 45.09.621; or

18 (B) any other person, other than the debtor, holding an interest
19 in the collateral subordinate to the security interest that is the subject of the
20 proposal;

21 (3) if the collateral is consumer goods, the collateral is not in the
22 possession of the debtor when the debtor consents to the acceptance; and

23 (4) the provisions of (e) of this section do not require the secured party
24 to dispose of the collateral or the debtor waives the requirement under AS 45.09.624.

25 (b) A purported or apparent acceptance of collateral under this section is
26 ineffective unless

27 (1) the secured party consents to the acceptance in an authenticated
28 record or sends a proposal to the debtor; and

29 (2) the conditions of (a) of this section are met.

30 (c) For purposes of this section, a debtor consents to an acceptance of
31 collateral

1 (1) in partial satisfaction of the obligation it secures only if the debtor
2 agrees to the terms of the acceptance in a record authenticated after default; and

3 (2) in full satisfaction of the obligation it secures only if the debtor
4 agrees to the terms of the acceptance in a record authenticated after default or the
5 secured party

6 (A) sends to the debtor after default a proposal that is
7 unconditional or subject only to a condition that collateral not in the possession
8 of the secured party be preserved or maintained;

9 (B) in the proposal, proposes to accept collateral in full
10 satisfaction of the obligation it secures; and

11 (C) does not receive a notification of objection authenticated by
12 the debtor within 20 days after the proposal is sent.

13 (d) To be effective under (a)(2) of this section, a notification of objection must
14 be received by the secured party

15 (1) in the case of a person to which the proposal was sent under
16 AS 45.09.621, within 20 days after notification was sent to that person; and

17 (2) in other cases,

18 (A) within 20 days after the last notification was sent under
19 AS 45.09.621; or

20 (B) if a notification was not sent, before the debtor consents to
21 the acceptance under (c) of this section.

22 (e) A secured party that has taken possession of collateral shall dispose of the
23 collateral under AS 45.09.610 within the time specified in (f) of this section if

24 (1) 60 percent of the cash price has been paid in the case of a purchase
25 money security interest in consumer goods; or

26 (2) 60 percent of the principal amount of the obligation secured has
27 been paid in the case of a nonpurchase money security interest in consumer goods.

28 (f) To comply with (e) of this section, the secured party shall dispose of the
29 collateral within

30 (1) 90 days after taking possession; or

31 (2) any longer period to which the debtor and all secondary obligors

1 have agreed in an agreement to that effect entered into and authenticated after default.

2 (g) In a consumer transaction, a secured party may not accept collateral in
3 partial satisfaction of the obligation it secures.

4 **Sec. 45.09.621. Notification of proposal to accept collateral.** (a) A secured
5 party who desires to accept collateral in full or partial satisfaction of the obligation it
6 secures shall send its proposal to

7 (1) any person from which the secured party has received, before the
8 debtor consented to the acceptance, an authenticated notification of a claim of an
9 interest in the collateral;

10 (2) any other secured party or lienholder who, 10 days before the
11 debtor consented to the acceptance, held a security interest in or other lien on the
12 collateral perfected by the filing of a financing statement that

13 (A) identified the collateral;

14 (B) was indexed under the debtor's name as of that date; and

15 (C) was filed in the office or offices in which to file a financing
16 statement against the debtor covering the collateral as of that date; and

17 (3) any other secured party who, 10 days before the debtor consented
18 to the acceptance, held a security interest in the collateral perfected by compliance
19 with a statute, regulation, or treaty described in AS 45.09.311(a).

20 (b) A secured party who desires to accept collateral in partial satisfaction of
21 the obligation it secures shall send its proposal to any secondary obligor in addition
22 to the persons described in (a) of this section.

23 **Sec. 45.09.622. Effect of acceptance of collateral.** (a) A secured party's
24 acceptance of collateral in full or partial satisfaction of the obligation it secures

25 (1) discharges the obligation to the extent consented to by the debtor;

26 (2) transfers to the secured party all of a debtor's rights in the
27 collateral;

28 (3) discharges the security interest or agricultural lien that is the subject
29 of the debtor's consent and any subordinate security interest or other subordinate lien;
30 and

31 (4) terminates any other subordinate interest.

1 (b) A subordinate interest is discharged or terminated under (a) of this section,
 2 whether or not the secured party sends or is required to send its proposal to the holder
 3 of the interest. However, a person to which the secured party was required to send,
 4 but did not send, its proposal has the remedy provided by AS 45.09.625(b).

5 **Sec. 45.09.623. Right to redeem collateral.** (a) A debtor, a secondary
 6 obligor, or other secured party or lienholder may redeem collateral.

7 (b) To redeem collateral, a person shall tender

8 (1) fulfillment of all obligations secured by the collateral; and

9 (2) the reasonable expenses and attorney fees described in
 10 AS 45.09.615(a)(1).

11 (c) A redemption may occur at any time before a secured party has

12 (1) collected collateral under AS 45.09.607;

13 (2) disposed of collateral or entered into a contract for its disposition
 14 under AS 45.09.610; or

15 (3) accepted collateral in full or partial satisfaction of the obligation it
 16 secures under AS 45.09.622.

17 **Sec. 45.09.624. Waiver.** (a) A debtor or secondary obligor may waive the
 18 right to notification of disposition of collateral under AS 45.09.611 only by an
 19 agreement to that effect entered into and authenticated after default.

20 (b) A debtor may waive the right to require disposition of collateral under
 21 AS 45.09.620(e) only by an agreement to that effect entered into and authenticated
 22 after default.

23 (c) Except in a consumer goods transaction, a debtor or secondary obligor may
 24 waive the right to redeem collateral under AS 45.09.623 only by an agreement to that
 25 effect entered into and authenticated after default.

26 **Sec. 45.09.625. Remedies for secured party's failure to comply with**
 27 **chapter.** (a) If it is established that a secured party is not proceeding in accordance
 28 with this chapter, a court may order or restrain collection, enforcement, or disposition
 29 of collateral on appropriate terms and conditions.

30 (b) Subject to (c), (d), and (f) of this section, a secured party is liable for
 31 damages in the amount of any loss caused by a failure to comply with this chapter.

1 Loss caused by a failure to comply with a request under AS 45.09.210 may include
2 loss resulting from the debtor's inability to obtain, or increased costs of, alternative
3 financing.

4 (c) Except as otherwise provided in AS 45.09.628,

5 (1) a person who, at the time of the failure, was a debtor or an obligor
6 or held a security interest in or other lien on the collateral may recover damages under
7 (b) of this section for its loss; and

8 (2) if the collateral is consumer goods, a person who was a debtor or
9 secondary obligor at the time a secured party failed to comply with AS 45.09.601 -
10 45.09.628 may recover for that failure in any event an amount not less than the credit
11 service charge plus 10 percent of the principal amount of the obligation or the time-
12 price differential plus 10 percent of the cash price.

13 (d) A debtor whose deficiency is eliminated under AS 45.09.626 may recover
14 damages for the loss of any surplus. However, a debtor or secondary obligor whose
15 deficiency is eliminated or reduced under AS 45.09.626 may not otherwise recover
16 under (b) of this section for noncompliance with the provisions of AS 45.09.601 -
17 45.09.628 relating to collection, enforcement, disposition, or acceptance.

18 (e) In addition to damages recoverable under (b) of this section, the debtor,
19 consumer obligor, or person named as a debtor in a filed record, as applicable, may
20 recover \$500 in each case from

21 (1) a secured party who fails to comply with AS 45.09.208;

22 (2) a secured party who fails to comply with AS 45.09.209;

23 (3) a person who files a record that the person is not entitled to file
24 under AS 45.09.509(a);

25 (4) a secured party who fails to cause the secured party of record to file
26 or send a termination statement as required by AS 45.09.513(a) or (c);

27 (5) a secured party that fails to comply with AS 45.09.616(b)(1) and
28 whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

29 (6) a secured party who fails to comply with AS 45.09.616(b)(2).

30 (f) A debtor or consumer obligor may recover damages under (b) of this
31 section and, in addition, \$500 in each case from a person who, without reasonable

1 cause, fails to comply with a request under AS 45.09.210. A recipient of a request
 2 under AS 45.09.210 who never claimed an interest in the collateral or obligations that
 3 are the subject of a request under that section has a reasonable excuse for failure to
 4 comply with the request within the meaning of this subsection.

5 (g) If a secured party fails to comply with a request regarding a list of
 6 collateral or a statement of account under AS 45.09.210, the secured party may claim
 7 a security interest only as shown in the statement included in the request as against a
 8 person who is reasonably misled by the failure.

9 **Sec. 45.09.626. Action in which deficiency or surplus is in issue.** (a) In an
 10 action arising from a transaction, other than a consumer transaction, in which the
 11 amount of a deficiency or surplus is in issue, the following rules apply:

12 (1) a secured party need not prove compliance with the provisions of
 13 AS 45.09.601 - 45.09.628 relating to collection, enforcement, disposition, or acceptance
 14 unless the debtor or secondary obligor places the secured party's compliance in issue;

15 (2) if the secured party's compliance is placed in issue, the secured
 16 party has the burden of establishing that the collection, enforcement, disposition, or
 17 acceptance was conducted in compliance with the provisions of AS 45.09.601 -
 18 45.09.628;

19 (3) except as otherwise provided in AS 45.09.628, if a secured party
 20 fails to prove that the collection, enforcement, disposition, or acceptance was
 21 conducted in compliance with the provisions of AS 45.09.601 - 45.09.628 relating to
 22 collection, enforcement, disposition, or acceptance, the liability of a debtor or
 23 secondary obligor for a deficiency is limited to an amount by which the sum of the
 24 secured obligation, expenses, and attorney fees exceeds the greater of

25 (A) the proceeds of the collection, enforcement, disposition, or
 26 acceptance; or

27 (B) the amount of proceeds that would have been realized had
 28 the noncomplying secured party proceeded in compliance with the provisions
 29 of AS 45.09.601 - 45.09.628 relating to collection, enforcement, disposition, or
 30 acceptance;

31 (4) for purposes of (3)(B) of this subsection, the amount of proceeds

1 that would have been realized is equal to the sum of the secured obligation, expenses,
2 and attorney fees unless the secured party proves that the amount is less than that sum;

3 (5) if a deficiency or surplus is calculated under AS 45.09.615(f), the
4 debtor or obligor has the burden of establishing that the amount of proceeds of the
5 disposition is significantly below the range of prices that a complying disposition to
6 a person other than the secured party, a person related to the secured party, or a
7 secondary obligor would have brought.

8 (b) The limitation of the rules in (a) of this section to transactions other than
9 consumer transactions is intended to leave to the court the determination of the proper
10 rules in consumer transactions. The court may not infer from that limitation the nature
11 of the proper rule in consumer transactions and may continue to apply established
12 approaches.

13 **Sec. 45.09.627. Determination of whether conduct was commercially**
14 **reasonable.** (a) The fact that a greater amount could have been obtained by a
15 collection, enforcement, disposition, or acceptance at a different time or in a different
16 method from that selected by the secured party is not of itself sufficient to preclude
17 the secured party from establishing that the collection, enforcement, disposition, or
18 acceptance was made in a commercially reasonable manner.

19 (b) A disposition of collateral is made in a commercially reasonable manner
20 if the disposition is made

21 (1) in the usual manner on any recognized market;

22 (2) at the price current in any recognized market at the time of the
23 disposition; or

24 (3) otherwise in conformity with reasonable commercial practices
25 among dealers in the type of property that was the subject of the disposition.

26 (c) A collection, enforcement, disposition, or acceptance is commercially
27 reasonable if it has been approved

28 (1) in a judicial proceeding;

29 (2) by a bona fide creditors' committee;

30 (3) by a representative of creditors; or

31 (4) by an assignee for the benefit of creditors.

1 (d) Approval under (c) of this section need not be obtained, and lack of
 2 approval does not mean that the collection, enforcement, disposition, or acceptance is
 3 not commercially reasonable.

4 **Sec. 45.09.628. Nonliability and limitation on liability of secured party;
 5 liability of secondary obligor.** (a) Unless a secured party knows that a person is a
 6 debtor or obligor, knows the identity of the person, and knows how to communicate
 7 with the person,

8 (1) the secured party is not liable to the person, or to a secured party
 9 or lienholder that has filed a financing statement against the person, for failure to
 10 comply with this chapter; and

11 (2) the secured party's failure to comply with this chapter does not
 12 affect the liability of the person for a deficiency.

13 (b) A secured party is not liable because of its status as secured party

14 (1) to a person that is a debtor or obligor unless the secured party
 15 knows

16 (A) that the person is a debtor or obligor;

17 (B) the identity of the person; and

18 (C) how to communicate with the person; or

19 (2) to a secured party or lienholder that has filed a financing statement
 20 against a person unless the secured party knows

21 (A) that the person is a debtor; and

22 (B) the identity of the person.

23 (c) A secured party is not liable to a person, and a person's liability for a
 24 deficiency is not affected, because of an act or omission arising out of the secured
 25 party's reasonable belief that a transaction is not a consumer goods transaction or a
 26 consumer transaction or that goods are not consumer goods if the secured party's belief
 27 is based on its reasonable reliance on

28 (1) a debtor's representation concerning the purpose for which collateral
 29 was to be used, acquired, or held; or

30 (2) an obligor's representation concerning the purpose for which a
 31 secured obligation was incurred.

1 (d) A secured party is not liable to a person under AS 45.09.625(c)(2) for its
2 failure to comply with AS 45.09.616.

3 (e) A secured party is not liable under AS 45.09.625(c)(2) more than once with
4 respect to any one secured obligation.

5 **Article 7. Transitional Provisions.**

6 **Sec. 45.09.702. Savings clause.** (a) Except as otherwise provided in
7 AS 45.09.702 - 45.09.708, this chapter applies to a transaction or lien within the scope
8 of this chapter, even if the transaction or lien was entered into or created before July 1,
9 2001.

10 (b) Except as otherwise provided in (c) of this section and AS 45.09.703 -
11 45.09.708,

12 (1) transactions and liens that were not governed by former AS 45.09,
13 were validly entered into or created before July 1, 2001, and would be subject to this
14 chapter if they had been entered into or created on or after July 1, 2001, and the rights,
15 duties, and interests flowing from those transactions and liens remain valid on and
16 after July 1, 2001; and

17 (2) the transactions and liens may be terminated, completed,
18 consummated, and enforced as required or permitted under this chapter or by the law
19 that otherwise would apply if this chapter had not taken effect.

20 **Sec. 45.09.703. Security interest perfected before effective date.** (a) A
21 security interest that is enforceable June 30, 2001, and would have priority over the
22 rights of a person who becomes a lien creditor June 30, 2001, is a perfected security
23 interest under this chapter if, on July 1, 2001, the applicable requirements for
24 enforceability and perfection under this chapter are satisfied without further action.

25 (b) Except as otherwise provided in AS 45.09.705, if, on June 30, 2001, a
26 security interest is enforceable and would have priority over the rights of a person who
27 becomes a lien creditor June 30, 2001, but the applicable requirements for
28 enforceability or perfection under this chapter are not satisfied on July 1, 2001, the
29 security interest

30 (1) is a perfected security interest until July 1, 2002;

31 (2) remains enforceable on and after July 1, 2002, only if the security

1 interest becomes enforceable under AS 45.09.203 before July 1, 2002; and

2 (3) remains perfected on and after July 1, 2002, only if the applicable
3 requirements for perfection under this chapter are satisfied before July 1, 2002.

4 **Sec. 45.09.704. Security interest unperfected before effective date.** A
5 security interest that is enforceable June 30, 2001, but that would be subordinate to the
6 rights of a person who becomes a lien creditor June 30, 2001,

7 (1) remains an enforceable security interest until July 1, 2002;

8 (2) remains enforceable on and after July 1, 2002, if the security
9 interest becomes enforceable under AS 45.09.203 on July 1, 2001, or before July 1,
10 2002; and

11 (3) becomes perfected

12 (A) without further action on July 1, 2001, if the applicable
13 requirements for perfection under this chapter are satisfied before July 1, 2001;

14 or

15 (B) when the applicable requirements for perfection are satisfied
16 if the requirements are satisfied on or after July 1, 2001.

17 **Sec. 45.09.705. Effectiveness of action taken before effective date.** (a) If
18 action, other than the filing of a financing statement, is taken before July 1, 2001, and
19 the action would have resulted in priority of a security interest over the rights of a
20 person who becomes a lien creditor had the security interest become enforceable before
21 July 1, 2001, the action is effective to perfect a security interest that attaches under this
22 chapter before July 1, 2002. An attached security interest becomes unperfected on
23 July 1, 2002, unless the security interest becomes a perfected security interest under
24 this chapter before July 1, 2002.

25 (b) The filing of a financing statement before July 1, 2001, is effective to
26 perfect a security interest to the extent the filing would satisfy the applicable
27 requirements for perfection under this chapter.

28 (c) This chapter does not render ineffective an effective financing statement
29 that was filed before July 1, 2001, and satisfied the applicable requirements for
30 perfection under the law of the jurisdiction governing perfection as provided in former
31 AS 45.09.103. However, except as otherwise provided in (d) and (e) of this section

1 and AS 45.09.706, the financing statement ceases to be effective at the earlier of

2 (1) the time the financing statement would have ceased to be effective
3 under the law of the jurisdiction in which it is filed; or

4 (2) June 30, 2006.

5 (d) The filing of a continuation statement on or after July 1, 2001, does not
6 continue the effectiveness of the financing statement filed before July 1, 2001.

7 However, upon the timely filing of a continuation statement on or after July 1, 2001,
8 and in accordance with the law of the jurisdiction governing perfection as provided in
9 AS 45.09.301 - 45.09.342, the effectiveness of a financing statement filed in the same
10 office in that jurisdiction before July 1, 2001, continues for the period provided by the
11 law of that jurisdiction.

12 (e) The provisions of (c)(2) of this section apply to a financing statement that
13 is filed against a transmitting utility before July 1, 2001, and satisfied the applicable
14 requirements for perfection under the law of the jurisdiction governing perfection as
15 provided in former AS 45.09.103 only to the extent that AS 45.09.301 - 45.09.342
16 provides that the law of a jurisdiction other than jurisdiction in which the financing
17 statement is filed governs perfection of a security interest in collateral covered by the
18 financing statement.

19 (f) A financing statement that includes a financing statement filed before
20 July 1, 2001, and a continuation statement filed on or after July 1, 2001, is effective
21 only to the extent that it satisfies the requirements of AS 45.09.501 - 45.09.525 for an
22 initial financing statement.

23 **Sec. 45.09.706. When initial financing statement suffices as continuation**
24 **statement.** (a) The filing of an initial financing statement in the office specified in
25 AS 45.09.501 continues the effectiveness of a financing statement filed before July 1,
26 2001, for the period provided in AS 45.09.515 with respect to an initial financing
27 statement if

28 (1) the filing of an initial financing statement in that office would be
29 effective to perfect a security interest under this chapter;

30 (2) the pre-effective date financing statement was filed in an office in
31 another state or another office in this state; and

1 (3) the initial financing statement satisfies (b) of this section.

2 (b) To be effective for purposes of (a) of this section, an initial financing
3 statement must

4 (1) satisfy the requirements of AS 45.09.501 - 45.09.524 for an initial
5 financing statement;

6 (2) identify the pre-effective date financing statement by indicating the
7 office in which the financing statement was filed and providing the dates of filing and
8 file numbers, if any, of the financing statement and of the most recent continuation
9 statement filed with respect to the financing statement; and

10 (3) indicate that the pre-effective date financing statement remains
11 effective.

12 **Sec. 45.09.707. Persons entitled to file initial financing statement or**
13 **continuation statement.** A person may file an initial financing statement or a
14 continuation statement under AS 45.09.702 - 45.09.708 if

15 (1) the secured party of record authorizes the filing; and

16 (2) the filing is necessary under AS 45.09.702 - 45.09.708 to

17 (A) continue the effectiveness of a financing statement filed
18 before July 1, 2001; or

19 (B) perfect or continue the perfection of a security interest.

20 **Sec. 45.09.708. Priority.** (a) Former AS 45.09 determines the priority of
21 conflicting claims to collateral if the relative priorities of the parties were fixed before
22 July 1, 2001. In other cases, AS 45.09 determines priority.

23 (b) For purposes of AS 45.09.322(a), the priority of a security interest that
24 becomes a perfected security interest under AS 45.09.704 dates from the time the
25 applicable requirements for perfection are satisfied. This subsection does not apply to
26 conflicting security interests each of which becomes a perfected security interest under
27 AS 45.09.704.

28 (c) For purposes of AS 45.09.322(a), the priority of a security interest that
29 becomes enforceable under AS 45.09.203 dates from July 1, 2001, if the security
30 interest is perfected under this chapter by the filing of a financing statement before
31 July 1, 2001, that would not have been effective to perfect the security interest under

1 former AS 45.09. This subsection does not apply to conflicting security interests each
2 of which is perfected by the filing of such a financing statement.

3 * **Sec. 2.** AS 44.37.027 is amended by adding new subsections to read:

4 (d) The Department of Natural Resources shall by regulation adopt a form and
5 format for written initial financing statements, financing statement addendums,
6 financing statement amendments, and financing statement amendment addendums
7 submitted under AS 45.09.521 that, subject to the exceptions in AS 45.09.521, the
8 department may not refuse to accept. The forms and formats adopted under this
9 section shall conform to the forms and formats recommended by the National
10 Conference of Commissioners on Uniform State Laws in Section 9-521 of the
11 conference's 1998 revision of Article 9 of the Uniform Commercial Code.

12 (e) To keep the filing office regulations and practices of the filing office in
13 harmony with the regulations and practices of filing offices in other jurisdictions that
14 enact laws that are substantially similar to AS 45.09.501 - 45.09.525, and to keep the
15 technology used by the filing office compatible with the technology used by filing
16 offices in those other jurisdictions, the Department of Natural Resources, so far as is
17 consistent with the purposes, policies, and provisions of this chapter, in adopting,
18 amending, and repealing filing office regulations, shall

19 (1) consult with filing offices in other jurisdictions that enact laws that
20 are substantially similar to AS 45.09.501 - 45.09.525; and

21 (2) consult the most recent version of the Model Rules promulgated by
22 the International Association of Corporate Administrators or any successor
23 organization; and

24 (3) take into consideration the regulations and practices of, and the
25 technology used by, filing offices in other jurisdictions that enact laws that are
26 substantially similar to AS 45.09.501 - 45.09.525.

27 (f) The Department of Natural Resources shall report annually on or before
28 January 15 to the governor on the operation of the filing office. The report must
29 contain a statement of the extent to which the filing office regulations are not in
30 harmony with

31 (1) the regulations of filing offices in other jurisdictions that enact laws

1 that are substantially similar to AS 45.09.501 - 45.09.525 and the reasons for these
2 variations; and

3 (2) the most recent version of the Model Rules promulgated by the
4 International Association of Corporate Administrators, or any successor organization,
5 and the reasons for these variations.

6 * **Sec. 3.** AS 45.01.105(b) is amended to read:

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

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

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

13 (3) AS 45.08.110 (applicability of the chapter on investment securities);

14 (4) **AS 45.09.301 - 45.09.307 (perfection and the priority of security**
15 **interests** [AS 45.09.103 (PERFECTION PROVISIONS OF THE CHAPTER ON
16 SECURED TRANSACTIONS)];

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

18 (6) AS 45.14 (funds transfers).

19 * **Sec. 4.** AS 45.01.201(9) is repealed and reenacted to read:

20 (9) "buyer in ordinary course of business" means a person that buys
21 goods in good faith, without knowledge that the sale violates the rights of another
22 person in the goods, and in the ordinary course from a person, other than a
23 pawnbroker, in the business of selling goods of that kind; a person buys goods in the
24 ordinary course if the sale to the person comports with the usual or customary
25 practices in the kind of business in which the seller is engaged or with the seller's own
26 usual or customary practices; a person that sells oil, gas, or other minerals at the
27 wellhead or minehead is a person in the business of selling goods of that kind; a buyer
28 in ordinary course of business may buy for cash, by exchange of other property, or on
29 secured or unsecured credit, and may acquire goods or documents of title under a
30 preexisting contract for sale; only a buyer that takes possession of the goods or has a
31 right to recover the goods from the seller under AS 45.02 may be a buyer in ordinary

1 course of business; a person that acquires goods in a transfer in bulk or as security for
 2 or in total or partial satisfaction of a money debt is not a buyer in ordinary course of
 3 business;

4 * **Sec. 5.** AS 45.01.201(33) is amended to read:

5 (33) "purchase" includes taking by sale, discount, negotiation,
 6 mortgage, pledge, lien, **security interest**, issue or re-issue, gift, or any other voluntary
 7 transaction creating an interest in property;

8 * **Sec. 6.** AS 45.01.201(38) is amended to read:

9 (38) "security interest" means an interest in personal property or
 10 fixtures that secures payment or performance of an obligation; [THE RETENTION OR
 11 RESERVATION OF TITLE BY A SELLER OF GOODS NOTWITHSTANDING
 12 SHIPMENT OR DELIVERY TO THE BUYER (AS 45.02.401) IS LIMITED IN
 13 EFFECT TO A RESERVATION OF A "SECURITY INTEREST";] the term also
 14 includes an interest of **a consignor and** a buyer of accounts, [OR] chattel paper, **a**
 15 **payment intangible, or a promissory note in a transaction** that is subject to
 16 AS 45.09; the special property interest of a buyer of goods on identification of the
 17 goods to a contract for sale under AS 45.02.401 is not a "security interest," but a buyer
 18 may also acquire a "security interest" by complying with AS 45.09; **except as**
 19 **otherwise provided in AS 45.02.505, the right of a seller or lessor of goods under**
 20 **AS 45.02 or AS 45.12 to retain or acquire possession of the goods is not a**
 21 **"security interest," but a seller or lessor may also acquire a "security interest"**
 22 **by complying with AS 45.09; the retention or reservation of title by a seller of**
 23 **goods notwithstanding shipment or delivery to the buyer (AS 45.02.401) is limited**
 24 **in effect to a reservation of a "security interest"** [UNLESS A CONSIGNMENT IS
 25 INTENDED AS SECURITY, RESERVATION OF TITLE UNDER THE
 26 CONSIGNMENT IS NOT A "SECURITY INTEREST," BUT A CONSIGNMENT IS
 27 IN ANY EVENT SUBJECT TO THE PROVISIONS ON CONSIGNMENT SALES
 28 (AS 45.02.326)]; whether a transaction creates a lease or security interest is determined
 29 by the facts of each case; however,

30 (A) a transaction creates a security interest if the consideration
 31 the lessee is to pay the lessor for the right to possession and use of the goods

1 is an obligation for the term of the lease not subject to termination by the
2 lessee; and

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

5 (ii) the lessee is bound to renew the lease for the
6 remaining economic life of the goods or is bound to become the owner
7 of the goods;

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

12 (iv) the lessee has an option to become the owner of the
13 goods for no additional consideration or nominal additional
14 consideration upon compliance with the lease agreement;

15 (B) a transaction does not create a security interest merely
16 because it provides that

17 (i) the present value of the consideration the lessee is
18 obligated to pay the lessor for the right to possession and use of the
19 goods is substantially equal to or is greater than the fair market value
20 of the goods at the time the lease is entered into;

21 (ii) the lessee assumes risk of loss of the goods, or
22 agrees to pay taxes, insurance, filing, recording, or registration fees, or
23 service or maintenance costs with respect to the goods;

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

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

30 (v) the lessee has an option to become the owner of the
31 goods for a fixed price that is equal to or greater than the reasonably

1 predictable fair market value of the goods at the time the option is to
2 be performed;

3 (C) in this paragraph, additional consideration is nominal if it
4 is less than the lessee's reasonably predictable cost of performing under the
5 lease agreement if the option is not exercised; additional consideration is not
6 nominal if

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

11 (ii) when the option to become the owner of the goods
12 is granted to the lessee, the price is stated to be the fair market value
13 of the goods determined at the time the option is to be performed;

14 (D) in this paragraph,

15 (i) "present value" means the amount as of a date certain
16 of one or more sums payable in the future, discounted to the date
17 certain; the discount is determined by the interest rate specified by the
18 parties if the rate is not manifestly unreasonable at the time the
19 transaction is entered into; otherwise, the discount is determined by a
20 commercially reasonable rate that takes into account the facts and
21 circumstances of each case at the time the transaction was entered into;
22 and

23 (ii) "reasonably predictable" and "remaining economic
24 life of the goods" are to be determined with reference to the facts and
25 circumstances at the time the transaction is entered into;

26 * **Sec. 7.** AS 45.02.103(c) is amended to read:

27 (c) The following definitions in other chapters apply to this chapter:

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

29 (2) "consignee" (AS 45.07.102);

30 (3) "consignor" (AS 45.07.102);

31 (4) "consumer goods" (AS 45.09.102 [AS 45.09.109]);

1 (5) "dishonor" (AS 45.03.502);

2 (6) "draft" (AS 45.03.104).

3 * **Sec. 8.** AS 45.02.210 is repealed and reenacted to read:

4 **Sec. 45.02.210. Delegation of performance; assignment of rights.** (a) A
5 party may perform the party's duty through a delegate unless otherwise agreed or
6 unless the other party has a substantial interest in having the original promisor perform
7 or control the acts required by the contract. No delegation of performance relieves the
8 party delegating of a duty to perform or a liability for breach.

9 (b) Unless otherwise agreed, all rights of either seller or buyer can be assigned
10 except where the assignment would materially change the duty of the other party,
11 increase materially the burden or risk imposed on the other party by the contract, or
12 impair materially the chance of obtaining return performance. A right to damages for
13 breach of the whole contract or a right arising out of the assignor's due performance
14 of the entire obligation can be assigned despite agreement otherwise.

15 (c) The creation, attachment, perfection, or enforcement of a security interest
16 in the seller's interest under a contract is not a transfer that materially changes the duty
17 of or increases materially the burden or risk imposed on the buyer or impairs
18 materially the buyer's chance of obtaining return performance within the purview of
19 (b) of this section unless, and then only to the extent that, enforcement actually results
20 in a delegation of material performance of the seller; even in that event, the creation,
21 attachment, perfection, and enforcement of the security interest remain effective, but

22 (1) the seller is liable to the buyer for damages caused by the
23 delegation to the extent that the damages could not reasonably be prevented by the
24 buyer; and

25 (2) a court having jurisdiction may grant other appropriate relief,
26 including cancellation of the contract for sale or an injunction against enforcement of
27 the security interest or consummation of the enforcement.

28 (d) Unless the circumstances indicate the contrary, a prohibition of assignment
29 of "the contract" is to be construed as barring only the delegation to the assignee of
30 the assignor's performance.

31 (e) An assignment of "the contract" or "all my rights under the contract" or an

1 assignment in similar general terms is an assignment of rights and, unless the language
 2 or the circumstances (as in an assignment for security) indicate the contrary, it is a
 3 delegation of performance of the duties of the assignor and its acceptance by the
 4 assignee constitutes a promise by the assignee to perform those duties. This promise
 5 is enforceable by either the assignor or the other party to the original contract.

6 (f) The other party may treat an assignment which delegates performance as
 7 creating reasonable grounds for insecurity and may, without prejudice to the party's
 8 rights against the assignor, demand assurances from the assignee (AS 45.02.609).

9 * **Sec. 9.** AS 45.02.326 is repealed and reenacted to read:

10 **Sec. 45.02.326. Sale on approval and sale or return; rights of creditors.**

11 (a) Unless otherwise agreed, if delivered goods may be returned by the buyer even
 12 though they conform to the contract, the transaction is

13 (1) a "sale on approval" if the goods are delivered primarily for use;
 14 and

15 (2) a "sale or return" if the goods are delivered primarily for resale.

16 (b) Goods held on approval are not subject to the claims of the buyer's
 17 creditors until acceptance; goods held on sale or return are subject to such claims while
 18 in the buyer's possession.

19 (c) An "or return" term of a contract for sale is to be treated as a separate
 20 contract for sale within the statute of frauds section (AS 45.02.201), and as
 21 contradicting the sale aspect of the contract within the provisions on parol or extrinsic
 22 evidence (AS 45.02.202).

23 (d) Whenever an artist delivers or causes to be delivered a work of fine art of
 24 the artist's creation to an art dealer for the purpose of sale, or exhibition and sale to
 25 the public on a commission or fee or other basis of compensation, the work of fine art
 26 is not subject to the claims of the art dealer's creditors. For the purposes of this
 27 subsection,

28 (1) "art dealer" means a person other than a public auctioneer engaged
 29 in the business of selling works of fine art;

30 (2) "artist" means the creator of a work of fine art;

31 (3) "fine art" includes a painting, sculpture, drawing, photograph, or

1 work of graphic art.

2 * **Sec. 10.** AS 45.02.502 is repealed and reenacted to read:

3 **Sec. 45.02.502. Buyer's right to goods on seller's repudiation, failure to**
 4 **deliver, or insolvency.** (a) Subject to (b) and (c) of this section and even though the
 5 goods have not been shipped, a buyer who has paid a part or all of the price of goods
 6 in which the buyer has a special property under the provisions of AS 45.02.501 may,
 7 on making and keeping good a tender of an unpaid portion of their price, recover them
 8 from the seller if

9 (1) in the case of goods bought for personal, family, or household
 10 purposes, the seller repudiates or fails to deliver as required by the contract; or

11 (2) in other cases, the seller becomes insolvent within 10 days after
 12 receipt of the first installment on their price.

13 (b) The buyer's right to recover the goods under (a)(1) of this section vests
 14 upon acquisition of a special property even if the seller had not then repudiated or
 15 failed to deliver.

16 (c) If the identification creating the buyer's special property has been made by
 17 the buyer, the buyer acquires the right to recover the goods only if they conform to the
 18 contract for sale.

19 * **Sec. 11.** AS 45.02.716(c) is amended to read:

20 (c) The buyer has a right of replevin for goods identified to the contract if
 21 after reasonable effort the buyer is unable to effect cover for the goods or the
 22 circumstances reasonably indicate that such effort will be unavailing or if the goods
 23 have been shipped under reservation and satisfaction of the security interest in them
 24 has been made or tendered. **In the case of goods bought for personal, family, or**
 25 **household purposes, the buyer's right of replevin vests upon acquisition of a**
 26 **special property even if the seller had not then repudiated or failed to deliver.**

27 * **Sec. 12.** AS 45.04.210(c) is amended to read:

28 (c) Receipt by a collecting bank of a final settlement for an item is a
 29 realization on its security interest in the item, accompanying documents, and proceeds.
 30 So long as the bank does not receive final settlement for the item or give up
 31 possession of the item or accompanying documents for purposes other than collection,

1 the security interest continues to that extent and is subject to AS 45.09, but

2 (1) a security agreement is not necessary to make the security interest
3 enforceable AS 45.09.203(b)(3)(A) [(AS 45.09.203(a))];

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

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

7 * **Sec. 13.** AS 45.05 is amended by adding a new section to read:

8 **Sec. 45.05.118. Security interest of issuer or nominated person.** (a) An
9 issuer or nominated person has a security interest in a document presented under a
10 letter of credit to the extent that the issuer or nominated person honors or gives value
11 for the presentation.

12 (b) So long as and to the extent that an issuer or nominated person has not
13 been reimbursed or has not otherwise recovered the value given with respect to a
14 security interest in a document under (a) of this section, the security interest continues
15 and is subject to AS 45.09, but

16 (1) a security agreement is not necessary to make the security interest
17 enforceable under AS 45.09.203(b)(3);

18 (2) if the document is presented in a medium other than a written or
19 other tangible medium, the security interest is perfected; and

20 (3) if the document is presented in a written or other tangible medium
21 and is not a certificated security, chattel paper, a document of title, an instrument, or
22 a letter of credit, the security interest is perfected and has priority over a conflicting
23 security interest in the document so long as the debtor does not have possession of the
24 document.

25 * **Sec. 14.** AS 45.07.503(a) is amended to read:

26 (a) A document of title confers no right in goods against a person who, before
27 issuance of the document, had a legal interest or a perfected security interest in them
28 and who neither

29 (1) delivered or entrusted them or a document of title covering them
30 to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or
31 sell or with power to obtain delivery under AS 45.07.403 or with power of disposition

1 under AS 45.02.403 and **AS 45.09.320** [AS 45.09.307] or other statute or rule of law;
 2 nor

3 (2) acquiesced in the procurement by the bailor or the bailor's nominee
 4 of a document of title.

5 * **Sec. 15.** AS 45.08.103(f) is amended to read:

6 (f) A commodity contract, as defined in **AS 45.09.102(a)** [AS 45.09.115], is
 7 not a security or a financial asset.

8 * **Sec. 16.** AS 45.08.106(d) is amended to read:

9 (d) A purchaser has control of a security entitlement if

10 (1) the purchaser becomes the entitlement holder; or

11 (2) the securities intermediary has agreed that the securities
 12 intermediary will comply with entitlement orders originated by the purchaser without
 13 further consent by the entitlement holder; or

14 **(3) another person has control of the security entitlement on behalf**
 15 **of the purchaser or, having previously acquired control of the security**
 16 **entitlement, acknowledges that it has control on behalf of the purchaser.**

17 * **Sec. 17.** AS 45.08.106(f) is amended to read:

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

25 * **Sec. 18.** AS 45.08.110(d) is amended to read:

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

28 (1) if an agreement between the securities intermediary and its
 29 entitlement holder **governing the securities account expressly provides that a**
 30 **particular jurisdiction is the securities intermediary's jurisdiction for purposes of**
 31 **AS 45.08.101 - 45.08.116, this chapter, or this code** [SPECIFIES THAT IT IS

1 GOVERNED BY THE LAW OF A PARTICULAR JURISDICTION], that jurisdiction
2 is the securities intermediary's jurisdiction;

3 (2) if (1) of this subsection does not apply and an agreement
4 between the securities intermediary and its entitlement holder expressly provides
5 that the agreement is governed by the law of a particular jurisdiction, that
6 jurisdiction is the securities intermediary's jurisdiction;

7 (3) if neither (1) nor (2) of this subsection applies and an agreement
8 between the securities intermediary and its entitlement holder governing the securities
9 account [DOES NOT SPECIFY THE GOVERNING LAW AS PROVIDED IN (1) OF
10 THIS SUBSECTION, BUT] expressly provides specifies that the securities account
11 is maintained at an office in a particular jurisdiction, that jurisdiction is the securities
12 intermediary's jurisdiction;

13 (4) [(3)] if none of the preceding paragraphs of this subsection
14 applies [AN AGREEMENT BETWEEN THE SECURITIES INTERMEDIARY AND
15 ITS ENTITLEMENT HOLDER DOES NOT SPECIFY A JURISDICTION
16 AS PROVIDED IN (1) OR (2) OF THIS SUBSECTION], the securities intermediary's
17 jurisdiction is the jurisdiction in which [IS LOCATED] the office identified in an
18 account statement as the office serving the entitlement holder's account is located;

19 (5) [(4)] if none of the preceding paragraphs of this subsection
20 applies [AN AGREEMENT BETWEEN THE SECURITIES INTERMEDIARY AND
21 ITS ENTITLEMENT HOLDER DOES NOT SPECIFY A JURISDICTION
22 AS PROVIDED IN (1) OR (2) OF THIS SUBSECTION AND AN ACCOUNT
23 STATEMENT DOES NOT IDENTIFY AN OFFICE SERVING THE ENTITLEMENT
24 HOLDER'S ACCOUNT AS PROVIDED IN (3) OF THIS SUBSECTION], the
25 securities intermediary's jurisdiction is the jurisdiction in which [IS LOCATED] the
26 chief executive office of the securities intermediary is located.

27 * **Sec. 19.** AS 45.08.301(a) is amended to read:

28 (a) Delivery of a certificated security to a purchaser occurs when

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

30 (2) another person, other than a securities intermediary, either acquires
31 possession of the security certificate on behalf of the purchaser or, having previously

1 acquired possession of the certificate, acknowledges that it holds for the purchaser; or
 2 (3) a securities intermediary acting on behalf of the purchaser acquires
 3 possession of the security certificate, only if the certificate is in registered form and
 4 is

5 (A) registered in the name of the purchaser;

6 (B) payable to the order of the purchaser; or

7 (C) [HAS BEEN] specially endorsed to the purchaser by an
 8 effective endorsement and has not been endorsed to the securities
 9 intermediary or in blank.

10 * **Sec. 20.** AS 45.08.302(a) is amended to read:

11 (a) Except as otherwise provided in (b) and (c) of this section, a purchaser
 12 [UPON DELIVERY] of a certificated or uncertificated security [TO A PURCHASER,
 13 THE PURCHASER] acquires all rights in the security that the transferor had or had
 14 power to transfer.

15 * **Sec. 21.** AS 45.08.510(a) is amended to read:

16 (a) In a case not covered by the priority rules in AS 45.09 or the rules
 17 stated in (c) of this section, an [AN] action based on an adverse claim to a financial
 18 asset or security entitlement, whether framed in conversion, replevin, constructive trust,
 19 equitable lien, or other theory, may not be asserted against a person who purchases a
 20 security entitlement, or an interest in a security entitlement, from an entitlement holder
 21 if the purchaser gives value, does not have notice of the adverse claim, and obtains
 22 control.

23 * **Sec. 22.** AS 45.08.510(c) is amended to read:

24 (c) In a case not covered by the priority rules in AS 45.09, a purchaser for
 25 value of a security entitlement, or an interest in a security entitlement, who obtains
 26 control has priority over a purchaser of a security entitlement, or an interest in a
 27 security entitlement, who does not obtain control. Except as otherwise provided in
 28 (d) of this section, purchasers [PURCHASERS] who have control rank according to
 29 priority in time of

30 (1) the purchaser's becoming the person for whom the securities
 31 account, in which the security entitlement is carried is maintained, if the

1 purchaser obtained control under AS 45.08.106(d)(1);

2 (2) the securities intermediary's agreement to comply with the
 3 purchaser's entitlement orders with respect to security entitlements carried or to
 4 be carried in the securities account in which the security entitlement is carried if
 5 the purchaser obtained control under AS 45.08.106(d)(2); or

6 (3) if the purchaser obtained control through another person under
 7 AS 45.08.106(d)(3), the time on which priority would be based under this
 8 subsection if the other person were the secured party [EQUALLY, EXCEPT THAT
 9 A SECURITIES INTERMEDIARY AS PURCHASER HAS PRIORITY OVER A
 10 CONFLICTING PURCHASER WHO HAS CONTROL UNLESS OTHERWISE
 11 AGREED BY THE SECURITIES INTERMEDIARY].

12 * **Sec. 23.** AS 45.08.510 is amended by adding a new subsection to read:

13 (d) A securities intermediary as purchaser has priority over a conflicting
 14 purchaser who has control unless otherwise agreed by the securities intermediary.

15 * **Sec. 24.** AS 45.12.103(c) is amended to read:

16 (c) The following definitions in AS 45.02 and AS 45.09 apply to this chapter:

- 17 (1) "account" (AS 45.09.102(a) [AS 45.09.106]);
- 18 (2) "between merchants" (AS 45.02.104(c));
- 19 (3) "buyer" (AS 45.02.103(a)(1));
- 20 (4) "chattel paper" (AS 45.09.102(a) [AS 45.09.105(a)(2)]);
- 21 (5) "consumer goods" (AS 45.09.102(a) [AS 45.09.109(1)]);
- 22 (6) "document" (AS 45.09.102(a) [AS 45.09.105(a)(6)]);
- 23 (7) "entrusting" (AS 45.02.403(c));
- 24 (8) "general intangible" (AS 45.09.102(a) [INTANGIBLES"
 25 (AS 45.09.106)]);
- 26 (9) "good faith" (AS 45.02.103(a)(2));
- 27 (10) "instrument" (AS 45.09.102(a) [AS 45.09.105(a)(9)]);
- 28 (11) "merchant" (AS 45.02.104(a));
- 29 (12) "mortgage" (AS 45.09.102(a) [AS 45.09.105(a)(10)]);
- 30 (13) "pursuant to a commitment" (AS 45.09.102(a)
 31 [AS 45.09.105(a)(11)]);

- 1 (14) "receipt" (AS 45.02.103(a)(3));
 2 (15) "sale" (AS 45.02.106(a));
 3 (16) "sale on approval" (AS 45.02.326);
 4 (17) "sale or return" (AS 45.02.326);
 5 (18) "seller" (AS 45.02.103(a)(4)).

6 * **Sec. 25.** AS 45.12.303(a) is amended to read:

7 (a) Except as provided in **(d)** [(b) - (d)] of this section **and AS 45.09.407**, a
 8 provision in a lease agreement that does either of the following gives rise to the rights
 9 and remedies provided in (e) of this section, but a transfer that is prohibited or is an
 10 event of default under the lease agreement is otherwise effective:

11 (1) prohibits the voluntary or involuntary transfer, including a transfer
 12 by sale, sublease, creation or enforcement of a security interest, or attachment, levy,
 13 or other judicial process, of

14 (A) an interest of a party under the lease contract; or

15 (B) the lessor's residual interest in the goods; or

16 (2) makes a transfer under (1) of this subsection an event of default.

17 * **Sec. 26.** AS 45.12.303(e) is amended to read:

18 (e) Subject to **(d)** [(b) - (d)] of this section **and AS 45.09.407**,

19 (1) if a transfer is made that is made an event of default under a lease
 20 agreement, the party to the lease contract not making the transfer, unless that party
 21 waives the default or otherwise agrees, has the rights and remedies under
 22 AS 45.12.501(b);

23 (2) if (1) of this subsection is not applicable and if a transfer is made
 24 that is prohibited under a lease agreement or that materially impairs the prospect of
 25 obtaining return performance by, materially changes the duty of, or materially increases
 26 the burden or risk imposed on, the other party to the lease contract, unless the party
 27 not making the transfer agrees at any time to the transfer in the lease contract or
 28 otherwise, then, except as limited by contract, the transferor is liable to the party not
 29 making the transfer for damages caused by the transfer to the extent that the damages
 30 could not reasonably be prevented by the party not making the transfer, and a court
 31 having jurisdiction may grant other appropriate relief, including cancellation of the

1 lease contract or an injunction against the transfer.

2 * **Sec. 27.** AS 45.12.303(i) is amended to read:

3 (i) In this section, "creation of a security interest" includes the sale of a lease
4 contract that is subject to AS 45.09, on secured transactions, by reason of
5 AS 45.09.109(a)(3) [AS 45.09.102(a)(2)].

6 * **Sec. 28.** AS 45.12.307(b) is amended to read:

7 (b) Except as otherwise provided in (c) [AND (d)] of this section and in
8 AS 45.12.306 and 45.12.308, a creditor of a lessor takes subject to the lease contract
9 unless

10 (1) the creditor holds a lien that attached to the goods before the lease
11 contract became enforceable[;

12 (2) THE CREDITOR HOLDS A SECURITY INTEREST IN THE
13 GOODS AND THE LESSEE GAVE VALUE AND RECEIVED DELIVERY OF THE
14 GOODS WITH KNOWLEDGE OF THE SECURITY INTEREST; OR

15 (3) THE CREDITOR HOLDS IN THE GOODS A SECURITY
16 INTEREST THAT WAS PERFECTED UNDER AS 45.09.303 BEFORE THE LEASE
17 CONTRACT BECAME ENFORCEABLE].

18 * **Sec. 29.** AS 45.12.307(c) is repealed and reenacted to read:

19 (c) Except as otherwise provided in AS 45.09.317, 45.09.321, and 45.09.323,
20 a lessee takes a leasehold interest subject to a security interest held by a creditor of the
21 lessor.

22 * **Sec. 30.** AS 45.12.309(j)(2) is amended to read:

23 (2) a "fixture filing" is the recording, in the office where a **record of**
24 **a** mortgage on the real estate would be recorded, of a financing statement covering
25 goods that are or are to become fixtures and conforming to the requirements of
26 AS 45.09.502(a) and (b) [AS 45.09.402(f)];

27 * **Sec. 31.** AS 45.12.303(b), 45.12.303(c), and 45.12.307(d) are repealed.

28 * **Sec. 32.** COURT RULE CHANGE. To the extent that they may allow the recovery of
29 expenses in a court action that are not allowed under Rule 79, Alaska Rules of Civil
30 procedure, the following sections have the effect of amending Rule 79, Alaska Rules of Civil
31 procedure: AS 45.09.607(d), 45.09.608(a)(1)(A), 45.09.615(a)(1), and 45.09.626(a)(3) and (4).

1 * **Sec. 33.** REGULATIONS. The Department of Natural Resources may proceed to adopt
2 regulations to implement this Act. The regulations take effect under AS 44.62 (Administrative
3 Procedure Act) but not before July 1, 2001.

4 * **Sec. 34.** APPLICABILITY. This Act does not apply to an action, case, or proceeding
5 commenced before July 1, 2001.

6 * **Sec. 35.** Except as provided in sec. 36 of this Act, this Act takes effect July 1, 2001.

7 * **Sec. 36.** Section 33 of this Act takes effect immediately under AS 01.10.070(c).