

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 20, 2013

3:24 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Lora Reinbold, Vice Chair
Representative Mike Chenault
Representative Bob Herron
Representative Charisse Millett
Representative Dan Saddler
Representative Andy Josephson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 68

"An Act relating to the computation of the tax on the taxable income of a corporation derived from sources within the state."

- MOVED HB 68 OUT OF COMMITTEE

HOUSE BILL NO. 9

"An Act relating to secured transactions under the Uniform Commercial Code and to the regulation of funds transfers, including remittance transfers, under the Uniform Commercial Code and federal law; and providing for an effective date."

- MOVED HB 9 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 68

SHORT TITLE: CORPORATE INCOME TAX

SPONSOR(S): REPRESENTATIVE(S) HUGHES

01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	L&C, FIN
02/20/13	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 9

SHORT TITLE: SECURED TRANSACTIONS AND FUNDS TRANSFERS

SPONSOR(s): REPRESENTATIVE(s) GRUENBERG

01/16/13 (H) PREFILE RELEASED 1/7/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) L&C, JUD
02/20/13 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE SHELLEY HUGHES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 68.

GINGER BLAISDELL, Staff
Representative Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the sponsor of HB 68, Representative Shelley Hughes.

JOHANNA BALES, Deputy Director
Tax Division, Anchorage Office
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 68.

ROBYNN WILSON, Income Audit Manager
Tax Division, Administrative Services Division
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 68.

REPRESENTATIVE MAX GRUENBERG
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 9.

MILES BROOKES, Staff
Representative Max Gruenberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the sponsor of HB 9, Representative Max Gruenberg.

DEBORAH BEHR, Chief Assistant Attorney General
Legislation and Regulations Section, Civil Division (Juneau)
Department of Law (DOL;
Chair; Alaska Uniform Law Delegations
National Conference of Commissioners on Uniform State Laws
(NCCUSL)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on HB 9.

VICKY BACKUS, State Recorder
State Recorder's Office
Division of Support Services (DSS)
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of
HB 9.

WILLIAM HENNING, L.L.M., Uniform Law Commissioner;
Professor, University of Alabama, School of Law
Tuscaloosa, Alabama

POSITION STATEMENT: Testified in support of HB 9.

LUKE FANNING, Vice-President
First National Bank;
Member; Alaska Bankers Association (ABA)
Anchorage, Alaska;

POSITION STATEMENT: Testified in support of HB 9

STACY SCHUBERT, Director, Government Relations
Alaska Housing Finance Corporation (AHFC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 9.

ACTION NARRATIVE

[3:24:08 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:24 p.m. Representatives Herron, Millett, Reinbold, Saddler, Josephson, and Olson were present at the call to order. Representatives Chenault arrived as the meeting was in progress.

HB 68-CORPORATE INCOME TAX

[3:24:53 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 68, "An Act relating to the computation of the tax on the taxable income of a corporation derived from sources within the state."

[3:25:05 PM](#)

REPRESENTATIVE SHELLEY HUGHES, Alaska State Legislature, speaking as the bill sponsor, remarked that this bill is overdue since corporate tax rates were set in 1981. She related that Alaska levies corporate income tax on corporations doing business in Alaska. The tax is a graduated tax, which means it increases incrementally based on the amount reported income. She explained the corporate income tax rate schedule is broken into ten levels, with the top level taxed at the highest rate, 9.4 percent, on federal taxable income of \$90,000 or more, based on gross income minus allowable deductions.

REPRESENTATIVE HUGHES characterized HB 68 as a rational way to get cash back into the hands of Alaskans, which would create a stronger economy and, in turn, would also enhance overall taxes in the long run.

REPRESENTATIVE HUGHES reiterated the corporate income tax was established in 1981 and this bill will adjust the incremental brackets based on the consumer price index. She offered her belief the rate changes are fair, since the proposed changes would incentivize all industries. She stated that the tax is limited to approximately 5,000 C corporations and would not apply to the 25,000 limited liability corporations (LLCs) and limited liability partnerships (LLPs) or to the 30,000 S corporations. She referred to a memo in members' packets entitled "Legislative Research Services, Research Brief" [from Susan Haymes, Legislative Analyst dated February 5, 2013]. This document refers to the companion bill, but applies to HB 68, she said. She then referred to the current tax schedule on page 3 of the document which shows that most companies who filed earn less than \$10,000. She concluded that this would point to numerous small businesses in the state. The other bulk of filers represent middle-sized businesses, she stated. In short, this bill would create relief for the small and medium-sized businesses.

[3:28:39 PM](#)

REPRESENTATIVE HUGHES explained that the S corporation and LLCs were established in the 1980s so Alaska has numerous pre-1980

small and medium-sized businesses that still fall under older rules. This bill also would affect larger businesses in Alaska and the Lower 48, but the tax does not apply to any out of state income. She related that under the bill, the current income bracket for over \$90,000 would be increased to \$222,000 or more at a 9.4 percent tax rate. Essentially, the bill expands the brackets structure, she said. Under the current structure, a large company making \$550,000 would pay \$47,700 in taxes, but under HB 68 would pay under \$42,000 in taxes or approximately \$6,000 less. Further, a smaller company making \$40,000 would pay \$1,250 in corporate income taxes, but under HB 68 would pay approximately half the taxes or \$650. She concluded this bill would reduce the corporate taxes. She noted that she has received letters of support from the State Chamber of Commerce, and the Matanuska-Susitna Business Alliance.

[3:31:00 PM](#)

CHAIR OLSON remarked this bill has a zero fiscal note.

GINGER BLAISDELL, Staff, Representative Shelley Hughes, Alaska State Legislature, on behalf of Representative Hughes, reported the Juneau Chamber of Commerce and the Wasilla Chamber of Commerce have also sent letters of support.

[3:31:47 PM](#)

REPRESENTATIVE MILLETT said she finds the corporate tax structure with 10 tier brackets as too complex. She recalled the two or three-tier brackets other states have in place, which she suggested might be easier. She related the National Conference of State Legislatures (NCSL) suggested this type of structure could be burdensome to businesses.

REPRESENTATIVE HUGHES answered she held discussions with the sponsor of the companion bill and the goal was to make a simple change and not create a whole new system at this time. She deferred to the Department of Revenue to respond.

[3:33:33 PM](#)

REPRESENTATIVE REINBOLD remarked that anything the legislature can do to move from the 50th spot and become a friendlier place to do business is welcome. She asked which types of industries would be affected by the bill.

REPRESENTATIVE HUGHES answered that the change would affect a broad spectrum of businesses and any long-time business might be from any industry.

[3:34:17 PM](#)

REPRESENTATIVE REINBOLD asked who assesses the corporate income taxes. Speaking from her own personal experience, she said she has observed the person rings up zero when she pays in cash at a nail salon. She asked whether this type of potential activity is a state or federal issue. She further asked if this type of business would typically be a C Corporation.

REPRESENTATIVE REINBOLD answered that the tax division has investigators.

CHAIR OLSON related the department would be testifying later on.

[3:35:25 PM](#)

REPRESENTATIVE REINBOLD related her understanding that someone else would bear the burden if the taxes were not collected.

REPRESENTATIVE HUGHES said she is a conservative and believes that lower taxes strengthen the economy and increases the amount of incoming taxes by growing businesses. In terms of the overall budget, she suggested that \$3.8 million less in revenue is a small amount, but the legislature would need to review it. She offered her belief this would be doable.

[3:36:34 PM](#)

REPRESENTATIVE HERRON asked whether the department could respond to whether any unintended consequence would result from the changes in the bill.

REPRESENTATIVE JOSEPHSON referred to the zero fiscal notes, which he assumed meant the program change wouldn't cost anything to administer. Still, he noted it would represent a loss of revenue. He asked for further clarification.

CHAIR OLSON related the fiscal note would measure the direct cost.

[3:38:01 PM](#)

REPRESENTATIVE JOSEPHSON acknowledged that 1981 was a long time ago and he could see the need for some adjustment. He referred to page 2 of the document entitled "Legislative Research Services, Research Brief" that read, "Under the proposed structure, a higher percentage of companies fall under the three lowest tax brackets; however, overall the tax liability would be more evenly distributed through the middle tax brackets than it is under the current tax structure." He asked whether the effect is that the middle tax bracket wouldn't be any greater, but due to the sum collected it ultimately would be greater.

REPRESENTATIVE HUGHES acknowledged that was her interpretation.

REPRESENTATIVE JOSEPHSON asked whether the middle tax bracket should create a concern - the businesses between a mom and pop store and ExxonMobil Corporation.

REPRESENTATIVE HUGHES related it is graduated so the lowest tax bracket would see the greater benefits in percentages. She offered her belief that it is reasonable and the businesses would be better off under the bill than under the current structure.

CHAIR OLSON remarked that ExxonMobil Corporation is paying significant taxes.

[3:39:48 PM](#)

JOHANNA BALES, Deputy Director, Tax Division, Anchorage Office, Department of Revenue (DOR), introduced herself.

ROBYNN WILSON, Income Audit Manager, Tax Division, Administrative Services Division, Department of Revenue (DOR), introduced herself.

[3:40:29 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the DOR's fiscal note reflects the cost of administering the tax changes is zero, even though the program would incur a loss of \$3.8 million under the bill.

MS. BALES answered yes; that is correct. She said it will not cost the department any more if the tax brackets change.

[3:41:28 PM](#)

REPRESENTATIVE MILLETT asked whether the C corporations are taxed differently than oil and gas taxes.

MS. BALES answered that the tax rate for oil and gas corporations and other non-oil and gas corporations are the same, but the calculation of the taxable income would differ between oil and gas companies and other non-oil and gas corporation. This bill would treat all C corporations the same.

[3:42:11 PM](#)

REPRESENTATIVE SADDLER asked about the net effect of HB 68 on the oil industry.

MS. BALES answered that \$3.8 million in revenue encompasses all C corporations. She pointed out the DOR has approximately 27 oil and gas C corporations that file in the state. Under this bill, the maximum benefit to a single corporation would be \$5,828. With the 27 oil and gas filers, the maximum benefit to all oil and gas corporations under the bill would represent approximately \$157,000 in tax savings. She concluded that the majority of the savings will go to non-oil and gas corporations under the bill.

[3:43:19 PM](#)

REPRESENTATIVE REINBOLD asked for an explanation of the C corporations. She further asked what type of businesses typically would apply and who would investigate any potential local tax fraud.

MS. BALES answered that all companies can be assessed as chapter C corporations. She explained that the designation for C corporations is found within the Internal Revenue Code (IRS). Thus businesses operating as C corporations in Alaska would be taxed in Alaska. The other types of corporations, such as S corporations, limited liability corporations (LLCs) and limited liability partnerships (LLPs) are taxed differently federally. Therefore the S corporations, LLCs and LLPs are taxed differently in Alaska. For example, with S corporations the income earned is distributed to the individual shareholders and reported on their individual income tax returns. The reason S corporations aren't taxed in Alaska, is because Alaska does not impose an individual income tax. She reiterated any industry or company that sets up itself as a corporation can be a C corporation or an S corporation depending upon how the corporation wishes to be treated under federal law. Additional

limitations apply, such that the S corporations are limited to no more than a hundred shareholders. Thus small businesses generally tend to be S corporations since they don't have to pay the Alaska corporate income tax; however, many older C corporations are companies that have been around for a long time, such as mom and pop restaurants, airlines, construction companies, retailers, and tourism companies and are subject to Alaska's corporate income tax.

[3:45:51 PM](#)

REPRESENTATIVE REINBOLD reiterated her earlier question of who would investigate local tax fraud and why the division doesn't use fewer brackets.

MS. BALES related that neither bill sponsor discussed collapsing the brackets into fewer tax brackets. She said she thinks it is a point well taken. She responded that the division investigates tax fraud through audits and also by the DOR's criminal investigation unit. Thus the DOR would investigate if the department receives tips or anyone has concerns that people aren't properly reporting income they have earned.

[3:46:58 PM](#)

REPRESENTATIVE REINBOLD suggested perhaps she should have called DOR instead of the IRS for the few times she has been suspicious [that someone was not reporting income.]

MS. BALES asked for clarification on whether the total purchase was not rung up or she wasn't charged an additional sales tax.

REPRESENTATIVE REINBOLD reiterated her earlier scenario in which she had her nails done at a nail salon and was charged \$40. She handed the clerk \$40 in cash, but the sale was rung up as zero and she also did not receive a receipt. In several instances when this happened it raised an alarm and while she isn't specifically accusing someone, she related when this happened she called the IRS. She wondered if the IRS is the appropriate agency to report this type of activity or if someone in the state should be notified.

MS. BALES responded that the DOR would appreciate a call and would determine if the company is subject to corporate income taxes. She indicated that if the company is not a C corporation it would not be subject to corporate income taxes, but the division could also refer the case to IRS since it sounds as

though the person could be trying to avoid individual income taxes. She reiterated the department's interest and noted a local sales tax could also apply. She understood Anchorage does not have a sales tax, but some jurisdictions throughout the state do impose one.

[3:48:46 PM](#)

CHAIR OLSON related a question on behalf Representative Herron. He asked whether there might be any unintended consequences.

MS. BALES answered that the department does not see any unintended consequences or potential loopholes with the changes in HB 68. She characterized this bill as being pretty straight forward.

[3:49:08 PM](#)

REPRESENTATIVE MILLETT asked whether the DOR has a preference for ten brackets or for using fewer brackets, such as three or four that some other states use.

MS. BALES answered that the DOR does not have a preference. The department's corporate income tax is set up using ten brackets. She said that changing the number of tax brackets really doesn't create any additional work. She viewed it as being a preference for legislators or businesses. The department doesn't view the current corporate income tax bracketing as creating any concern.

[3:50:04 PM](#)

REPRESENTATIVE MILLETT understood that it doesn't create a burden for the department, but she asked whether it would it be easier for the taxpayer.

MS. BALES related she did not think it created any burden for businesses either. She reported that so many automated tax preparation services calculate the taxes for businesses. She suggested that some software companies would need to change their programs under the current bill or if the tax brackets were also collapsed to three brackets. She did not see the 10 tax brackets as creating any issue, but she could also understand if [the legislature] would like to make changes from the current corporate income tax brackets.

[3:51:11 PM](#)

REPRESENTATIVE MILLETT asked why businesses don't change from C corporations to S corporations and avoid Alaska's corporate income taxes.

MS. BALES answered that the department has also pondered this. She related her understanding that when these C corporations were initially established, the top individual income rates in Alaska were at 55 percent, which was greater than the top corporate income tax rates at the time. The department has concluded that the businesses initially incorporated as C corporations since the rates were less and they would pay less corporate income taxes. She surmised that to change the articles of incorporation will often involve fees for attorneys or accountants. The department has contemplated that at any given time these small C corporations with less than a hundred shareholders could easily convert to S corporations and not pay any Alaska corporate income tax at all.

[3:52:36 PM](#)

CHAIR OLSON asked whether switching the current corporate income tax structure to three brackets would generate a fiscal note.

MS. BALES answered no; that the DOR could easily convert to less tax brackets.

[3:53:20 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, [the Chair treated the public testimony as being closed.]

[3:53:45 PM](#)

REPRESENTATIVE REINBOLD moved to report HB 68 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 68 was reported from the House Labor and Commerce Standing Committee.

[3:54:15 PM](#)

The committee took a brief at-ease from 3:54 p.m. to 3:59 p.m.

HB 9-SECURED TRANSACTIONS AND FUNDS TRANSFERS

[3:59:33 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 9, "An Act relating to secured transactions under the Uniform Commercial Code and to the regulation of funds transfers, including remittance transfers, under the Uniform Commercial Code and federal law; and providing for an effective date."

[3:59:47 PM](#)

REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, sponsor of HB 9, introduced himself.

MILES BROOKES, Staff, Representative Max Gruenberg, Alaska State Legislature, introduced himself.

[4:00:23 PM](#)

REPRESENTATIVE GRUENBERG said HB 9 is a very important, time sensitive bill. He stated the bill would amend the uniform commercial code. The first two sections of HB 9 assist the banking industry and the remaining sections assist creditors who attempt to collect debts from people who change their names or may not give their correct name. Further, it is also easy to have a misspelling entered into transactions, which can stop the process, he also said.

[4:01:15 PM](#)

REPRESENTATIVE GRUENBERG thanked Mr. Brookes for his work on the bill. He said this bill was introduced at the request of the Uniform Law Commissioners. He listed potential testifiers and letters of support. He also pointed to a letter of support from Deborah Behr, on behalf of the administration. He reported the deadline of July 1, 2013, that all states must meet so the provisions involving creditors' rights will go into effect simultaneously nationwide.

CHAIR OLSON asked whether this is part of a compact.

REPRESENTATIVE GRUENBERG answered no. He said the first two sections remedy an issue that arose with passage of the federal Dodd-Frank Act [Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173), which became effective on July 10, 2010]. The Dodd-Frank Act did not cover certain types of financial transfers between banks and individuals. As a result, the states must cure this defect with state law and the last parts of HB 9 do so and pertain to issues with name changes.

[4:03:58 PM](#)

DEBORAH BEHR, Chief Assistant Attorney General, Legislation and Regulations Section, Civil Division (Juneau), Department of Law (DOL), Chair; Alaska Uniform Law Delegations, National Conference of Commissioners on Uniform State Laws (NCCUSL), said the Alaska statutes assigned to the Department of Law (DOL) the duty to promote uniform laws in Alaska where uniformity among the states is important. The state has been a member of the Uniform Law Commission for over a hundred years. She characterized the Uniform Law Commission as a states' rights' organization, in which states propose uniform solutions to state legislatures to address common problems where uniformity across state lines is desirable. In particular, one area is commerce, she stated. She said that businesses buy and sell products and borrow money across state lines. All fifty states have adopted the Uniform Commercial Code (UCC) since the UCC ensures reliability and predictability of business transactions. The goal of this bill is to update two articles of the UCC, with the first pertaining to the UCC, Article 9 on secured transactions.

[4:05:47 PM](#)

MS. BEHR related a scenario to illustrate the first update to the UCC, Article 9. She and her husband are buying a car and very few people pay cash for a car. Instead, people make a down payment on the car, the bank loans the remainder, but takes a secured interest in the car. Thus if the owner were to default on the loan, the bank wants to have an easy way to get the car back. The Uniform Commercial Code (UCC), Article 9, sets up the easy way to do this, which is perfected by filing the transaction with the recorder's office. Thus a secondary creditor, who is interested in the owner's interest in the car, can check the transaction. In short, this is what the UCC, Article 9 secured transactions is about, she said.

[4:07:22 PM](#)

MS. BEHR reiterated that it is also very easy to misspell someone's name on a secured transaction. For example, when she and her husband buy their car, the bank would prepare the document; however, it is very easy to misspell her name since there are many different ways to spell Deborah and also to spell Behr. In the event the name doesn't match up, the creditor has a problem although it shouldn't be the creditor's problem since, in this instance, she promised to pay for the car and she

received the car. In any case, it causes a problem if names don't match, she said. In essence, this explains the first update.

MS. BEHR said under current law, if the creditor gets things exactly right there isn't any problem and the creditor can get the car back; however, with a misspelling, it has been a problem. Thus the UCC has recommended all states have a safe harbor and examine the person's driver's license. Even though the driver's license may have a misspelling the creditors will have taken the necessary steps to protect its interest in the car. Further, if the person held a commercial driver's license and a personal driver's license, the most current driver's license would be used. Additionally, if the person held both a driver's license and a state identification card, in this state the Alaska driver's license would be used. This process allows creditors and businesses a means to obtain an easy way to get expectations fulfilled - one that is fast, smooth, and easy, and avoids lawsuits, she stated.

[4:08:26 PM](#)

MS. BEHR related the second update to the UCC, Article 9 makes changes to "registered organizations." Since the UCC, Article 9, was adopted, new limited liability corporations (LLCs) and limited liability partnerships (LLPs) have cropped up. These LLCs and LLPs also purchase things and can conduct business in several different states. This second change sets up a rule, similar to corporations, in which the paperwork of organization is examined to determine the origin of formation and becomes the state the LLCs or LLPs would file their paperwork. This change makes it much easier for the banking community to feel more comfortable loaning businesses money. In fact, that's one of the advantages of the UCC. In essence, when banks feel more secure that purchasers will repay the loan, it can offer better interest rates or allow businesses to obtain more liquidity they can use to run their businesses.

[4:09:34 PM](#)

MS. BEHR turned to the final major change to the UCC, Article 9, which relates to "after acquired property." She related a scenario in which she lives in Anchorage and wants to open a bike construction company. She detailed that she would first ask the bank for a loan to buy parts and put together bikes. The bank would loan her the money, but would take a security interest in parts and bicycles of her business. However, she

related that businesses don't always stay at their original location. In fact, she might decide to move her bicycle business to Arizona for a couple of months during Alaska's winter. In the process, she would also take the proceeds the bank loaned her to buy more bicycles in Arizona. In doing so, a legal issue arises as to where a creditor would need to look to find the business statement filed. Under the changes to the UCC, Article 9, the new change would state that the filing in Alaska trails with the property to Arizona for four months each year in order to allow the bank time to record against the bicycles. In short, the changes to the UCC, Article 9, would allow commerce move more smoothly and provide greater comfort to lending institutions that are loaning money to businesses.

[4:11:00 PM](#)

MS. BEHR turned to the final changes, which relate to the UCC, Article 4A. She indicated these changes are supported by the Alaska Bankers Association - noting the letter of support of January 28, 2013 in members' packets. This change pertains to "remittance transfers," which are electronic transfers that are generally made overseas. She related that typically if the transaction is a consumer transaction, it is set up under federal law, but if it is a business transaction it is covered under state law; however, a recent change in the Congress made it murky and the banks asked for clarity - nationwide. Thus things that fall under the UCC, Article 4A, will continue to be covered by UCC, Article 4A for these remittance transfers, she said.

MS. BEHR reported that 30 states have adopted the Article 9 changes, 13 other states have legislation pending, and all 50 state's changes are due by July 1; 2013. She said that the Article 4A changes are brand new and a few states are currently doing this; however, all states are trying to quickly pass the changes to accommodate the banking community since the bankers really want the changes. She pointed out technical advisors who are available for questions, including Mr. Bill Henning, University of Alabama, who is a nationwide expert on the UCC. She expressed her gratitude that he is available to the committee today.

[4:12:30 PM](#)

CHAIR OLSON asked whether this is a model law.

MS. BEHR answered that all the states are making changes and try to keep to the UCC. In further response to a question, she answered thus far, 30 states have made the Article 9 changes.

[4:12:48 PM](#)

REPRESENTATIVE MILLETT referred to materials in the packet [Uniform Law Commission, "Why States Should Adopt 2010 Amendments to UCC Article 9,"] that indicates states must ensure the state's driver's license database is compatible with its UCC database as to characters and fields. She asked whether Alaska's DMV's database is compatible.

MS. BEHR answered that the state has two options. One option is to have Alaska's DMV computers communicate directly with the state recorder, which was not feasible without a significant fiscal note. The other approach, which Alaska will take is the "safe harbor" one in which the actual physical Alaska driver's license (ADL) is viewed at the time of the transaction. She clarified the ADL would not be viewed electronically, but would be viewed in the individual creditor's office.

REPRESENTATIVE MILLETT asked what happens if the person does not have an Alaska driver's license.

MS. BEHR answered that the person would use their name, noting people can also obtain a state identification card. She emphasized that the mistake could be a typo in an agreement and does not necessarily mean fraud.

[4:14:20 PM](#)

REPRESENTATIVE MILLETT acknowledged her name is frequently misspelled.

MS. BEHR stated that if everyone is acting appropriately, it works fine. She referred to her earlier scenario - the car purchase - and said if she wasn't able to make the car payment, she would just go to the car dealer and indicate she couldn't make the payment and work out an agreement. However, she said the recording function is beneficial when another creditor wants to loan her money and can view the database at the state recorder's office to ensure she doesn't have substantial debt. She emphasized this does not stop the transaction because the name is misspelled, but it makes it more difficult and more expensive.

REPRESENTATIVE MILLETT was unsure how this would affect rural Alaska since many rural Alaskans don't have access to photo identification.

[4:15:39 PM](#)

REPRESENTATIVE REINBOLD referred to page 2 of the fiscal note, which read, "Section 34 instructs DNR to adopt, amend, or repeal regulations and this section takes effect immediately per Section 36. The Recorders/UCC Central Section has begun work on amending definitions that exist in regulations and thus DNR anticipates completing regulations by September 16, 2013." She asked how this will affect DNR.

MS. BEHR deferred to the Department of Natural Resources (DNR) to answer.

[4:16:32 PM](#)

VICKY BACKUS, State Recorder, State Recorder's Office, Division of Support Services (DSS), Department of Natural Resources (DNR), answered that HB 9 makes minor changes to the Recorder's office to their regulations; however most of the changes amend their forms.

[4:17:22 PM](#)

REPRESENTATIVE REINBOLD said she was alarmed this bill would affect the DNR.

MS. BACKUS responded that the DNR's involvement would be minimal.

[4:17:45 PM](#)

REPRESENTATIVE JOSEPHSON recalled that 30 states have opted into the recommendations. He asked how many states have adopted the 4A recommendations.

MS. BEHR answered that less states have; however, this is due primarily to the changes being circulated to the industry for only a few months. She offered that many states have bills pending. Additionally, the banking community thinks the changes are a good idea, she said.

[4:18:26 PM](#)

REPRESENTATIVE CHENAULT asked whether a misspelling in a person's name has anything to do with repossessing car from the bank or creditor's standpoint.

MS. BEHR, using her earlier scenario of her car purchase, answered that the issue would arise if the party had to go to court to prove the creditor was going after the same Deborah Behr's car; however, if no objection arose and the debtor did not complain, it would go pretty smoothly.

REPRESENTATIVE CHENAULT suggested that the creditor loaning the money would use the vehicle identification number (VIN) and not be as concerned about the name being misspelled.

[4:19:43 PM](#)

REPRESENTATIVE JOSEPHSON said it strikes him that the bill pertains mainly to creditors, but it did not seem as though anything in the bill was unreasonable.

MS. BEHR answered that HB 9 is also a debtor's bill, since it creates a smooth mechanism for creditors to get back merchandise, such as her car in the aforementioned scenario. Absent that mechanism, the car dealer would be reluctant to give her the car so it would make credit easier for consumers to obtain, she said. She related that thus far the legislation has passed 30 states and to date no consumer protection group has objected.

[4:21:08 PM](#)

WILLIAM HENNING, L.L.M., Uniform Law Commissioner; Professor, University of Alabama, School of Law, related he has worked extensively with Ms. Behr on the Uniform Law Commission.

[4:22:20 PM](#)

REPRESENTATIVE REINBOLD understood 30 states have adopted Article 9 and 20 states have not, although 13 are in the process of doing so. She asked why these state have not all adopted the changes. She further asked whether any national organizations, such as the National Conference of State Legislatures (NCSL) have weighed in.

MR. HENNING answered that the amendments [contained in HB 9] were finalized by the American Law Institute and Uniform Law Commission in 2010. As Ms. Behr mentioned earlier, the

commission wants the changes to go into effect at the same time nationwide. He said that some states passed bills, but the commission asked them to defer the effective date to July 1, 2013. He acknowledged many more than 13 states have not yet brought in legislation yet, but are preparing to do so. He related his understanding that universal adoption in all 50 states will occur. In fact, there has been no opposition to the changes.

MR. HENNING, with respect to the consumer organizations, explained he served on the drafting committee that prepared the Article 9 amendments and served with someone who brought the consumer perspective to the committee [Gail Hillebrand]. She was involved throughout the process. He related that this member is an expert in the UCC, serves on the permanent editorial board of the UCC, and did not find any problem with the proposed changes. In fact, she reported back that using driver's license name as a safe harbor would give additional certainty to creditors and would not disadvantage someone without a driver's license because other ways exist to show the name would be perfectly adequate. In short, there is no opposition from anyone, including consumer groups. The proposed changes have happened rapidly during a three-year period; however, he anticipated the remaining states would act promptly.

[4:25:13 PM](#)

REPRESENTATIVE REINBOLD asked whether any unintended consequences have been reported by the 30 states that have passed the bill.

MR. HENNING answered no; however, he cautioned that the proposed changes will not be effective until July 1, 2013. He emphasized that the proposed changes the UCC have been very carefully reviewed by the Uniform Law Commissioners, by banking groups, and by consumer groups. In fact, he is not aware of any problems that have ever surfaced. Additionally, he reported that he lectures nationwide to provide continuing legal education presentations. He has presented these changes in a number of states to groups of lawyers and he has not yet been asked a question that leads him to believe any problem exists.

[4:26:13 PM](#)

REPRESENTATIVE REINBOLD asked for the reason for the July 1, 2013 effective date.

MR. HENNING indicated that a single effective date for all states is important since problems can arise if some states incorporate the changes at different times. If that were to occur, then some states would have adopted the proposed UCC amendments and others would not. This would create a "conflicts of law" problem, and uncertainty could arise over which state's laws govern the transaction. He indicated the UCC asked states to defer the effective date until July 1, 2013 to avoid any issues. He pointed out the proposed UCC amendments pertain to a large scale revision of Article 9 that was dispersed in 1998 or 1999. The UCC undertook the process to adopt the large package of changes through all states. At the time the UCC used July 1, 2001 as the deferred effective date and all fifty states successfully adopted the changes. In conclusion, the UCC has previously used this process to make changes so the same pattern used then is very similar to the one being used now.

[4:27:57 PM](#)

CHAIR OLSON related that it's a common practice to use a July 1 effective date to incorporate changes that affect all states. He explained that every year or so changes which will affect the insurance or banking communities necessitate the whole country must use a July 1 effective date to implement the changes.

[4:28:42 PM](#)

REPRESENTATIVE GRUENBERG referred to page 8, lines 11-18 of HB 9. He asked whether the general rule for financing statement must include the following, which read:

- (A) the individual name of the debtor;
- (B) the surname and first personal name of the debtor;
or
- (C) subject to (g) of this section, the name of the individual that is indicated on an unexpired driver's license that this state has issued to the individual or on an unexpired identification card issued to the individual under AS 18.65.310;

REPRESENTATIVE GRUENBERG then referred to page 9, lines 6-9, to subsection (g), which read:

- (g) If this state has issued to an individual more than one driver's license, more than one

identification card under AS 18.65.310, or both an identification card under AS 18.65.310 and a driver's license, the driver's license or identification card that was issued the most recently is the one to which (a)(4)(C) of this section refers.

REPRESENTATIVE GRUENBERG asked whether his interpretation is correct that this language is very carefully set out.

MR. HENNING answered yes. He elaborated that he would be happy to explain more fully, but Representative Gruenberg has correctly stated how the rules would work.

[4:30:16 PM](#)

REPRESENTATIVE REINBOLD referred to page 9, lines 24-30, of HB 9 and asked what is meant by the language "financing statement becomes seriously misleading."

MR. HENNING answered that a couple of situations have arisen that this language would address. For example, frequently a loan to a decedent's estate occurs. Even though one would imagine this to happen infrequently, it doesn't. He explained that often times an infusion of capital is necessary to keep businesses going during the winding down process of a business. The name used on the financing statement is the name of the deceased person, yet the deceased person is not the debtor in the transaction; instead, the debtor is the estate itself. These paragraphs indicates when the name included in a filed financing statement for a debtor becomes insufficient, it does not represent a name change. Briefly, the current language spoke to a name change, but it does not accurately describe all situations. He characterized proposed Section 20 as technical changes as the content of the rule will remain exactly the same, although this language is more descriptive.

[4:32:26 PM](#)

REPRESENTATIVE REINBOLD asked whether this is identical to law in other states.

MR. HENNING answered yes; it is precisely identical to the changes in law for the 30 states that adopted the 2010 amendments to Article 9.

[4:32:48 PM](#)

REPRESENTATIVE GRUENBERG related his understanding that the Alaska changes are identical to the uniform act.

MS. BEHR agreed, except for stylistic changes. She indicated she had the national headquarters review the language and it meets the test of uniformity and would be accepted.

CHAIR OLSON advised members HB 9 is in its original form.

[4:33:24 PM](#)

LUKE FANNING, Vice-President, First National Bank, Alaska; Alaska Bankers Association (ABA), said he is testifying on behalf of the ABA, which represents eight state, national, and federal savings banks in Alaska. These member banks are responsible for 85 percent of the nonpublic commercial lending in Alaska as well as 2,500 employees across 130 branches statewide.

MR. FANNING stated that the ABA supports HB 9 because it provides for necessary amendments to UCC, Article 9, which was adopted in all 50 states. He said this legislation is necessary to address recent changes to the articles in 2010. These changes to Article 9 have been adopted in 30 states, as previously discussed, and similar legislation is pending in other states. In fact, it is important to pass the bill this legislative session since the amendments will be effective July 1, 2013. He cautioned that if the bill is not passed this year, Alaska will be inconsistent with the amendments adopted already by the majority of states. In short, HB 9 is necessary to keep UCC's Article 9 up to date in Alaska and ensure Alaska's law is consistent with financial practices in the rest of the country. Further, failure to pass HB 9 could result in additional cost and uncertainty for Alaska's businesses and financial services customers. Besides affecting creditors, which was discussed earlier, the bill would affect other businesses and parties trying to purchase property, particularly across state lines. He concluded that if there is any inconsistency in the security requirements it could hinder or otherwise hold up property sales transfers, such as cars being purchased across state lines. Again, these changes are not limited to creditors, but affect people purchasing assets or trying to sell assets, regardless of whether a bank is involved in that transaction. He thanked members for consideration of the ABA's position on this bill.

[4:35:50 PM](#)

CHAIR OLSON asked what would happen if 45 states adopted the Article 9 amendments, but Mr. Fanning's bank has a multi-state relationship with a state not party to the agreement by July 1, 2013.

MR. FANNING answered that it could complicate things, in particular, in the event of foreclosures, sales of assets, or for private parties trying to buy or sell assets across state lines. He said it could hinder a transaction or derail the party's ability to obtain financing on an asset if the chain of ownership was not clear and consistent.

[4:36:34 PM](#)

CHAIR OLSON wondered whether all fifty states can comply by July 1, 2013.

MR. FANNING deferred to Ms. Behr; however, he offered his belief that if any perception of uncertainty exists, it could drive up costs for banks. He further offered his belief that it could discourage lending in a worst case scenario.

[4:37:43 PM](#)

STACY SCHUBERT, Director, Government Relations, Alaska Housing Finance Corporation (AHFC) read prepared testimony as follows:

AHFC, through its multi-family lending department utilizes Article 9 of the Uniform Commercial Code in securing some of its collateral when financing multi-family projects. The collateral, such as kitchen appliances, furniture, equipment, and the like is perfected due to recording of the UCC's financing statement.

As proposed, HB 9 further enhances AHFC's, as well as other creditors' secured positions, by providing: 1) greater guidance as to the name of the debtor provided on the financing statement; and 2) greater protection for an existing secured creditor having a security interest in an after acquired property, when debtor moves to another state or merges with another entity. For example, in the event AHFC forecloses on a property and is also trying to repossess and sell the furniture and appliances, the amendment to UCC's [Article] 9 would protect AHFC in the event the debtor

has merged with another entity after the loan has closed.

AHFC supports the revisions as they enhance AHFC's ability to repossess a security. Thank you, Mr. Chairman.

[4:40:51 PM](#)

The committee took an at-ease from 4:40 p.m. to 4:44 p.m.

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 9.

[4:44:07 PM](#)

REPRESENTATIVE REINBOLD moved to report HB 9 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 9 was reported from the House Labor and Commerce Standing Committee.

[4:45:34 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:45 p.m.