

CS FOR HOUSE BILL NO. 294 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/10/92

Referred: Judiciary, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to funds transfers under the Uniform Commercial Code; amending Alaska
2 Rule of Civil Procedure 82; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 45.01.101 is amended to read:

5 Sec. 45.01.101. SHORT TITLE. AS 45.01 - AS 45.09 and AS 45.12 [AS 45.01.101 -
6 AS 45.09.507 SHALL BE KNOWN AND] may be cited as the Uniform Commercial Code.

7 * Sec. 2. AS 45.01.102 is amended to read:

8 Sec. 45.01.102. PURPOSES; RULES OF CONSTRUCTION; VARIATION BY
9 AGREEMENT. (a) The code [AS 45.01 - AS 45.09] shall be liberally construed and applied
10 to promote the underlying purposes and policies.

11 (b) Underlying purposes and policies of the code [AS 45.01 - AS 45.09] are:

12 (1) to simplify, clarify, and modernize the law governing commercial transactions;

13 (2) to permit the continued expansion of commercial practices through
14 custom, usage, and agreement of the parties;

1 (3) to make uniform the law among the various jurisdictions.

2 (c) The effect of provisions of the code [AS 45.01 - AS 45.09] may be varied by
3 agreement, except as otherwise provided in the code [AS 45.01 - AS 45.09] and except that the
4 obligations of good faith, diligence, reasonableness, and care prescribed by the code [AS 45.01 -
5 AS 45.09] may not be disclaimed by agreement, but the parties may by agreement determine the
6 standards by which the performance of the obligations is to be measured if such standards are
7 not manifestly unreasonable.

8 (d) The presence in certain provisions of the code [AS 45.01 - AS 45.09] of the words
9 "unless otherwise agreed" or words of similar import does not imply that the effect of other
10 provisions may not be varied by agreement under (c) of this section.

11 (e) In the code [AS 45.01 - AS 45.09], unless the context otherwise requires,

12 (1) words in the singular number include the plural, and in the plural include the
13 singular;

14 (2) words of the masculine gender include the feminine and the neuter, and when
15 the sense so indicates words of the neuter gender may refer to any gender.

16 * Sec. 3. AS 45.01.103 is amended to read:

17 Sec. 45.01.103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.
18 Unless displaced by the particular provisions of the code [AS 45.01 - AS 45.09], the principles
19 of law and equity, including the law merchant and the law relative to capacity to contract,
20 principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or
21 other validating or invalidating cause, supplement the provisions of the code [AS 45.01 -
22 AS 45.09].

23 * Sec. 4. AS 45.01.105 is amended to read:

24 Sec. 45.01.105. TERRITORIAL APPLICATION OF THE ACT; PARTIES' POWER TO
25 CHOOSE APPLICABLE LAW. (a) Except as provided in this section, when a transaction bears
26 a reasonable relation to this state and also to another state or nation, the parties may agree that
27 the law either of this state or of the other state or nation shall govern their rights and duties.
28 Failing this agreement, the code applies [AS 45.01 - AS 45.09 APPLY] to transactions bearing
29 an appropriate relation to this state.

30 (b) Where one of the following provisions of the code [AS 45.01 - AS 45.09] specifies
31 the applicable law, that provision governs and a contrary agreement is effective only to the extent

1 permitted by the law, including the conflict of laws rules, so specified:

2 (1) rights [RIGHTS] of creditors against sold goods (AS 45.02.402);

3 (2) applicability [APPLICABILITY] of the chapter [ARTICLE] on bank deposits
4 and collections (AS 45.04.102);

5 (3) bulk transfers subject to the chapter [ARTICLE] on bulk transfers;

6 (4) applicability [(AS 45.06.102) APPLICABILITY] of the chapter [ARTICLE]
7 on investment securities (AS 45.08.106);

8 (5) perfection [PERFECTION] provisions of the chapter [ARTICLE] on secured
9 transactions (AS 45.09.103);

10 (6) AS 45.12, the chapter on funds transfers.

11 * Sec. 5. AS 45.01.106 is amended to read:

12 Sec. 45.01.106. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The remedies
13 provided by the code [AS 45.01 - AS 45.09] shall be liberally administered to the end that the
14 aggrieved party may be put in as good a position as if the other party had fully performed, but
15 neither consequential or special nor penal damages may be had except as specifically provided
16 in the code [AS 45.01 - AS 45.09] or by other rule of law.

17 (b) A right or obligation declared by the code [AS 45.01 - AS 45.09] is enforceable by
18 action unless the provision declaring it specifies a different and limited effect.

19 * Sec. 6. AS 45.01.108 is amended to read:

20 Sec. 45.01.108. SEVERABILITY. If a provision or clause of the code [AS 45.01 -
21 AS 45.09] or application of the clause or provision to a person or circumstances is held invalid,
22 the invalidity does not affect other provisions or applications of the code [AS 45.01 - AS 45.09]
23 that can be given effect without the invalid provision or application, and to this end the
24 provisions of the code [AS 45.01 - AS 45.09] are severable.

25 * Sec. 7. AS 45.01.109 is amended to read:

26 Sec. 45.01.109. SECTION CAPTIONS. Notwithstanding AS 01.05.006, section
27 headings [SECTION CAPTIONS] are parts of the code [AS 45.01 - AS 45.09].

28 * Sec. 8. AS 45.01.201 is amended to read:

29 Sec. 45.01.201. GENERAL DEFINITIONS. Subject to additional definitions contained
30 in the subsequent chapters [ARTICLES] of the code [AS 45.01 - AS 45.09] that are applicable
31 to specific chapters [ARTICLES] or sections, and unless the context otherwise requires, in the

1 **code** [AS 45.01 - AS 45.09],

2 (1) "action" in the sense of a judicial proceeding includes recoupment,
3 counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined;

4 (2) "aggrieved party" means a party entitled to resort to a remedy;

5 (3) "agreement" means the bargain of the parties in fact as found in their language
6 or by implication from other circumstances including course of dealing or usage of trade or
7 course of performance as provided in **the code** [AS 45.01 - AS 45.09] (AS 45.01.205 and
8 AS 45.02.208); whether or not an agreement has legal consequences is determined by the
9 provisions of **the code** [AS 45.01 - AS 45.09], if applicable; otherwise by the law of contracts
10 (AS 45.01.103) (**compare "contract"** [COMPARE "CONTRACT"]);

11 (4) "bank" means a person engaged in the business of banking;

12 (5) "bearer" means the person in possession of an instrument, document of title,
13 or certificated security payable to bearer or endorsed in blank;

14 (6) "bill of lading" means a document evidencing the receipt of goods for
15 shipment issued by a person engaged in the business of transporting or forwarding goods, and
16 includes an airbill; "airbill" means a document serving for air transportation as a bill of lading
17 does for marine or rail transportation, and includes an air consignment note or air waybill;

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

19 (8) "burden of establishing" a fact means the burden of persuading the triers of
20 fact that the existence of the fact is more probable than its nonexistence;

21 (9) "buyer in ordinary course of business" means a person who, in good faith and
22 without knowledge that the sale to that person is in violation of the ownership rights or security
23 interest of a third party in the goods, buys in ordinary course from a person in the business of
24 selling goods of that kind but does not include a pawnbroker; all persons who sell minerals or
25 the like, [() including oil and gas, ()] at wellhead or minehead are considered to be persons in
26 the business of selling goods of that kind; "buying" may be for cash or by exchange of other
27 property or on secured or unsecured credit and includes receiving goods or documents of title
28 under a pre-existing contract for sale but does not include a transfer in bulk or as security for or
29 in total or partial satisfaction of a money debt;

30 (10) **"code" means AS 45.01 - AS 45.09 and AS 45.12 (the Uniform**
31 **Commercial Code**);

1 **(11)** "conspicuous": a term or clause is conspicuous when it is so written that a
2 reasonable person against whom it is to operate ought to have noticed it; a printed heading in
3 capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous; language in the body of
4 a form is "conspicuous" if it is in larger or other contrasting type or color; but in a telegram any
5 stated term is "conspicuous"; whether a term or clause is "conspicuous" or not is for decision by
6 the court;

7 **(12)** [(11)] "contract" means the total legal obligation that results from the parties'
8 agreement as affected by **the code** [AS 45.01 - AS 45.09] and any other applicable rules of law
9 (**compare "agreement"** [COMPARE "AGREEMENT"]);

10 **(13)** [(12)] "creditor" includes a general creditor, a secured creditor, a lien
11 creditor, and any representative of creditors, including an assignee for the benefit of creditors,
12 a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent
13 debtor's or assignor's estate;

14 **(14)** [(13)] "defendant" includes a person in the position of defendant in a cross
15 action or counterclaim;

16 **(15)** [(14)] "delivery" with respect to instruments, documents of title, chattel
17 paper, or certificated securities means voluntary transfer of possession;

18 **(16)** [(15)] "document of title" includes bill of lading, dock warrant, dock receipt,
19 warehouse receipt or order for the delivery of goods, and also any other document which in the
20 regular course of business or financing is treated as adequately evidencing that the person in
21 possession of it is entitled to receive, hold, and dispose of the document and the goods it covers;
22 to be a document of title a document must purport to be issued by or addressed to a bailee and
23 purport to cover goods in the bailee's possession which are either identified or are fungible
24 portions of an identified mass;

25 **(17)** [(16)] "fault" means wrongful act, omission, or breach;

26 **(18)** [(17)] "fungible" with respect to goods or securities means goods or securities
27 of which any unit is, by nature or usage of trade, the equivalent of any other like unit; goods that
28 are not fungible shall be deemed fungible for the purposes of **the code** [AS 45.01 - AS 45.09]
29 to the extent that under a particular agreement or document unlike units are treated as
30 equivalents;

31 **(19)** [(18)] "genuine" means free of forgery or counterfeiting;

1 **(20)** [(19)] "good faith" means honesty in fact in the conduct or transaction
2 concerned;

3 **(21)** [(20)] "holder" means a person who is in possession of a document of title
4 or an instrument or a certificated investment security drawn, issued, or endorsed to the person
5 or to the order of the person or to bearer or in blank;

6 **(22)** [(21)] to "honor" is to pay or to accept and pay or, where a credit so
7 engages, to purchase or discount a draft complying with the terms of the credit;

8 **(23)** [(22)] "insolvency proceedings" includes any assignment for the benefit of
9 creditors or other proceedings intended to liquidate or rehabilitate the estate of the person
10 involved;

11 **(24)** [(23)] a person is "insolvent" who either has ceased to pay the person's debts
12 in the ordinary course of business or cannot pay the person's debts as they become due or is
13 insolvent within the meaning of the federal bankruptcy law;

14 **(25)** [(24)] "money" means a medium of exchange authorized or adopted by a
15 domestic or foreign government as a part of its currency;

16 **(26)** [(25)] a person has "notice" of a fact when (A) the person has actual
17 knowledge of it; (B) the person has received a notice or notification of it; or (C) from all the
18 facts and circumstances known to the person at the time in question the person has reason to
19 know that it exists; a person "knows" or has "knowledge" of a fact when the person has actual
20 knowledge of it; "discover" or "learn" or a word or phrase of similar import refers to knowledge
21 rather than to reason to know; the time and circumstances under which a notice or notification
22 may cease to be effective are not determined by the code [AS 45.01 - AS 45.09];

23 **(27)** [(26)] a person "notifies" or "gives" a notice or notification to another by
24 taking such steps as may be reasonably required to inform the other in ordinary course whether
25 or not such other actually comes to know of it; a person "receives" a notice or notification when

26 (A) it comes to the person's attention; or

27 (B) it is duly delivered at the place of business through which the contract
28 was made or at any other place held out by the person as the place for receipt of the
29 communications;

30 **(28)** [(27)] notice, knowledge, or a notice or notification received by an
31 organization is effective for a particular transaction from the time when it is brought to the

1 attention of the individual conducting that transaction, and in any event from the time when it
2 would have been brought to that person's attention if the organization had exercised due
3 diligence;

4 (29) [(28)] "organization" includes a corporation, government or governmental
5 subdivision or agency, business trust, estate, trust, partnership or association, two or more persons
6 having a joint or common interest, or any other legal or commercial entity;

7 (30) [(29)] "party," as distinct from "third party," means a person who has
8 engaged in a transaction or made an agreement within this chapter;

9 (31) [(30)] "person" includes an individual or an organization (See AS 45.01.102);

10 (32) [(31)] "presumption" or "presumed" means that the trier of fact must find the
11 existence of the fact presumed unless evidence is introduced which would support a finding of
12 its nonexistence;

13 (33) [(32)] "purchase" includes taking by sale, discount, negotiation, mortgage,
14 pledge, lien, issue or re-issue, gift, or any other voluntary transaction creating an interest in
15 property;

16 (34) [(33)] "purchaser" means a person who takes by purchase;

17 (35) [(34)] "remedy" means any remedial right to which an aggrieved party is
18 entitled with or without resort to a tribunal;

19 (36) [(35)] "representative" includes an agent, an officer of a corporation or
20 association, and a trustee, executor, or administrator of an estate, or any other person empowered
21 to act for another;

22 (37) [(36)] "rights" includes remedies;

23 (38) [(37)] "security interest" means an interest in personal property or fixtures
24 that [WHICH] secures payment or performance of an obligation; the retention or reservation of
25 title by a seller of goods notwithstanding shipment or delivery to the buyer (AS 45.02.401) is
26 limited in effect to a reservation of a "security interest"; the term also includes an interest of a
27 buyer of accounts or chattel paper that [WHICH] is subject to AS 45.09; the special property
28 interest of a buyer of goods on identification of the goods to a contract for sale under
29 AS 45.02.401 is not a "security interest," but a buyer may also acquire a "security interest" by
30 complying with AS 45.09; unless a lease or consignment is intended as security, reservation of
31 title under the lease or consignment is not a "security interest," but a consignment is in any event

1 subject to the provisions on consignment sales (AS 45.02.326); whether a lease is intended as
2 security is to be determined by the facts of each case; however,

3 (A) the inclusion of an option to purchase does not of itself make the lease
4 one intended for security, and

5 (B) an agreement that upon compliance with the terms of the lease the
6 lessee shall become or has the option to become the owner of the property for no
7 additional consideration or for a nominal consideration does make the lease one intended
8 for security;

9 (39) [(38)] "send" in connection with writing or notice means to deposit in the
10 mail, or deliver for transmission by another usual means of communication, with postage or cost
11 of transmission provided for and properly addressed and, in the case of an instrument, to an
12 address specified on it or otherwise agreed, or if there is none to an address reasonable under the
13 circumstances; the receipt of a writing or notice within the time at which it would have arrived
14 if properly sent has the effect of a proper sending;

15 (40) [(39)] "signed" includes a symbol executed or adopted by a party with
16 present intention to authenticate a writing;

17 (41) [(40)] "surety" includes guarantor;

18 (42) [(41)] "telegram" includes a message transmitted by radio, teletype, cable,
19 a mechanical method of transmission, or the like;

20 (43) [(42)] "term" means that portion of an agreement which relates to a particular
21 matter;

22 (44) [(43)] "unauthorized" signature or endorsement means one made without
23 actual, implied, or apparent authority, and includes a forgery;

24 (45) [(44)] "value": except as otherwise provided with respect to negotiable
25 instruments and bank collections (AS 45.03.303, AS 45.04.208, and AS 45.04.209), a person
26 gives "value" for rights if the person acquires them

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

30 (B) as security for or in total or partial satisfaction of a pre-existing claim;

31 (C) by accepting delivery under a pre-existing contract for purchase; or

1 (D) generally, in return for a consideration sufficient to support a simple
2 contract;

3 (46) [(45)] "warehouse receipt" means a receipt issued by a person engaged in the
4 business of storing goods for hire;

5 (47) [(46)] "written" or "writing" includes printing, typewriting, or any other
6 intentional reduction to tangible form.

7 * Sec. 9. AS 45.01.204(a) is amended to read:

8 (a) Where the code [AS 45.01 - AS 45.09] requires an action to be taken within a
9 reasonable time, a time which is not manifestly unreasonable may be fixed by agreement.

10 * Sec. 10. AS 45.02.511(c) is amended to read:

11 (c) Subject to the provisions of the code [AS 45.01 - AS 45.09] on the effect of an
12 instrument on an obligation (AS 45.03.802), payment by check is conditional and is defeated as
13 between the parties by dishonor of the check on due presentment.

14 * Sec. 11. AS 45.09.408 is amended to read:

15 Sec. 45.09.408. FINANCING STATEMENTS COVERING CONSIGNED OR LEASED
16 GOODS. A consignor or lessor of goods may file a financing statement using the terms
17 "consignor", "consignee", "lessor", "lessee", or the like instead of the terms specified in
18 AS 45.09.402. The provisions of AS 45.09.401 - 45.09.408 apply as appropriate to the financing
19 statement, but its filing may not of itself be a factor in determining whether or not the
20 consignment or lease is intended as security as defined in AS 45.01.201 [(AS 45.01.201(37))].
21 However, if it is determined for other reasons that the consignment or lease is so intended, a
22 security interest of the consignor or lessor which attaches to the consigned or leased goods is
23 perfected by the filing.

24 * Sec. 12. AS 45 is amended by adding a new chapter to read:

25 CHAPTER 12. FUNDS TRANSFERS.

26 ARTICLE 1. SUBJECT MATTER AND DEFINITIONS.

27 Sec. 45.12.101. SHORT TITLE. This chapter may be cited as Uniform Commercial
28 Code - Funds Transfers.

29 Sec. 45.12.102. SUBJECT MATTER. Except as otherwise provided in AS 45.12.108,
30 this chapter applies to funds transfers defined in AS 45.12.104.

31 Sec. 45.12.103. PAYMENT ORDER; DEFINITIONS. (a) In this chapter,

1 (1) "payment order" means an instruction of a sender to a receiving bank,
2 transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed
3 or determinable amount of money to a beneficiary if

4 (A) the instruction does not state a condition to payment to the beneficiary
5 other than time of payment;

6 (B) the receiving bank is to be reimbursed by debiting an account of, or
7 otherwise receiving payment from, the sender; and

8 (C) the instruction is transmitted by the sender directly to the receiving
9 bank or to an agent, funds-transfer system, or communication system for transmittal to
10 the receiving bank;

11 (2) "beneficiary" means the person to be paid by the beneficiary's bank;

12 (3) "beneficiary's bank" means the bank that is identified in a payment order in
13 which an account of the beneficiary is to be credited under an order, or that otherwise is to make
14 payment to the beneficiary if the order does not provide for payment to an account;

15 (4) "receiving bank" means the bank to which the sender's instruction is
16 addressed;

17 (5) "sender" means the person giving the instruction to the receiving bank.

18 (b) If an instruction complying with (a)(1) of this section is to make more than one
19 payment to a beneficiary, the instruction is a separate payment order with respect to each
20 payment.

21 (c) A payment order is issued when it is sent to the receiving bank.

22 Sec. 45.12.104. FUNDS TRANSFER; DEFINITIONS. In this chapter,

23 (1) "funds transfer" means the series of transactions, beginning with the
24 originator's payment order, made for the purpose of making payment to the beneficiary of the
25 order; the term includes any payment order issued by the originator's bank or an intermediary
26 bank intended to carry out the originator's payment order; a funds transfer is completed by
27 acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the
28 originator's payment order;

29 (2) "intermediary bank" means a receiving bank other than the originator's bank
30 or the beneficiary's bank;

31 (3) "originator" means the sender of the first payment order in a funds transfer;

1 (4) "originator's bank" means

2 (A) the receiving bank to which the payment order of the originator is
3 issued if the originator is not a bank; or

4 (B) the originator if the originator is a bank.

5 Sec. 45.12.105. OTHER DEFINITIONS. (a) In this chapter,

6 (1) "authorized account" means a deposit account of a customer in a bank
7 designated by the customer as a source of payment of payment orders issued by the customer to
8 the bank; if a customer does not so designate an account, any account of the customer is an
9 authorized account if payment of a payment order from that account is not inconsistent with a
10 restriction on the use of that account;

11 (2) "bank" means a person engaged in the business of banking and includes a
12 savings bank, savings and loan association, credit union, and trust company; a branch or separate
13 office of a bank is a separate bank for purposes of this chapter;

14 (3) "customer" means a person, including a bank, having an account with a bank
15 or from whom a bank has agreed to receive payment orders;

16 (4) "funds-transfer business day" of a receiving bank means the part of a day
17 during which the receiving bank is open for the receipt, processing, and transmittal of payment
18 orders and cancellations and amendments of payment orders;

19 (5) "funds-transfer system" means a wire transfer network, automated
20 clearinghouse, or other communication system of a clearinghouse or other association of banks
21 through which a payment order by a bank may be transmitted to the bank to which the order is
22 addressed;

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

25 (7) "prove" with respect to a fact means to meet the burden of establishing the
26 fact; "burden of establishing" has the meaning given in AS 45.01.201.

27 (b) Other definitions applying to this chapter and the sections in which they appear are

28 (1) "acceptance" in AS 45.12.209;

29 (2) "executed" in AS 45.12.301;

30 (3) "execution date" in AS 45.12.301;

31 (4) "funds-transfer system rule" in AS 45.12.501;

- 1 (5) "payment by beneficiary's bank to beneficiary" in AS 45.12.405;
2 (6) "payment by originator to beneficiary" in AS 45.12.406;
3 (7) "payment by sender to receiving bank" in AS 45.12.403;
4 (8) "payment date" in AS 45.12.401;
5 (9) "security procedure" in AS 45.12.201.

6 (c) The following definitions in AS 45.04.104 apply to this chapter:

- 7 (1) "clearinghouse";
8 (2) "item";
9 (3) "suspends payments".

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

12 Sec. 45.12.106. TIME PAYMENT ORDER IS RECEIVED. (a) The time of receipt of
13 a payment order or communication canceling or amending a payment order is determined by the
14 rules applicable to receipt of a notice stated in AS 45.01.201(28). A receiving bank may fix a
15 cut-off time or times on a funds-transfer business day for the receipt and processing of payment
16 orders and communications canceling or amending payment orders. Different cut-off times may
17 apply to payment orders, cancellations, or amendments, or to different categories of payment
18 orders, cancellations, or amendments. A cut-off time may apply to senders generally or different
19 cut-off times may apply to different senders or categories of payment orders. If a payment order
20 or communication canceling or amending a payment order is received after the close of a funds-
21 transfer business day or after the appropriate cut-off time on a funds-transfer business day, the
22 receiving bank may treat the payment order or communication as received at the opening of the
23 next funds-transfer business day.

24 (b) If this chapter refers to an execution date or payment date or states a day on which
25 a receiving bank is required to take action, and the date or day does not fall on a funds-transfer
26 business day, the next day that is a funds-transfer business day is treated as the date or day
27 stated, unless the contrary is stated in this chapter.

28 Sec. 45.12.107. FEDERAL RESERVE REGULATIONS AND OPERATING
29 CIRCULARS. Regulations of the Board of Governors of the Federal Reserve System and
30 operating circulars of the federal reserve banks supersede an inconsistent provision of this chapter
31 to the extent of the inconsistency.

1 Sec. 45.12.108. EXCLUSION OF CONSUMER TRANSACTIONS GOVERNED BY
2 FEDERAL LAW. This chapter does not apply to a funds transfer if a part of the funds transfer
3 is governed by 15 U.S.C. 1693 - 1693r (Electronic Fund Transfer Act of 1978) as amended.

4 ARTICLE 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.

5 Sec. 45.12.201. SECURITY PROCEDURE. (a) In this chapter, "security procedure"
6 means a procedure established by agreement of a customer and a receiving bank for the purpose
7 of

8 (1) verifying that a payment order or communication amending or canceling a
9 payment order is that of the customer; or

10 (2) detecting error in the transmission or the content of the payment order or
11 communication.

12 (b) A security procedure may require the use of algorithms or other codes, identifying
13 words or numbers, encryption, call-back procedures, or similar security devices. Comparison of
14 a signature on a payment order or communication with an authorized specimen signature of the
15 customer is not by itself a security procedure.

16 Sec. 45.12.202. AUTHORIZED AND VERIFIED PAYMENT ORDERS. (a) A payment
17 order received by the receiving bank is the authorized order of the person identified as sender
18 if that person authorized the order or is otherwise bound by it under the law of agency.

19 (b) If a bank and its customer have agreed that the authenticity of payment orders issued
20 to the bank in the name of the customer as sender will be verified under a security procedure,
21 a payment order received by the receiving bank is effective as the order of the customer, whether
22 or not authorized, if

23 (1) the security procedure is a commercially reasonable method of providing
24 security against unauthorized payment orders; and

25 (2) the bank proves that it accepted the payment order in good faith and in
26 compliance with the security procedure and any written agreement or instruction of the customer
27 restricting acceptance of payment orders issued in the name of the customer; the bank is not
28 required to follow an instruction that violates a written agreement with the customer or notice
29 of which is not received at a time and in a manner affording the bank a reasonable opportunity
30 to act on it before the payment order is accepted.

31 (c) Commercial reasonableness of a security procedure is a question of law to be

1 determined by considering the wishes of the customer expressed to the bank, the circumstances
2 of the customer known to the bank, including the size, type, and frequency of payment orders
3 normally issued by the customer to the bank, alternative security procedures offered to the
4 customer, and security procedures in general use by customers and receiving banks similarly
5 situated. A security procedure is considered to be commercially reasonable if

6 (1) the security procedure was chosen by the customer after the bank offered, and
7 the customer refused, a security procedure that was commercially reasonable for that customer;
8 and

9 (2) the customer expressly agreed in writing to be bound by a payment order,
10 whether or not authorized, issued in its name and accepted by the bank in compliance with the
11 security procedure chosen by the customer.

12 (d) This section applies to amendments and cancellations of payment orders to the same
13 extent that it applies to payment orders.

14 (e) Except as provided in this section and in AS 45.12.203(a)(1), rights and obligations
15 arising under this section or AS 45.12.203 may not be varied by agreement.

16 (f) In this chapter, "sender" includes the customer in whose name a payment order is
17 issued if the order is the authorized order of the customer under (a) of this section, or it is
18 effective as the order of the customer under (b) of this section.

19 Sec. 45.12.203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT
20 ORDERS. (a) If an accepted payment order is not, under AS 45.12.202(a), an authorized order
21 of a customer identified as sender, but is effective as an order of the customer under
22 AS 45.12.202(b), the following rules apply:

23 (1) by express written agreement, the receiving bank may limit the extent to
24 which it is entitled to enforce or retain payment of the payment order;

25 (2) the receiving bank is not entitled to enforce or retain payment of the payment
26 order if the customer proves that the order was not caused, directly or indirectly, by a person

27 (A) entrusted at any time with duties to act for the customer with respect
28 to payment orders or the security procedure; or

29 (B) who obtained access to transmitting facilities of the customer or who
30 obtained, from a source controlled by the customer and without authority of the receiving
31 bank, information facilitating breach of the security procedure, regardless of how the

1 information was obtained or whether the customer was at fault; in this subparagraph,
2 "information" includes any access device, computer software, or the like.

3 (b) This section applies to amendments of payment orders to the same extent that it
4 applies to payment orders.

5 Sec. 45.12.204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT
6 WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER. (a) If a receiving bank accepts
7 a payment order issued in the name of its customer as sender and if the payment order is not
8 authorized and not effective as the order of the customer under AS 45.12.202, or not enforceable
9 in whole or in part against the customer under AS 45.12.203, the bank shall refund payment of
10 the payment order received from the customer to the extent that the bank is not entitled to
11 enforce payment and shall pay interest on the refundable amount calculated from the date the
12 bank received payment to the date of the refund. However, the customer is not entitled to
13 interest from the bank on the amount to be refunded if the customer fails to exercise ordinary
14 care to determine that the order was not authorized by the customer and to notify the bank of the
15 relevant facts within a reasonable time not exceeding 90 days after the date the customer received
16 notification from the bank that the order was accepted or that the customer's account was debited
17 with respect to the order. The bank is not entitled to recovery from the customer on account of
18 a failure by the customer to give notification as stated in this section.

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

22 Sec. 45.12.205. ERRONEOUS PAYMENT ORDERS. (a) If an accepted payment order
23 was transmitted under a security procedure for the detection of error and the payment order was
24 an erroneous payment order, the following rules apply:

25 (1) if the sender proves that the sender or a person acting on behalf of the sender
26 under AS 45.12.206 complied with the security procedure and that the error would have been
27 detected if the receiving bank had also complied, the sender is not obliged to pay the order to
28 the extent stated in (2) and (3) of this subsection;

29 (2) if the funds transfer is completed on the basis of an erroneous payment order
30 described in (d)(1) or (3) of this section, the sender is not obliged to pay the order and the
31 receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to

1 the extent allowed by the law governing mistake and restitution;

2 (3) if the funds transfer is completed on the basis of an erroneous payment order
3 described in (d)(2) of this section, the sender is not obliged to pay the order to the extent the
4 amount received by the beneficiary is greater than the amount intended by the sender; in that
5 case, the receiving bank is entitled to recover from the beneficiary the excess amount received
6 to the extent allowed by the law governing mistake and restitution.

7 (b) If the sender of an erroneous payment order is not obliged to pay all or part of the
8 order, and if the sender receives notification from the receiving bank that the order was accepted
9 by the bank or that the sender's account was debited with respect to the order, the sender has a
10 duty to exercise ordinary care, on the basis of information available to the sender, to discover the
11 error with respect to the order and to advise the bank of the relevant facts within a reasonable
12 time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank
13 proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the
14 bank proves it incurred as a result of the failure, but the liability of the sender may not exceed
15 the amount of the sender's order.

16 (c) This section applies to amendments to payment orders to the same extent it applies
17 to payment orders.

18 (d) In this section, "erroneous payment order" means a payment order that

19 (1) erroneously instructed payment to a beneficiary not intended by the sender;

20 (2) erroneously instructed payment in an amount greater than the amount intended
21 by the sender; or

22 (3) was an erroneously transmitted duplicate of a payment order previously sent
23 by the sender.

24 Sec. 45.12.206. TRANSMISSION OF PAYMENT ORDER THROUGH FUNDS-
25 TRANSFER OR OTHER COMMUNICATION SYSTEM. (a) If a payment order addressed to
26 a receiving bank is transmitted to a funds-transfer system or other third-party communication
27 system for transmittal to the bank, the system is considered to be an agent of the sender for the
28 purpose of transmitting the payment order to the bank. If there is a discrepancy between the
29 terms of the payment order transmitted to the system and the terms of the payment order
30 transmitted by the system to the bank, the terms of the payment order of the sender are those
31 transmitted by the system. This section does not apply to a funds-transfer system of the federal

1 reserve banks.

2 (b) This section applies to cancellations and amendments of payment orders to the same
3 extent that it applies to payment orders.

4 Sec. 45.12.207. MISDESCRIPTION OF BENEFICIARY. (a) Subject to (b) of this
5 section, if, in a payment order received by the beneficiary's bank, the name, bank account
6 number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person
7 or account, no person has rights as a beneficiary of the order, and acceptance of the order cannot
8 occur.

9 (b) If a payment order received by the beneficiary's bank identifies the beneficiary both
10 by name and by an identifying or bank account number and the name and number identify
11 different persons, the following rules apply:

12 (1) except as otherwise provided in (c) of this section, if the beneficiary's bank
13 does not know that the name and number refer to different persons, it may rely on the number
14 as the proper identification of the beneficiary of the order; the beneficiary's bank does not need
15 to determine whether the name and number refer to the same person;

16 (2) if the beneficiary's bank pays the person identified by name or knows that the
17 name and number identify different persons, no person has rights as beneficiary except the person
18 paid by the beneficiary's bank if that person was entitled to receive payment from the originator
19 of the funds transfer; if no person has rights as beneficiary, acceptance of the order cannot occur.

20 (c) If a payment order described in (b) of this section is accepted, if the originator's
21 payment order described the beneficiary inconsistently by name and number, and if the
22 beneficiary's bank pays the person identified by number as permitted by (b)(1) of this section,
23 the following rules apply:

24 (1) if the originator is a bank, the originator is obliged to pay its order;

25 (2) if the originator is not a bank and proves that the person identified by number
26 was not entitled to receive payment from the originator, the originator is not obliged to pay its
27 order unless the originator's bank proves that the originator, before acceptance of the originator's
28 order, had notice that payment of a payment order issued by the originator might be made by the
29 beneficiary's bank on the basis of an identifying or bank account number even if it identifies a
30 person different from the named beneficiary; proof of notice may be made by any admissible
31 evidence; the originator's bank satisfies the burden of proof if it proves that the originator, before

1 the payment order was accepted, signed a writing stating the information to which the notice
2 relates.

3 (d) In a case governed by (b)(1) of this section, if the beneficiary's bank rightfully pays
4 the person identified by number and that person was not entitled to receive payment from the
5 originator, the amount paid may be recovered from that person to the extent allowed by the law
6 governing mistake and restitution as follows:

7 (1) if the originator is obliged to pay its payment order as stated in (c) of this
8 section, the originator has the right to recover;

9 (2) if the originator is not a bank and is not obliged to pay its payment order, the
10 originator's bank has the right to recover.

11 Sec. 45.12.208. MISDESCRIPTION OF INTERMEDIARY BANK OR BENEFICIARY'S
12 BANK. (a) The following rules in this subsection apply to a payment order identifying an
13 intermediary bank or the beneficiary's bank only by an identifying number:

14 (1) the receiving bank may rely on the number as the proper identification of the
15 intermediary or beneficiary's bank and need not determine whether the number identifies a bank;

16 (2) the sender is obliged to compensate the receiving bank for any loss and
17 expenses incurred by the receiving bank as a result of its reliance on the number in executing or
18 attempting to execute the order.

19 (b) The following rules in this subsection apply to a payment order identifying an
20 intermediary bank or the beneficiary's bank both by name and an identifying number if the name
21 and number identify different persons:

22 (1) if the sender is a bank, the receiving bank may rely on the number as the
23 proper identification of the intermediary or beneficiary's bank if the receiving bank, when it
24 executes the sender's order, does not know that the name and number identify different persons;
25 the receiving bank does not need to determine whether the name and number refer to the same
26 person or whether the number refers to a bank; the sender is obliged to compensate the receiving
27 bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the
28 number in executing or attempting to execute the order;

29 (2) if the sender is not a bank and the receiving bank proves that the sender,
30 before the payment order was accepted, had notice that the receiving bank might rely on the
31 number as the proper identification of the intermediary or beneficiary's bank even if it identifies

1 a person different from the bank identified by name, the rights and obligations of the sender and
2 the receiving bank are governed by (b)(1) of this section, as though the sender were a bank;
3 proof of notice may be made by any admissible evidence; the receiving bank satisfies the burden
4 of proof if it proves that the sender, before the payment order was accepted, signed a writing
5 stating the information to which the notice relates;

6 (3) regardless of whether the sender is a bank, the receiving bank may rely on the
7 name as the proper identification of the intermediary or beneficiary's bank if the receiving bank,
8 at the time it executes the sender's order, does not know that the name and number identify
9 different persons; the receiving bank does not need to determine whether the name and number
10 refer to the same person;

11 (4) if the receiving bank knows that the name and number identify different
12 persons, reliance on either the name or the number in executing the sender's payment order is
13 a breach of the obligation stated in AS 45.12.302(a)(1).

14 Sec. 45.12.209. ACCEPTANCE OF PAYMENT ORDER. (a) Subject to (d) of this
15 section, a receiving bank other than the beneficiary's bank accepts a payment order when it
16 executes the order.

17 (b) Subject to (c) and (d) of this section, a beneficiary's bank accepts a payment order
18 at the earliest of the following times:

19 (1) when the bank

20 (A) pays the beneficiary as stated in AS 45.12.405(a) or (b); or

21 (B) notifies the beneficiary of receipt of the order or that the account of
22 the beneficiary has been credited with respect to the order unless the notice indicates that
23 the bank is rejecting the order or that funds with respect to the order may not be
24 withdrawn or used until receipt of payment from the sender of the order;

25 (2) when the bank receives payment of the entire amount of the sender's order
26 under AS 45.12.403(a)(1) or (2); or

27 (3) the opening of the next funds-transfer business day of the bank following the
28 payment date of the order if, at the opening of the next funds-transfer business day, the amount
29 of the sender's order is fully covered by a withdrawable credit balance in an authorized account
30 of the sender, or the bank has otherwise received full payment from the sender, unless the order
31 was rejected before the opening of the next funds-transfer business day, is rejected within one

hour after the opening of the next funds-transfer business day, or, if later, is rejected one hour after the opening of the next business day of the sender following the payment date; if notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day; if the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order may not occur before the order is received by the receiving bank. Acceptance does not occur under (b)(2) or (3) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled under AS 45.12.211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

Sec. 45.12.210. REJECTION OF PAYMENT ORDER. (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection does not need to use particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, means

(1) complying with the agreement are reasonable; and

(2) not complying with the agreement are not reasonable unless significant delay in receipt of the notice did not result from the use of the noncomplying means.

1 (b) This subsection applies if a receiving bank other than the beneficiary's bank fails to
2 execute a payment order despite the existence on the execution date of a withdrawable credit
3 balance in an authorized account of the sender sufficient to cover the order. If the sender does
4 not receive notice of rejection of the order on the execution date and the authorized account of
5 the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount
6 of the order for the number of days elapsing after the execution date to the earlier of the day the
7 order is canceled under AS 45.12.211(e) or the day the sender receives notice or learns that the
8 order was not executed, counting the final day of the period as an elapsed day. If the
9 withdrawable credit balance during that period falls below the amount of the order, the amount
10 of interest is reduced accordingly.

11 (c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are
12 considered rejected at the time the bank suspends payments.

13 (d) Acceptance of a payment order precludes a later rejection of the order. Rejection of
14 a payment order precludes a later acceptance of the order.

15 Sec. 45.12.211. CANCELLATION AND AMENDMENT OF PAYMENT ORDER. (a)
16 A communication of the sender of a payment order canceling or amending the order may be
17 transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is
18 in effect between the sender and the receiving bank, the communication is not effective to cancel
19 or amend the order unless the communication is verified under the security procedure or the bank
20 agrees to the cancellation or amendment.

21 (b) Subject to (a) of this section, a communication by the sender canceling or amending
22 a payment order is effective to cancel or amend the order if notice of the communication is
23 received at a time and in a manner affording the receiving bank a reasonable opportunity to act
24 on the communication before the bank accepts the payment order.

25 (c) After a payment order has been accepted, cancellation or amendment of the order is
26 not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation
27 or amendment without agreement of the bank. The following rules also apply:

28 (1) with respect to a payment order accepted by a receiving bank other than the
29 beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation
30 or amendment of the payment order issued by the receiving bank is also made;

31 (2) with respect to a payment order accepted by the beneficiary's bank,

1 cancellation or amendment is not effective unless the order was issued in execution of an
2 unauthorized payment order, or because of a mistake by a sender in the funds transfer, if the
3 mistake resulted in the issuance of a payment order that

4 (A) is a duplicate of a payment order previously issued by the sender;

5 (B) orders payment to a beneficiary not entitled to receive payment from
6 the originator; or

7 (C) orders payment in an amount greater than the amount the beneficiary
8 was entitled to receive from the originator.

9 (d) Under (c)(2) of this section, if the payment order is canceled or amended, the
10 beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary
11 to the extent allowed by the law governing mistake and restitution.

12 (e) An unaccepted payment order is canceled by operation of law at the close of the fifth
13 funds-transfer business day of the receiving bank after the execution date or payment date of the
14 order.

15 (f) A canceled payment order cannot be accepted. If an accepted payment order is
16 canceled, the acceptance is nullified and no person has a right or obligation based on the
17 acceptance. Amendment of a payment order is considered to be cancellation of the original
18 order at the time of amendment and issue of a new payment order in the amended form at the
19 same time.

20 (g) Unless otherwise provided in an agreement of the parties or in a funds-transfer system
21 rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment
22 of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or
23 amendment without the banks' agreement, the sender, whether or not cancellation or amendment
24 is effective, is liable to the bank for any loss and expenses, including reasonable attorney fees,
25 incurred by the bank as a result of the cancellation or amendment or attempted cancellation or
26 amendment.

27 (h) A payment order is not revoked by the death or legal incapacity of the sender unless
28 the receiving bank knows of the death or of an adjudication of incapacity by a court of competent
29 jurisdiction and has reasonable opportunity to act before acceptance of the order.

30 (i) A funds-transfer system rule is not effective to the extent that it conflicts with (c)(2)
31 or (d) of this section.

1 Sec. 45.12.212. **LIABILITY AND DUTY OF RECEIVING BANK REGARDING**
2 **UNACCEPTED PAYMENT ORDER.** If a receiving bank fails to accept a payment order that
3 it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the
4 extent provided in the agreement or in this chapter, but does not otherwise have a duty to accept
5 a payment order or, before acceptance, to take action, or refrain from taking action, with respect
6 to the order except as provided in this chapter or by express agreement. Liability based on
7 acceptance arises only when acceptance occurs as stated in AS 45.12.209, and liability is limited
8 to liability provided in this chapter. A receiving bank is not the agent of the sender or
9 beneficiary of the payment order it accepts, or of another party to the funds transfer, and the bank
10 does not owe a duty to a party to the funds transfer except as provided in this chapter or by
11 express agreement.

12 **ARTICLE 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK.**

13 Sec. 45.12.301. **EXECUTION AND EXECUTION DATE.** (a) A payment order is
14 executed by the receiving bank when it issues a payment order intended to carry out the payment
15 order received by the bank. A payment order received by the beneficiary's bank can be accepted
16 but cannot be executed.

17 (b) "Execution date" of a payment order means the day on which the receiving bank may
18 properly issue a payment order in execution of the sender's order. The execution date may be
19 determined by instruction of the sender but cannot be earlier than the day the order is received
20 and, unless otherwise determined, is the day the order is received. If the sender's instruction
21 states a payment date, the execution date is the payment date or an earlier date on which
22 execution is reasonably necessary to allow payment to the beneficiary on the payment date.

23 Sec. 45.12.302. **OBLIGATIONS OF RECEIVING BANK IN EXECUTION OF**
24 **PAYMENT ORDER.** (a) Except as provided in (b) - (d) of this section, if the receiving bank
25 accepts a payment order under AS 45.12.209(a), the bank has the following obligations in
26 executing the order:

27 (1) the receiving bank is obliged to issue, on the execution date, a payment order
28 complying with the sender's order and to follow the sender's instructions concerning

29 (A) an intermediary bank or funds-transfer system to be used in carrying
30 out the funds transfer; or

31 (B) the means by which payment orders are to be transmitted in the funds

1 transfer; if the originator's bank issues a payment order to an intermediary bank, the
2 originator's bank is obliged to instruct the intermediary bank according to the instruction
3 of the originator; an intermediary bank in the funds transfer is similarly bound by an
4 instruction given to it by the sender of the payment order it accepts;

5 (2) if the sender's instruction states that the funds transfer is to be carried out
6 telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried
7 out by the most expeditious means, the receiving bank is obliged to transmit its payment order
8 by the most expeditious available means, and to instruct an intermediary bank accordingly; if a
9 sender's instruction states a payment date, the receiving bank is obliged to transmit its payment
10 order at a time and by means reasonably necessary to allow payment to the beneficiary on the
11 payment date or as soon after that date as is feasible.

12 (b) Unless otherwise instructed, a receiving bank executing a payment order may

13 (1) use any funds-transfer system if use of that system is reasonable in the
14 circumstances; and

15 (2) issue a payment order to the beneficiary's bank or to an intermediary bank
16 through which a payment order conforming to the sender's order can expeditiously be issued to
17 the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the
18 intermediary bank; a receiving bank is not required to follow an instruction of the sender
19 designating a funds-transfer system to be used in carrying out the funds transfer if the receiving
20 bank, in good faith, determines that it is not feasible to follow the instruction or that following
21 the instruction would unduly delay completion of the funds transfer.

22 (c) Unless (a)(2) of this section applies or the receiving bank is otherwise instructed, the
23 bank may execute a payment order by transmitting its payment order by first class mail or by any
24 means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's
25 order by transmitting its payment order by a particular means, the receiving bank may issue its
26 payment order by the means stated or by means as expeditious as the means stated.

27 (d) Unless instructed by the sender,

28 (1) the receiving bank may not obtain payment of its charges for services and
29 expenses in connection with the execution of the sender's order by issuing a payment order in
30 an amount equal to the amount of the sender's order less the amount of the charges; and

31 (2) may not instruct a subsequent receiving bank to obtain payment of its charges

1 in the same manner.

2 Sec. 45.12.303. ERRONEOUS EXECUTION OF PAYMENT ORDER. (a) If a
3 receiving bank executes the payment order of the sender by issuing a payment order in an
4 amount greater than the amount of the sender's order, or if a receiving bank issues a payment
5 order in execution of the sender's order and then issues a duplicate order, the bank is entitled to
6 payment of the amount of the sender's order under AS 45.12.402(c) if that subsection is
7 otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order
8 the excess payment received to the extent allowed by the law governing mistake and restitution.

9 (b) A receiving bank that executes the payment order of the sender by issuing a payment
10 order in an amount less than the amount of the sender's order is entitled to payment of the
11 amount of the sender's order under AS 45.12.402(c) if that subsection is otherwise satisfied and
12 the bank corrects its mistake by issuing an additional payment order for the benefit of the
13 beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order
14 is entitled to receive or retain payment from the sender of the order it accepted only to the extent
15 of the amount of the erroneous order. This subsection does not apply if the receiving bank
16 executes the sender's payment order by issuing a payment order in an amount less than the
17 amount of the sender's order for the purpose of obtaining payment of its charges for services and
18 expenses pursuant to instruction of the sender.

19 (c) If a receiving bank executes the payment order of the sender by issuing a payment
20 order to a beneficiary different from the beneficiary of the sender's order and the funds transfer
21 is completed on the basis of that error, the sender of the payment order that was erroneously
22 executed and all previous senders in the funds transfer are not obliged to pay the payment orders
23 they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the
24 order the payment received to the extent allowed by the law governing mistake and restitution.

25 Sec. 45.12.304. DUTY OF SENDER TO REPORT ERRONEOUSLY EXECUTED
26 PAYMENT ORDER. If the sender of a payment order that is erroneously executed as stated in
27 AS 45.12.303 receives notification from the receiving bank that the order was executed or that
28 the sender's account was debited with respect to the order, the sender has a duty to exercise
29 ordinary care to determine, on the basis of information available to the sender, that the order was
30 erroneously executed and to notify the bank of the relevant facts within a reasonable time not
31 exceeding 90 days after the notification from the bank was received by the sender. If the sender

1 fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to
2 the sender under AS 45.12.402(d) for the period before the bank learns of the execution error.
3 The bank is not entitled to any recovery from the sender on account of a failure by the sender
4 to perform the duty stated in this section.

5 Sec. 45.12.305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR FAILURE
6 TO EXECUTE PAYMENT ORDER. (a) If a funds transfer is completed but execution of a
7 payment order by the receiving bank in breach of AS 45.12.302 results in delay in payment to
8 the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of
9 the funds transfer for the period of delay caused by the improper execution. Except as provided
10 in (c) of this section, additional damages are not recoverable.

11 (b) If execution of a payment order by a receiving bank in breach of AS 45.12.302
12 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by
13 the originator, or issuance of a payment order that does not comply with the terms of the
14 payment order of the originator, the bank is liable to the originator for its expenses in the funds
15 transfer and for incidental expenses and interest losses, to the extent not covered by (a) of this
16 section, resulting from the improper execution. Except as provided in (c) of this section,
17 additional damages are not recoverable.

18 (c) In addition to the amounts payable under (a) and (b) of this section, damages,
19 including consequential damages, are recoverable to the extent provided in an express written
20 agreement of the receiving bank.

21 (d) If a receiving bank fails to execute a payment order it was obliged by express
22 agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction
23 and for incidental expenses and interest losses resulting from the failure to execute. Additional
24 damages, including consequential damages, are recoverable to the extent provided in an express
25 written agreement of the receiving bank, but are not otherwise recoverable.

26 (e) Reasonable attorney fees are recoverable if demand for compensation under (a) or (b)
27 of this section is made and refused before an action is brought on the claim. If a claim is made
28 for breach of an agreement under (d) of this section and the agreement does not provide for
29 damages, reasonable attorney fees are recoverable if demand for compensation under (d) of this
30 section is made and refused before an action is brought on the claim.

31 (f) Except as stated in this section, the liability of a receiving bank under (a) and (b) of

1 this section may not be varied by agreement.

2 **ARTICLE 4. PAYMENT.**

3 **Sec. 45.12.401. PAYMENT DATE.** "Payment date" of a payment order means the day
4 on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The
5 payment date may be determined by instruction of the sender but cannot be earlier than the day
6 the order is received by the beneficiary's bank and, unless otherwise determined, is the day the
7 order is received by the beneficiary's bank.

8 **Sec. 45.12.402. OBLIGATION OF SENDER TO PAY RECEIVING BANK.** (a) This
9 section is subject to AS 45.12.205 and 45.12.207.

10 (b) With respect to a payment order issued to the beneficiary's bank, acceptance of the
11 order by the bank obliges the sender to pay the bank the amount of the order, but payment is not
12 due until the payment date of the order.

13 (c) With respect to a payment order issued to a receiving bank other than the
14 beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the
15 bank the amount of the sender's order. Payment by the sender is not due until the execution date
16 of the sender's order. The obligation of that sender to pay its payment order is excused if the
17 funds transfer is not completed by acceptance by the beneficiary's bank of a payment order
18 instructing payment to the beneficiary of that sender's payment order. This subsection is subject
19 to (e) of this section and to AS 45.12.303.

20 (d) If the sender of a payment order pays the order and was not obliged to pay all or part
21 of the amount paid, the bank receiving payment is obliged to refund payment to the extent the
22 sender was not obliged to pay. Except as provided in AS 45.12.204 and 45.12.304, interest is
23 payable on the refundable amount from the date of payment.

24 (e) If a funds transfer is not completed as stated in (c) of this section and an intermediary
25 bank is obliged to refund payment as stated in (d) of this section but is unable to do so because
26 not permitted by applicable law or because the bank suspends payments, a sender in the funds
27 transfer that executed a payment order in compliance with an instruction, as stated in
28 AS 45.12.302(a)(1), to route the funds transfer through that intermediary bank is entitled to
29 receive or retain payment from the sender of the payment order that it accepted. The first sender
30 in the funds transfer that issued an instruction requiring routing through that intermediary bank
31 is subrogated to the right of the bank that paid the intermediary bank to refund as stated in (d)

1 of this section.

2 (f) The right of the sender of a payment order to be excused from the obligation to pay
3 the order as stated in (c) of this section or to receive refund under (d) of this section may not be
4 varied by agreement.

5 Sec. 45.12.403. PAYMENT BY SENDER TO RECEIVING BANK. (a) Payment of the
6 sender's obligation under AS 45.12.402 to pay the receiving bank occurs as follows:

7 (1) if the sender is a bank, payment occurs when the receiving bank receives final
8 settlement of the obligation through a federal reserve bank or through a funds-transfer system;

9 (2) if the sender is a bank and the sender

10 (A) credited an account of the receiving bank with the sender; or

11 (B) caused an account of the receiving bank in another bank to be
12 credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight
13 of the day on which the credit is withdrawable and the receiving bank learns of that fact;

14 (3) if the receiving bank debits an account of the sender with the receiving bank,
15 payment occurs when the debit is made to the extent that the debit is covered by a withdrawable
16 credit balance in the account.

17 (b) If the sender and receiving bank are members of a funds-transfer system that nets
18 obligations multilaterally among participants, the receiving bank receives final settlement when
19 settlement is complete in accordance with the rules of the system. The obligation of the sender
20 to pay the amount of a payment order transmitted through the funds-transfer system may be
21 satisfied, to the extent permitted by the rules of the system, by setting off and applying against
22 the sender's obligation the right of the sender to receive payment from the receiving bank of the
23 amount of any other payment order transmitted to the sender by the receiving bank through the
24 funds-transfer system. The aggregate balance of obligations owed by each sender to each
25 receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules
26 of the system, by setting off and applying against that balance the aggregate balance of
27 obligations owed to the sender by other members of the system. The aggregate balance is
28 determined after the right of setoff stated in the second sentence of this subsection has been
29 exercised.

30 (c) If two banks transmit payment orders to each other under an agreement that
31 settlement of the obligations of each bank to the other under AS 45.12.402 will be made at the

1 end of the day or other period, the total amount owed with respect to all orders transmitted by
2 one bank shall be set off against the total amount owed with respect to all orders transmitted by
3 the other bank. To the extent of the setoff, each bank has made payment to the other.

4 (d) In a case not covered under (a) of this section, the time when payment of the sender's
5 obligation under AS 45.12.402(b) or (c) occurs is governed by applicable principles of law that
6 determine when an obligation is satisfied.

7 Sec. 45.12.404. OBLIGATION OF BENEFICIARY'S BANK TO PAY AND GIVE
8 NOTICE TO BENEFICIARY. (a) Subject to AS 45.12.211(f) and 45.12.405(d) and (e), if a
9 beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order
10 to the beneficiary of the order. Payment is due on the payment date of the order, but if
11 acceptance occurs on the payment date after the close of the funds-transfer business day of the
12 bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after
13 demand by the beneficiary and receipt of notice of particular circumstances that will give rise to
14 consequential damages as a result of nonpayment, the beneficiary may recover damages resulting
15 from the refusal to pay to the extent that the bank had notice of the damages, unless the bank
16 proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary
17 to payment.

18 (b) If a payment order accepted by the beneficiary's bank instructs payment to an account
19 of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before
20 midnight of the next funds-transfer business day following the payment date. If the payment
21 order does not instruct payment to an account of the beneficiary, the bank is required to notify
22 the beneficiary only if notice is required by the order. Notice may be given by first class mail
23 or other means reasonable in the circumstances. If the bank fails to give the required notice, the
24 bank is obliged to pay interest to the beneficiary on the amount of the payment order from the
25 day notice should have been given until the day the beneficiary learned of receipt of the payment
26 order by the bank. Other damages are not recoverable. Reasonable attorney fees are also
27 recoverable if demand for interest is made and refused before an action is brought on the claim.

28 (c) The right of a beneficiary to receive payment and damages as stated in (a) of this
29 section may not be varied by agreement or a funds-transfer system rule. The right of a
30 beneficiary to be notified as stated in (b) of this section may be varied by agreement of the
31 beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before

1 initiation of the funds transfer.

2 Sec. 45.12.405. PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY. (a) If
3 the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the
4 bank's obligation under AS 45.12.404(a) occurs when and to the extent that

- 5 (1) the beneficiary is notified of the right to withdraw the credit;
6 (2) the bank lawfully applies the credit to a debt of the beneficiary; or
7 (3) funds with respect to the order are otherwise made available to the beneficiary
8 by the bank.

9 (b) If the beneficiary's bank does not credit an account of the beneficiary of a payment
10 order, the time when payment of the bank's obligation under AS 45.12.404(a) occurs is governed
11 by principles of law that determine when an obligation is satisfied.

12 (c) Except as stated in (d) and (e) of this section, if the beneficiary's bank pays the
13 beneficiary of a payment order under a condition to payment or agreement of the beneficiary
14 giving the bank the right to recover payment from the beneficiary if the bank does not receive
15 payment of the order, the condition to payment or agreement is not enforceable.

16 (d) A funds-transfer system rule may provide that payments made to beneficiaries of
17 funds transfers made through the system are provisional until receipt of payment by the
18 beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment
19 that is provisional under the rule is entitled to refund from the beneficiary if the rule requires that
20 both the beneficiary and the originator be given notice of the provisional nature of the payment
21 before the funds transfer is initiated, if the beneficiary, the beneficiary's bank, and the
22 originator's bank agreed to be bound by the rule, and if the beneficiary's bank did not receive
23 payment of the payment order that it accepted. If the beneficiary is obliged to refund payment
24 to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified
25 and a payment by the originator of the funds transfer to the beneficiary does not occur under
26 AS 45.12.406.

27 (e) This subsection applies to a funds transfer that includes a payment order transmitted
28 over a funds-transfer system that nets obligations multilaterally among participants and has in
29 effect a loss-sharing agreement among participants for the purpose of providing funds necessary
30 to complete settlement of the obligations of one or more participants that do not meet their
31 settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order

1 and the system fails to complete settlement under its rules with respect to any payment order in
2 the funds transfer,

3 (1) the acceptance by the beneficiary's bank is nullified and no person has a right
4 or obligation based on the acceptance;

5 (2) the beneficiary's bank is entitled to recover payment from the beneficiary;

6 (3) payment by the originator to the beneficiary does not occur under
7 AS 45.12.406; and

8 (4) subject to AS 45.12.402(e), each sender in the funds transfer is excused from
9 its obligation to pay its payment order under AS 45.12.402(c) because the funds transfer has not
10 been completed.

11 Sec. 45.12.406. PAYMENT BY ORIGINATOR TO BENEFICIARY; DISCHARGE OF
12 UNDERLYING OBLIGATION. (a) Subject to AS 45.12.211(f) and 45.12.405(d) and (e), the
13 originator of a funds transfer pays the beneficiary of the originator's payment order

14 (1) at the time a payment order for the benefit of the beneficiary is accepted by
15 the beneficiary's bank in the funds transfer; and

16 (2) in an amount equal to the amount of the order accepted by the beneficiary's
17 bank, but not more than the amount of the originator's order.

18 (b) If payment under (a) of this section is made to satisfy an obligation, the obligation
19 is discharged to the same extent discharge would result from payment to the beneficiary of the
20 same amount in money, unless

21 (1) the payment under (a) of this section was made by a means prohibited by the
22 contract of the beneficiary with respect to the obligation;

23 (2) the beneficiary, within a reasonable time after receiving notice of receipt of
24 the order by the beneficiary's bank, notifies the originator of the beneficiary's refusal of the
25 payment;

26 (3) funds with respect to the order were not withdrawn by the beneficiary or
27 applied to a debt of the beneficiary; and

28 (4) the beneficiary would suffer a loss that could reasonably have been avoided
29 if payment had been made by a means complying with the contract.

30 (c) If payment by the originator does not result in discharge under this section, the
31 originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's

1 bank under AS 45.12.404(a).

2 (d) For the purpose of determining whether discharge of an obligation occurs under (b)
3 of this section, if the beneficiary's bank accepts a payment order in an amount equal to the
4 amount of the originator's payment order less charges of one or more receiving banks in the
5 funds transfer, payment to the beneficiary is considered to be in the amount of the originator's
6 order unless upon demand by the beneficiary the originator does not pay the beneficiary the
7 amount of the deducted charges.

8 (e) Rights of the originator or of the beneficiary of a funds transfer under this section
9 may be varied only by agreement of the originator and the beneficiary.

10 ARTICLE 5. MISCELLANEOUS PROVISIONS.

11 Sec. 45.12.501. VARIATION BY AGREEMENT AND EFFECT OF FUNDS-
12 TRANSFER SYSTEM RULE. (a) Except as otherwise provided in this chapter, the rights and
13 obligations of a party to a funds transfer may be varied by agreement of the affected party.

14 (b) Except as otherwise provided in this chapter, a funds-transfer system rule governing
15 rights and obligations between participating banks using the system may be effective even if the
16 rule conflicts with this chapter and indirectly affects another party to the funds transfer who does
17 not consent to the rule. A funds-transfer system rule may also govern rights and obligations of
18 parties other than participating banks using the system, to the extent stated in AS 45.12.404(c),
19 45.12.405(d), and 45.12.507(c) - (d). In this subsection, "funds-transfer system rule" means

20 (1) a rule of an association of banks governing transmission of payment orders
21 by means of a funds-transfer system of the association or rights and obligations with respect to
22 those orders; or

23 (2) a rule of an association of banks, to the extent the rule governs rights and
24 obligations between banks that are parties to a funds transfer in which a federal reserve bank,
25 acting as an intermediary bank, sends a payment order to the beneficiary's bank.

26 Sec. 45.12.502. CREDITOR PROCESS SERVED ON RECEIVING BANK; SETOFF
27 BY BENEFICIARY'S BANK. (a) This subsection applies to creditor process with respect to
28 an authorized account of the sender of a payment order if the creditor process is served on the
29 receiving bank. For the purpose of determining rights with respect to the creditor process, if the
30 receiving bank accepts the payment order the balance in the authorized account is considered to
31 be reduced by the amount of the payment order to the extent that the bank did not otherwise

1 receive payment of the order, unless the creditor process is served at a time and in a manner
2 affording the bank a reasonable opportunity to act on it before the bank accepts the payment
3 order.

4 (b) If a beneficiary's bank has received a payment order for payment to the beneficiary's
5 account in the bank, the following rules apply:

6 (1) the bank may credit the beneficiary's account; the amount credited may be
7 set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy
8 creditor process served on the bank with respect to the account;

9 (2) the bank may credit the beneficiary's account and allow withdrawal of the
10 amount credited unless creditor process with respect to the account is served at a time and in a
11 manner affording the bank a reasonable opportunity to act to prevent withdrawal;

12 (3) if creditor process with respect to the beneficiary's account has been served
13 and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment
14 order except for a reason unrelated to the service of process.

15 (c) Creditor process with respect to a payment by the originator to the beneficiary in
16 accordance with a funds transfer may be served only on the beneficiary's bank with respect to
17 the debt owed by that bank to the beneficiary. Another bank served with the creditor process is
18 not obliged to act with respect to the process.

19 (d) In this section, "creditor process" means levy, attachment, garnishment, notice of lien,
20 sequestration, or similar process issued by or on behalf of a creditor or other claimant with
21 respect to an account.

22 Sec. 45.12.503. INJUNCTION OR RESTRAINING ORDER WITH RESPECT TO
23 FUNDS TRANSFER. (a) For proper cause and in compliance with applicable law, a court may
24 restrain

25 (1) a person from issuing a payment order to initiate a funds transfer;

26 (2) an originator's bank from executing the payment order of the originator; or

27 (3) the beneficiary's bank from releasing funds to the beneficiary or the
28 beneficiary from withdrawing the funds.

29 (b) Except as provided in (a) of this section, a court may not otherwise restrain a person
30 from issuing a payment order, paying or receiving payment of a payment order, or otherwise
31 acting with respect to a funds transfer.

1 Sec. 45.12.504. ORDER IN WHICH ITEMS AND PAYMENT ORDERS MAY BE
2 CHARGED TO ACCOUNT; ORDER OF WITHDRAWALS FROM ACCOUNT. (a) If a
3 receiving bank has received more than one payment order of the sender or one or more payment
4 orders and other items that are payable from the sender's account, the bank may charge the
5 sender's account with respect to the various orders and items in any sequence.

6 (b) In determining whether a credit to an account has been withdrawn by the holder of
7 the account or applied to a debt of the holder of the account, credits first made to the account
8 are first withdrawn or applied.

9 Sec. 45.12.505. PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S
10 ACCOUNT. If a receiving bank has received payment from its customer with respect to a
11 payment order issued in the name of the customer as sender and accepted by the bank, and the
12 customer received notification reasonably identifying the order, the customer is precluded from
13 asserting that the bank is not entitled to retain the payment unless the customer notifies the bank
14 of the customer's objection to the payment within one year after the notification was received
15 by the customer.

16 Sec. 45.12.506. RATE OF INTEREST. (a) If, under this chapter, a receiving bank is
17 obliged to pay interest with respect to a payment order issued to the bank, the amount payable
18 may be determined

19 (1) by agreement of the sender and receiving bank; or

20 (2) by a funds-transfer system rule if the payment order is transmitted through a
21 funds-transfer system.

22 (b) If the amount of interest is not determined by an agreement or rule as stated in (a)
23 of this section, the amount is calculated by multiplying the applicable federal funds rate by the
24 amount on which interest is payable, and then multiplying the product by the number of days for
25 which interest is payable. The applicable federal funds rate is the average of the federal funds
26 rates published by the Federal Reserve Bank of New York for each of the days for which interest
27 is payable divided by 360. The federal funds rate for a day on which a published rate is not
28 available is the same as the published rate for the next preceding day for which there is a
29 published rate. If a receiving bank that accepted a payment order is required to refund payment
30 to the sender of the order because the funds transfer was not completed, but the failure to
31 complete was not due to any fault by the bank, the interest payable is reduced by a percentage

1 equal to the reserve requirement on deposits of the receiving bank.

2 Sec. 45.12.507. CHOICE OF LAW. (a) The following rules apply unless the affected
3 parties otherwise agree or (c) - (d) of this section applies:

4 (1) the rights and obligations between the sender of a payment order and the
5 receiving bank are governed by the law of the jurisdiction in which the receiving bank is located;

6 (2) the rights and obligations between the beneficiary's bank and the beneficiary
7 are governed by the law of the jurisdiction in which the beneficiary's bank is located;

8 (3) the issue of when payment is made under a funds transfer by the originator
9 to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is
10 located.

11 (b) If the parties described in each paragraph of (a) of this section have made an
12 agreement selecting the law of a particular jurisdiction to govern rights and obligations between
13 each other, the law of that jurisdiction governs those rights and obligations, whether or not the
14 payment order or the funds transfer bears a reasonable relation to that jurisdiction.

15 (c) A funds-transfer system rule may select the law of a particular jurisdiction to govern

16 (1) rights and obligations between participating banks with respect to payment
17 orders transmitted or processed through the system; or

18 (2) the rights and obligations of some or all parties to a funds transfer if a part
19 of the funds transfer is carried out by means of the system.

20 (d) A choice of law made under (c)(1) of this section is binding on participating banks.
21 A choice of law made under (c)(2) of this section is binding on the originator, other sender, or
22 a receiving bank having notice that the funds-transfer system might be used in the funds transfer
23 and of the choice of law by the system when the originator, other sender, or receiving bank
24 issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice
25 of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer
26 system might be used in the funds transfer and of the choice of law by the system. The law of
27 a jurisdiction selected under this subsection or (c) of this section may govern, whether or not that
28 law bears a reasonable relation to the matter in issue.

29 (e) In the event of inconsistency between an agreement under (b) of this section and a
30 choice-of-law rule under (c) - (d) of this section, the agreement under (b) of this section prevails.

31 (f) If a funds transfer is made by use of more than one funds-transfer system and there

1 is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by
2 the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

3 * Sec. 13. REVISOR CHANGES. The revisor of statutes shall update the citations to the state's
4 Uniform Commercial Code throughout the state statutes to reflect the changes made by this Act.

5 * Sec. 14. APPLICABILITY. (a) AS 45.12, enacted by sec. 12 of this Act, and the other provisions
6 of this Act that apply to a funds transfer do not apply to a funds transfer that is begun before January 1,
7 1993.

8 (b) A cause of action that accrued under AS 45.01 - AS 45.09 before January 1, 1993, is
9 governed by AS 45.01 - AS 45.09 as those chapters existed before January 1, 1993.

10 * Sec. 15. AMENDMENT OF COURT RULES. (a) AS 45.12.305(e), enacted by sec. 12 of this
11 Act, amends Alaska Rule of Civil Procedure 82 by changing the criteria for the award of attorney fees
12 in certain circumstances.

13 (b) AS 45.12.404(b), enacted by sec. 12 of this Act, amends Alaska Rule of Civil Procedure 82
14 by changing the criteria for the award of attorney fees in certain circumstances.

15 * Sec. 16. This Act takes effect January 1, 1993.