

ALASKA LAW JOURNAL

Reference Library
LEGISLATIVE AFFAIRS AGENCY
POUCH Y—STATE CAPITOL
JUNEAU, ALASKA 99801

Vol. I

JANUARY, 1963

No. 1

ALASKA STATUTES Revision of Alaska Law

By JANE F. ASHER
Revisor of Statutes

A revision of Alaska law, as found in ACLA 1949 and all subsequent session laws through the 1962 legislative session, has been completed. This revision is contained in five volumes, is entitled "Alaska Statutes," and is the result of five years of planning and work. There are some differences and many advantages in using the Alaska Statutes as compared with ACLA 1949 and the session laws. The purpose of this article is to acquaint you with the format and use of the Alaska Statutes in order that it may be used immediately with maximum efficiency.

Bulk Formal Revision

The "bulk formal revision" of Alaska law which resulted in the Alaska Statutes was a revision of the entire body of statutory law consisting of collecting the laws according to subject matter and arranging them in a logical system of positive law without making substantive changes such as correcting legislative errors, clarifying the law or trying to make it more workable. Specifically, the ends sought were to:

(1) determine what statutes were in effect by eliminating the obsolete, unconstitutional, and unnecessary sections of the law;

(2) organize the live law according to subject matter into a logical classification system of titles, chapters, and sections;

(3) restate the law in clear and simple language with uniformity of expression, capitalization, spelling and punctuation, and with redundancies removed, misspelled words corrected, poor grammar reconstructed, and frequently used

(Continued on Page 2)



Jane F. Asher

ABOUT THE AUTHOR—

Jane F. Asher is a graduate of the Tulane School of Law and a member of the Louisiana and Alaska bars and the American Bar Association. She was law clerk for Judge Raymond Kelly, District Court for the Territory of Alaska in 1957. She then became attorney for the Veterans Affairs Commission and in 1959 was appointed an Assistant Attorney General. She joined the staff of the Legislative Council as Revisor of Statutes in 1960.

ALASKA UNIFORM COMMERCIAL CODE

—a preliminary look at this comprehensive law
By JAMES N. WANAMAKER

This article gives a brief historical background of the enactment of the Uniform Commercial Code in Alaska and other states, compares the Code with Alaska's former commercial laws, cites the laws repealed by the Code and outlines some of the important changes that are now effective.

Historical background and the need for the Code

Alaska now stands with seventeen other states (Pennsylvania, Massachusetts, Kentucky, Connecticut, New Hampshire, Rhode Island, Wyoming, Arkansas, New Mexico, Ohio, Oregon, Oklahoma, Illinois, New Jersey, Georgia, Michigan and New York) which have adopted the Uniform Commercial Code. Pennsylvania was the first state to enact the Code having done so in 1954.

In Alaska, the Code was introduced in the First Session of the Second Legislature but no action on it was taken then. It was not until the Second Session that it was enacted becoming law at midnight, December 31, 1962 (See Ch. 114, SLA; AS 45.05).

Perhaps the primary reason underlying the introduction and passage of the Uniform Commercial Code was the antiquity and uncertainty of the existing commercial laws. Alaska's commercial law was chiefly comprised of the following uniform acts: the Uniform Sales Act, (1906) (1913); the Uniform Conditional Sales Act, (1918) (1919); the Uniform Negotiable Instruments Act, (1896) (1913); the Uniform Warehouse Receipts Act, (1906) (1913); the Uniform Trust Receipts Law, (1933) (1951); the Uniform Stock Transfer Act, (1909) (1959); and the Uniform Bills

of Lading Act, (1909) (1913). (The dates are respectively the date of adoption by the Commissioners on Uniform State Laws and the date enacted in Alaska.)

As you will note from the above dates, most of these acts were drafted near the turn of century. In the intervening years many new commercial practices have arisen which were then entirely unknown. Because these acts were recommended and enacted in a piecemeal fashion, there are numerous areas of overlapping and duplication, and in some cases inconsistency, in dealing with negotiable instruments, bills of lading, warehouse receipts, stock transfers, sales and trust receipts.

Further, there have been many conflicting interpretations of these old uniform laws, thus creating a very real problem of finding the controlling case law applicable to any particular problem. For instance, as many as eighty sections of the N.I.L. have different meanings in various states because of conflicting court decisions. Commercial law has grown so complex and so inadequate in recent year that even practicing lawyers are confused. The Illinois and Chicago Bar Associations, in their report urging enactment of the Uniform Commercial Code, made the following comment:

"We think, finally, that the

(Continued on Page 2)

Alaska Stats. (cont'd)

(Continued from Page 1)

and critical terms defined and consistently used; and

(4) establish a numbering system which provides immediate identification and access to the subject matter and which is sufficiently flexible to accommodate future enactments.

Format

The Alaska Statutes is five volumes of loose-leaf binders which contain the bound title pamphlets. The first pamphlet in volume one includes non-statutory material such as the table of contents, U. S. Constitution with index, treaties and conventions, Organic Act, Statehood Act, presidential statehood proclamation, Omnibus Act, and the Alaska Constitution with index and annotations.

Annual Contents Card

The Annual Contents Card follows after the first pamphlet. The card shows the date each title pamphlet was published. A new card will be published each year with the cumulative supplement pamphlet and any other pamphlets that are reprinted. If you wish to know when a pamphlet containing a particular title has been reprinted, you look at the Annual Contents Card. If it shows "Title 14 . . . Dec. 1962" you look on the cover page of the pamphlet containing Title 14 and if your statutes are current the cover page will have the same date as that listed on the card. This simple method assures the user of the Alaska Statutes that he is using the current law.

Law

The 47 titles of law (such as Title 11, Criminal Law) follow the Annual Contents Card. Each title is in one or more bound pamphlets depending on the size of the title. The maximum size of any pamphlet is 240 numbered pages, and if a title includes material in excess of this figure, the material is divided into more than one pamphlet, each of substantially equal size. Page numbering is by title.

The chapters in a title are listed at the beginning of the title. Articles in a chapter are listed immediately after the chapter title, and the section numbers and titles follow after the article title. If the chapter is not divided into articles the section numbers and titles follow the chapter title. This is

the same format used in the Alaska Compiled Laws Annotated 1949.

Decimal Numbering

The numbering system used in the Alaska Statutes is a three-part number separated by decimal points. The first two digits is the title number. Title numbers are consecutive from the number "1" through "47."

The second two digit of the number is the chapter. Most chapters are numbered at intervals of five so that new chapters can be inserted between the existing chapters. However, chapters are numbered at intervals of two, three, or four in those titles which contain 20 or more chapters.

The last three digits of the number is the section number. This portion of the complete number is in most instances numbered at 10-unit intervals which may be divided further at 1-unit intervals. For example: .001, .002; .010, .011, .012; .100, .101, 102, etc.

Under this system the first section in the Alaska Statutes is AS 01.05.010, which is Title 1, ch. 5, sec. 10. This numbering system is very similar to that in the Alaska Compiled Laws Annotated 1949 where the first number is sec. 1-1-1, which is Title 1, ch. 1, sec. 1. However, the Alaska Statutes system permits the insertion of an almost unlimited number of chapters and sections as well as flexibility in section numbering. Properly spaced numbering with room for expansion also makes it possible to avoid reusing a number if the law in a particular section is repealed or sub-

(Continued on Page 3)

Notice

Legal news from all areas of the state, manuscripts, and ideas for law articles are requested. Please forward to: Alaska Law Journal, Box 1481, Juneau, Alaska.

Your comments and suggestions are welcomed.

Local participation on the staff of the Journal is possible by joining the Legal Periodicals Committee of the Alaska Bar Association in your area.

Commercial Code

(Continued from Page 1)

discussion of new concepts in the Code and their desirability gives its own answer to the question of whether the Code is needed. We add, at this point, the fact that our existing law is not only generally unknown to the practicing bar but the more important point that it is unknowable and inaccessible except through the expenditure of time for which a adequate fee can be charged by the general practitioner. The result is that either clients are inadequately served or the lawyer is inadequately compensated. It seems to us that either result is bad for the bar and for the community."

The Uniform Commercial Code was prepared under the joint direction of the National Conference of Commissioners on Uniform State Laws and the American Law Institute. The National Conference, organized in 1892, sponsored the many uniform laws which the Alaska Legislature has enacted in past

sessions. The American Law Institute, organized in 1923, is widely respected for its work in preparing the various Restatements of the Law.

As early as 1940, the need for amendment of the old uniform acts was recognized. Because of the difficulty of piecemeal amendment of the different uniform laws, the sponsors decided to draft a comprehensive code to consolidate the broad scope of the commercial law into one integral and inter-related statute and to bring up to date all the uniform laws in the commercial area. Work on the Code began in 1940. It was drafted and redrafted, and submitted to extensive study by the two sponsoring organizations. In all, the project cost approximately \$400,000. Finally in 1951 the sponsors approved the full draft. The Code was contemporaneously studied for five years by a committee of the American Bar Association, and in 1951 it was approved by the House of Delegates of the American Bar Association. In 1957, certain minor amendments were made as a result of the comments and wishes of the New York Law Revision Commission. This revision was approved by both sponsoring organizations and is adopted by all states which have enacted the Code.

OUTLINE OF THE CODE

Basic Policies

The Code does not concern real property in any way except that one section deals with security interest in fixtures that may be attached to the real estate. Also, the Code contains no criminal provisions.

Aside from the article on Sales, the Code makes very little change in existing legal concepts. Generally, the approach is in the nature of organization, clarification and implementation of the existing commercial law and commercial practice. The practicing lawyer will now find answers easily and quickly because of the excellent organization and indexing of the Code.

The Uniform Commercial Code is flexible. Wherever possible, parties are left free to set their own terms by private agreement, and need rely on the Code only in absence of such agreement. Most areas which the Code covers have been defined to allow expansion of business practices within the existing statutory structure. Thus,

(Continued on Page 3)

Alaska Law Journal

Official Newspaper of the Supreme Court and Alaska Bar
Published monthly by the Alaska Bar Association, Box 279, Anchorage, Alaska. Subscriptions: \$12 a year.
Correspondence regarding the Journal and subscriptions—Alaska Law Journal, Box 1481, Juneau, Alaska.

Board of Governors

WILLIAM V. BOGGESE, Fairbanks, President
DAVID H. THORSNESS, Anchorage, 1st Vice-Pres.
ROBERT H. ZIEGLER, Ketchikan, 2nd Vice-Pres.
STANLEY J. McCUTCHEON, Anchorage, Secretary
W. C. ARNOLD, Anchorage
FRED O. EASTAUGH, Juneau
JOHN E. HAVELOCK, Juneau
MICHAEL A. STEPOVICH, Fairbanks
KARL L. WALTER, Fairbanks

Journal Board of Directors

ROBERT BOOCHEVER, Juneau
RICHARD R. COLE, Fairbanks
LESTER W. MILLER, Anchorage, Chairman

Journal Staff

Donald L. Craddick	Michael M. Holmes	Lester W. Miller
Robert C. Ely	Jerry Kurtz	Frank Nosek
Avrum Gross	Shirley F. Meussen	Helen D. Simpson
	James N. Wanamaker	
	STANLEY HOWITT, Editor	

Alaska Stats. (cont'd)

(Continued from Page 2)

stantively revised. No one can anticipate where growth will come in the law and the more intervals that are left at the beginning the less distortion of the pattern occurs with the passage of time and laws.

Index

Each title has an index at the end of the text. The index is one of the most important if not the most important part of the revision. It is a detailed and exhaustive index with adequate cross indexing but with no cross index referring to another one. The index is based not upon the section heading but upon the contents of the section. In addition to the index to each title there is a concordance index which is the last pamphlet in the last volume. The concordance index is used only when you do not know which title index you should use. The concordance index refers you to a particular title rather than to a section. For example if you looked up "Alaska Statutes, amendment" the concordance index would refer you to "Title 1." Then the same designation in the index to Title 1 would refer you to AS 01.05.030. The grouping of the law into titles which are for the most part self-explanatory, such as Title 4. Alcoholic Beverages or Title 15. Elections, and frequent use of the Alaska Statutes will almost totally eliminate the need to use the concordance index.

Source of Section

Following the last word of each section the source of the section is cited in parenthesis. The citation shows the original source as well as all amendments. If the source of the section is complicated, an additional explanation is found in the revisor's note.

Revisor's Notes, Annotations, and References

Annotations and collateral references appear at the end of a section. Case notes are prepared from the cases rather than from the headnotes and cover all cases involving Alaska law, such as cases in the U. S. Supreme Court, Circuit Court of Appeals, District Court of Appeals, District Court of the Territory of Alaska, U. S. District Court, and the Superior Court. Cross-references are added where helpful such as cross-references to the court

rules in Title 9., Civil Procedure and Title 12 Criminal Procedure. Annotations are prepared to all published opinions of the attorney general since statehood, from January 3, 1959—June 1962. Collateral references to American Jurisprudence, American Law Reports, and Corpus Juris Secundum are included where appropriate. Revisor's notes and editor's notes cover explanatory material affecting a section and include executive orders of the governor having the force of law. The executive orders are indexed in the same manner as the law, though they appear only in a note.

Tables

After the 47 title pamphlets there is a pamphlet containing tables. One table indicates what has happened to each section of Alaska Compiled Laws Annotated 1949 and the subsequent session laws. If a section of law has been repealed, the table will give the repealing citation. If a section is in the Alaska Statutes, the number of the section will be listed. If a section is not in the Alaska Statutes, the table will show it as deleted. There are varied reasons for deletions. The revision contains only general and permanent law so special, local or temporary laws, laws making appropriations, and laws affecting a bond issue or authorizing a bond issue are deleted. In addition laws which are obsolete because of statehood, executed, or held unconstitutional by the state supreme court, are also deleted.

There is a second table based on the first Alaska code which was published in 1900, "Carters Annotated Alaska Code." The code contains five parts: part one, the penal code; part two, code of criminal procedure; part three, the political code; part four, the code of civil procedure; and part five, the civil code. The table indicates if a section of part one, the penal code, and part five, the civil code, is essentially the same as a section of the Alaska Statutes and the AS section number is listed. Since most of the sections in Carters Annotated Alaska Code were derived from some other state, the derivation of the sections are shown. Final-

(Continued on Page 4)

Commercial Code (cont'd)

(Continued from Page 2)

it is possible for the Code to grow with the business practices it governs.

Article 1. General Provisions

The greatest merit of the Code is in the organization of the commercial law. A great effort has been made to bring about consistency and continuity between its nine substantive articles. Article 1 includes certain statements of general principles and general rules of construction and also contains forty-six definitions of standard words and phrases used throughout the Code, to insure that these words will have the same meaning wherever used. Mastery of these definitions is the starting point for an understanding of the Code.

These definitions bring a degree of precision to the commercial law which has never been known before. At the same time, allowance for flexibility is made, principally by Sec. 1-102(3), which allows the parties to vary the provisions of the Code by agreement except where such variation is specifically prohibited, or where affirmative obligations of good faith, diligence, reasonableness and care are imposed.

Article 2. Sales

Article 2 is a revision and expansion of the old Uniform Sales Act. It covers considerably more ground since it has 37 sections which have no counterpart in the old Sales Act. These new rules are principally drawn from case law decisions and practices which have become settled in the years after the enactment of the Act.

The principal change from the old Sales Act is the de-emphasizing of the concept of title. Under the Uniform Sales Act risk of loss, right of recovery of the price and other issues depended on the location of the title. Determining "where the title is" has become exceedingly complex in modern transactions because of the increasing number of intermediate parties involved. Thus, insofar as possible, this difficult legal concept has been laid aside and the risks and remedies between the parties are now spelled out by specific rules. The title concept has been retained only insofar as it is necessary to spell out rules for the actual passage of title. But it no longer governs so

many collateral rights.

Because of the codification of established case law and the limitation of the title theory, Article 2 conforms much more closely to modern business practice than did the old Sales Act.

Article 2 [AS 45.05.036—45.05.242] replaces the Uniform Sales Act, §§ 29-1-1—29-1-189, ACLA 1949 as amended by Ch. 96, SLA 1955.

Article 3. Commercial Paper

Article 3 of the Code deals with commercial paper and is generally a revision of the Uniform Negotiable Instruments Law. It covers practically no territory not previously covered by the N.I.L. In fact, it has condensed the N.I.L. and omitted many of its obsolete provisions. For example, protest is required only in the case of an instrument which is drawn or payable outside the United States and territories, and the provisions for presentment and notice of dishonor are substantially streamlined.

Because of their increased importance, three areas of commercial law formerly covered by the N.I.L. have been removed from this article and have been placed in other Articles of the Code. These areas are: (1) bank deposits and collections, (2) letters of credit, and (3) corporate bonds, debentures and similar instruments.

Articles 3 replaces the Uniform Negotiable Instrument Act, §§ 27-1-1—27-4-6, ACLA 1949.

Article 4. Bank Deposits and Collections

American banks quickly and efficiently process millions of "items" per day. However, when a case does develop where it is necessary to examine the law to find out the right of the parties, it is, in many instances, found to be out of date or clouded by conflicting decisions. For instance, on the important question of the time when an item is finally paid by the payor bank,

(Continued on Page 5)

**Alaska
Bar Convention
at
Fairbanks
May 2, 3 & 4**

Alaska Stats. (Cont'd)

(Continued from Page 3)

ly, the table shows whether or not the state from which a particular section was derived has that law today and if so the section number is listed. For example, AS 09.55.010 is derived from Carters Annotated Alaska Code, part 5, sec. 32, which was in turn derived from Hills Oregon Code, sec. 2947, which today is Oregon Revised Statutes sec. 33.410. By comparing AS 09.55.010 with ORS 33.410 and shepardizing the latter, an attorney can quickly tell if there are any Oregon cases which can be of assistance to him, or he can ascertain if a section of the Alaska Statutes was the same in 1900 so that Alaska cases from that date forward can be researched.

No section of part three, the political code, exist in today's law. The table has not yet been prepared for part two, the code of criminal procedure and part four, the code of civil procedure. This will be completed and included in a cumulative supplement pamphlet. It is hoped that later cumulative supplements can contain annotations to cases on other states which have practically the same law today and from which we derived our law as shown by this table.

Annual Cumulative Supplement Pamphlets

At the close of each legislative session a cumulative supplement will be prepared which will include all statutory changes, supplemental annotations and collateral references made in all titles in the Alaska Statutes, and amendments or annotations to the Alaska Constitution, tables and indices. If, for example, Titles 1-10 are in volume one, then the cumulative supplement pamphlet for that volume will include changes or additions to items in the first pamphlet (such as to the Alaska Constitution) and to the first ten titles. The cumulative supplement pamphlet for the last volume would cover changes in the titles in that volume as well as tables and the concordance index. The supplement will also contain a table of sections which will reflect which sections have been added, amended, or repealed.

A blue dividing page will separate the material supplementary to one title from the mate-

rial supplementary to the next title. If a section is added or amended and again amended by a subsequent legislature, this fact will be reflected in the table of sections and the nature of the amendments will be indicated in a note at the end of the section, but the section itself will be written as last amended. Thus, the user of the statutes need look in only two places to find the current law year after year. He looks first in the title pamphlet and then one place in the Annual Cumulative Supplement Pamphlet.

If a section is repealed, the cumulative supplement will indicate this in a reference at the appropriate section number and in the table of sections. When a replacement pamphlet is issued, the repealed sections will be noted in the replacement pamphlet, but not the notation of the section or the repeal citation.

Replacement Pamphlets

A replacement of a title by reprinting the pamphlet or pamphlets containing the title will be made when the supplemental material, including amendments, annotations, collateral references, and notes exceeds one-third of the pages in the original pamphlet or pamphlets of the title. When replacement pamphlets are needed they will be published at the same time as the cumulative supplement and the annual contents card at no additional cost to those purchasing the cumulative supplement.

Binders

The binders have two important features. A lever inside the front cover releases the lock and allows the top cover to be lifted up and pamphlets extracted. The top cover does not need to be pushed down against the pamphlets to lock the binder. If extra space is left between the front cover of the binder and the pamphlets the volume will lie flat when open for use.

The binder has a plastic picture insert frame. A card slipped under the plastic indicates the volume number and the material it contains. When expansion is required, an additional binder is used and new cards are inserted indicating the material then contained in the six volumes. Also, if the material in only one volume becomes ex-

cessive, the pamphlets can be redistributed between volumes at the time of the publication of the cumulative supplement pamphlet and new cards prepared for insertion in the plastic frames. This simple maneuver allows for expansion of the statute without having to replace all the binders.

Effect

Under Ch. 16, SLA 1962 (AS 01.05.010 and 01.05.020) the Alaska Statutes were adopted as prima facie evidence of the law of the state and "In all courts, tribunals, and public offices of the state, the matter set out in the Alaska Statutes establishes prima facie the laws of the State of Alaska of general and permanent nature. . . ." Ch. 84, SLA 1962 (AS 01.05.030) allows the Alaska Statutes to be cited, amended or repealed after January 1, 1963, and any amendment, including the entire context set out in the amendatory act, shall, as amended, constitute the law. A bill will be introduced in the 1963 session of the legislature to adopt the Alaska Statutes as the law of the state.

Legislation

Formerly, a bill could act upon existing law, as by amending Alaska Compiled Laws Annotated 1949 or a session law, or it could create new law without reference to existing law. The Alaska Statutes, however, codify all general and permanent law, and amendments and additions to and repeals of general and permanent law may be made only by specific reference to the Alaska Statutes. For example: "Section 1. AS 26.15.100 is amended to read:" or "Section 1. AS 26.15 is amended by adding a new section (or new sections) to read:" or "Section 1. AS 26 is amended by adding a new chapter to read:" The section to be amended or the section or sections to be added are then set out.

Legislation which is not of a general and permanent nature has not been affected by the publication of the Alaska Statutes. Bonding laws, appropriation laws, and laws of a local, special or temporary character may therefore be enacted, amended, or repealed without reference to the Alaska Statutes.

The "Manual for Legislative Drafting" published by the Alaska Legislative Council contains sections on legal drafting

and clerical drafting which specifically describe legislative drafting methods for the 1963 legislative session.

Errors

A bulk formal revision is a monumental task requiring many months of careful work. But regardless of how carefully it is done errors are inevitable in a work of this magnitude. Users of the Alaska Statutes are therefore invited and requested to report errors or suspected errors to the:

Revisor of Statutes
Alaska Legislative Council
P.O. Box 2199
Juneau, Alaska

Corrective legislation will be introduced immediately so that the Alaska Statutes will become a more perfect product.

IRS MARKS TIME ON FUTURE PAY PLAN TAX POLICY

WASHINGTON, D.C. (ACCN)

—The Internal Revenue Service has announced that until new regulations are issued it will continue to follow existing procedures with regard to the tax status of deferred compensation plans. A new law, effective Dec. 31, 1962, substantially affects, in various ways, the tax-exempt features of these plans and will, in time, be the subject of new regulations by the Treasury Department. The new statute is Public Law 87-792, which amends present Sec. 401(a) of the Internal Revenue Code.

The Service said that no determination letters as to qualification for the new tax treatment will be issued with respect to amendments to present deferred-compensation plans made solely for the purpose of conforming to the new law. In making determinations as to the qualification of new plans, the continued qualification of existing plans, or the qualification of plans which have terminated, the Service will for the time being continue to apply existing regulations and published rulings, including Mimeograph 5717, and taxpayers, according to the Service, may continue to rely thereon.

In general, the new law requires that a qualified plan must provide that upon its termination or complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to

(Continued on Page 5)