

## SENATE BILL NO. 112

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR KERTTULA

Introduced: 2/11/93  
 Referred: L&C, JUD, FIN

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the Uniform Commercial Code; amending Alaska Rules of  
 2 Civil Procedure 8 and 82, and Alaska Rule of Evidence 402; and providing for  
 3 an effective date."

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

5 \* Section 1. AS 45.01.101 is amended to read:

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

9 \* Sec. 2. AS 45.01.102 is amended to read:

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

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

14 (1) to simplify, clarify, and modernize the law governing commercial

1 7) transactions;

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

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

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

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

14 (e) In the code the rules of construction in AS 01.10.050(b) - (c) apply  
15 [AS 45.01 - AS 45.09], unless the context otherwise requires [,

16 (1) WORDS IN THE SINGULAR NUMBER INCLUDE THE  
17 PLURAL, AND IN THE PLURAL INCLUDE THE SINGULAR;

18 (2) WORDS OF THE MASCULINE GENDER INCLUDE THE  
19 FEMININE AND THE NEUTER, AND WHEN THE SENSE SO INDICATES  
20 WORDS OF THE NEUTER GENDER MAY REFER TO ANY GENDER].

21 \* Sec. 3. AS 45.01.103 is amended to read:

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

28 \* Sec. 4. AS 45.01.105 is amended to read:

29 Sec. 45.01.105. TERRITORIAL APPLICATION OF THE ACT; PARTIES'  
30 POWER TO CHOOSE APPLICABLE LAW. (a) Except as provided in this section,  
31 when a transaction bears a reasonable relation to this state and also to another state or

1 nation, the parties may agree that the law either of this state or of the other state or  
2 nation shall govern their rights and duties. Failing this agreement, the code applies  
3 [AS 45.01 - AS 45.09 APPLY] to transactions bearing an appropriate relation to this  
4 state.

5 (b) Where one of the following provisions of the code [AS 45.01 - AS 45.09]  
6 specifies the applicable law, that provision governs and a contrary agreement is  
7 effective only to the extent permitted by the law, including the conflict of laws rules,  
8 so specified:

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

10 (2) AS 45.04.102 (applicability [(AS 45.02.402) APPLICABILITY]  
11 of the chapter [ARTICLE] on bank deposits and collections);

12 (3) AS 45.08.106 (applicability [(AS 45.04.102) BULK TRANSFERS  
13 SUBJECT TO THE ARTICLE ON BULK TRANSFERS (AS 45.06.102)  
14 APPLICABILITY] of the chapter [ARTICLE] on investment securities);

15 (4) AS 45.09.103 (perfection [(AS 45.08.106) PERFECTION]  
16 provisions of the chapter [ARTICLE] on secured transactions);

17 (5) AS 45.12.105 and 45.12.106 (applicability of the chapter on  
18 leases) [(AS 45.09.103)].

19 \* Sec. 5. AS 45.01.106 is amended to read:

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

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

29 \* Sec. 6. AS 45.01.108 is amended to read:

30 Sec. 45.01.108. SEVERABILITY. If a provision or clause of the code  
31 [AS 45.01 - AS 45.09] or application of the clause or provision to a person or

1 circumstances is held invalid, the invalidity does not affect other provisions or  
2 applications of the code [AS 45.01 - AS 45.09] that can be given effect without the  
3 invalid provision or application, and to this end the provisions of the code [AS 45.01 -  
4 AS 45.09] are severable.

5 \* Sec. 7. AS 45.01.109 is amended to read:

6 Sec. 45.01.109. SECTION HEADINGS [CAPTIONS]. Notwithstanding  
7 AS 01.05.006 and 01.05.031(b)(2), section headings [SECTION CAPTIONS] are  
8 parts of the code [AS 45.01 - AS 45.09].

9 \* Sec. 8. AS 45.01.201 is amended to read:

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

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

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

18 (3) "agreement" means the bargain of the parties in fact as found in  
19 their language or by implication from other circumstances including course of dealing  
20 or usage of trade or course of performance as provided in AS 45.01 - AS 45.09  
21 [AS 45.01 - AS 45.09] (AS 45.01.205 and AS 45.02.208); whether or not an  
22 agreement has legal consequences is determined by the provisions of AS 45.01 -  
23 AS 45.12 [AS 45.01 - AS 45.09], if applicable; otherwise by the law of contracts  
24 (AS 45.01.103) (compare "contract") [(COMPARE "CONTRACT")];

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

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

28 (6) "bill of lading" means a document evidencing the receipt of goods  
29 for shipment issued by a person engaged in the business of transporting or forwarding  
30 goods, and includes an airbill; "airbill" means a document serving for air transportation  
31 as a bill of lading does for marine or rail transportation, and includes an air

1 consignment note or air waybill;

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

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

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

16 (10) "code" means AS 45.01 - AS 45.09 and AS 45.12;

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

23 (12) [(11)] "contract" means the total legal obligation that results from  
24 the parties' agreement as affected by the code [AS 45.01 - AS 45.09] and any other  
25 applicable rules of law (compare "agreement") [(COMPARE "AGREEMENT")];

26 (13) [(12)] "creditor" includes a general creditor, a secured creditor, a  
27 lien creditor, and any representative of creditors, including an assignee for the benefit  
28 of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or  
29 administrator of an insolvent debtor's or assignor's estate;

30 (14) [(13)] "defendant" includes a person in the position of defendant  
31 in a cross action or counterclaim;

1                   (15) [(14)] "delivery" with respect to instruments, documents of title,  
2 chattel paper, or certificated securities means voluntary transfer of possession;

3                   (16) [(15)] "document of title" includes bill of lading, dock warrant,  
4 dock receipt, warehouse receipt or order for the delivery of goods, and also any other  
5 document which in the regular course of business or financing is treated as adequately  
6 evidencing that the person in possession of it is entitled to receive, hold, and dispose  
7 of the document and the goods it covers; to be a document of title a document must  
8 purport to be issued by or addressed to a bailee and purport to cover goods in the  
9 bailee's possession which are either identified or are fungible portions of an identified  
10 mass;

11                   (17) [(16)] "fault" means wrongful act, omission, or breach;

12                   (18) [(17)] "fungible" with respect to goods or securities means goods  
13 or securities of which any unit is, by nature or usage of trade, the equivalent of any  
14 other like unit; goods that are not fungible shall be deemed fungible for the purposes  
15 of the code [AS 45.01 - AS 45.09] to the extent that under a particular agreement or  
16 document unlike units are treated as equivalents;

17                   (19) [(18)] "genuine" means free of forgery or counterfeiting;

18                   (20) [(19)] "good faith" means honesty in fact in the conduct or  
19 transaction concerned;

20                   (21) [(20)] "holder," with respect to a negotiable instrument, means  
21 the [A] person [WHO IS] in possession if the instrument is payable to bearer or,  
22 in the case of an instrument payable to an identified person, if the identified  
23 person is in possession; "holder," with respect to [OF] a document of title, means  
24 the person in possession if the goods are deliverable to bearer or to the order of  
25 the person in possession [OR AN INSTRUMENT OR A CERTIFICATED  
26 INVESTMENT SECURITY DRAWN, ISSUED, OR ENDORSED TO THE PERSON  
27 OR TO THE ORDER OF THE PERSON OR TO BEARER OR IN BLANK];

28                   (22) [(21)] to "honor" is to pay or to accept and pay or, where a credit  
29 so engages, to purchase or discount a draft complying with the terms of the credit;

30                   (23) [(22)] "insolvency proceedings" includes any assignment for the  
31 benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate

1 of the person involved;

2 (24) [(23)] a person is "insolvent" who either has ceased to pay the  
3 person's debts in the ordinary course of business or cannot pay the person's debts as  
4 they become due or is insolvent within the meaning of the federal bankruptcy law;

5 (25) [(24)] "money" means a medium of exchange authorized or  
6 adopted by a domestic or foreign government, including a monetary unit of account  
7 established by an intergovernmental organization or by agreement between two  
8 or more nations [AS A PART OF ITS CURRENCY];

9 (26) [(25)] a person has "notice" of a fact when (A) the person has  
10 actual knowledge of it; (B) the person has received a notice or notification of it; or (C)  
11 from all the facts and circumstances known to the person at the time in question the  
12 person has reason to know that it exists; a person "knows" or has "knowledge" of a  
13 fact when the person has actual knowledge of it; "discover" or "learn" or a word or  
14 phrase of similar import refers to knowledge rather than to reason to know; the time  
15 and circumstances under which a notice or notification may cease to be effective are  
16 not determined by the code [AS 45.01 - AS 45.09];

17 (27) [(26)] a person "notifies" or "gives" a notice or notification to  
18 another by taking such steps as may be reasonably required to inform the other in  
19 ordinary course whether or not such other actually comes to know of it; a person  
20 "receives" a notice or notification when

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

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

25 (28) [(27)] notice, knowledge, or a notice or notification received by  
26 an organization is effective for a particular transaction from the time when it is brought  
27 to the attention of the individual conducting that transaction, and in any event from the  
28 time when it would have been brought to that person's attention if the organization had  
29 exercised due diligence;

30 (29) [(28)] "organization" includes a corporation, government or  
31 governmental subdivision or agency, business trust, estate, trust, partnership or

1 association, two or more persons having a joint or common interest, or any other legal  
2 or commercial entity;

3 (30) [(29)] "party," as distinct from "third party," means a person who  
4 has engaged in a transaction or made an agreement within this chapter;

5 (31) [(30)] "person" includes an individual or an organization (See  
6 AS 45.01.102);

7 (32) [(31)] "presumption" or "presumed" means that the trier of fact  
8 must find the existence of the fact presumed unless evidence is introduced which  
9 would support a finding of its nonexistence;

10 (33) [(32)] "purchase" includes taking by sale, discount, negotiation,  
11 mortgage, pledge, lien, issue or re-issue, gift, or any other voluntary transaction  
12 creating an interest in property;

13 (34) [(33)] "purchaser" means a person who takes by purchase;

14 (35) [(34)] "remedy" means any remedial right to which an aggrieved  
15 party is entitled with or without resort to a tribunal;

16 (36) [(35)] "representative" includes an agent, an officer of a  
17 corporation or association, and a trustee, executor, or administrator of an estate, or any  
18 other person empowered to act for another;

19 (37) [(36)] "rights" includes remedies;

20 (38) [(37)] "security interest" means an interest in personal property or  
21 fixtures that [WHICH] secures payment or performance of an obligation; the retention  
22 or reservation of title by a seller of goods notwithstanding shipment or delivery to the  
23 buyer (AS 45.02.401) is limited in effect to a reservation of a "security interest"; the  
24 term also includes an interest of a buyer of accounts or chattel paper that [WHICH]  
25 is subject to AS 45.09; the special property interest of a buyer of goods on  
26 identification of the goods to a contract for sale under AS 45.02.401 is not a "security  
27 interest," but a buyer may also acquire a "security interest" by complying with  
28 AS 45.09; unless a [LEASE OR] consignment is intended as security, reservation of  
29 title under the [LEASE OR] consignment is not a "security interest," but a consignment  
30 is in any event subject to the provisions on consignment sales (AS 45.02.326); whether  
31 a transaction creates a lease or [IS INTENDED AS] security interest is [TO BE]

1 determined by the facts of each case; however,

2 (A) a transaction creates a security interest if the  
3 consideration the lessee is to pay the lessor for the right to possession and  
4 use of the goods is an obligation for the term of the lease not subject to  
5 termination by the lessee; and

6 (i) the original term of the lease is equal to or greater  
7 than the remaining economic life of the goods;

8 (ii) the lessee is bound to renew the lease for the  
9 remaining economic life of the goods or is bound to become the  
10 owner of the goods;

11 (iii) the lessee has an option to renew the lease for  
12 the remaining economic life of the goods for no additional  
13 consideration or nominal additional consideration upon compliance  
14 with the lease agreement; or

15 (iv) the lessee has an option to become the owner of  
16 the goods for no additional consideration or nominal additional  
17 consideration upon compliance with the lease agreement; [THE  
18 INCLUSION OF AN OPTION TO PURCHASE DOES NOT OF  
19 ITSELF MAKE THE LEASE ONE INTENDED FOR SECURITY,  
20 AND]

21 (B) a transaction does not create a security interest merely  
22 because it provides that

23 (i) the present value of the consideration the lessee is  
24 obligated to pay the lessor for the right to possession and use of the  
25 goods is substantially equal to or is greater than the fair market  
26 value of the goods at the time the lease is entered into;

27 (ii) the lessee assumes risk of loss of the goods, or  
28 agrees to pay taxes, insurance, filing, recording, or registration fees,  
29 or service or maintenance costs with respect to the goods;

30 (iii) the lessee has an option to renew the lease or to  
31 become the owner of the goods;

1 (iv) the lessee has an option to renew the lease for a  
2 fixed rent that is equal to or greater than the reasonably  
3 predictable fair market rent for the use of the goods for the term  
4 of the renewal at the time the option is to be performed; or

5 (v) the lessee has an option to become the owner of  
6 the goods for a fixed price that is equal to or greater than the  
7 reasonably predictable fair market value of the goods at the time  
8 the option is to be performed;

9 (C) in of this paragraph, additional consideration is nominal  
10 if it is less than the lessee's reasonably predictable cost of performing  
11 under the lease agreement if the option is not exercised; additional consid-  
12 eration is not nominal if

13 (i) when the option to renew the lease is granted to  
14 the lessee the rent is stated to be the fair market rent for the use of  
15 the goods for the term of the renewal determined at the time the  
16 option is to be performed; or

17 (ii) when the option to become the owner of the goods  
18 is granted to the lessee the price is stated to be the fair market  
19 value of the goods determined at the time the option is to be  
20 performed;

21 (D) in this paragraph,

22 (i) "present value" means the amount as of a date  
23 certain of one or more sums payable in the future, discounted to the  
24 date certain; the discount is determined by the interest rate  
25 specified by the parties if the rate is not manifestly unreasonable at  
26 the time the transaction is entered into; otherwise, the discount is  
27 determined by a commercially reasonable rate that takes into  
28 account the facts and circumstances of each case at the time the  
29 transaction was entered into; and

30 (ii) "reasonably predictable" and "remaining  
31 economic life of the goods" are to be determined with reference to

1 the facts and circumstances at the time the transaction is entered  
2 into (AN AGREEMENT THAT UPON COMPLIANCE WITH THE  
3 TERMS OF THE LEASE THE LESSEE SHALL BECOME OR  
4 HAS THE OPTION TO BECOME THE OWNER OF THE  
5 PROPERTY FOR NO ADDITIONAL CONSIDERATION OR FOR A  
6 NOMINAL CONSIDERATION DOES MAKE THE LEASE ONE  
7 INTENDED FOR SECURITY);

8 (39) [(38)] "send" in connection with writing or notice means to deposit  
9 in the mail, or deliver for transmission by another usual means of communication, with  
10 postage or cost of transmission provided for and properly addressed and, in the case  
11 of an instrument, to an address specified on it or otherwise agreed, or if there is none  
12 to an address reasonable under the circumstances; the receipt of a writing or notice  
13 within the time at which it would have arrived if properly sent has the effect of a  
14 proper sending;

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

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

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

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

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

24 (45) [(44)] "value": except as otherwise provided in AS 45.03.303 with  
25 respect to negotiable instruments and in AS 45.04.210 and 45.04.211 with respect to  
26 bank collections [(AS 45.03.303, AS 45.04.208, AND AS 45.04.209)], a person gives  
27 "value" for rights if the person acquires them

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

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

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

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

7 (46) [(45)] "warehouse receipt" means a receipt issued by a person  
8 engaged in the business of storing goods for hire;

9 (47) [(46)] "written" or "writing" includes printing, typewriting, or any  
10 other intentional reduction to tangible form.

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

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

15 \* Sec. 10. AS 45.01.207 is amended to read:

16 Sec. 45.01.207. PERFORMANCE OR ACCEPTANCE UNDER  
17 RESERVATION OF RIGHTS. A party who, with explicit reservation of rights,  
18 performs or promises performance or assents to performance in a manner demanded  
19 or offered by the other party does not thereby prejudice the rights reserved. Such  
20 words as "without prejudice," "under protest," or the like are sufficient. This section  
21 does not apply to an accord and satisfaction.

22 \* Sec. 11. AS 45.02.103(c)(5) is amended to read:

23 (5) "dishonor" (AS 45.03.502) [(AS 45.03.507)]

24 \* Sec. 12. AS 45.02.403(d) is amended to read:

25 (d) The rights of other purchasers of goods and of lien creditors are governed  
26 by [AS 45.06,] AS 45.07 [,] and AS 45.09.

27 \* Sec. 13. AS 45.02.511(c) is amended to read:

28 (c) Subject to the provisions of the code [AS 45.01 - AS 45.09] on the effect  
29 of an instrument on an obligation (AS 45.03.310) [(AS 45.03.802)], payment by check  
30 is conditional and is defeated as between the parties by dishonor of the check on due  
31 presentment.

- 1     \* **Sec. 14.** AS 45.03.101 is repealed and reenacted to read:  
2             **Sec. 45.03.101. SHORT TITLE.** This chapter may be cited as the Uniform  
3             **Commercial Code - Negotiable Instruments.**
- 4     \* **Sec. 15.** AS 45.03.102 is repealed and reenacted to read:  
5             **Sec. 45.03.102. SUBJECT MATTER.** (a) This chapter applies to negotiable  
6             instruments. It does not apply to money or to securities governed by AS 45.08.  
7             (b) If there is conflict between this chapter and AS 45.04 or AS 45.09,  
8             AS 45.04 and AS 45.09 govern.  
9             (c) Regulations of the Board of Governors of the Federal Reserve System and  
10            operating circulars of the Federal Reserve Banks supersede any inconsistent provision  
11            of this chapter to the extent of the inconsistency.
- 12    \* **Sec. 16.** AS 45.03.103 is repealed and reenacted to read:  
13            **Sec. 45.03.103. DEFINITIONS.** (a) In this chapter,  
14            (1) "acceptor" means a drawee who has accepted a draft;  
15            (2) "drawee" means a person ordered in a draft to make payment;  
16            (3) "drawer" means a person who signs or is identified in a draft as a  
17            person ordering payment;  
18            (4) "good faith" means honesty in fact and the observance of reasonable  
19            commercial standards of fair dealing;  
20            (5) "maker" means a person who signs or is identified in a note as a  
21            person undertaking to pay;  
22            (6) "order" means a written instruction to pay money signed by the  
23            person giving the instruction; the instruction may be addressed to any person, including  
24            the person giving the instruction, or to one or more persons jointly or in the alternative  
25            but not in succession; an authorization to pay is not an order unless the person  
26            authorized to pay is also instructed to pay;  
27            (7) "ordinary care" in the case of a person engaged in business means  
28            observance of reasonable commercial standards, prevailing in the area in which the  
29            person is located, with respect to the business in which the person is engaged; in the  
30            case of a bank that takes an instrument for processing for collection or payment by  
31            automated means, reasonable commercial standards do not require the bank to examine

1 the instrument if the failure to examine does not violate the bank's prescribed  
2 procedures and the bank's procedures do not vary unreasonably from general banking  
3 usage not disapproved by this chapter or AS 45.04;

4 (8) "party" means a party to an instrument;

5 (9) "promise" means a written undertaking to pay money signed by the  
6 person undertaking to pay; an acknowledgment of an obligation by the obligor is not  
7 a promise unless the obligor also undertakes to pay the obligation;

8 (10) "prove" with respect to a fact means to meet the burden of  
9 establishing the fact (AS 45.01.201);

10 (11) "remitter" means a person who purchases an instrument from the  
11 issuer of the instrument if the instrument is payable to an identified person other than  
12 the purchaser.

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

15 (1) "acceptance" in AS 45.03.409;

16 (2) "accommodated party" in AS 45.03.419;

17 (3) "accommodation party" in AS 45.03.419;

18 (4) "alteration" in AS 45.03.407;

19 (5) "anomalous endorsement" in AS 45.03.205;

20 (6) "blank endorsement" in AS 45.03.205;

21 (7) "cashier's check" in AS 45.03.104;

22 (8) "certificate of deposit" in AS 45.03.104;

23 (9) "certified check" in AS 45.03.409;

24 (10) "check" in AS 45.03.104;

25 (11) "consideration" in AS 45.03.303;

26 (12) "draft" in AS 45.03.104;

27 (13) "endorsement" in AS 45.03.204;

28 (14) "endorser" in AS 45.03.204;

29 (15) "holder in due course" in AS 45.03.302;

30 (16) "incomplete instrument" in AS 45.03.115;

31 (17) "instrument" in AS 45.03.104;

- 1 (18) "issue" in AS 45.03.105;
- 2 (19) "issuer" in AS 45.03.105;
- 3 (20) "negotiable instrument" in AS 45.03.104;
- 4 (21) "negotiation" in AS 45.03.201;
- 5 (22) "note" in AS 45.03.104;
- 6 (23) "payable at a definite time" in AS 45.03.108;
- 7 (24) "payable on demand" in AS 45.03.108;
- 8 (25) "payable to bearer" in AS 45.03.109;
- 9 (26) "payable to order" in AS 45.03.109;
- 10 (27) "payment" in AS 45.03.602;
- 11 (28) "person entitled to enforce" in AS 45.03.301;
- 12 (29) "presentment" in AS 45.03.501;
- 13 (30) "reacquisition" in AS 45.03.207;
- 14 (31) "special endorsement" in AS 45.03.205;
- 15 (32) "teller's check" in AS 45.03.104;
- 16 (33) "transfer of instrument" in AS 45.03.203;
- 17 (34) "traveler's check" in AS 45.03.104;
- 18 (35) "value" in AS 45.03.303.

19 (c) The following definitions in AS 45.04 apply to this chapter:

- 20 (1) "bank" (AS 45.04.105);
- 21 (2) "banking day" (AS 45.04.104);
- 22 (3) "clearing house" (AS 45.04.104);
- 23 (4) "collecting bank" (AS 45.04.105);
- 24 (5) "depository bank" (AS 45.04.105);
- 25 (6) "documentary draft" (AS 45.04.104);
- 26 (7) "intermediary bank" (AS 45.04.105);
- 27 (8) "item" (AS 45.04.104);
- 28 (9) "payor bank" (AS 45.04.105);
- 29 (10) "suspends payments" (AS 45.04.104).

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

1 • **Sec. 17. AS 45.03.104 is repealed and reenacted to read:**

2           **Sec. 45.03.104. NEGOTIABLE INSTRUMENT.** (a) Except as provided in  
3 (c) - (d) of this section, "negotiable instrument" means an unconditional promise or  
4 order to pay a fixed amount of money, with or without interest or other charges  
5 described in the promise or order, if the unconditional promise or order

6           (1) is payable to bearer or to order at the time it is issued or first comes  
7 into possession of a holder;

8           (2) is payable on demand or at a definite time; and

9           (3) does not state any other undertaking or instruction by the person  
10 promising or ordering payment to do an act in addition to the payment of money, but  
11 the promise or order may contain an undertaking or power to give, maintain, or protect  
12 collateral to secure payment, an authorization or power to the holder to confess  
13 judgment or realize on or dispose of collateral, or a waiver of the benefit of a law  
14 intended for the advantage or protection of an obligor.

15           (b) "Instrument" means a negotiable instrument.

16           (c) An order that meets all of the requirements of (a)(2) - (3) of this section,  
17 and otherwise falls within the definition of "check" in (f) of this section, is a  
18 negotiable instrument and a check.

19           (d) A promise or order other than a check is not an instrument if, at the time  
20 the promise or order is issued or first comes into possession of a holder, the promise  
21 or order contains a conspicuous statement, however expressed, to the effect that the  
22 promise or order is not negotiable or is not an instrument governed by this chapter.

23           (e) An instrument is a "note" if the instrument is a promise and a "draft" if the  
24 instrument is an order. If an instrument falls within the definition of both "note" and  
25 "draft," a person entitled to enforce the instrument may treat the instrument as either.

26           (f) "Check" means a draft, other than a documentary draft, payable on demand  
27 and drawn on a bank, or a cashier's check or teller's check. An instrument may be  
28 a check even though the instrument is described on its face by another term, such as  
29 "money order."

30           (g) "Cashier's check" means a draft with respect to which the drawer and  
31 drawee are the same bank or branches of the same bank.

- 1 (h) "Teller's check" means a draft drawn by a bank  
2 (1) on another bank; or  
3 (2) payable at or through a bank.
- 4 (i) "Traveler's check" means an instrument that  
5 (1) is payable on demand;  
6 (2) is drawn on or payable at or through a bank;  
7 (3) is designated by the term "traveler's check" or by a substantially  
8 similar term; and  
9 (4) requires, as a condition to payment, a countersignature by a person  
10 whose specimen signature appears on the instrument.
- 11 (j) "Certificate of deposit" means an instrument containing an acknowledgment  
12 by a bank that a sum of money has been received by the bank and a promise by the  
13 bank to repay the sum of money. A certificate of deposit is a note of the bank.

14 \* Sec. 18. AS 45.03.105 is repealed and reenacted to read:

15 Sec. 45.03.105. ISSUE OF INSTRUMENT. (a) "Issue" means the first  
16 delivery of an instrument by the maker or drawer, whether to a holder or nonholder,  
17 for the purpose of giving rights on the instrument to any person.

18 (b) An unissued instrument, or an unissued incomplete instrument that is  
19 completed, is binding on the maker or drawer, but nonissuance is a defense. An  
20 instrument that is conditionally issued or is issued for a special purpose is binding on  
21 the maker or drawer, but failure of the condition or special purpose to be fulfilled is  
22 a defense.

23 (c) "Issuer" applies to issued and unissued instruments and means a maker or  
24 drawer of an instrument.

25 \* Sec. 19. AS 45.03.106 is repealed and reenacted to read:

26 Sec. 45.03.106. UNCONDITIONAL PROMISE OR ORDER. (a) Except as  
27 provided in this section, for the purposes of AS 45.03.104(a), a promise or order is  
28 unconditional unless it states an express condition to payment, that the promise or  
29 order is subject to or governed by another writing, or that rights or obligations with  
30 respect to the promise or order are stated in another writing. A reference to another  
31 writing does not of itself make a promise or order conditional.

1 (b) A promise or order is not made conditional

2 (1) by a reference to another writing for a statement of rights with  
3 respect to collateral, prepayment, or acceleration; or

4 (2) because payment is limited to resort to a particular fund or source.

5 (c) If a promise or order requires, as a condition to payment, a  
6 countersignature by a person whose specimen signature appears on the promise or  
7 order, the condition does not make the promise or order conditional for the purposes  
8 of AS 45.03.104(a). If the person whose specimen signature appears on an instrument  
9 fails to countersign the instrument, the failure to countersign is a defense to the  
10 obligation of the issuer, but the failure does not prevent a transferee of the instrument  
11 from becoming a holder of the instrument.

12 (d) If a promise or order at the time it is issued or first comes into possession  
13 of a holder contains a statement, required by applicable statutory or administrative law,  
14 to the effect that the rights of a holder or transferee are subject to claims or defenses  
15 that the issuer could assert against the original payee, the promise or order is not  
16 thereby made conditional for the purposes of AS 45.03.104(a), but if the promise or  
17 order is an instrument, there cannot be a holder in due course of the instrument.

18 \* Sec. 20. AS 45.03.107 is repealed and reenacted to read:

19 Sec. 45.03.107. INSTRUMENT PAYABLE IN FOREIGN MONEY. Unless  
20 the instrument otherwise provides, an instrument that states the amount payable in  
21 foreign money may be paid in the foreign money or in an equivalent amount in dollars  
22 calculated by using the current bank-offered spot rate at the place of payment for the  
23 purchase of dollars on the day on which the instrument is paid.

24 \* Sec. 21. AS 45.03.108 is repealed and reenacted to read:

25 Sec. 45.03.108. PAYABLE ON DEMAND OR AT DEFINITE TIME. (a) A  
26 promise or order is payable on demand if it

27 (1) states that it is payable on demand or at sight, or otherwise  
28 indicates that it is payable at the will of the holder; or

29 (2) does not state a time of payment.

30 (b) A promise or order is payable at a definite time if it is payable on elapse  
31 of a definite period of time after sight or acceptance or at a fixed date or dates or at

1 a time or times readily ascertainable at the time the promise or order is issued, subject  
2 to rights of

3 (1) prepayment;

4 (2) acceleration;

5 (3) extension at the option of the holder; or

6 (4) extension to a further definite time at the option of the maker or  
7 acceptor, or automatically on or after a specified act or event.

8 (c) If an instrument, payable at a fixed date, is also payable upon demand  
9 made before the fixed date, the instrument is payable on demand until the fixed date  
10 and, if demand for payment is not made before that date, becomes payable at a definite  
11 time on the fixed date.

12 \* Sec. 22. AS 45.03.109 is repealed and reenacted to read:

13 Sec. 45.03.109. PAYABLE TO BEARER OR TO ORDER. (a) A promise  
14 or order is payable to bearer if it

15 (1) states that it is payable to bearer or to the order of bearer or  
16 otherwise indicates that the person in possession of the promise or order is entitled to  
17 payment;

18 (2) does not state a payee; or

19 (3) states that it is payable to or to the order of cash, or otherwise  
20 indicates that it is not payable to an identified person.

21 (b) A promise or order that is not payable to bearer is payable to order if it  
22 is payable to the order of an identified person, or to an identified person or order. A  
23 promise or order that is payable to order is payable to the identified person.

24 (c) An instrument payable to bearer may become payable to an identified  
25 person if it is specially endorsed under AS 45.03.205(a). An instrument payable to an  
26 identified person may become payable to bearer if it is endorsed in blank under  
27 AS 45.03.205(b).

28 \* Sec. 23. AS 45.03.110 is repealed and reenacted to read:

29 Sec. 45.03.110. IDENTIFICATION OF PERSON TO WHOM INSTRUMENT  
30 IS PAYABLE. (a) The person to whom an instrument is initially payable is  
31 determined by the intent of the person, whether or not authorized, signing as, or in the

1 name or on the behalf of, the issuer of the instrument. The instrument is payable to  
2 the person intended by the signer even if that person is identified in the instrument by  
3 a name or other identification that is not that of the intended person. If more than one  
4 person signs in the name or on the behalf of the issuer of an instrument and all the  
5 signers do not intend the same person as payee, the instrument is payable to any  
6 person intended by one or more of the signers.

7 (b) If the signature of the issuer of an instrument is made by automated means,  
8 such as a check-writing machine, the payee of the instrument is determined by the  
9 intent of the person who supplied the name or identification of the payee, whether or  
10 not authorized to do so.

11 (c) A person to whom an instrument is payable may be identified in any way,  
12 including by name, identifying number, office, or account number. For the purpose  
13 of determining the holder of an instrument, the following rules apply:

14 (1) if an instrument is payable to an account and the account is  
15 identified only by number, the instrument is payable to the person to whom the  
16 account is payable. If an instrument is payable to an account identified by number and  
17 by the name of a person, the instrument is payable to the named person, whether or  
18 not that person is the owner of the account identified by number;

19 (2) if an instrument is payable to

20 (A) a trust, an estate, or a person described as trustee or  
21 representative of a trust or estate, the instrument is payable to the trustee, the  
22 representative, or a successor of either, whether or not the beneficiary or estate  
23 is also named;

24 (B) a person described as agent or similar representative of a  
25 named or identified person, the instrument is payable to the represented person,  
26 the representative, or a successor of the representative;

27 (C) a fund or organization that is not a legal entity, the  
28 instrument is payable to a representative of the members of the fund or  
29 organization; or

30 (D) an office or a person described as holding an office, the  
31 instrument is payable to the named person, the incumbent of the office, or a

1 successor to the incumbent.

2 (d) If an instrument is payable to two or more persons alternatively, it is  
3 payable to any of them and may be negotiated, discharged, or enforced by any or all  
4 of them in possession of the instrument. If an instrument is payable to two or more  
5 persons not alternatively, it is payable to all of them and may be negotiated,  
6 discharged, or enforced only by all of them. If an instrument payable to two or more  
7 persons is ambiguous as to whether it is payable to the persons alternatively, the  
8 instrument is payable to the persons alternatively.

9 \* Sec. 24. AS 45.03.111 is repealed and reenacted to read:

10 Sec. 45.03.111. PLACE OF PAYMENT. Except as otherwise provided for  
11 items in AS 45.04, an instrument is payable at the place of payment stated in the  
12 instrument. If no place of payment is stated, an instrument is payable at the address  
13 of the drawee or maker stated in the instrument. If no address is stated, the place of  
14 payment is the place of business of the drawee or maker. If a drawee or maker has  
15 more than one place of business, the place of payment is any place of business of the  
16 drawee or maker chosen by the person entitled to enforce the instrument. If the  
17 drawee or maker has no place of business, the place of payment is the residence of the  
18 drawee or maker.

19 \* Sec. 25. AS 45.03.112 is repealed and reenacted to read:

20 Sec. 45.03.112. INTEREST. (a) Unless otherwise provided in the instrument,  
21 an instrument is not payable with interest, and interest on an interest-bearing  
22 instrument is payable from the date of the instrument.

23 (b) Interest may be stated in an instrument as a fixed or variable amount of  
24 money or it may be expressed as a fixed or variable rate or rates. The amount or rate  
25 of interest may be stated or described in the instrument in any manner and may require  
26 reference to information not contained in the instrument. If an instrument provides for  
27 interest but the amount of interest payable cannot be ascertained from the description,  
28 interest is payable at the judgment rate in effect at the place of payment of the  
29 instrument and at the time interest first accrues.

30 \* Sec. 26. AS 45.03.113 is repealed and reenacted to read:

31 Sec. 45.03.113. DATE OF INSTRUMENT. (a) An instrument may be

1 antedated or postdated. The date stated determines the time of payment if the  
2 instrument is payable at a fixed period after the date. Except as provided in  
3 AS 45.04.401(c), an instrument payable on demand is not payable before the date of  
4 the instrument.

5 (b) If an instrument is undated, the date of the instrument is the date of the  
6 instrument's issue or, in the case of an unissued instrument, the date the instrument  
7 first comes into possession of a holder.

8 \* Sec. 27. AS 45.03.114 is repealed and reenacted to read:

9 Sec. 45.03.114. **CONTRADICTORY TERMS OF INSTRUMENT.** If an  
10 instrument contains contradictory terms, typewritten terms prevail over printed terms,  
11 handwritten terms prevail over both, and words prevail over numbers.

12 \* Sec. 28. AS 45.03.115 is repealed and reenacted to read:

13 Sec. 45.03.115. **INCOMPLETE INSTRUMENT.** (a) "Incomplete instrument"  
14 means a signed writing, whether or not issued by the signer, the contents of which  
15 show at the time of signing that it is incomplete but that the signer intended it to be  
16 completed by the addition of words or numbers.

17 (b) Subject to (c) of this section, if an incomplete instrument is an instrument  
18 under AS 45.03.104, it may be enforced according to its terms if it is not completed,  
19 or according to its terms as augmented by completion. If an incomplete instrument is  
20 not an instrument under AS 45.03.104 but, after completion, the requirements of  
21 AS 45.03.104 are met, the instrument may be enforced according to its terms as  
22 augmented by completion.

23 (c) If words or numbers are added to an incomplete instrument without  
24 authority of the signer, there is an alteration of the incomplete instrument under  
25 AS 45.03.407.

26 (d) The burden of establishing that words or numbers were added to an  
27 incomplete instrument without authority of the signer is on the person asserting the  
28 lack of authority.

29 \* Sec. 29. AS 45.03.116 is repealed and reenacted to read:

30 Sec. 45.03.116. **JOINT AND SEVERAL LIABILITY; CONTRIBUTION.** (a)  
31 Except as otherwise provided in the instrument, two or more persons who have the

1 same liability on an instrument as makers, drawers, acceptors, endorsers who endorse  
2 as joint payees, or anomalous endorsers are jointly and severally liable in the capacity  
3 in which they sign.

4 (b) Except as provided in AS 45.03.419(e), or by agreement of the affected  
5 parties, a party having joint and several liability who pays the instrument is entitled  
6 to receive from any party having the same joint and several liability contribution in  
7 accordance with applicable law.

8 (c) Discharge of one party having joint and several liability by a person  
9 entitled to enforce the instrument does not affect the right under (b) of this section of  
10 a party having the same joint and several liability to receive contribution from the  
11 party discharged.

12 \* Sec. 30. AS 45.03.117 is repealed and reenacted to read:

13 Sec. 45.03.117. OTHER AGREEMENTS AFFECTING INSTRUMENT.

14 Subject to applicable law regarding exclusion of proof of contemporaneous or previous  
15 agreements, the obligation of a party to an instrument to pay the instrument may be  
16 modified, supplemented, or nullified by a separate agreement of the obligor and a  
17 person entitled to enforce the instrument, if the instrument is issued or the obligation  
18 is incurred in reliance on the agreement or a part of the same transaction giving rise  
19 to the agreement. To the extent an obligation is modified, supplemented, or nullified  
20 by an agreement under this section, the agreement is a defense to the obligation.

21 \* Sec. 31. AS 45.03.118 is repealed and reenacted to read:

22 Sec. 45.03.118. STATUTE OF LIMITATIONS. (a) Except as provided in (e)

23 of this section, an action to enforce the obligation of a party to pay a note payable at  
24 a definite time must be commenced within six years after the due date or dates stated  
25 in the note or, if a due date is accelerated, within six years after the accelerated due  
26 date.

27 (b) Except as provided in (d) or (e) of this section, if demand for payment is  
28 made to the maker of a note payable on demand, an action to enforce the obligation  
29 of a party to pay the note must be commenced within six years after the demand. If  
30 no demand for payment is made to the maker, an action to enforce the note is barred  
31 if neither principal nor interest on the note has been paid for a continuous period of

1 10 years.

2 (c) Except as provided in (d) of this section, an action to enforce the obligation  
3 of a party to an unaccepted draft to pay the draft must be commenced within three  
4 years after dishonor of the draft or 10 years after the date of the draft, whichever  
5 period expires first.

6 (d) An action to enforce the obligation of the acceptor of a certified check, or  
7 the issuer of a teller's check, cashier's check, or traveler's check, must be commenced  
8 within three years after demand for payment is made to the acceptor or issuer.

9 (e) An action to enforce the obligation of a party to a certificate of deposit to  
10 pay the instrument must be commenced within six years after demand for payment is  
11 made to the maker, but if the instrument states a due date and the maker is not  
12 required to pay before that date, the six-year period begins when a demand for  
13 payment is in effect and the due date has passed.

14 (f) An action to enforce the obligation of a party to pay an accepted draft,  
15 other than a certified check, must be commenced

16 (1) within six years after the due date stated in the draft or acceptance,  
17 if the obligation of the acceptor is payable at a definite time; or

18 (2) within six years after the date of the acceptance, if the obligation  
19 of the acceptor is payable on demand.

20 (g) Unless governed by other law regarding claims for indemnity or  
21 contribution, an action for conversion of an instrument, for money had and received,  
22 or like action based on conversion, for breach of warranty, or to enforce an obligation,  
23 duty, or right arising under this chapter and not governed by this section, must be  
24 commenced within three years after the cause of action accrues.

25 \* Sec. 32. AS 45.03.119 is repealed and reenacted to read:

26 Sec. 45.03.119. NOTICE OF RIGHT TO DEFEND ACTION. In an action for  
27 breach of an obligation for which a third person is answerable over under this chapter  
28 or AS 45.04, the defendant may give the third person written notice of the litigation,  
29 and the person notified may then give similar notice to any other person who is  
30 answerable over. If the notice states that the person notified may come in and defend  
31 and that failure to do so will bind the person notified in an action later brought by the

1 person giving the notice as to any determination of fact common to the two litigations,  
2 the person notified is so bound unless after reasonable receipt of the notice the person  
3 notified does come in and defend.

4 \* Sec. 33. AS 45.03.201 is repealed and reenacted to read:

5 Sec. 45.03.201. NEGOTIATION. (a) "Negotiation" means a transfer of  
6 possession, whether voluntary or involuntary, of an instrument by a person other than  
7 the issuer to a person who thereby becomes the holder of the instrument.

8 (b) Except for negotiation by a remitter, if an instrument is payable to an  
9 identified person, negotiation requires transfer of possession of the instrument and its  
10 endorsement by the holder. If an instrument is payable to bearer, the instrument may  
11 be negotiated by transfer of possession alone.

12 \* Sec. 34. AS 45.03.202 is repealed and reenacted to read:

13 Sec. 45.03.202. NEGOTIATION SUBJECT TO RESCISSION. (a)  
14 Negotiation is effective even if obtained

15 (1) from an infant, a corporation exceeding its powers, or a person  
16 without capacity;

17 (2) by fraud, duress, or mistake; or

18 (3) in breach of duty or as part of an illegal transaction.

19 (b) To the extent permitted by other law, negotiation may be rescinded or may  
20 be subject to other remedies, but those remedies may not be asserted against a  
21 subsequent holder in due course or a person paying the instrument in good faith and  
22 without knowledge of facts that are a basis for rescission or other remedy.

23 \* Sec. 35. AS 45.03.203 is repealed and reenacted to read:

24 Sec. 45.03.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY  
25 TRANSFER. (a) An instrument is transferred when the instrument is delivered by a  
26 person other than its issuer for the purpose of giving to the person receiving delivery  
27 the right to enforce the instrument.

28 (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests  
29 in the transferee any right of the transferor to enforce the instrument, including any  
30 right as a holder in due course, but the transferee cannot acquire rights of a holder in  
31 due course by a transfer, directly or indirectly, from a holder in due course if the

1 transferee engaged in fraud or illegality affecting the instrument.

2 (c) Unless otherwise agreed, if an instrument is transferred for value and the  
3 transferee does not become a holder because of lack of endorsement by the transferor,  
4 the transferee has a specifically enforceable right to the unqualified endorsement of the  
5 transferor, but negotiation of the instrument does not occur until the endorsement is  
6 made.

7 (d) If a transferor purports to transfer less than the entire instrument,  
8 negotiation of the instrument does not occur, and the transferee obtains no rights under  
9 this chapter and has only the rights of a partial assignee.

10 \* Sec. 36. AS 45.03.204 is repealed and reenacted to read:

11 Sec. 45.03.204. ENDORSEMENT. (a) "Endorsement" means a signature,  
12 other than that of a signer as maker, drawer, or acceptor, that alone or accompanied  
13 by other words is made on an instrument for the purpose of negotiating the instrument,  
14 restricting payment of the instrument, or incurring endorser's liability on the  
15 instrument, but regardless of the intent of the signer, a signature and its accompanying  
16 words are an endorsement unless the accompanying words, terms of the instrument,  
17 place of the signature, or other circumstances unambiguously indicate that the signature  
18 was made for a purpose other than endorsement. For the purpose of determining  
19 whether a signature is made on an instrument, a paper affixed to the instrument is a  
20 part of the instrument.

21 (b) "Endorser" means a person who makes an endorsement.

22 (c) For the purpose of determining whether the transferee of an instrument is  
23 a holder, an endorsement that transfers a security interest in the instrument is effective  
24 as an unqualified endorsement of the instrument.

25 (d) If an instrument is payable to a holder under a name that is not the name  
26 of the holder, endorsement may be made by the holder in the name stated in the  
27 instrument or in the holder's name or both, but signature in both names may be  
28 required by a person paying or taking the instrument for value or collection.

29 \* Sec. 37. AS 45.03.205 is repealed and reenacted to read:

30 Sec. 45.03.205. SPECIAL ENDORSEMENT; BLANK ENDORSEMENT;  
31 ANOMALOUS ENDORSEMENT. (a) If an endorsement is made by the holder of

1 an instrument, whether payable to an identified person or payable to bearer, and the  
2 endorsement identifies a person to whom it makes the instrument payable, it is a  
3 "special endorsement." When specially endorsed, an instrument becomes payable to  
4 the identified person and may be negotiated only by the endorsement of that person.  
5 The principles stated in AS 45.03.110 apply to special endorsements.

6 (b) If an endorsement is made by the holder of an instrument and it is not a  
7 special endorsement, it is a "blank endorsement." When endorsed in blank, an  
8 instrument becomes payable to bearer and may be negotiated by transfer of possession  
9 alone until specially endorsed.

10 (c) The holder may convert a blank endorsement that consists only of a  
11 signature into a special endorsement by writing, above the signature of the endorser,  
12 words identifying the person to whom the instrument is made payable.

13 (d) "Anomalous endorsement" means an endorsement made by a person who  
14 is not the holder of the instrument. An anomalous endorsement does not affect the  
15 manner in which the instrument may be negotiated.

16 \* Sec. 38. AS 45.03.206 is repealed and reenacted to read:

17 Sec. 45.03.206. RESTRICTIVE ENDORSEMENT. (a) An endorsement  
18 limiting payment to a particular person or otherwise prohibiting further transfer or  
19 negotiation of the instrument is not effective to prevent further transfer or negotiation  
20 of the instrument.

21 (b) An endorsement stating a condition to the right of the endorsee to receive  
22 payment does not affect the right of the endorsee to enforce the instrument. A person  
23 paying the instrument or taking it for value or collection may disregard the condition,  
24 and the rights and liabilities of that person are not affected by whether the condition  
25 has been fulfilled.

26 (c) If an instrument bears an endorsement described in AS 45.04.201(b), or an  
27 endorsement in blank or to a particular bank using the words "for deposit," "for  
28 collection," or other words indicating a purpose of having the instrument collected by  
29 a bank for the endorser or for a particular account, the following rules apply:

30 (1) a person, other than a bank, who purchases the instrument when so  
31 endorsed converts the instrument unless the amount paid for the instrument is received

1 by the endorser or applied consistently with the endorsement;

2 (2) a depository bank that purchases the instrument or takes it for  
3 collection when so endorsed converts the instrument unless the amount paid by the  
4 bank with respect to the instrument is received by the endorser or applied consistently  
5 with the endorsement;

6 (3) a payor bank that is also the depository bank or that takes the  
7 instrument for immediate payment over the counter from a person other than a  
8 collecting bank converts the instrument unless the proceeds of the instrument are  
9 received by the endorser or applied consistently with the endorsement; and

10 (4) except as otherwise provided in (3) of this subsection, a payor bank  
11 or intermediary bank may disregard the endorsement and is not liable if the proceeds  
12 of the instrument are not received by the endorser or applied consistently with the  
13 endorsement.

14 (d) Except for an endorsement covered by (c) of this section, if an instrument  
15 bears an endorsement using words to the effect that payment is to be made to the  
16 endorsee as agent, trustee, or other fiduciary for the benefit of the endorser or another  
17 person, the following rules apply:

18 (1) unless there is notice of breach of fiduciary duty as provided in  
19 AS 45.03.307, a person who purchases the instrument from the endorsee or takes the  
20 instrument from the endorsee for collection or payment may pay the proceeds of  
21 payment or the value given for the instrument to the endorsee without regard to  
22 whether the endorsee violates a fiduciary duty to the endorser; and

23 (2) a subsequent transferee of the instrument or person who pays the  
24 instrument is neither given notice nor otherwise affected by the restriction in the  
25 endorsement unless the transferee or payor knows that the fiduciary dealt with the  
26 instrument or its proceeds in breach of a fiduciary duty.

27 (e) The presence on an instrument of an endorsement to which this section  
28 applies does not prevent a purchaser of the instrument from becoming a holder in due  
29 course of the instrument unless the purchaser is a converter under (c) of this section  
30 or has notice or knowledge of breach of fiduciary duty as stated in (d) of this section.

31 (f) In an action to enforce the obligation of a party to pay the instrument, the

1 obligor has a defense if payment would violate an endorsement to which this section  
2 applies and the payment is not permitted by this section.

3 • **Sec. 39.** AS 45.03.207 is repealed and reenacted to read:

4 **Sec. 45.03.207. REACQUISITION.** Reacquisition of an instrument occurs if  
5 it is transferred to a former holder, by negotiation or otherwise. A former holder who  
6 reacquires the instrument may cancel endorsements made after the reacquirer first  
7 became a holder of the instrument. If the cancellation causes the instrument to be  
8 payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An  
9 endorser whose endorsement is canceled is discharged, and the discharge is effective  
10 against a subsequent holder.

11 • **Sec. 40.** AS 45.03.301 is repealed and reenacted to read:

12 **Sec. 45.03.301. PERSON ENTITLED TO ENFORCE INSTRUMENT.** A  
13 person entitled to enforce an instrument is the holder of the instrument, a nonholder  
14 in possession of the instrument who has the rights of a holder, or a person not in  
15 possession of the instrument who is entitled to enforce the instrument under  
16 AS 45.03.309 or 45.03.418(d). A person may be a person entitled to enforce the  
17 instrument even though the person is not the owner of the instrument or is in wrongful  
18 possession of the instrument.

19 • **Sec. 41.** AS 45.03.302 is repealed and reenacted to read:

20 **Sec. 45.03.302. HOLDER IN DUE COURSE.** (a) Subject to (c) of this  
21 section and AS 45.03.106(d), "holder in due course" means the holder of an  
22 instrument, if

23 (1) the instrument when issued or negotiated to the holder does not bear  
24 such apparent evidence of forgery or alteration or is not otherwise so irregular or  
25 incomplete as to call into question its authenticity; and

26 (2) the holder took the instrument

27 (A) for value;

28 (B) in good faith;

29 (C) without notice that the instrument is overdue or has been  
30 dishonored or that there is an uncured default with respect to payment of  
31 another instrument issued as part of the same series;

1 (D) without notice that the instrument contains an unauthorized  
2 signature or has been altered;

3 (E) without notice of any claim to the instrument described in  
4 AS 45.03.306; and

5 (F) without notice that any party has a defense or claim in  
6 recoupment described in AS 45.03.305(a).

7 (b) Notice of discharge of a party, other than discharge in an insolvency  
8 proceeding, is not notice of a defense under (a) of this section, but discharge is  
9 effective against a person who became a holder in due course with notice of the  
10 discharge. Public filing or recording of a document does not of itself constitute notice  
11 of a defense, claim in recoupment, or claim to the instrument.

12 (c) Except to the extent a transferor or predecessor in interest has rights as a  
13 holder in due course, a person does not acquire rights of a holder in due course of an  
14 instrument taken by legal process or by purchase in an execution, bankruptcy, or  
15 creditor's sale or similar proceeding, by purchase as part of a bulk transaction not in  
16 the ordinary course of business of the transferor, or as the successor in interest to an  
17 estate or other organization.

18 (d) If, under AS 45.03.303(a)(1), the promise of performance that is the  
19 consideration for an instrument has been partially performed, the holder may assert  
20 rights as a holder in due course of the instrument only to the fraction of the amount  
21 payable under the instrument equal to the value of the partial performance divided by  
22 the value of the promised performance.

23 (e) If the person entitled to enforce an instrument has only a security interest  
24 in the instrument and the person obliged to pay the instrument has a defense, claim in  
25 recoupment, or claim to the instrument that may be asserted against the person who  
26 granted the security interest, the person entitled to enforce the instrument may assert  
27 rights as a holder in due course only to an amount payable under the instrument that,  
28 at the time of enforcement of the instrument, does not exceed the amount of the unpaid  
29 obligation secured.

30 (f) To be effective, notice must be received at a time and in a manner that  
31 gives a reasonable opportunity to act on it.

1 (g) This section is subject to any law limiting status as a holder in due course  
2 in particular classes of transactions.

3 \* Sec. 42. AS 45.03.303 is repealed and reenacted to read:

4 Sec. 45.03.303. VALUE AND CONSIDERATION. (a) An instrument is  
5 issued or transferred for value if

6 (1) the instrument is issued or transferred for a promise of performance,  
7 to the extent the promise has been performed;

8 (2) the transferee acquires a security interest or other lien in the  
9 instrument other than a lien obtained by judicial proceeding;

10 (3) the instrument is issued or transferred as payment of, or as security  
11 for, an antecedent claim against a person, whether or not the claim is due;

12 (4) the instrument is issued or transferred in exchange for a negotiable  
13 instrument; or

14 (5) the instrument is issued or transferred in exchange for the incurring  
15 of an irrevocable obligation to a third party by the person taking the instrument.

16 (b) "Consideration" means any consideration sufficient to support a simple  
17 contract. The drawer or maker of an instrument has a defense if the instrument is  
18 issued without consideration. If an instrument is issued for a promise of performance,  
19 the issuer has a defense to the extent performance of the promise is due and the  
20 promise has not been performed. If an instrument is issued for value as stated in (a)  
21 of this section, the instrument is also issued for consideration.

22 \* Sec. 43. AS 45.03.304 is repealed and reenacted to read:

23 Sec. 45.03.304. OVERDUE INSTRUMENT. (a) An instrument payable on  
24 demand becomes overdue at the earliest of the following times:

25 (1) on the day after the day demand for payment is duly made;

26 (2) if the instrument is a check, 90 days after its date; or

27 (3) if the instrument is not a check, when the instrument has been  
28 outstanding for a period of time after the instrument's date that is unreasonably long  
29 under the circumstances of the particular case in light of the nature of the instrument  
30 and usage of the trade.

31 (b) With respect to an instrument payable at a definite time, the following

1 rules apply:

2 (1) if the principal is payable in installments and a due date has not  
3 been accelerated, the instrument becomes overdue upon default under the instrument  
4 for nonpayment of an installment, and the instrument remains overdue until the default  
5 is cured;

6 (2) if the principal is not payable in installments and the due date has  
7 not been accelerated, the instrument becomes overdue on the day after the due date;  
8 and

9 (3) if a due date with respect to principal has been accelerated, the  
10 instrument becomes overdue on the day after the accelerated due date.

11 (c) Unless the due date of principal has been accelerated, an instrument does  
12 not become overdue if there is default in payment of interest but no default in payment  
13 of principal.

14 \* Sec. 44. AS 45.03.305 is repealed and reenacted to read:

15 Sec. 45.03.305. DEFENSES AND CLAIMS IN RECOUPMENT. (a) Except  
16 as stated in (b) of this section, the right to enforce the obligation of a party to pay an  
17 instrument is subject to the following:

18 (1) a defense of the obligor based on

19 (A) infancy of the obligor, to the extent it is a defense to a  
20 simple contract;

21 (B) duress, lack of legal capacity, or illegality of the transaction  
22 that, under other law, nullifies the obligation of the obligor;

23 (C) fraud that induced the obligor to sign the instrument with  
24 neither knowledge nor reasonable opportunity to learn of its character or its  
25 essential terms; or

26 (D) discharge of the obligor in insolvency proceedings;

27 (2) a defense of the obligor stated in another section of this chapter or  
28 a defense of the obligor that would be available if the person entitled to enforce the  
29 instrument were enforcing a right to payment under a simple contract; and

30 (3) a claim in recoupment of the obligor against the original payee of  
31 the instrument if the claim arose from the transaction that gave rise to the instrument,

1 but the claim of the obligor may be asserted against a transferee of the instrument only  
2 to reduce the amount owing in the instrument at the time the action is brought.

3 (b) The right of a holder in due course to enforce the obligation of a party to  
4 pay the instrument is subject to defenses of the obligor stated in (a)(1) of this section,  
5 but is not subject to defenses of the obligor stated in (a)(2) of this section or claims  
6 in recoupment stated in (a)(3) of this section against a person other than the holder.

7 (c) Except as stated in (d) of this section, in an action to enforce the obligation  
8 of a party to pay the instrument, the obligor may not assert against the person entitled  
9 to enforce the instrument a defense, claim in recoupment, or claim to the instrument  
10 under AS 45.03.306 of another person, but the other person's claim to the instrument  
11 may be asserted by the obligor if the other person is joined in the action and  
12 personally asserts the claim against the person entitled to enforce the instrument. An  
13 obligor is not obliged to pay the instrument if the person seeking enforcement of the  
14 instrument does not have rights of a holder in due course and the obligor proves that  
15 the instrument is a lost or stolen instrument.

16 (d) In an action to enforce the obligation of an accommodation party to pay  
17 an instrument, the accommodation party may assert against the person entitled to  
18 enforce the instrument any defense or claim in recoupment under (a) of this section  
19 that the accommodated party could assert against the person entitled to enforce the  
20 instrument, except the defenses of discharge in insolvency proceedings, infancy, and  
21 lack of legal capacity.

22 \* Sec. 45. AS 45.03.306 is repealed and reenacted to read:

23 Sec. 45.03.306. CLAIMS TO AN INSTRUMENT. A person taking an  
24 instrument, other than a person having rights of a holder in due course, is subject to  
25 a claim of a property or possessory right in the instrument or its proceeds, including  
26 a claim to rescind a negotiation and to recover the instrument or its proceeds. A  
27 person having rights of a holder in due course takes free of the claim to the  
28 instrument.

29 \* Sec. 46. AS 45.03.307 is repealed and reenacted to read:

30 Sec. 45.03.307. NOTICE OF BREACH OF FIDUCIARY DUTY. (a) If an  
31 instrument is taken from a fiduciary for payment or collection or for value, the taker

1 has knowledge of the fiduciary status of the fiduciary, and the represented person  
2 makes a claim to the instrument or its proceeds on the basis that the transaction of the  
3 fiduciary is a breach of fiduciary duty, the following rules apply:

4 (1) notice of breach of fiduciary duty by the fiduciary is notice of the  
5 claim of the represented person;

6 (2) in the case of an instrument payable to the represented person or  
7 the fiduciary as such, the taker has notice of the breach of fiduciary duty if the  
8 instrument is

9 (A) taken in payment of or as security for a debt known by the  
10 taker to be the personal debt of the fiduciary;

11 (B) taken in a transaction known by the taker to be for the  
12 personal benefit of the fiduciary; or

13 (C) deposited to an account other than an account of the  
14 fiduciary, as such, or an account of the represented person;

15 (3) if an instrument is issued by the represented person or the fiduciary  
16 as such, and made payable to the fiduciary personally, the taker does not have notice  
17 of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty;  
18 and

19 (4) if an instrument is issued by the represented person or the fiduciary  
20 as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if  
21 the instrument is

22 (A) taken in payment of or as security for a debt known by the  
23 taker to be the personal debt of the fiduciary;

24 (B) taken in a transaction known by the taker to be for the  
25 personal benefit of the fiduciary; or

26 (C) deposited to an account other than an account of the  
27 fiduciary, as such, or an account of the represented person.

28 (b) In this section,

29 (1) "fiduciary" means an agent, trustee, partner, corporate officer or  
30 director, or other representative owing a fiduciary duty with respect to an instrument;

31 (2) "represented person" means the principal, beneficiary, partnership,

1 corporation, or other person to whom a fiduciary duty with respect to an instrument  
2 is owed.

3 • **Sec. 47. AS 45.03 is amended by adding new sections to read:**

4 **Sec. 45.03.308. PROOF OF SIGNATURES AND STATUS AS HOLDER IN**  
5 **DUE COURSE. (a)** In an action with respect to an instrument, the authenticity of,  
6 and authority to make, each signature on the instrument is admitted unless specifically  
7 denied in the pleadings to which a responsive pleading is required. If the validity of  
8 a signature is denied in the pleadings, the burden of establishing validity is on the  
9 person claiming validity, but the signature is presumed to be authentic and authorized,  
10 unless the action is to enforce the liability of the purported signer and the signer is  
11 dead or incompetent at the time of trial of the issue of validity of the signature. If an  
12 action to enforce the instrument is brought against a person as the undisclosed  
13 principal of a person who signed the instrument as a party to the instrument, the  
14 plaintiff has the burden of establishing that the defendant is liable on the instrument  
15 as a represented person under AS 45.03.402(a).

16 (b) If the validity of signatures is admitted or proved and there is compliance  
17 with (a) of this section, a plaintiff producing the instrument is entitled to payment if  
18 the plaintiff proves entitlement to enforce the instrument under AS 45.03.301, unless  
19 the defendant proves a defense or claim in recoupment. If a defense or claim in  
20 recoupment is proved, the right to payment of the plaintiff is subject to the defense or  
21 claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder  
22 in due course which are not subject to the defense or claim.

23 **Sec. 45.03.309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN**  
24 **INSTRUMENT. (a)** A person not in possession of an instrument is entitled to enforce  
25 the instrument if

26 (1) the person was in possession of the instrument and entitled to  
27 enforce it when loss of possession occurred;

28 (2) the loss of possession was not the result of a transfer by the person  
29 or a lawful seizure; and

30 (3) the person cannot reasonably obtain possession of the instrument  
31 because the instrument was destroyed, its whereabouts cannot be determined, or it is

1 in the wrongful possession of an unknown person or a person who cannot be found or  
2 is not amenable to service of process.

3 (b) A person seeking enforcement of an instrument under (a) of this section  
4 must prove the terms of the instrument and the person's right to enforce the  
5 instrument. If that proof is made, AS 45.03.308 applies to the case as if the person  
6 seeking enforcement had produced the instrument. The court may not enter judgment  
7 in favor of the person seeking enforcement unless it finds that the person required to  
8 pay the instrument is adequately protected against loss that might occur by reason of  
9 a claim by another person to enforce the instrument. Adequate protection may be  
10 provided by any reasonable means.

11 **Sec. 45.03.310. EFFECT OF INSTRUMENT ON OBLIGATION FOR**  
12 **WHICH TAKEN.** (a) Unless otherwise agreed, if a certified check, cashier's check,  
13 or teller's check is taken for an obligation, the obligation is discharged to the same  
14 extent discharge would result if an amount of money equal to the amount of the  
15 instrument were taken in payment of the obligation. Discharge of the obligation does  
16 not affect any liability that the obligor may have as an endorser of the instrument.

17 (b) Unless otherwise agreed and except as provided in (a) of this section, if  
18 a note or an uncertified check is taken for an obligation, the obligation is suspended  
19 to the same extent the obligation would be discharged if an amount of money equal  
20 to the amount of the instrument were taken, and the following rules apply:

21 (1) in the case of an uncertified check, suspension of the obligation  
22 continues until dishonor of the check or until it is paid or certified; payment or  
23 certification of the check results in discharge of the obligation to the extent of the  
24 amount of the check;

25 (2) in the case of a note, suspension of the obligation continues until  
26 dishonor of the note or until it is paid; payment of the note results in discharge of the  
27 obligation to the extent of the payment;

28 (3) except as provided in (4) of this subsection, if the check or note is  
29 dishonored and the obligee of the obligation for which the instrument was taken is the  
30 person entitled to enforce the instrument, the obligee may enforce either the instrument  
31 or the obligation; in the case of an instrument of a third person that is negotiated to

1 the obligee by the obligor, discharge of the obligor on the instrument also discharges  
2 the obligation; and

3 (4) if the person entitled to enforce the instrument taken for an  
4 obligation is a person other than the obligee, the obligee may not enforce the  
5 obligation to the extent the obligation is suspended; if the obligee is the person entitled  
6 to enforce the instrument but no longer has possession of it because it was lost, stolen,  
7 or destroyed, the obligation may not be enforced to the extent of the amount payable  
8 on the instrument, and to that extent the obligee's rights against the obligor are limited  
9 to enforcement of the instrument.

10 (c) If an instrument other than one described in (a) or (b) of this section is  
11 taken for an obligation, the effect is that stated in (a) if the instrument is one on which  
12 a bank is liable as maker or acceptor, or that stated in (b) in any other case.

13 **Sec. 45.03.311. ACCORD AND SATISFACTION BY USE OF**  
14 **INSTRUMENT.** (a) The provisions of this section apply if a person against whom  
15 a claim is asserted proves that

16 (1) the person in good faith tendered an instrument to the claimant as  
17 full satisfaction on the claim;

18 (2) the amount of the claim was unliquidated or subject to a bona fide  
19 dispute; and

20 (3) the claimant obtained payment of the instrument.

21 (b) Unless (c) of this section applies, the claim is discharged if the person  
22 against whom the claim is asserted proves that the instrument or an accompanying  
23 written communication contained a conspicuous statement to the effect that the  
24 instrument was tendered as full satisfaction of the claim.

25 (c) Subject to (d) of this section, a claim is not discharged under (b) of this  
26 section if either of the following applies:

27 (1) the claimant, if an organization, proves that

28 (A) within a reasonable time before the tender, the claimant sent  
29 a conspicuous statement to the person against whom the claim is asserted that  
30 communications concerning disputed debts, including an instrument tendered  
31 as full satisfaction of a debt, are to be sent to a designated person, office, or

1 place; and

2 (B) the instrument or accompanying communication was not  
3 received by that designated person, office, or place; or

4 (2) the claimant, whether or not an organization, proves that within 90  
5 days after payment of the instrument, the claimant tendered repayment of the amount  
6 of the instrument to the person against whom the claim is asserted, unless the claimant  
7 is an organization that sent a statement complying with (1)(A) of this subsection.

8 (d) A claim is discharged if the person against whom the claim is asserted  
9 proves that within a reasonable time before collection of the instrument was initiated,  
10 the claimant, or an agent of the claimant having direct responsibility with respect to  
11 the disputed obligation, knew that the instrument was tendered in full satisfaction of  
12 the claim.

13 **Sec. 45.03.312. LOST, DESTROYED, OR STOLEN CASHIER'S CHECK,**  
14 **TELLER'S CHECK, OR CERTIFIED CHECK.** (a) A claimant may assert a claim  
15 to the amount of a check by a communication to the obligated bank describing the  
16 check with reasonable certainty and requesting payment of the amount of the check,  
17 if

18 (1) the claimant is the drawer or payee of a certified check or the  
19 remitter or payee of a cashier's check or teller's check;

20 (2) the communication contains or is accompanied by a declaration of  
21 loss of the claimant with respect to the check;

22 (3) the communication is received at a time and in a manner affording  
23 the bank a reasonable time to act on it before the check is paid; and

24 (4) the claimant provides reasonable identification if requested by the  
25 obligated bank.

26 (b) Delivery of a declaration of loss under (a)(2) of this section is a warranty  
27 of the truth of the statements made in the declaration.

28 (c) If a claim is asserted in compliance with (a) of this section, the following  
29 rules apply:

30 (1) the claim becomes enforceable at the later of

31 (A) the time the claim is asserted; or

1 (B) the 90th day following the date of the check, in the case of  
2 a cashier's check or teller's check, or the 90th day following the date of the  
3 acceptance, in the case of a certified check;

4 (2) until the claim becomes enforceable, it does not have legal effect  
5 and the obligated bank may pay the check or, in the case of a teller's check, may  
6 permit the drawee to pay the check; payment to a person entitled to enforce the check  
7 discharges all liability of the obligated bank with respect to the check;

8 (3) if the claim becomes enforceable before the check is presented for  
9 payment, the obligated bank is not obliged to pay the check;

10 (4) when the claim becomes enforceable, the obligated bank becomes  
11 obliged to pay the amount of the check to the claimant if payment of the check has  
12 not been made to a person entitled to enforce the check; subject to AS 45.04.302(a)(1),  
13 payment to the claimant discharges all liability of the obligated bank with respect to  
14 the check.

15 (d) If the obligated bank pays the amount of a check to a claimant under (c)(4)  
16 of this section and the check is presented for payment by a person having rights of a  
17 holder in due course, the claimant is obliged to

18 (1) refund the payment to the obligated bank if the check is paid; or  
19 (2) pay the amount of the check to the person having rights of a holder  
20 in due course if the check is dishonored.

21 (e) If a claimant has the right to assert a claim under (a) - (c) of this section  
22 and is also a person entitled to enforce a cashier's check, teller's check, or certified  
23 check that is lost, destroyed, or stolen, the claimant may assert rights with respect to  
24 the check either under this section or AS 45.03.309.

25 (f) In this section,

26 (1) "check" means a cashier's check, teller's check, or certified check;

27 (2) "claimant" means a person who claims the right to receive the  
28 amount of a cashier's check, teller's check, or certified check that was lost, destroyed,  
29 or stolen;

30 (3) "declaration of loss" means a written statement, made under penalty  
31 of perjury, to the effect that

- 1 (A) the declarer lost possession of a check;
- 2 (B) the declarer is the drawer or payee of the check, in the case
- 3 of a certified check, or the remitter or payee of the check, in the case of a
- 4 cashier's check or teller's check;
- 5 (C) the loss of possession was not the result of a transfer by the
- 6 declarer or a lawful seizure; and
- 7 (D) the declarer cannot reasonably obtain possession of the
- 8 check because the check was destroyed, the check's whereabouts cannot be
- 9 determined, or the check is in the wrongful possession of an unknown person
- 10 or a person who cannot be found or is not amenable to service of process;
- 11 (4) "obligated bank" means the issuer of a cashier's check or teller's
- 12 check or the acceptor of a certified check.

13 \* Sec. 48. AS 45.03.401 is repealed and reenacted to read:

14 Sec. 45.03.401. SIGNATURE. (a) A person is not liable on an instrument  
15 unless

- 16 (1) the person signed the instrument; or
- 17 (2) the person is represented by an agent or representative who signed
- 18 the instrument and the signature is binding on the represented person under
- 19 AS 45.03.402.

20 (b) A signature may be made manually or by means of a device or machine,  
21 and by the use of any name, including a trade or assumed name, or by a word, mark,  
22 or symbol executed or adopted by a person with present intention to authenticate a  
23 writing.

24 \* Sec. 49. AS 45.03.402 is repealed and reenacted to read:

25 Sec. 45.03.402. SIGNATURE BY REPRESENTATIVE. (a) If a person  
26 acting, or purporting to act, as a representative signs an instrument by signing either  
27 the name of the represented person or the name of the signer, the represented person  
28 is bound by the signature to the same extent the represented person would be bound  
29 if the signature were on a simple contract. If the represented person is bound, the  
30 signature of the representative is the authorized signature of the represented person and  
31 the represented person is liable on the instrument, whether or not identified in the

1 instrument.

2 (b) If a representative signs the name of the representative to an instrument  
3 and the signature is an authorized signature of the represented person, the following  
4 rules apply:

5 (1) if the form of the signature shows unambiguously that the signature  
6 is made on behalf of the represented person who is identified in the instrument, the  
7 representative is not liable on the instrument; and

8 (2) subject to (c) of this section, if the form of the signature does not  
9 show unambiguously that the signature is made in a representative capacity or the  
10 represented person is not identified in the instrument, the representative is liable on the  
11 instrument to a holder in due course that took the instrument without notice that the  
12 representative was not intended to be liable on the instrument; with respect to another  
13 person, the representative is liable on the instrument unless the representative proves  
14 that the original parties did not intend the representative to be liable on the instrument.

15 (c) If a representative signs the name of the representative as drawer of a  
16 check without indication of the representative status and the check is payable from an  
17 account of the represented person who is identified on the check, the signer is not  
18 liable on the check if the signature is an authorized signature of the represented person.

19 \* Sec. 50. AS 45.03.403 is repealed and reenacted to read:

20 Sec. 45.03.403. UNAUTHORIZED SIGNATURE. (a) Unless otherwise  
21 provided in this chapter or AS 45.04, an unauthorized signature is ineffective except  
22 as the signature of the unauthorized signer in favor of a person who in good faith pays  
23 the instrument or takes it for value. An unauthorized signature may be ratified for all  
24 purposes of this chapter.

25 (b) If the signature of more than one person is required to constitute the  
26 authorized signature of an organization, the signature of the organization is  
27 unauthorized if one of the required signatures is lacking.

28 (c) The civil or criminal liability of a person who makes an unauthorized  
29 signature is not affected by any provision of this chapter that makes the unauthorized  
30 signature effective for the purposes of this chapter.

31 \* Sec. 51. AS 45.03.404 is repealed and reenacted to read:

1           **Sec. 45.03.404. IMPOSTORS; FICTITIOUS PAYEES.** (a) If an impostor,  
2 by use of the mails or otherwise, induces the issuer of an instrument to issue the  
3 instrument to the impostor or a person acting in concert with the impostor, by  
4 impersonating the payee of the instrument or a person authorized to act for the payee,  
5 an endorsement of the instrument by any person in the name of the payee is effective  
6 as the endorsement of the payee in favor of a person who, in good faith, pays the  
7 instrument or takes it for value or for collection.

8           (b) If a person whose intent determines to whom an instrument is payable  
9 (AS 45.03.110(a) or (b)) does not intend the person identified as payee to have an  
10 interest in the instrument, or if the person identified as payee of an instrument is a  
11 fictitious person, the following rules apply until the instrument is negotiated by special  
12 endorsement:

13                   (1) any person in possession of the instrument is the holder of the  
14 instrument; and

15                   (2) an endorsement by any person in the name of the payee stated in  
16 the instrument is effective as the endorsement of the payee in favor of a person who,  
17 in good faith, pays the instrument or takes it for value or for collection.

18           (c) Under (a) or (b) of this section, an endorsement is made in the name of a  
19 payee if

20                   (1) it is made in a name substantially similar to that of the payee; or

21                   (2) the instrument, whether or not endorsed, is deposited in a depository  
22 bank to an account in a name substantially similar to that of the payee.

23           (d) With respect to an instrument to which (a) or (b) of this section applies,  
24 if a person paying the instrument or taking it for value or for collection fails to  
25 exercise ordinary care in paying or taking the instrument and that failure substantially  
26 contributes to loss resulting from payment of the instrument, the person bearing the  
27 loss may recover from the person failing to exercise ordinary care to the extent the  
28 failure to exercise ordinary care contributed to the loss.

29 \* **Sec. 52.** AS 45.03.405 is repealed and reenacted to read:

30           **Sec. 45.03.405. EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT**  
31 **ENDORSEMENT BY EMPLOYEE.** (a) For the purpose of determining the rights

1 and liabilities of a person who, in good faith, pays an instrument or takes it for value  
2 or for collection, if an employer entrusted an employee with responsibility with respect  
3 to the instrument and the employee or a person acting in concert with the employee  
4 makes a fraudulent endorsement of the instrument, the endorsement is effective as the  
5 endorsement of the person to whom the instrument is payable if it is made in the name  
6 of that person. If the person paying the instrument or taking it for value or for  
7 collection fails to exercise ordinary care in paying or taking the instrument and that  
8 failure substantially contributes to loss resulting from the fraud, the person bearing the  
9 loss may recover from the person failing to exercise ordinary care to the extent the  
10 failure to exercise ordinary care contributed to the loss.

11 (b) Under (a) of this section, an endorsement is made in the name of the  
12 person to whom an instrument is payable if

13 (1) it is made in a name substantially similar to the name of that  
14 person; or

15 (2) the instrument, whether or not endorsed, is deposited in a depository  
16 bank to an account in a name substantially similar to the name of that person.

17 (c) In this section,

18 (1) "employee" includes an independent contractor and an employee of  
19 an independent contractor retained by the employer;

20 (2) "fraudulent endorsement" means

21 (A) in the case of an instrument payable to the employer, a  
22 forged endorsement purporting to be that of the employer; or

23 (B) in the case of an instrument with respect to which the  
24 employer is the issuer, a forged endorsement purporting to be that of the person  
25 identified as payee;

26 (3) "responsibility" with respect to instruments means authority to sign  
27 or endorse instruments on behalf of the employer; to process instruments received by  
28 the employer for bookkeeping purposes, for deposit to an account, or for other  
29 disposition; to prepare or process instruments for issue in the name of the employer;  
30 to supply information determining the names or addresses of payees of instruments to  
31 be issued in the name of the employer; to control the disposition of instruments to be

1 issued in the name of the employer; or to act otherwise with respect to instruments in  
2 a responsible capacity; "responsibility" does not include authority that merely allows  
3 an employee to have access to instruments or blank or incomplete instrument forms  
4 that are being stored or transported or are part of incoming or outgoing mail, or similar  
5 access.

6 \* **Sec. 53.** AS 45.03.406 is repealed and reenacted to read:

7 **Sec. 45.03.406. NEGLIGENCE CONTRIBUTING TO FORGED SIGNATURE**  
8 **OR ALTERATION OF INSTRUMENT.** (a) A person whose failure to exercise  
9 ordinary care substantially contributes to an alteration of an instrument or to the  
10 making of a forged signature on an instrument is precluded from asserting the  
11 alteration or the forgery against a person who, in good faith, pays the instrument or  
12 takes it for value or for collection.

13 (b) Under (a) of this section, if the person asserting the preclusion fails to  
14 exercise ordinary care in paying or taking the instrument and that failure substantially  
15 contributes to loss, the loss is allocated between the person precluded and the person  
16 asserting the preclusion according to the extent to which the failure of each to exercise  
17 ordinary care contributed to the loss.

18 (c) Under (a) of this section, the burden of proving failure to exercise ordinary  
19 care is on the person asserting the preclusion. Under (b) of this section, the burden  
20 of proving failure to exercise ordinary care is on the person precluded.

21 \* **Sec. 54.** AS 45.03.407 is repealed and reenacted to read:

22 **Sec. 45.03.407. ALTERATION.** (a) Except as provided in (b) of this section,  
23 an alteration fraudulently made discharges a party whose obligation is affected by the  
24 alteration unless that party assents or is precluded from asserting the alteration.  
25 Another alteration does not discharge a party, and the instrument may be enforced  
26 according to its original terms.

27 (b) A payor bank or drawee paying a fraudulently altered instrument or a  
28 person taking it for value, in good faith and without notice of the alteration, may  
29 enforce rights with respect to the instrument according to its original terms or, in the  
30 case of an incomplete instrument altered by unauthorized completion, according to its  
31 terms as completed.

1 (c) "Alteration" means  
2 (1) an unauthorized change in an instrument that purports to modify in  
3 any respect the obligation of a party; or  
4 (2) an unauthorized addition of words or numbers or other change to  
5 an incomplete instrument relating to the obligation of a party.

6 \* Sec. 55. AS 45.03.408 is repealed and reenacted to read:

7 Sec. 45.03.408. DRAWEE NOT LIABLE ON UNACCEPTED DRAFT. A  
8 check or other draft does not of itself operate as an assignment of funds in the hands  
9 of the drawee available for its payment, and the drawee is not liable on the instrument  
10 until the drawee accepts the instrument.

11 \* Sec. 56. AS 45.03.409 is repealed and reenacted to read:

12 Sec. 45.03.409. ACCEPTANCE OF DRAFT; CERTIFIED CHECK. (a)  
13 "Acceptance" means the drawee's signed agreement to pay a draft as presented.  
14 Acceptance must be written on the draft and may consist of the drawee's signature  
15 alone. Acceptance may be made at any time and becomes effective when notification  
16 in accordance with instructions is given or the accepted draft is delivered for the  
17 purpose of giving rights on the acceptance to any person.

18 (b) A draft may be accepted although it has not been signed by the drawer, is  
19 otherwise incomplete, is overdue, or has been dishonored.

20 (c) If a draft is payable at a fixed period after sight and the acceptor fails to  
21 date the acceptance, the holder may complete the acceptance by supplying a date in  
22 good faith.

23 (d) "Certified check" means a check accepted by the bank on which it is  
24 drawn. Acceptance may be made as stated in (a) of this section or by a writing on the  
25 check that indicates that the check is certified. The drawee of a check does not have  
26 an obligation to certify the check, and refusal to certify is not dishonor of the check.

27 \* Sec. 57. AS 45.03.410 is repealed and reenacted to read:

28 Sec. 45.03.410. ACCEPTANCE VARYING DRAFT. (a) If the terms of a  
29 drawee's acceptance vary from the terms of the draft as presented, the holder may  
30 refuse the acceptance and treat the draft as dishonored. In that case, the drawee may  
31 cancel the acceptance.

1 (b) The terms of a draft are not varied by an acceptance to pay at a particular  
2 bank or place in the United States, unless the acceptance states that the draft is to be  
3 paid only at that bank or place.

4 (c) If the holder assents to an acceptance varying the terms of a draft, the  
5 obligation of each drawer and endorser that does not expressly assent to the acceptance  
6 is discharged.

7 \* Sec. 58. AS 45.03.411 is repealed and reenacted to read:

8 Sec. 45.03.411. REFUSAL TO PAY CASHIER'S CHECKS, TELLER'S  
9 CHECKS, AND CERTIFIED CHECKS. (a) If the obligated bank wrongfully refuses  
10 to pay a cashier's check or certified check, stops payment of a teller's check, or  
11 refuses to pay a dishonored teller's check, the person asserting the right to enforce the  
12 check is entitled to compensation for expenses and loss of interest resulting from the  
13 nonpayment and may recover consequential damages if the obligated bank refuses to  
14 pay after receiving notice of particular circumstances giving rise to the damages.

15 (b) Expenses or consequential damages under (a) of this section are not  
16 recoverable if

17 (1) the refusal of the obligated bank to pay occurs because the bank  
18 suspends payments;

19 (2) the obligated bank asserts a claim or defense of the bank that it has  
20 reasonable grounds to believe is available against the person entitled to enforce the  
21 instrument;

22 (3) the obligated bank has a reasonable doubt whether the person  
23 demanding payment is the person entitled to enforce the instrument; or

24 (4) payment is prohibited by law.

25 (c) In this section, "obligated bank" means the acceptor of a certified check  
26 or the issuer of a cashier's check or teller's check bought from the issuer.

27 \* Sec. 59. AS 45.03.412 is repealed and reenacted to read:

28 Sec. 45.03.412. OBLIGATION OF ISSUER OF NOTE OR CASHIER'S  
29 CHECK. The issuer of a note, cashier's check, or other draft drawn on the drawer is  
30 obliged to pay the instrument according to its terms at the time it was issued or, if not  
31 issued, at the time it first came into possession of a holder, if the issuer signed an

1 incomplete instrument, the issuer is obligated to pay the instrument according to its  
2 terms when completed, to the extent stated in AS 45.03.115 and 45.03.407. The  
3 obligation is owed to a person entitled to enforce the instrument or to an endorser who  
4 paid the instrument under AS 45.03.415.

5 \* Sec. 60. AS 45.03.413 is repealed and reenacted to read:

6 Sec. 45.03.413. OBLIGATION OF ACCEPTOR. (a) The acceptor of a draft  
7 is obliged to pay the draft according to its terms at the time it was accepted, even  
8 though the acceptance states that the draft is payable "as originally drawn" or  
9 equivalent terms; if the acceptance varies the terms of the draft, the acceptor is obliged  
10 to pay the draft according to the terms of the draft as varied; if the acceptance is of  
11 a draft that is an incomplete instrument, the acceptor is obliged to pay the draft  
12 according to its terms when completed, to the extent stated in AS 45.03.115 and  
13 45.03.407. The obligation is owed to a person entitled to enforce the draft or to the  
14 drawer or an endorser who paid the draft under AS 45.03.414 - 45.03.415.

15 (b) If the certification of a check or other acceptance of a draft states the  
16 amount certified or accepted, the obligation of the acceptor is that amount. If the  
17 certification or acceptance does not state an amount, the amount of the instrument is  
18 subsequently raised, and the instrument is then negotiated to a holder in due course,  
19 the obligation of the acceptor is the amount of the instrument at the time it was taken  
20 by the holder in due course.

21 \* Sec. 61. AS 45.03.414 is repealed and reenacted to read:

22 Sec. 45.03.414. OBLIGATION OF DRAWER. (a) This section does not  
23 apply to cashier's checks or other drafts drawn on the drawer.

24 (b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft  
25 according to its terms at the time it was issued or, if not issued, at the time it first  
26 came into possession of a holder. If the drawer signed an incomplete instrument, the  
27 drawer is obliged to pay the draft according to its terms when completed, to the extent  
28 stated in AS 45.03.115 and 45.03.407. The obligation is owed to a person entitled to  
29 enforce the draft or to an endorser who paid the draft under AS 45.03.415.

30 (c) If a draft is accepted by a bank, the drawer is discharged, regardless of  
31 when or by whom acceptance was obtained.

1 (d) If a draft is accepted and the acceptor is not a bank, the obligation of the  
2 drawer to pay the draft, if the draft is dishonored by the acceptor, is the same as the  
3 obligation of an endorser under AS 45.03.415(a) and (c).

4 (e) If a draft states that it is drawn "without recourse" or otherwise disclaims  
5 liability of the drawer to pay the draft, the drawer is not liable under (b) of this section  
6 to pay the draft if the draft is not a check. A disclaimer of the liability stated in (b)  
7 of this section is not effective if the draft is a check.

8 (f) If a check is not presented for payment or given to a depository bank for  
9 collection within 30 days after its date and the drawee suspends payments after  
10 expiration of the 30-day period without paying the check and, because of the  
11 suspension of payments, the drawer is deprived of funds maintained with the drawee  
12 to cover payment of the check, the drawer to the extent deprived of funds may  
13 discharge its obligation to pay the check by assigning to the person entitled to enforce  
14 the check the rights of the drawer against the drawee with respect to the funds.

15 \* Sec. 62. AS 45.03.415 is repealed and reenacted to read:

16 Sec. 45.03.415. OBLIGATION OF ENDORSER. (a) Subject to (b) - (d) of  
17 this section and AS 45.03.419(d), if an instrument is dishonored an endorser is obliged  
18 to pay the amount due on the instrument according to the terms of the instrument at  
19 the time it was endorsed or, if the endorser endorsed an incomplete instrument,  
20 according to its terms when completed to the extent stated in AS 45.03.115 and  
21 45.03.407. The obligation of the endorser is owed to a person entitled to enforce the  
22 instrument or to a subsequent endorser who paid the instrument under this section.

23 (b) If an endorsement states that it is made "without recourse" or otherwise  
24 disclaims liability of the endorser, the endorser is not liable under (a) of this section  
25 to pay the instrument.

26 (c) If notice of dishonor of an instrument is required by AS 45.03.503 and  
27 notice of dishonor complying with that section is not given to an endorser, the liability  
28 of the endorser under (a) of this section is discharged.

29 (d) If a draft is accepted by a bank after an endorsement is made, the liability  
30 of the endorser under (a) of this section is discharged.

31 (e) If an endorser of a check is liable under (a) of this section and the check

1 is not presented for payment or given to a depository bank for collection within 30  
2 days after the date the endorsement was made, the liability of the endorser under (a)  
3 of this section is discharged.

4 \* Sec. 63. AS 45.03.416 is repealed and reenacted to read:

5 Sec. 45.03.416. TRANSFER WARRANTIES. (a) A person who transfers an  
6 instrument for consideration warrants to the transferee and, if the transfer is by  
7 endorsement, to any subsequent transferee that

8 (1) the warrantor is a person entitled to enforce the instrument;

9 (2) all signatures on the instrument are authentic and authorized;

10 (3) the instrument has not been altered;

11 (4) the instrument is not subject to a defense or claim in recoupment  
12 of any party that can be asserted against the warrantor; and

13 (5) the warrantor does not know of any insolvency proceeding  
14 commenced with respect to the maker or acceptor or, in the case of an unaccepted  
15 draft, the drawer.

16 (b) A person to whom the warranties under (a) of this section are made and  
17 who took the instrument in good faith may recover from the warrantor as damages for  
18 breach of warranty an amount equal to the loss suffered as a result of the breach, but  
19 not more than the amount of the instrument plus expenses and loss of interest incurred  
20 as a result of the breach.

21 (c) The warranties stated in (a) of this section cannot be disclaimed with  
22 respect to checks. Unless notice of a claim for breach of warranty is given to the  
23 warrantor within 30 days after the claimant has reason to know of the breach and the  
24 identity of the warrantor, the liability of the warrantor under (b) of this section is  
25 discharged to the extent of any loss caused by the delay in giving notice of the claim.

26 (d) A cause of action for breach of warranty under this section accrues when  
27 the claimant has reason to know of the breach.

28 \* Sec. 64. AS 45.03.417 is repealed and reenacted to read:

29 Sec. 45.03.417. PRESENTMENT WARRANTIES. (a) If an unaccepted draft  
30 is presented to the drawee for payment or acceptance and the drawee pays or accepts  
31 the draft, the person obtaining payment or acceptance, at the time of presentment, and

1 a previous transferor of the draft, at the time of transfer, warrant to the drawee making  
2 payment or accepting the draft in good faith that

3 (1) the warrantor is, or was at the time the warrantor transferred the  
4 draft, a person entitled to enforce the draft or authorized to obtain payment or  
5 acceptance of the draft on behalf of a person entitled to enforce the draft;

6 (2) the draft has not been altered; and

7 (3) the warrantor does not know that the signature of the drawer of the  
8 draft is unauthorized.

9 (b) A drawee making payment may recover from any warrantor damages for  
10 breach of warranty equal to the amount paid by the drawee less the amount the drawee  
11 received or is entitled to receive from the drawer because of the payment. In addition,  
12 the drawee is entitled to compensation for expenses and loss of interest resulting from  
13 the breach. The right of the drawee to recover damages under this subsection is not  
14 affected by any failure of the drawee to exercise ordinary care in making payment.  
15 If the drawee accepts the draft, breach of warranty is a defense to the obligation of the  
16 acceptor. If the acceptor makes payment with respect to the draft, the acceptor is  
17 entitled to recover from any warrantor for breach of warranty the amounts stated in  
18 this subsection.

19 (c) If a drawee asserts a claim for breach of warranty under (a) of this section  
20 based on an unauthorized endorsement of the draft or an alteration of the draft, the  
21 warrantor may defend by proving that the endorsement is effective under AS 45.03.404  
22 or 45.03.405, or that the drawer is precluded under AS 45.03.406 or AS 45.04.406  
23 from asserting against the drawee the unauthorized endorsement or alteration.

24 (d) If a dishonored draft is presented for payment to the drawer or an endorser,  
25 or if any other instrument is presented for payment to a party obliged to pay the  
26 instrument, and payment is received, the following rules apply:

27 (1) the person obtaining payment and a prior transferor of the  
28 instrument warrant to the person making payment in good faith that the warrantor is,  
29 or was at the time the warrantor transferred the instrument, a person entitled to enforce  
30 the instrument or authorized to obtain payment on behalf of a person entitled to  
31 enforce the instrument;

1 (2) the person making payment may recover from any warrantor for  
2 breach of warranty an amount equal to the amount paid plus expenses and loss of  
3 interest resulting from the breach.

4 (e) The warranties stated in (a) and (d) of this section cannot be disclaimed  
5 with respect to checks. Unless notice of a claim for breach of warranty is given to the  
6 warrantor within 30 days after the claimant has reason to know of the breach and the  
7 identity of the warrantor, the liability of the warrantor under (b) or (d) of this section  
8 is discharged to the extent of any loss caused by the delay in giving notice of the  
9 claim.

10 (f) A cause of action for breach of warranty under this section accrues when  
11 the claimant has reason to know of the breach.

12 \* Sec. 65. AS 45.03.418 is repealed and reenacted to read:

13 Sec. 45.03.418. PAYMENT OR ACCEPTANCE BY MISTAKE. (a) Except  
14 as provided in (c) of this section, if the drawee of a draft pays or accepts the draft and  
15 the drawee acted on the mistaken belief that payment of the draft had not been stopped  
16 under AS 45.04.403 or that the signature of the drawer of the draft was authorized, the  
17 drawee may recover the amount of the draft from the person to whom or for whose  
18 benefit payment was made or, in the case of acceptance, may revoke the acceptance.  
19 Rights of the drawee under this subsection are not affected by failure of the drawee  
20 to exercise ordinary care in paying or accepting the draft.

21 (b) Except as provided in (c) of this section, if an instrument has been paid or  
22 accepted by mistake and the case is not covered by (a) of this section, the person  
23 paying or accepting may, to the extent permitted by the law governing mistake and  
24 restitution, recover the payment from the person to whom or for whose benefit  
25 payment was made or, in the case of acceptance, may revoke the acceptance.

26 (c) The remedies provided by (a) or (b) of this section may not be asserted  
27 against a person who took the instrument in good faith and for value or who in good  
28 faith changed position in reliance on the payment or acceptance. This subsection does  
29 not limit remedies provided by AS 45.03.407 or AS 45.04.407.

30 (d) Notwithstanding AS 45.04.215, if an instrument is paid or accepted by  
31 mistake and the payor or acceptor recovers payment or revokes acceptance under (a)

1 or (b) of this section, the instrument is considered not to have been paid or accepted  
2 and is treated as dishonored, and the person from whom payment is recovered has  
3 rights as a person entitled to enforce the dishonored instrument.

4 \* **Sec. 66.** AS 45.03.419 is repealed and reenacted to read:

5 **Sec. 45.03.419. INSTRUMENTS SIGNED FOR ACCOMMODATION. (a)**

6 If an instrument is issued for value given for the benefit of a party to the instrument,  
7 the "accommodated party," and another party to the instrument, the "accommodation  
8 party," signs the instrument for the purpose of incurring liability on the instrument  
9 without being a direct beneficiary of the value given for the instrument, the instrument  
10 is signed by the accommodation party "for accommodation."

11 (b) An accommodation party may sign the instrument as maker, drawer,  
12 acceptor, or endorser and, subject to (d) of this section, is obliged to pay the  
13 instrument in the capacity in which the accommodation party signs. The obligation  
14 of an accommodation party may be enforced notwithstanding a statute of frauds and  
15 whether or not the accommodation party receives consideration for the accommodation.

16 (c) If the signature is an anomalous endorsement or is accompanied by words  
17 indicating that the signer is acting as surety or guarantor with respect to the obligation  
18 of another party to an instrument, a person signing an instrument is presumed to be an  
19 accommodation party and there is notice that the instrument is signed for  
20 accommodation. Except as provided in AS 45.03.605, the obligation of an  
21 accommodation party to pay the instrument is not affected by the fact that the person  
22 enforcing the obligation had notice when the instrument was taken by that person that  
23 the accommodation party signed the instrument for accommodation.

24 (d) If the signature of a party to an instrument is accompanied by words  
25 indicating unambiguously that the party is guaranteeing collection rather than payment  
26 of the obligation of another party to the instrument, the signer is obliged to pay the  
27 amount due on the instrument to a person entitled to enforce the instrument only if

28 (1) execution of judgment against the other party has been returned  
29 unsatisfied;

30 (2) the other party is insolvent or in an insolvency proceeding;

31 (3) the other party cannot be served with process; or

1 (4) it is otherwise apparent that payment cannot be obtained from the  
2 other party.

3 (e) An accommodation party who pays the instrument is entitled to  
4 reimbursement from the accommodated party and is entitled to enforce the instrument  
5 against the accommodated party. An accommodated party who pays the instrument  
6 does not have a right of recourse against, and is not entitled to contribution from, an  
7 accommodation party.

8 • Sec. 67. AS 45.03 is amended by adding a new section to article 4 to read:

9 Sec. 45.03.420. CONVERSION OF INSTRUMENT. (a) The law applicable  
10 to conversion of personal property applies to instruments. An instrument is also  
11 converted if it is taken by transfer, other than a negotiation, from a person not entitled  
12 to enforce the instrument, or a bank makes or obtains payment with respect to the  
13 instrument for a person not entitled to enforce the instrument or receive payment. An  
14 action for conversion of an instrument may not be brought by the issuer or acceptor  
15 of the instrument, or by a payee or endorsee who did not receive delivery of the  
16 instrument either directly or through delivery to an agent or a co-payee.

17 (b) In an action under (a) of this section, the measure of liability is presumed  
18 to be the amount payable on the instrument, but recovery may not exceed the amount  
19 of the plaintiff's interest in the instrument.

20 (c) A representative, other than a depository bank, who has in good faith dealt  
21 with an instrument or its proceeds on behalf of one who was not the person entitled  
22 to enforce the instrument is not liable in conversion to that person beyond the amount  
23 of any proceeds that it has not paid out.

24 • Sec. 68. AS 45.03.501 is repealed and reenacted to read:

25 Sec. 45.03.501. PRESENTMENT. (a) "Presentment" means a demand made  
26 by or on behalf of a person entitled to enforce an instrument

27 (1) to pay the instrument made to the drawee or a party obliged to pay  
28 the instrument or, in the case of a note or accepted draft payable at a bank, to the  
29 bank; or

30 (2) to accept a draft made to the drawee.

31 (b) The following rules are subject to AS 45.04, agreement of the parties, and

1 clearinghouse rules and the like:

2 (1) presentment may be made at the place of payment of the instrument  
3 and must be made at the place of payment if the instrument is payable at a bank in the  
4 United States; may be made by any commercially reasonable means, including an oral,  
5 written, or electronic communication; is effective when the demand for payment or  
6 acceptance is received by the person to whom presentment is made; and is effective  
7 if made to any one of two or more makers, acceptors, drawees, or other payors;

8 (2) upon demand of the person to whom presentment is made, the  
9 person making presentment must

10 (A) exhibit the instrument;

11 (B) give reasonable identification and, if presentment is made  
12 on behalf of another person, reasonable evidence of authority to do so; and

13 (C) sign a receipt on the instrument for any payment made or  
14 surrender the instrument if full payment is made;

15 (3) without dishonoring the instrument, the party to whom presentment  
16 is made may

17 (A) return the instrument for lack of a necessary endorsement;

18 or

19 (B) refuse payment or acceptance for failure of the presentment  
20 to comply with the terms of the instrument, an agreement of the parties, or  
21 other applicable law or rule; and

22 (4) the party to whom presentment is made may treat presentment as  
23 occurring on the next business day after the day of presentment, if the party to whom  
24 presentment is made has established a cut-off hour not earlier than two o'clock in the  
25 afternoon for the receipt and processing of instruments presented for payment or  
26 acceptance and presentment is made after the cut-off hour.

27 \* Sec. 69. AS 45.03.502 is repealed and reenacted to read:

28 Sec. 45.03.502. DISHONOR. (a) Dishonor of a note is governed by the  
29 following rules:

30 (1) if the note is payable on demand, the note is dishonored if  
31 presentment is duly made to the maker and the note is not paid on the day of

1 presentment;

2 (2) if the note is not payable on demand and is payable at or through  
3 a bank or the terms of the note require presentment, the note is dishonored if  
4 presentment is duly made and the note is not paid on the day it becomes payable or  
5 the day of presentment, whichever is later; and

6 (3) if the note is not payable on demand and (2) of this subsection does  
7 not apply, the note is dishonored if it is not paid on the day it becomes payable.

8 (b) Dishonor of an unaccepted draft, other than a documentary draft, is  
9 governed by the following rules:

10 (1) if a check is duly presented for payment to the payor bank other  
11 than for immediate payment over the counter, the check is dishonored if the payor  
12 bank makes timely return of the check or sends timely notice of dishonor or  
13 nonpayment under AS 45.04.301 - 45.04.302, or becomes accountable for the amount  
14 of the check under AS 45.04.302;

15 (2) if a draft is payable on demand and (1) of this subsection does not  
16 apply, the draft is dishonored if presentment for payment is duly made to the drawee  
17 and the draft is not paid on the day of presentment;

18 (3) if a draft is payable on a date stated in the draft, the draft is  
19 dishonored if presentment for

20 (A) payment is duly made to the drawee and payment is not  
21 made on the day the draft becomes payable or the day of presentment,  
22 whichever is later; or

23 (B) acceptance is duly made before the day the draft becomes  
24 payable and the draft is not accepted on the day of presentment; and

25 (4) if a draft is payable on elapse of a period of time after sight or  
26 acceptance, the draft is dishonored if presentment for acceptance is duly made and the  
27 draft is not accepted on the day of presentment.

28 (c) Dishonor of an unaccepted documentary draft occurs according to the rules  
29 stated in (b)(2) - (4) of this section, except that payment or acceptance may be delayed  
30 without dishonor until no later than the close of the third business day of the drawee  
31 following the day on which payment or acceptance is required by (b)(2) - (4) of this

1 section.

2 (d) Dishonor of an accepted draft is governed by the following rules:

3 (1) if the draft is payable on demand, the draft is dishonored if  
4 presentment for payment is duly made to the acceptor and the draft is not paid on the  
5 day of presentment; and

6 (2) if the draft is not payable on demand, the draft is dishonored if  
7 presentment for payment is duly made to the acceptor and payment is not made on the  
8 day it becomes payable or the day of presentment, whichever is later.

9 (e) In any case in which presentment is otherwise required for dishonor under  
10 this section and presentment is excused under AS 45.03.504, dishonor occurs without  
11 presentment if the instrument is not duly accepted or paid.

12 (f) If a draft is dishonored because timely acceptance of the draft was not  
13 made and the person entitled to demand acceptance consents to a late acceptance, from  
14 the time of acceptance the draft is treated as never having been dishonored.

15 \* Sec. 70. AS 45.03.503 is repealed and reenacted to read:

16 Sec. 45.03.503. NOTICE OF DISHONOR. (a) The obligation of an endorser  
17 stated in AS 45.03.415(a) and the obligation of a drawer stated in AS 45.03.414(d)  
18 may not be enforced unless the endorser or drawer is given notice of dishonor of the  
19 instrument complying with this section or notice of dishonor is excused under  
20 AS 45.03.504(b).

21 (b) Notice of dishonor may be given by any person; may be given by any  
22 commercially reasonable means, including an oral, written, or electronic  
23 communication; and is sufficient if it reasonably identifies the instrument and indicates  
24 that the instrument has been dishonored or has not been paid or accepted. Return of  
25 an instrument given to a bank for collection is sufficient notice of dishonor.

26 (c) Subject to AS 45.03.504(c) with respect to an instrument taken for  
27 collection by a collecting bank, notice of dishonor must be given by the bank before  
28 midnight of the next banking day following the banking day on which the bank  
29 receives notice of dishonor of the instrument, or by another person within 30 days  
30 following the day on which the person receives notice of dishonor. With respect to  
31 other instruments, notice of dishonor must be given within 30 days following the day

1 on which dishonor occurs.

2 \* Sec. 71. AS 45.03.504 is repealed and reenacted to read:

3 **Sec. 45.03.504. EXCUSED PRESENTMENT AND NOTICE OF DISHONOR.**

4 (a) Presentment for payment or acceptance of an instrument is excused if

5 (1) the person entitled to present the instrument cannot with reasonable  
6 diligence make presentment;

7 (2) the maker or acceptor has repudiated an obligation to pay the  
8 instrument or is dead or in insolvency proceedings;

9 (3) by the terms of the instrument presentment is not necessary to  
10 enforce the obligation of endorsers or the drawer;

11 (4) the drawer or endorser whose obligation is being enforced has  
12 waived presentment or otherwise does not have a reason to expect or a right to require  
13 that the instrument be paid or accepted; or

14 (5) the drawer instructed the drawee not to pay or accept the draft or  
15 the drawee was not obligated to the drawer to pay the draft.

16 (b) Notice of dishonor is excused if by the terms of the instrument notice of  
17 dishonor is not necessary to enforce the obligation of a party to pay the instrument, or  
18 the party whose obligation is being enforced waived notice of dishonor. A waiver of  
19 presentment is also a waiver of notice of dishonor.

20 (c) Delay in giving notice of dishonor is excused if the delay was caused by  
21 circumstances beyond the control of the person giving the notice and the person giving  
22 the notice exercised reasonable diligence after the cause of the delay ceased to operate.

23 \* Sec. 72. AS 45.03.505 is repealed and reenacted to read:

24 **Sec. 45.03.505. EVIDENCE OF DISHONOR.** (a) The following are  
25 admissible as evidence and create a presumption of dishonor and of any notice of  
26 dishonor stated:

27 (1) a document regular in form as provided in (b) of this section that  
28 purports to be a protest;

29 (2) a purported stamp or writing of the drawee, payor bank, or  
30 presenting bank on or accompanying the instrument stating that acceptance or payment  
31 has been refused unless reasons for the refusal are stated and the reasons are not

1 consistent with dishonor; or

2 (3) a book or record of the drawee, payor bank, or collecting bank, kept  
3 in the usual course of business, which shows dishonor, even if there is no evidence of  
4 who made the entry.

5 (b) A protest is a certificate of dishonor made by a United States consul or  
6 vice-consul or a notary public or other person authorized to administer oaths by the  
7 law of the place where dishonor occurs. The protest may be made upon information  
8 satisfactory to that person. The protest must identify the instrument and certify either  
9 that presentment has been made or, if not made, the reason why it was not made, and  
10 that the instrument has been dishonored by nonacceptance or nonpayment. The protest  
11 may also certify that notice of dishonor has been given to some or all parties.

12 \* Sec. 73. AS 45.03.601 is repealed and reenacted to read:

13 Sec. 45.03.601. DISCHARGE AND EFFECT OF DISCHARGE. (a) The  
14 obligation of a party to pay the instrument is discharged as stated in this chapter or by  
15 an act or agreement with the party that would discharge an obligation to pay money  
16 under a simple contract.

17 (b) Discharge of the obligation of a party is not effective against a person  
18 acquiring rights of a holder in due course of the instrument without notice of the  
19 discharge.

20 \* Sec. 74. AS 45.03.602 is repealed and reenacted to read:

21 Sec. 45.03.602. PAYMENT. (a) Subject to (b) of this section, an instrument  
22 is paid to the extent payment is made by or on behalf of a party obliged to pay the  
23 instrument and to a person entitled to enforce the instrument. To the extent of the  
24 payment, the obligation of the party obliged to pay the instrument is discharged even  
25 though payment is made with knowledge of a claim to the instrument under  
26 AS 45.03.306 by another person.

27 (b) The obligation of a party to pay the instrument is not discharged under (a)  
28 of this section if

29 (1) a claim to the instrument under AS 45.03.306 is enforceable against  
30 the party receiving payment and

31 (A) payment is made with knowledge by the payor that payment

1 is prohibited by injunction or similar process of a court of competent  
2 jurisdiction; or

3 (B) in the case of an instrument other than a cashier's check,  
4 teller's check, or certified check, the party making payment accepted, from the  
5 person having a claim to the instrument, indemnity against loss resulting from  
6 refusal to pay the person entitled to enforce the instrument; or

7 (2) the person making payment knows that the instrument is a stolen  
8 instrument and pays a person it knows is in wrongful possession of the instrument.

9 \* Sec. 75. AS 45.03.603 is repealed and reenacted to read

10 Sec. 45.03.603. TENDER OF PAYMENT. (a) If tender of payment of an  
11 obligation to pay an instrument is made to a person entitled to enforce the instrument,  
12 the effect of tender is governed by principles of law applicable to tender of payment  
13 under a simple contract.

14 (b) If tender of payment of an obligation to pay an instrument is made to a  
15 person entitled to enforce the instrument and the tender is refused, there is discharge,  
16 to the extent of the amount of the tender, of the obligation of an endorser or  
17 accommodation party having a right of recourse with respect to the obligation to which  
18 the tender relates.

19 (c) If tender of payment of an amount due on an instrument is made to a  
20 person entitled to enforce the instrument, the obligation of the obligor to pay interest  
21 after the due date on the amount tendered is discharged. If presentment is required  
22 with respect to an instrument and the obligor is able and ready to pay on the due date  
23 at every place of payment stated in the instrument, the obligor is deemed to have made  
24 tender of payment on the due date to the person entitled to enforce the instrument.

25 \* Sec. 76. AS 45.03.604 is repealed and reenacted to read:

26 Sec. 45.03.604. DISCHARGE BY CANCELLATION OR RENUNCIATION.

27 (a) A person entitled to enforce an instrument, with or without consideration, may  
28 discharge the obligation of a party to pay the instrument

29 (1) by an intentional voluntary act, such as surrender of the instrument  
30 to the party, destruction, mutilation, or cancellation of the instrument, cancellation or  
31 striking out of the party's signature, or the addition of words to the instrument

1        indicating discharge; or  
2                    (2) by agreeing not to sue or otherwise renouncing rights against the  
3        party by a signed writing.

4                    (b) Cancellation or striking out of an endorsement under (a) of this section  
5        does not affect the status and rights of a party derived from the endorsement.

6        \* **Sec. 77.** AS 45.03.605 is repealed and reenacted to read:

7                    **Sec. 45.03.605. DISCHARGE OF ENDORSERS AND ACCOMMODATION**  
8        **PARTIES.** (a) Discharge, under AS 45.03.604, of the obligation of a party to pay an  
9        instrument does not discharge the obligation of an endorser or accommodation party  
10       having a right of recourse against the discharged party.

11                    (b) If a person entitled to enforce an instrument agrees, with or without  
12        consideration, to an extension of the due date of the obligation of a party to pay the  
13        instrument, the extension discharges an endorser or accommodation party having a  
14        right of recourse against the party whose obligation is extended to the extent the  
15        endorser or accommodation party proves that the extension caused loss to the endorser  
16        or accommodation party with respect to the right of recourse.

17                    (c) If a person entitled to enforce an instrument agrees, with or without  
18        consideration, to a material modification of the obligation of a party other than an  
19        extension of the due date, the modification discharges the obligation of an endorser or  
20        accommodation party having a right of recourse against the person whose obligation  
21        is modified to the extent the modification causes loss to the endorser or  
22        accommodation party with respect to the right of recourse. The loss suffered by the  
23        endorser or accommodation party as a result of the modification is equal to the amount  
24        of the right of recourse unless the person enforcing the instrument proves that no loss  
25        was caused by the modification or that the loss caused by the modification was an  
26        amount less than the amount of the right of recourse.

27                    (d) If the obligation of a party to pay an instrument is secured by an interest  
28        in collateral and a person entitled to enforce the instrument impairs the value of the  
29        interest in collateral, the obligation of an endorser or accommodation party having a  
30        right of recourse against the obligor is discharged to the extent of the impairment. The  
31        value of an interest in collateral is impaired to the extent the value of the interest is

1 reduced to an amount less than the amount of the right of recourse of the party  
2 asserting discharge, or to the extent the reduction in value of the interest causes an  
3 increase in the amount by which the amount of the right of recourse exceeds the value  
4 of the interest. The burden of proving impairment is on the party asserting discharge.

5 (e) If the obligation of a party is secured by an interest in collateral not  
6 provided by an accommodation party and a person entitled to enforce the instrument  
7 impairs the value of the interest in collateral, the obligation of a party who is jointly  
8 and severally liable with respect to the secured obligation is discharged to the extent  
9 the impairment causes the party asserting discharge to pay more than that party would  
10 have been obliged to pay, taking into account rights of contribution, if impairment had  
11 not occurred. If the party asserting discharge is an accommodation party not entitled  
12 to discharge under (d) of this section, the party is considered to have a right to  
13 contribution based on joint and several liability rather than a right to reimbursement.  
14 The burden of proving impairment is on the party asserting discharge.

15 (f) Under (d) or (e) of this section, impairing value of an interest in collateral  
16 includes

17 (1) failure to obtain or maintain perfection or recordation of the interest  
18 in collateral;

19 (2) release of collateral without substitution of collateral of equal value;

20 (3) failure to perform a duty to preserve the value of collateral owed,  
21 under AS 45.09 or other law, to a debtor or surety or other person secondarily liable;  
22 or

23 (4) failure to comply with applicable law in disposing of collateral.

24 (g) An accommodation party is not discharged under (b), (c), or (d) of this  
25 section unless the person entitled to enforce the instrument knows of the  
26 accommodation or has notice under AS 45.03.419(c) that the instrument was signed  
27 for accommodation.

28 (h) A party is not discharged under this section if

29 (1) the party asserting discharge consents to the event or conduct that  
30 is the basis of the discharge; or

31 (2) the instrument or a separate agreement of the party provides for

1 waiver of discharge under this section either specifically or by general language  
2 indicating that parties waive defenses based on suretyship or impairment of collateral.

3 (i) In this section, the term "endorser" includes a drawer having the obligation  
4 described in AS 45.03.414(d).

5 \* Sec. 78. AS 45.04.101 is amended to read:

6 Sec. 45.04.101. SHORT TITLE. This chapter [SHALL BE KNOWN AND]  
7 may be cited as Uniform Commercial Code - Bank Deposits and Collections.

8 \* Sec. 79. AS 45.04.102(a) is amended to read:

9 (a) To the extent that items within this chapter are also within [THE SCOPE  
10 OF] AS 45.03 and 45.08, they are subject to [THE PROVISIONS OF] those chapters.  
11 If there is [IN THE EVENT OF] conflict, [THE PROVISIONS OF] this chapter  
12 governs [GOVERN THOSE OF] AS 45.03, but [THE PROVISIONS OF] AS 45.08  
13 governs [GOVERN THOSE OF] this chapter.

14 \* Sec. 80. AS 45.04.103 is amended to read:

15 Sec. 45.04.103. VARIATION BY AGREEMENT; MEASURE OF  
16 DAMAGES; CERTAIN ACTION CONSTITUTING ORDINARY CARE. (a) The  
17 effect of this chapter may be varied by agreement, but the parties to the [EXCEPT  
18 THAT NO] agreement may not [CAN] disclaim a bank's responsibility for its [OWN]  
19 lack of good faith or failure to exercise ordinary care or [CAN] limit the measure of  
20 damages for the [THAT] lack or failure, However, [; BUT] the parties may  
21 determine by agreement [DETERMINE] the standards by which the bank's [THAT]  
22 responsibility is to be measured if the standards are not manifestly unreasonable.

23 (b) Federal Reserve regulations and operating circulares, clearinghouse  
24 [LETTERS, CLEARING HOUSE] rules, and the like have the effect of agreements  
25 under (a) of this section, whether or not specifically assented to by all parties  
26 interested in items handled.

27 (c) Action or nonaction approved by this chapter or under Federal Reserve  
28 regulations or operating circulares is [LETTERS CONSTITUTES] the exercise of  
29 ordinary care and, in the absence of special instructions, action or nonaction consistent  
30 with clearinghouse [CLEARING HOUSE] rules and the like or with a general banking  
31 usage not disapproved by this chapter is prima facie [CONSTITUTES] the exercise of

1 ordinary care.

2 (d) The specification or approval of certain procedures by this chapter is not  
3 [DOES NOT CONSTITUTE] disapproval of other procedures that [WHICH] may be  
4 reasonable under the circumstances.

5 (e) The measure of damages for failure to exercise ordinary care in handling  
6 an item is the amount of the item reduced by an amount that [WHICH] could not have  
7 been realized by the exercise [USE] of ordinary care, and if there is also bad faith it  
8 includes any other damages [SUFFERED BY] the party suffered as a proximate  
9 consequence.

10 \* Sec. 81. AS 45.04.104(a)(1) is repealed and reenacted to read:

11 (1) "account" means a deposit or credit account with a bank, including  
12 a demand, time, savings, passbook, share draft, or like account, other than an account  
13 evidenced by a certificate of deposit;

14 \* Sec. 82. AS 45.04.104(a)(5) is amended to read:

15 (5) "customer" means a person having an account with a bank or for  
16 whom a bank has agreed to collect items, including [AND INCLUDES] a bank that  
17 maintains [CARRYING] an account at [WITH] another bank;

18 \* Sec. 83. AS 45.04.104(a)(6) is repealed and reenacted to read:

19 (6) "documentary draft" means a draft to be presented for acceptance  
20 or payment if specified documents, certificated securities under AS 45.08.102 or  
21 instructions for uncertificated securities under AS 45.08.308, or other certificates,  
22 statements, or the like are to be received by the drawee or other payor before  
23 acceptance or payment of the draft;

24 \* Sec. 84. AS 45.04.104(a)(7) is repealed and reenacted to read:

25 (7) "item" means an instrument or a promise or order to pay money  
26 handled by a bank for collection or payment; the term does not include a credit or  
27 debit card slip;

28 \* Sec. 85. AS 45.04.104(a)(10) is amended to read:

29 (10) "settle" means to pay in cash, by clearinghouse [CLEARING  
30 HOUSE] settlement, in a charge or credit or by remittance, or otherwise as agreed  
31 [INSTRUCTED]; a settlement may be either provisional or final;

1     \* Sec. 86. AS 45.04.104(a) is amended by adding new paragraphs to read:

2                     (12) "draft" means a draft as defined in AS 45.03.104 or an item, other  
3                     than an instrument, that is an order;

4                     (13) "drawee" means a person ordered in a draft to make payment;

5     \* Sec. 87. AS 45.04.104(b) is repealed and reenacted to read:

6                     (b) Other definitions applying to this chapter and the sections in which the  
7                     definitions appear are:

8                     (1) "agreement for electronic presentment" in AS 45.04.110;

9                     (2) "bank" in AS 45.04.105;

10                    (3) "collecting bank" in AS 45.04.105;

11                    (4) "depository bank" in AS 45.04.105;

12                    (5) "intermediary bank" in AS 45.04.105;

13                    (6) "payor bank" in AS 45.04.105;

14                    (7) "presenting bank" in AS 45.04.105;

15                    (8) "presentment notice" in AS 45.04.110.

16     \* Sec. 88. AS 45.04.104(c) is repealed and reenacted to read:

17                    (c) The following definitions in AS 45.03 apply to this chapter:

18                    (1) "acceptance" (AS 45.03.409);

19                    (2) "alteration" (AS 45.03.407);

20                    (3) "cashier's check" (AS 45.03.104);

21                    (4) "certificate of deposit" (AS 45.03.104);

22                    (5) "certified check" (AS 45.03.409);

23                    (6) "check" (AS 45.03.104);

24                    (7) "good faith" (AS 45.03.103);

25                    (8) "holder in due course" (AS 45.03.302);

26                    (9) "instrument" (AS 45.03.104);

27                    (10) "notice of dishonor" (AS 45.03.503);

28                    (11) "order" (AS 45.03.103);

29                    (12) "ordinary care" (AS 45.03.103);

30                    (13) "person entitled to enforce" (AS 45.03.301);

31                    (14) "presentment" (AS 45.03.501);

1 (15) "promise" (AS 45.03.103);

2 (16) "prove" (AS 45.03.103);

3 (17) "teller's check" (AS 45.03.104);

4 (18) "unauthorized signature" (AS 45.03.403).

5 \* Sec. 89. AS 45.04.105 is amended to read:

6 Sec. 45.04.105. "BANK"; "DEPOSITARY BANK"; "INTERMEDIARY  
7 BANK"; "COLLECTING BANK"; "PAYOR BANK"; "PRESENTING BANK [";  
8 "REMITTING BANK]." In this chapter, [UNLESS THE CONTEXT OTHERWISE  
9 REQUIRES,]

10 (1) "bank" means a person engaged in the business of banking,  
11 including a savings bank, savings and loan association, credit union, or trust  
12 company;

13 (2) "depository bank" means the first bank to take [WHICH] an item  
14 [IS TRANSFERRED FOR COLLECTION] even though it is also the payor bank,  
15 unless the item is presented for immediate payment over the counter;

16 (3) [(2)] "payor bank" means a bank that is the drawee of a draft [BY  
17 WHICH AN ITEM IS PAYABLE AS DRAWN OR ACCEPTED];

18 (4) [(3)] "intermediary bank" means a bank to which an item is  
19 transferred in course of collection except the depository or payor bank;

20 (5) [(4)] "collecting bank" means a bank handling an [THE] item for  
21 collection except the payor bank;

22 (6) [(5)] "presenting bank" means a bank presenting an item except a  
23 payor bank [;

24 (6) "REMITTING BANK" MEANS A PAYOR OR INTERMEDIARY  
25 BANK REMITTING FOR AN ITEM].

26 \* Sec. 90. AS 45.04.106 is repealed and reenacted to read:

27 Sec. 45.04.106. PAYABLE THROUGH OR PAYABLE AT BANK;  
28 COLLECTING BANK. (a) If an item states that it is "payable through" a bank  
29 identified in the item, the item designates the bank as a collecting bank and does not  
30 by itself authorize the bank to pay the item, and the item may be presented for  
31 payment only by or through the bank.

1 (b) If an item states that it is "payable at" a bank identified in the item, the  
2 item is equivalent to a draft drawn on the bank.

3 (c) If a draft names a nonbank drawee and it is unclear whether a bank named  
4 in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

5 \* Sec. 91. AS 45.04.107 is repealed and reenacted to read:

6 Sec. 45.04.107. SEPARATE OFFICE OF A BANK. A branch or separate  
7 office of a bank is a separate bank for the purpose of computing the time within which  
8 and determining the place at or to which action may be taken or notices or orders must  
9 be given under this chapter and under AS 45.03.

10 \* Sec. 92. AS 45.04.108 is repealed and reenacted to read:

11 Sec. 45.04.108. TIME OF RECEIPT OF ITEMS. (a) To allow time to  
12 process items, prove balances, and make the necessary entries on its books to  
13 determine its position for the day, a bank may fix an afternoon hour of two o'clock  
14 in the afternoon or later as a cutoff hour for the handling of money and items and the  
15 making of entries on the books of the bank.

16 (b) An item or deposit of money received on a day after a cutoff hour so fixed  
17 or after the close of the banking day may be treated as received at the opening of the  
18 next banking day.

19 \* Sec. 93. AS 45.04 is amended by adding new sections to article 1 to read:

20 Sec. 45.04.109. DELAYS. (a) Unless otherwise instructed, a collecting bank  
21 in a good faith effort to secure payment of a specific item drawn on a payor other than  
22 a bank, and with or without the approval of a person involved, may waive, modify, or  
23 extend time limits imposed or permitted by the code for a period not exceeding two  
24 additional banking days without discharge of drawers or endorsers or liability to its  
25 transferor or a prior party.

26 (b) Delay by a collecting bank or payor bank beyond time limits prescribed  
27 or permitted by the code or by instructions is excused if the delay is caused by  
28 interruption of communication or computer facilities, suspension of payments by  
29 another bank, war, emergency conditions, failure of equipment, or other circumstances  
30 beyond the control of the bank, and if the bank exercises the diligence circumstances  
31 require.

1           Sec. 45.04.110. ELECTRONIC PRESENTMENT. (a) "Agreement for  
2 electronic presentment" means an agreement, clearinghouse rule, or Federal Reserve  
3 regulation or operating circular, providing that presentment of an item may be made  
4 by transmission of an image of an item or information describing the item, a  
5 "presentment notice," rather than delivery of the item itself. The agreement may  
6 provide for procedures governing retention, presentment, payment, dishonor, and other  
7 matters concerning items subject to the agreement.

8           (b) Presentment of an item under an agreement for presentment is made when  
9 the presentment notice is received.

10          (c) If presentment is made by presentment notice, a reference to "item" or  
11 "check" in this chapter means the presentment notice unless the context otherwise  
12 indicates.

13          Sec. 45.04.111. STATUTE OF LIMITATIONS. An action to enforce an  
14 obligation, duty, or right arising under this chapter must be commenced within three  
15 years after the cause of action accrues.

16 \* Sec. 94. AS 45.04.201 is amended to read:

17          Sec. 45.04.201. [PRESUMPTION AND DURATION OF AGENCY] STATUS  
18 OF COLLECTING BANK AS AGENT [BANKS] AND PROVISIONAL STATUS  
19 OF CREDITS; APPLICABILITY; ITEM ENDORSED "PAY ANY BANK." (a)  
20 Unless a contrary intent clearly appears [,] and before a settlement given by a  
21 collecting bank for an item becomes final [(AS 45.04.211(c), 45.04.212 AND  
22 45.04.213)], the bank, with respect to the item, is an agent or subagent of the owner  
23 of the item and a settlement given for the item is provisional. This provision applies  
24 regardless of the form of endorsement or lack of endorsement and even though credit  
25 given for the item is subject to immediate withdrawal as of right or is in fact  
26 withdrawn; but the continuance of ownership of an item by its owner and the rights  
27 of the owner to proceeds of the item are subject to rights of a collecting bank such as  
28 those resulting from outstanding advances on the item and [VALID] rights of  
29 recoupment or setoff. If an item is handled by banks for purposes of presentment,  
30 payment, [AND] collection, or return, the relevant provisions of this chapter apply  
31 even though action of the parties clearly establishes that a particular bank has

1 purchased the item and is the owner of it.

2 (b) After an item has been endorsed with the words "pay any bank" or the like,  
3 only a bank may acquire the rights of a holder until the item has been

4 (1) [UNTIL THE ITEM HAS BEEN] returned to the customer initiating  
5 collection; or

6 (2) [UNTIL THE ITEM HAS BEEN] specially endorsed by a bank to  
7 a person who is not a bank.

8 \* Sec. 95. AS 45.04.202 is amended to read:

9 Sec. 45.04.202. RESPONSIBILITY FOR COLLECTION OR RETURN;  
10 WHEN ACTION TIMELY [SEASONABLE]. (a) A collecting bank must exercise  
11 [USE] ordinary care in

12 (1) presenting an item or sending it for presentment;

13 (2) sending notice of dishonor or nonpayment or returning an item  
14 other than a documentary draft to the bank's transferor [OR DIRECTLY TO THE  
15 DEPOSITARY BANK UNDER AS 45.04.212(b)] after learning that the item has not  
16 been paid or accepted, as the case may be;

17 (3) settling for an item when the bank receives final settlement; and

18 (4) [MAKING OR PROVIDING FOR A NECESSARY PROTEST;

19 AND

20 (5)] notifying its transferor of a loss or delay in transit within a  
21 reasonable time after discovery of the loss or delay.

22 (b) A collecting bank exercises ordinary care under (a) of this section by  
23 taking proper action before its midnight deadline following receipt of an item, notice,  
24 or settlement [PAYMENT ACTS SEASONABLY]; taking proper action within a  
25 reasonably longer time may constitute the exercise of ordinary care, [BE  
26 SEASONABLE] but the bank has the burden of [SO] establishing timeliness.

27 (c) Subject to (a)(1) of this section, a bank is not liable for the insolvency,  
28 neglect, misconduct, mistake, or default of another bank or person or for loss or  
29 destruction of an item in the possession of others or in transit [OR IN THE  
30 POSSESSION OF OTHERS].

31 \* Sec. 96. AS 45.04.203 is amended to read:

1           Sec. 45.04.203. EFFECT OF INSTRUCTIONS. Subject to the provisions  
2 concerning conversion of instruments (AS 45.03.420) [(AS 45.03.419)] and [THE  
3 PROVISIONS OF AS 45.03 AND THIS CHAPTER CONCERNING] restrictive  
4 endorsements (AS 45.03.206), only a collecting bank's transferor can give instructions  
5 ~~that~~ [WHICH] affect the bank or constitute notice to it, and a collecting bank is not  
6 liable to prior parties for an action taken under these instructions or in accordance with  
7 an agreement with its transferor.

8     \* Sec. 97. AS 45.04.204 is amended to read:

9           Sec. 45.04.204. METHODS OF SENDING AND PRESENTING; SENDING  
10 DIRECTLY [DIRECT] TO PAYOR BANK. (a) A collecting bank shall [MUST]  
11 send items by a reasonably prompt method, taking into consideration relevant  
12 instructions, the nature of the item, the number of the items on hand, the cost of  
13 collection involved, and the method generally used by it or others to present the items.

14           (b) A collecting bank may send an item

15                 (1) directly [AN ITEM DIRECT] to the payor bank;

16                 (2) [AN ITEM] to a nonbank payor if authorized by its transferor; and

17                 (3) [AN ITEM] other than documentary drafts to a nonbank payor, if  
18 authorized by federal reserve regulation or operating circular, clearinghouse  
19 [LETTER, CLEARING HOUSE] rule, or the like.

20     \* Sec. 98. AS 45.04.204 is amended by adding a new subsection to read:

21           (c) Presentment may be made by a presenting bank at a place where the payor  
22 bank or other payor has requested that presentment be made.

23     \* Sec. 99. AS 45.04.205 is repealed and reenacted to read:

24           Sec. 45.04.205. DEPOSITARY BANK HOLDER OF UNENDORSED ITEM.

25           If a customer delivers an item to a depositary bank for collection

26                 (1) the depositary bank becomes a holder of the item at the time it  
27 receives the item for collection if the customer at the time of delivery was a holder of  
28 the item, whether or not the customer endorses the item, and, if the bank satisfies the  
29 other requirements of AS 45.03.302, it is a holder in due course; and

30                 (2) the depositary bank warrants to collecting banks, the payor bank or  
31 other payor, and the drawer that the amount of the item was paid to the customer or

1 deposited to the customer's account.

2 \* Sec. 100. AS 45.04.207 is repealed and reenacted to read:

3 Sec. 45.04.207. TRANSFER WARRANTIES. (a) A customer or collecting  
4 bank that transfers an item and receives a settlement or other consideration warrants  
5 to the transferee and to any subsequent collecting bank that

6 (1) the warrantor is a person entitled to enforce the item;

7 (2) all signatures on the item are authentic and authorized;

8 (3) the item has not been altered;

9 (4) the item is not subject to a defense or claim in recoupment under  
10 AS 45.03.305(a) of any party that can be asserted against the warrantor; and

11 (5) the warrantor does not have knowledge of any insolvency  
12 proceeding commenced with respect to the maker or acceptor or, in the case of an  
13 unaccepted draft, the drawer.

14 (b) If an item is dishonored, a customer or collecting bank transferring the  
15 item and receiving settlement or other consideration is obliged to pay the amount due  
16 on the item according to the terms of the item at the time it was transferred, or, if the  
17 transfer was of an incomplete item, according to its terms when completed as stated  
18 in AS 45.03.115 and 45.03.407. The obligation of a transferor is owed to the  
19 transferee and to any subsequent collecting bank that takes the item in good faith. A  
20 transferor cannot disclaim its obligation under this subsection by an endorsement  
21 stating that it is made "without recourse" or otherwise disclaiming liability.

22 (c) A person to whom the warranties under (a) of this section are made and  
23 who took the item in good faith may recover from the warrantor as damages for breach  
24 of warranty an amount equal to the loss suffered as a result of the breach, but not  
25 more than the amount of the item plus expenses and loss of interest incurred as a result  
26 of the breach.

27 (d) The warranties stated in (a) of this section cannot be disclaimed with  
28 respect to checks. Unless notice of a claim for breach of warranty is given to the  
29 warrantor within 30 days after the claimant has reason to know of the breach and the  
30 identity of the warrantor, the warrantor is discharged to the extent of any loss caused  
31 by the delay in giving notice of the claim.

1 (e) A cause of action for breach of warranty under this section accrues when  
2 the claimant has reason to know of the breach.

3 • Sec. 101. AS 45.04.208 is repealed and reenacted to read:

4 AS 45.04.208. PRESENTMENT WARRANTIES. (a) If an unaccepted draft  
5 is presented to the drawee for payment or acceptance and the drawee pays or accepts  
6 the draft, the person obtaining payment or acceptance, at the time of presentment, and  
7 a previous transferor of the draft, at the time of transfer, warrant to the drawee that  
8 pays or accepts the draft in good faith that

9 (1) the warrantor is, or was at the time the warrantor transferred the  
10 draft, a person entitled to enforce the draft or authorized to obtain payment or  
11 acceptance of the draft on behalf of a person entitled to enforce the draft;

12 (2) the draft has not been altered; and

13 (3) the warrantor does not have knowledge that the signature of the  
14 purported drawer of the draft is unauthorized.

15 (b) A drawee making payment may recover from a warrantor damages for  
16 breach of warranty equal to the amount paid by the drawee less the amount the drawee  
17 received or is entitled to receive from the drawer because of the payment. In addition,  
18 the drawee is entitled to compensation for expenses and loss of interest resulting from  
19 the breach. The right of the drawee to recover damages under this subsection is not  
20 affected by a failure of the drawee to exercise ordinary care in making payment. If  
21 the drawee accepts the draft, breach of warranty is a defense to the obligation of the  
22 acceptor, and if the acceptor makes payment with respect to the draft, the acceptor is  
23 entitled to recover from a warrantor for breach of warranty the amounts stated in this  
24 subsection.

25 (c) If a drawee asserts a claim for breach of warranty under (a) of this section  
26 based on an unauthorized endorsement of the draft or an alteration of the draft, the  
27 warrantor may defend by proving that the endorsement is effective under AS 45.03.404  
28 or 45.03.405 or the drawer is precluded under AS 45.03.406 or AS 45.04.406 from  
29 asserting against the drawee the unauthorized endorsement or alteration.

30 (d) If a dishonored draft is presented for payment to the drawer or an endorser,  
31 or if any other item is presented for payment to a party obliged to pay the item, and

1 the item is paid, the person obtaining payment and a prior transferor of the item  
2 warrant to the person making payment in good faith that the warrantor is, or was, at  
3 the time the warrantor transferred the item, a person entitled to enforce the item or  
4 authorized to obtain payment on behalf of a person entitled to enforce the item. The  
5 person making payment may recover from any warrantor for breach of warranty an  
6 amount equal to the amount paid plus expenses and loss of interest resulting from the  
7 breach.

8 (e) The warranties stated in (a) and (d) of this section may not be disclaimed  
9 with respect to checks. Unless notice of a claim for breach of warranty is given to the  
10 warrantor within 30 days after the claimant has reason to know of the breach and the  
11 identity of the warrantor, the warrantor is discharged to the extent of any loss caused  
12 by the delay in giving notice of the claim.

13 (f) A cause of action for breach of warranty under this section accrues when  
14 the claimant has reason to know of the breach.

15 \* Sec. 102. AS 45.04.209 is repealed and reenacted to read:

16 Sec. 45.04.209. ENCODING AND RETENTION WARRANTIES. (a) A  
17 person who encodes information on or with respect to an item after issue warrants to  
18 any subsequent collecting bank and to the payor bank or other payor that the  
19 information is correctly encoded. If the customer of a depository bank encodes, that  
20 bank also makes the warranty.

21 (b) A person who undertakes to retain an item pursuant to an agreement for  
22 electronic presentment warrants to any subsequent collecting bank and to the payor  
23 bank or other payor that retention and presentment of the item comply with the  
24 agreement. If a customer of a depository bank undertakes to retain an item, that bank  
25 also makes this warranty.

26 (c) A person to whom warranties are made under this section and who took  
27 the item in good faith may recover from the warrantor as damages for breach of  
28 warranty an amount equal to the loss suffered as a result of the breach, plus expenses  
29 and loss of interest incurred as a result of the breach.

30 \* Sec. 103. AS 45.04.210 is repealed and reenacted to read:

31 Sec. 45.04.210. SECURITY INTEREST OF COLLECTING BANK IN

1 ITEMS, ACCOMPANYING DOCUMENTS, AND PROCEEDS. (a) A collecting  
2 bank has a security interest in an item and any accompanying documents or the  
3 proceeds of either

4 (1) in case of an item deposited in an account, to the extent to which  
5 credit given for the item has been withdrawn or applied;

6 (2) in case of an item for which it has given credit available for  
7 withdrawal as of right, to the extent of the credit given, whether or not the credit is  
8 drawn upon or there is a right of charge-back; or

9 (3) if it makes an advance on or against the item.

10 (b) If credit given for several items received at one time or under a single  
11 agreement is withdrawn or applied in part, the security interest remains upon all the  
12 items, accompanying documents, or the proceeds of either. For the purpose of this  
13 section, credits first given are first withdrawn.

14 (c) Receipt by a collecting bank of a final settlement for an item is a  
15 realization on its security interest in the item, accompanying documents, and proceeds.  
16 So long as the bank does not receive final settlement for the item or give up  
17 possession of the item or accompanying documents for purposes other than collection,  
18 the security interest continues to that extent and is subject to AS 45.09, but

19 (1) a security agreement is not necessary to make the security interest  
20 enforceable (AS 45.09.203(a));

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

22 (3) the security interest has priority over conflicting perfected security  
23 interests in the item, accompanying documents, or proceeds.

24 \* Sec. 104. AS 45.04.211 is repealed and reenacted to read:

25 Sec. 45.04.211. WHEN BANK GIVES VALUE FOR PURPOSES OF  
26 HOLDER IN DUE COURSE. To determine its status as a holder in due course, a  
27 bank has given value to the extent it has a security interest in an item, if the bank  
28 otherwise complies with the requirements of AS 45.03.302 on what constitutes a holder  
29 in due course.

30 \* Sec. 105. AS 45.04.212 is repealed and reenacted to read:

31 Sec. 45.04.212. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE

1 BY, THROUGH, OR AT A BANK; LIABILITY OF DRAWER OR ENDORSER. (a)  
2 Unless otherwise instructed, a collecting bank may present an item not payable by,  
3 through, or at a bank by sending to the party to accept or pay a written notice that the  
4 bank holds the item for acceptance or payment. The notice must be sent in time to be  
5 received on or before the day when presentment is due and the bank must meet any  
6 requirement of the party to accept or pay under AS 45.03.501 by the close of the  
7 bank's next banking day after it knows of the requirement.

8 (b) If presentment is made by notice, and payment, acceptance, or request for  
9 compliance with a requirement under AS 45.03.501 is not received by the close of  
10 business on the day after maturity or, in the case of demand items, by the close of  
11 business on the third banking day after notice was sent, the presenting bank may treat  
12 the item as dishonored and charge a drawer or endorser by sending the drawer or  
13 endorser notice of the facts.

14 \* Sec. 106. AS 45.04.213 is repealed and reenacted to read:

15 Sec. 45.04.213. MEDIUM AND TIME OF SETTLEMENT BY BANK. (a)  
16 With respect to settlement by a bank, the medium and time of settlement may be  
17 prescribed by Federal Reserve regulations or circulars, clearinghouse rules, and the  
18 like, or by agreement. In the absence of a prescription

19 (1) the medium of settlement is cash or credit to an account in a  
20 Federal Reserve Bank of or specified by the person to receive settlement; and

21 (2) the time of settlement is with respect to tender of settlement

22 (A) by cash, a cashier's check, or teller's check, when the cash  
23 or check is sent or delivered;

24 (B) by credit in an account in a Federal Reserve Bank, when the  
25 credit is made;

26 (C) by a credit or debit to an account in a bank, when the credit  
27 or debit is made or, in the case of tender of settlement by authority to charge  
28 an account, when the authority is sent or delivered; or

29 (D) by a funds transfer, when payment is made to the person  
30 receiving settlement.

31 (b) If the tender of settlement is not by a medium authorized by (a) of this

1 section or the time of settlement is not fixed by (a) of this section, settlement does not  
2 occur until the tender of settlement is accepted by the person receiving settlement.

3 (c) If settlement for an item is made by cashier's check or teller's check and  
4 the person receiving settlement, before its midnight deadline,

5 (1) presents or forwards the check for collection, settlement is final  
6 when the check is finally paid; or

7 (2) fails to present or forward the check for collection, settlement is  
8 final at the midnight deadline of the person receiving settlement.

9 (d) If settlement for an item is made by giving authority to charge the account  
10 of the bank giving settlement in the bank receiving settlement, settlement is final when  
11 the charge is made by the bank receiving settlement if there are funds available in the  
12 account for the amount of the item.

13 • **Sec. 107.** AS 45.04.214 is repealed and reenacted to read:

14 **Sec. 45.04.214. RIGHT OF CHARGE BACK OR REFUND; LIABILITY OF**  
15 **COLLECTING BANK; RETURN OF ITEM.** (a) If a collecting bank has made  
16 provisional settlement with its customer for an item and fails, by reason of dishonor,  
17 suspension of payments by a bank, or otherwise, to receive a settlement for the item  
18 that is or becomes final, the bank may revoke the settlement given by it, charge back  
19 the amount of a credit given for the item to its customer's account, or obtain refund  
20 from its customer, whether or not it is able to return the items, if by its midnight  
21 deadline or within a longer reasonable time after it learns the facts it returns the item  
22 or sends notification of the facts. If the return or notice is delayed beyond the bank's  
23 midnight deadline or a longer reasonable time after it learns the facts, the bank may  
24 revoke the settlement, charge back the credit, or obtain refund from its customer, but  
25 it is liable for any loss resulting from the delay. These rights to revoke, charge back,  
26 and obtain refund terminate if and when a settlement for the item received by the bank  
27 is or becomes final.

28 (b) A collecting bank returns an item when it is sent or delivered to the bank's  
29 customer or transferor or according to its instructions.

30 (c) A depository bank that is also the payor may charge back the amount of  
31 an item to its customer's account or obtain refund in accordance with AS 45.04.301,

1 the section governing return of an item received by a payor bank for credit on its  
2 books.

3 (d) The right to charge back is not affected by  
4 (1) previous use of a credit given for the item; or  
5 (2) failure by a bank to exercise ordinary care with respect to the item,  
6 but a bank so failing remains liable.

7 (e) A failure to charge back or claim refund does not affect other rights of the  
8 bank against the customer or another party.

9 (f) If credit is given in dollars as the equivalent of the value of an item  
10 payable in foreign money, the dollar amount of a charge back or refund must be  
11 calculated on the basis of the bank offered spot rate for the foreign money prevailing  
12 on the day when the person entitled to the charge back or refund learns that it will not  
13 receive payment in ordinary course.

14 \* Sec. 108. AS 45.04 is amended by adding new sections to article 2 to read:

15 Sec. 45.04.215. FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN  
16 PROVISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN  
17 CREDITS BECOME AVAILABLE FOR WITHDRAWAL. (a) An item is finally  
18 paid by a payor bank when the bank has first

19 (1) paid the item in cash;  
20 (2) settled for the item without having a right to revoke the settlement  
21 under statute, clearinghouse rule, or agreement; or

22 (3) made a provisional settlement for the item and failed to revoke the  
23 settlement in the time and manner permitted by statute, clearinghouse rule, or  
24 agreement.

25 (b) If provisional settlement for an item does not become final, the item is not  
26 finally paid.

27 (c) If provisional settlement for an item between the presenting and payor  
28 banks is made through a clearinghouse or by debits or credits in an account between  
29 them, then, to the extent that provisional debits or credits for the item are entered in  
30 accounts between the presenting and payor banks or between the presenting and  
31 successive prior collecting banks seriatim, they become final upon final payment of the

1 item by the payor bank.

2 (d) If a collecting bank receives a settlement for an item that is or becomes  
3 final, the bank is accountable to its customer for the amount of the item and a  
4 provisional credit given for the item in an account with its customer becomes final.

5 (e) Subject to applicable law stating a time for availability of funds and a right  
6 of the bank to apply the credit to an obligation of the customer, credit given by a bank  
7 for an item in a customer's account becomes available for withdrawal as of right if the  
8 bank

9 (1) has received a provisional settlement for the item, when the  
10 settlement becomes final and the bank has had a reasonable time to receive return of  
11 the item and the item has not been received within that time;

12 (2) is both the depository bank and the payor bank, and the item is  
13 finally paid, at the opening of the bank's second banking day following receipt of the  
14 item.

15 (f) Subject to applicable law stating a time for availability of funds and a right  
16 of a bank to apply a deposit to an obligation of the depositor, a deposit of money  
17 becomes available for withdrawal as of right at the opening of the bank's next banking  
18 day after receipt of the deposit.

19 Sec. 45.04.216. INSOLVENCY AND PREFERENCE. (a) If an item is in or  
20 comes into the possession of a payor or collecting bank that suspends payment and the  
21 item has not been finally paid, the item shall be returned by the receiver, trustee, or  
22 agent in charge of the closed bank to the presenting bank or the closed bank's  
23 customer.

24 (b) If a payor bank finally pays an item and suspends payments without  
25 making a settlement for the item with its customer or the presenting bank, which  
26 settlement is or becomes final, the owner of the item has a preferred claim against the  
27 payor bank.

28 (c) If a payor bank gives or a collecting bank gives or receives a provisional  
29 settlement for an item and later suspends payments, the suspension does not prevent  
30 or interfere with the settlement's becoming final if the finality occurs automatically  
31 upon the lapse of certain time or the happening of certain events.

1 (d) If a collecting bank receives from subsequent parties settlement for an  
2 item, which settlement is or becomes final and the bank suspends payments without  
3 making a settlement for the item with its customer, which settlement is or becomes  
4 final, the owner of the item has a preferred claim against the collecting bank.

5 \* Sec. 109. AS 45.04.301 is repealed and reenacted to read:

6 Sec. 45.04.301. DEFERRED POSTING; RECOVERY OF PAYMENT BY  
7 RETURN OF ITEMS; TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR  
8 BANK. (a) If a payor bank settles for a demand item other than a documentary draft  
9 presented other than for immediate payment over the counter before midnight of the  
10 banking day of receipt, the payor bank may revoke the settlement and recover the  
11 settlement if, before it has made final payment and before its midnight deadline, it

12 (1) returns the item; or

13 (2) sends written notice of dishonor or nonpayment if the item is  
14 unavailable for return.

15 (b) If a demand item is received by a payor bank for credit on its books, it  
16 may return the item or send notice of dishonor and may revoke a credit given or  
17 recover the amount of the credit withdrawn by its customer if it acts within the time  
18 limit and in the manner specified in (a) of this section.

19 (c) Unless previous notice of dishonor has been sent, an item is dishonored at  
20 the time when, for purposes of dishonor, it is returned or notice is sent in accordance  
21 with this section.

22 (d) An item is returned

23 (1) as to an item presented through a clearinghouse, when it is  
24 delivered to the presenting or last collecting bank or to the clearinghouse or is sent or  
25 delivered in accordance with clearinghouse rules; or

26 (2) in all other cases, when it is sent or delivered to the bank's  
27 customer or transferor or under the instructions of the customer or transferor.

28 \* Sec. 110. AS 45.04.302 is amended to read:

29 Sec. 45.04.302. PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN  
30 OF ITEM. If [IN THE ABSENCE OF A VALID DEFENSE, SUCH AS BREACH  
31 OF A PRESENTMENT WARRANTY (AS 45.04.207(a)), SETTLEMENT

1 EFFECTED, OR THE LIKE, IF] an item is presented ~~to~~ [ON] and received by a payor  
2 bank, the bank is accountable for the amount of

3 (1) a demand item, other than a documentary draft, whether properly  
4 payable or not, if the bank,

5 (A) in any case in which [WHERE] it is not also the depository  
6 bank, retains the item beyond midnight of the banking day of receipt without  
7 settling for it; [,] or

8 (B) [REGARDLESS OF] whether or not it is also the  
9 depository bank, does not pay or return the item or send notice of dishonor  
10 until after its midnight deadline; or

11 (2) any other properly payable item [,] unless, within the time allowed  
12 for acceptance or payment of that item, the bank either accepts or pays the item or  
13 returns it and accompanying documents.

14 \* Sec. 111. AS 45.04.302 is amended by adding a new subsection to read:

15 (b) The liability of a payor bank to pay an item under (a) of this section is  
16 subject to defenses based on breach of a presentment warranty under AS 45.04.208 or  
17 proof that the person seeking enforcement of the liability presented or transferred the  
18 item for the purpose of defrauding the payor bank.

19 \* Sec. 112. AS 45.04.303 is repealed and reenacted to read:

20 Sec. 45.04.303. WHEN ITEMS SUBJECT TO NOTICE, STOP-PAYMENT  
21 ORDER, LEGAL PROCESS, OR SETOFF; ORDER IN WHICH ITEMS MAY BE  
22 CHARGED OR CERTIFIED. (a) Any knowledge, notice, or stop-payment order  
23 received by, legal process served upon, or setoff exercised by a payor bank is too late  
24 to terminate, suspend, or modify the bank's right or duty to pay an item or to charge  
25 its customer's account for the item if the knowledge, notice, stop-payment order, or  
26 legal process is received or served and a reasonable time for the bank to act on it  
27 expires or the setoff is exercised after the earliest of the following:

28 (1) the bank accepts or certifies the item;

29 (2) the bank pays the item in cash;

30 (3) the bank settles for the item without having a right to revoke the  
31 settlement under statute, clearinghouse rule, or agreement;

1 (4) the bank becomes accountable for the amount of the item under  
2 AS 45.04.302, which deals with the payor bank's responsibility for late return of items;  
3 or

4 (5) with respect to checks, a cutoff hour no earlier than one hour after  
5 the opening of the next banking day after the banking day on which the bank received  
6 the check and no later than the close of that next banking day or, if a cutoff hour is  
7 not fixed, the close of the next banking day after the banking day on which the bank  
8 received the check.

9 (b) Subject to (a) of this section, items may be accepted, paid, certified, or  
10 charged to the indicated account of its customer in any order.

11 \* Sec. 113. AS 45.04.401 is repealed and reenacted to read:

12 Sec. 45.04.401. WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

13 (a) A bank may charge against the account of a customer an item that is properly  
14 payable from that account even though the charge creates an overdraft. An item is  
15 properly payable if it is authorized by the customer and is in accordance with any  
16 agreement between the customer and the bank.

17 (b) A customer is not liable for the amount of an overdraft if the customer  
18 neither signed the item nor benefitted from the proceeds of the item.

19 (c) A bank may charge against the account of a customer a check that is  
20 otherwise properly payable from the account, even though payment was made before  
21 the date of the check, unless the customer has given notice to the bank of the  
22 postdating describing the check with reasonable certainty. The notice is effective for  
23 the period stated in AS 45.04.403(b) for stop-payment orders, and must be received  
24 at a time and in a manner that afford the bank a reasonable opportunity to act on it  
25 before the bank takes any action with respect to the check described in AS 45.04.303.  
26 If a bank charges against the account of a customer a check before the date stated in  
27 the notice of postdating, the bank is liable for damages for the loss resulting from its  
28 act. The loss may include damages for dishonor of subsequent items under  
29 AS 45.04.402.

30 (d) A bank that in good faith makes payment to a holder may charge the  
31 indicated account of its customer according to

- 1 (1) the original terms of the altered item; or  
2 (2) the terms of the completed item, even though the bank knows the  
3 item has been completed, unless the bank has notice that the completion was improper.

4 • Sec. 114. AS 45.04.402 is repealed and reenacted to read:

5 Sec. 45.04.402. **BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL**  
6 **DISHONOR; TIME OF DETERMINING INSUFFICIENCY OF ACCOUNT.** (a)  
7 Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an  
8 item if it dishonors an item that is properly payable, but a bank may dishonor an item  
9 that would create an overdraft unless it has agreed to pay the overdraft.

10 (b) A payor bank is liable to its customer for damages proximately caused by  
11 the wrongful dishonor of an item. Liability is limited to actual damages proved and  
12 may include damages for an arrest or prosecution of the customer or other  
13 consequential damages. Whether any consequential damages are proximately caused  
14 by the wrongful dishonor is a question of fact to be determined in each case.

15 (c) A payor bank's determination of the customer's account balance on which  
16 a decision to dishonor for insufficiency of available funds is based may be made at any  
17 time between the time the item is received by the payor bank and the time that the  
18 payor bank returns the item or gives notice in lieu of return, and the bank does not  
19 need to make more than one determination. If, at the election of the payor bank, a  
20 subsequent balance determination is made for the purpose of reevaluating the bank's  
21 decision to dishonor the item, the account balance at that time is determinative of  
22 whether a dishonor for insufficiency of available funds is wrongful.

23 • Sec. 115. AS 45.04.403 is repealed and reenacted to read:

24 Sec. 45.04.403. **CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF**  
25 **PROOF OF LOSS.** (a) A customer, or any person authorized to draw on the account  
26 if there is more than one person, may stop payment of any item drawn on the  
27 customer's account or close the account by an order to the bank describing the item  
28 or account with reasonable certainty, received at a time and in a manner that affords  
29 the bank a reasonable opportunity to act on it before any action by the bank with  
30 respect to the item described in AS 45.04.303. If the signature of more than one  
31 person is required to draw on an account, any of these persons may stop payment or

1 close the account.

2 (b) A stop-payment order is effective for six months, but it lapses after 14  
3 calendar days if the original order was oral and was not confirmed in writing within  
4 that period. A stop-payment order may be renewed for additional six-month periods  
5 by a writing given to the bank within a period during which the stop-payment order  
6 is effective.

7 (c) The burden of establishing the fact and amount of loss resulting from the  
8 payment of an item contrary to a stop-payment order or order to close an account is  
9 on the customer. The loss from payment of an item contrary to a stop-payment order  
10 may include damages for dishonor of subsequent items under AS 45.04.402.

11 \* Sec. 116. AS 45.04.406 is repealed and reenacted to read:

12 Sec. 45.04.406. CUSTOMER'S DUTY TO DISCOVER AND REPORT  
13 UNAUTHORIZED SIGNATURE OR ALTERATION. (a) A bank that sends or  
14 makes available to a customer a statement of account showing payment of items for  
15 the account shall either return or make available to the customer the items paid or  
16 provide information in the statement of account sufficient to allow the customer  
17 reasonably to identify the items paid. The statement of account provides sufficient  
18 information if the item is described by item number, amount, and date of payment.

19 (b) If the items are not returned to the customer, the person retaining the items  
20 shall either retain the items or, if the items are destroyed, maintain the capacity to  
21 furnish legible copies of the items until the expiration of seven years after receipt of  
22 the items. A customer may request an item from the bank that paid the item, and that  
23 bank must provide in a reasonable time either the item or, if the item has been  
24 destroyed or is not otherwise obtainable, a legible copy of the item.

25 (c) If a bank sends or makes available a statement of account or items under  
26 (a) of this section, the customer must exercise reasonable promptness in examining the  
27 statement or the items to determine whether a payment was not authorized because of  
28 an alteration of an item or because a purported signature by or on behalf of the  
29 customer was not authorized. If, based on the statement or items provided, the  
30 customer should reasonably have discovered the unauthorized payment, the customer  
31 must promptly notify the bank of the relevant facts.

1 (d) If the bank proves that the customer failed, with respect to an item, to  
2 comply with the duties imposed on the customer by (c) of this section, the customer  
3 is precluded from asserting against the bank the customer's unauthorized signature or

4 (1) any alteration on the item, if the bank also proves that it suffered  
5 a loss by reason of the failure; and

6 (2) alteration by the same wrongdoer on any other item paid in good  
7 faith by the bank, if the payment was made before the bank received notice from the  
8 customer of the unauthorized signature or alteration and after the customer had been  
9 afforded a reasonable period of time, not exceeding 30 days, in which to examine the  
10 item or statement of account and notify the bank.

11 (e) If (d) of this section applies and the customer proves that the bank failed  
12 to exercise ordinary care in paying the item and that the failure substantially  
13 contributed to loss, the loss is allocated between the customer precluded and the bank  
14 asserting the preclusion according to the extent to which the failure of the customer  
15 to comply with (c) of this section and the failure of the bank to exercise ordinary care  
16 contributed to the loss. If the customer proves that the bank did not pay the item in  
17 good faith, the preclusion under (d) of this section does not apply.

18 (f) Without regard to care or lack of care of either the customer or the bank,  
19 a customer who does not within one year after the statement or items are made  
20 available to the customer under (a) of this section discover and report the customer's  
21 unauthorized signature on or an alteration on the item is precluded from asserting  
22 against the bank the unauthorized signature or alteration. If there is a preclusion under  
23 this subsection, the payor bank may not recover for breach of warranty under  
24 AS 45.04.208 with respect to the unauthorized signature or alteration to which the  
25 preclusion applies.

26 \* Sec. 117. AS 45.04.407 is amended to read:

27 Sec. 45.04.407. PAYOR BANK'S RIGHT TO SUBROGATION ON  
28 IMPROPER PAYMENT. If a payor bank has paid an item over the [STOP  
29 PAYMENT] order of the drawer or maker to stop payment, or after an account has  
30 been closed, or otherwise under circumstances giving a basis for objection by the  
31 drawer or maker, to prevent unjust enrichment and only to the extent necessary to

1 prevent loss to the bank by reason of its payment of the item, the payor bank is  
2 subrogated to the rights

- 3 (1) of a holder in due course on the item against the drawer or maker;  
4 (2) of the payee or any other holder of the item against the drawer or  
5 maker either on the item or under the transaction out of which the item arose; and  
6 (3) of the drawer or maker against the payee or another [ANY  
7 OTHER] holder of the item with respect to the transaction out of which the item arose.

8 \* Sec. 118. AS 45.05.103(c)(1) is amended to read:

- 9 (1) "accept" or "acceptance" (AS 45.03.409) [(AS 45.03.410)].

10 \* Sec. 119. AS 45.08.102(a)(3) is amended to read:

- 11 (3) a "security" is either a certificated or an uncertificated security; if  
12 a security is certificated, the terms "security" and "certificated security" may mean  
13 either the intangible interest, the instrument representing that interest, or both, as the  
14 context requires; a writing that is a certificated security is governed by this chapter and  
15 not by AS 45.03 on negotiable instruments [COMMERCIAL PAPER], even though  
16 it also meets the requirements of that chapter; this chapter does not apply to money;  
17 if a certificated security has been retained by or surrendered to the issuer or its transfer  
18 agent for reasons other than registration of transfer, other temporary purpose, payment,  
19 exchange, or acquisition by the issuer, that security shall be treated as an uncertificated  
20 security for purposes of this chapter;

21 \* Sec. 120. AS 45.09.113 is amended to read:

22 Sec. 45.09.113. SECURITY INTERESTS ARISING UNDER AS 45.02  
23 (SALES) OR AS 45.12 (LEASES). A security interest arising solely under AS 45.02  
24 or AS 45.12 is subject to the provisions of this chapter except that, to the extent that  
25 and so long as the debtor does not have or does not lawfully obtain possession of the  
26 goods,

- 27 (1) a [NO] security agreement is not necessary to make the security  
28 interest enforceable;

- 29 (2) [NO] filing is not required to perfect the security interest; and

- 30 (3) the rights of the secured party on default by the debtor are governed

31 by

1 (A) AS 45.02, the chapter on sales, in the case of a security  
2 interest arising solely under that chapter; or

3 (B) AS 45.12, the chapter on leases, in the case of a security  
4 interest arising solely under that [THIS] chapter.

5 • **Sec. 121.** AS 45.09.203(a) is amended to read:

6 (a) Subject to the provisions of AS 45.04.210 [AS 45.04.208] on the security  
7 interest of a collecting bank, AS 45.08.321 on security interests in securities, and  
8 AS 45.09.113 on a security interest arising under AS 45.02, a security interest is not  
9 enforceable against the debtor or third parties with respect to the collateral and does  
10 not attach unless

11 (1) the collateral is in the possession of the secured party under an  
12 [PURSUANT TO] agreement or the debtor has signed a security agreement that  
13 contains a description of the collateral, and, in addition, if the security interest covers  
14 crops growing or to be grown or timber to be cut, a description of the land concerned;

15 (2) value has been given; and

16 (3) the debtor has rights in the collateral.

17 • **Sec. 122.** AS 45.09.302(a) is amended to read:

18 (a) A financing statement must be filed to perfect all security interests except  
19 the following:

20 (1) a security interest in collateral in possession of the secured party  
21 under AS 45.09.305;

22 (2) a security interest temporarily perfected in instruments or documents  
23 without delivery under AS 45.09.304 or in proceeds for a 10-day period under  
24 AS 45.09.306;

25 (3) a security interest created by an assignment of a beneficial interest  
26 in a trust or a decedent's estate;

27 (4) a purchase money security interest in consumer goods; but filing  
28 is required for a motor vehicle required to be registered; and fixture filing is required  
29 for priority over conflicting interests in fixtures to the extent provided in  
30 AS 45.09.313;

31 (5) an assignment of accounts that [WHICH] does not alone or in

1 conjunction with other assignments to the same assignee transfer a significant part of  
2 the outstanding accounts of the assignor;

3 (6) a security interest of a collecting bank under AS 45.04.210  
4 [(AS 45.04.208)], or in securities under AS 45.08.321 [(AS 45.08.321)], or arising  
5 under AS 45.02 (see AS 45.09.113) or covered in (c) of this section;

6 (7) as assignment for the benefit of all the creditors of the transferor,  
7 and subsequent transfers by the assignee.

8 \* Sec. 123. AS 45.09.312(a) is amended to read:

9 (a) The rules of priority stated in AS 45.09.301 - 45.09.318 and in the  
10 following sections govern where applicable: AS 45.04.210 [AS 45.04.208] with respect  
11 to the security interest of collecting banks in items being collected, accompanying  
12 documents, and proceeds; AS 45.09.103 on security interests related to other  
13 jurisdictions; AS 45.09.114 on consignments.

14 \* Sec. 124. AS 45.09.408 is amended to read:

15 Sec. 45.09.408. FINANCING STATEMENTS COVERING CONSIGNED OR  
16 LEASED GOODS. A consignor or lessor of goods may file a financing statement  
17 using the terms "consignor", "consignee", "lessor", "lessee", or the like instead of the  
18 terms specified in AS 45.09.402. The provisions of AS 45.09.401 - 45.09.408 apply  
19 as appropriate to the financing statement, but its filing may not of itself be a factor in  
20 determining whether or not the consignment or lease is intended as security  
21 (AS 45.01.201(38)) [(AS 45.01.201(37))]. However, if it is determined for other  
22 reasons that the consignment or lease is so intended, a security interest of the  
23 consignor or lessor that [WHICH] attaches to the consigned or leased goods is  
24 perfected by the filing.

25 \* Sec. 125. AS 45 is amended by adding a new chapter to read:

26 CHAPTER 12. LEASES.

27 ARTICLE 1. GENERAL PROVISIONS.

28 Sec. 45.12.101. SHORT TITLE. This chapter may be cited as the Uniform  
29 Commercial Code - leases.

30 Sec. 45.12.102. SCOPE. This chapter applies to any transaction, regardless  
31 of form, that creates a lease.

1                   **Sec. 45.12.103. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this**  
2                   **chapter, unless the context otherwise requires**

3                   (1) "buyer in ordinary course of business" means a person who in good  
4                   faith and without knowledge that the sale to that person is in violation of the  
5                   ownership rights or security interest or leasehold interest of a third party in the goods  
6                   buys in ordinary course from a person in the business of selling goods of that kind but  
7                   does not include a pawnbroker; "buying" may be for cash or by exchange of other  
8                   property or on secured or unsecured credit and includes receiving goods or documents  
9                   of title under a preexisting contract for sale but does not include a transfer in bulk or  
10                  as security for or in total or partial satisfaction of a money debt;

11                  (2) "cancellation" occurs when either party puts an end to the lease  
12                  contract for default by the other party;

13                  (3) "commercial unit" means a unit of goods that by commercial usage  
14                  is a single whole for purposes of lease and division of which materially impairs its  
15                  character or value on the market or in use; a commercial unit may be a single article,  
16                  as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a  
17                  quantity, as a gross or carload, or any other unit treated in use or in the relevant  
18                  market as a single whole;

19                  (4) "conforming" goods or performance under a lease contract means  
20                  goods or performance that are in accordance with the obligations under the lease  
21                  contract;

22                  (5) "consumer lease" means a lease that a lessor regularly engaged in  
23                  the business of leasing or selling makes to a lessee who is an individual and who takes  
24                  under the lease primarily for personal, family, or household purposes;

25                  (6) "fault" means wrongful act, omission, breach, or default;

26                  (7) "finance lease" means a lease with respect to which

27                                 (A) the lessor does not select, manufacture, or supply the goods;

28                                 (B) the lessor acquires the goods or the right to possession and  
29                                 use of the goods in connection with the lease; and

30                                 (C) one of the following occurs:

31   (i) the lessee receives a copy of the contract by which

1 the lessor acquired the goods or the right to possession and use of the  
2 goods before signing the lease contract;

3 (ii) the lessee's approval of the contract by which the  
4 lessor acquired the goods or the right to possession and use of the  
5 goods is a condition to effectiveness of the lease contract;

6 (iii) the lessee, before signing the lease contract, receives  
7 an accurate and complete statement designating the promises and  
8 warranties, and any disclaimers of warranties, limitations or  
9 modifications of remedies, or liquidated damages, including those of a  
10 third party, such as the manufacturer of the goods, provided to the  
11 lessor by the person supplying the goods in connection with or as part  
12 of the contract by which the lessor acquired the goods or the right to  
13 possession and use of the goods; or

14 (iv) if the lease is not a consumer lease, the lessor,  
15 before the lessee signs the lease contract, informs the lessee in writing  
16 of the identity of the person supplying the goods to the lessor, unless  
17 the lessee has selected that person and directed the lessor to acquire the  
18 goods or the right to possession and use of the goods from that person;  
19 that the lessee is entitled under this chapter to the promises and  
20 warranties, including those of a third party, provided to the lessor by  
21 the person supplying the goods in connection with or as part of the  
22 contract by which the lessor acquired the goods or the right to  
23 possession and use of the goods; and that the lessee may communicate  
24 with the person supplying the goods to the lessor and receive an  
25 accurate and complete statement of those promises and warranties,  
26 including any disclaimers and limitations of them or of remedies;

27 (8) "goods" means all things that are movable at the time of  
28 identification to the lease contract, or are fixtures under AS 45.12.309, but the term  
29 does not include money, documents, instruments, accounts, chattel paper, general  
30 intangibles, or minerals or the like, including oil and gas, before extraction; the term  
31 also includes the unborn young of animals;

1 (9) "installment lease contract" means a lease contract that authorizes  
2 or requires the delivery of goods in separate lots to be separately accepted, even  
3 though the lease contract contains the clause "each delivery is a separate lease" or its  
4 equivalent;

5 (10) "lease" means a transfer of the right to possession and use of  
6 goods for a term in return for consideration, but a sale, including a sale on approval  
7 or a sale or return, or retention or creation of a security interest is not a lease; unless  
8 the context clearly indicates otherwise, the term includes a sublease;

9 (11) "lease agreement" means the bargain, with respect to the lease, of  
10 the lessor and the lessee in fact as found in their language or by implication from other  
11 circumstances including course of dealing or usage of trade or course of performance  
12 as provided in this chapter; unless the context clearly indicates otherwise, the term  
13 includes a sublease agreement;

14 (12) "lease contract" means the total legal obligation that results from  
15 the lease agreement as affected by this chapter and other applicable rules of law;  
16 unless the context clearly indicates otherwise, the term includes a sublease contract;

17 (13) "leasehold interest" means the interest of the lessor or the lessee  
18 under a lease contract;

19 (14) "lessee" means a person who acquires the right to possession and  
20 use of goods under a lease; unless the context clearly indicates otherwise, the term  
21 includes a sublessee;

22 (15) "lessee in ordinary course of business" means a person who in  
23 good faith and without knowledge that the lease to that person is in violation of the  
24 ownership rights or security interest or leasehold interest of a third party in the goods  
25 leases in ordinary course from a person in the business of selling or leasing goods of  
26 that kind but does not include a pawnbroker; "leasing" may be for cash or by exchange  
27 of other property or on secured or unsecured credit and includes receiving goods or  
28 documents of title under a preexisting lease contract but does not include a transfer in  
29 bulk or as security for or in total or partial satisfaction of a money debt;

30 (16) "lessor" means a person who transfers the right to possession and  
31 use of goods under a lease; unless the context clearly indicates otherwise, the term

1 includes a sublessor;

2 (17) "lessor's residual interest" means the lessor's interest in the goods  
3 after expiration, termination, or cancellation of the lease contract;

4 (18) "lien" means a charge against or interest in goods to secure  
5 payment of a debt or performance of an obligation, but the term does not include a  
6 security interest;

7 (19) "lot" means a parcel or a single article that is the subject matter  
8 of a separate lease or delivery, whether or not it is sufficient to perform the lease  
9 contract;

10 (20) "merchant lessee" means a lessee who is a merchant with respect  
11 to goods of the kind subject to the lease;

12 (21) "present value" means the amount as of a date certain of one or  
13 more sums payable in the future, discounted to the date certain; the discount is  
14 determined by the interest rate specified by the parties if the rate was not manifestly  
15 unreasonable at the time the transaction was entered into; otherwise, the discount is de-  
16 termined by a commercially reasonable rate that takes into account the facts and  
17 circumstances of each case at the time the transaction was entered into;

18 (22) "purchase" includes taking by sale, lease, mortgage, security  
19 interest, pledge, gift, or any other voluntary transaction creating an interest in goods;

20 (23) "sublease" means a lease of goods the right to possession and use  
21 of which was acquired by the lessor as a lessee under an existing lease;

22 (24) "supplier" means a person from whom a lessor buys or leases  
23 goods to be leased under a finance lease;

24 (25) "supply contract" means a contract under which a lessor buys or  
25 leases goods to be leased;

26 (26) "termination" occurs when either party under a power created by  
27 agreement or law puts an end to the lease contract otherwise than for default.

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

30 (1) "accessions" in AS 45.12.310(a);

31 (2) "construction mortgage" in AS 45.12.309(j)(5);

- 1 (3) "encumbrance" in AS 45.12.309(j)(1);
- 2 (4) "fixtures" in AS 45.12.309(j)(3);
- 3 (5) "fixture filing" in AS 45.12.309(j)(2);
- 4 (6) "purchase money lease" in AS 45.12.309(j)(4).

5 (c) The following definitions in AS 45.02 and AS 45.09 apply to this chapter:

- 6 (1) "account" (AS 45.09.106);
- 7 (2) "between merchants" (AS 45.02.104(c));
- 8 (3) "buyer" (AS 45.02.103(a)(1));
- 9 (4) "chattel paper" (AS 45.09.105(a)(2));
- 10 (5) "consumer goods" (AS 45.09.109(1));
- 11 (6) "document" (AS 45.09.105(a)(6));
- 12 (7) "entrusting" (AS 45.02.403(c));
- 13 (8) "general intangibles" (AS 45.09.106);
- 14 (9) "good faith" (AS 45.02.103(a)(2));
- 15 (10) "instrument" (AS 45.09.105(a)(9));
- 16 (11) "merchant" (AS 45.02.104(a));
- 17 (12) "mortgage" (AS 45.09.105(a)(10));
- 18 (13) "pursuant to a commitment" (AS 45.09.105(a)(11));
- 19 (14) "receipt" (AS 45.02.103(a)(3));
- 20 (15) "sale" (AS 45.02.106(a));
- 21 (16) "sale on approval" (AS 45.02.326);
- 22 (17) "sale or return" (AS 45.02.326);
- 23 (18) "seller" (AS 45.02.103(a)(4)).

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

26 Sec. 45.12.104. LEASES SUBJECT TO OTHER LAW. (a) A lease, although  
27 subject to this chapter, is also subject to an applicable

- 28 (1) certificate of title statute of this state, including AS 28.10.201;
- 29 (2) certificate of title statute of another jurisdiction as provided in  
30 AS 45.12.105;
- 31 (3) consumer protection statute of this state, or final consumer

1 protection decision of a court of this state existing on the effective date of this chapter,  
2 or

3 (4) provision of AS 36.30 (State Procurement Code).

4 (b) In case of conflict between this chapter, other than AS 45.12.105,  
5 45.12.304(c), and 45.12.305(c), and a statute or decision referred to in (a) of this  
6 section, the statute or decision controls.

7 (c) Failure to comply with an applicable law has only the effect specified in  
8 it.

9 **Sec. 45.12.105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS**  
10 **COVERED BY CERTIFICATE OF TITLE.** Subject to the provisions of  
11 AS 45.12.304(c) and 45.12.305(c), with respect to goods covered by a certificate of  
12 title issued under a statute of this state or of another jurisdiction, compliance and the  
13 effect of compliance or noncompliance with a certificate of title statute are governed  
14 by the law, including the conflict of laws rules, of the jurisdiction issuing the  
15 certificate until the earlier of

16 (1) surrender of the certificate; or

17 (2) four months after the goods are removed from that jurisdiction and  
18 after that date until a new certificate of title is issued by another jurisdiction.

19 **Sec. 45.12.106. LIMITATION ON POWER OF PARTIES TO CONSUMER**  
20 **LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM.** (a) If the law  
21 chosen by the parties to a consumer lease is that of a jurisdiction other than a  
22 jurisdiction in which the lessee resides at the time the lease agreement becomes  
23 enforceable or within 30 days after that date or in which the goods are to be used, the  
24 choice is not enforceable.

25 (b) If the judicial forum chosen by the parties to a consumer lease is a forum  
26 that would not otherwise have jurisdiction over the lessee, the choice is not  
27 enforceable.

28 **Sec. 45.12.107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT**  
29 **AFTER DEFAULT OR BREACH.** A claim or right arising out of an alleged default  
30 or breach of warranty may be discharged in whole or in part without consideration by  
31 a written waiver or renunciation signed and delivered by the aggrieved party.



1 under (a) of this section is on the party who exercised the power, otherwise the burden  
2 of establishing lack of good faith is on the party against whom the power has been  
3 exercised.

4 **ARTICLE 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT.**

5 **Sec. 45.12.201. STATUTE OF FRAUDS. (a) A lease contract is not**  
6 **enforceable by way of action or defense unless**

7 (1) the total payments to be made under the lease contract, excluding  
8 payments for options to renew or buy, are less than \$1,000; or

9 (2) there is a writing, signed by the party against whom enforcement  
10 is sought or by that party's authorized agent, sufficient to indicate that a lease contract  
11 has been made between the parties and to describe the goods leased and the lease term.

12 (b) A description of leased goods or of the lease term is sufficient and satisfies  
13 (a)(2) of this section, whether or not it is specific, if it reasonably identifies what is  
14 described.

15 (c) A writing is not insufficient because it omits or incorrectly states a term  
16 agreed upon, but the lease contract is not enforceable under (a)(2) of this section  
17 beyond the lease term and the quantity of goods shown in the writing.

18 (d) A lease contract that does not satisfy the requirements of (a) of this  
19 section, but that is valid in other respects, is enforceable

20 (1) if the goods are to be specially manufactured or obtained for the  
21 lessee and are not suitable for lease or sale to others in the ordinary course of the  
22 lessor's business, and the lessor, before notice of repudiation is received and under  
23 circumstances that reasonably indicate that the goods are for the lessee, has made  
24 either a substantial beginning of their manufacture or commitments for their  
25 procurement;

26 (2) if the party against whom enforcement is sought admits in that  
27 party's pleading, testimony, or otherwise in court that a lease contract was made, but  
28 the lease contract is not enforceable under this paragraph beyond the quantity of goods  
29 admitted; or

30 (3) with respect to goods that have been received and accepted by the  
31 lessee.

- 1 (e) The lease term under a lease contract referred to in (d) of this section is  
2 (1) if there is a writing signed by the party against whom enforcement  
3 is sought or by that party's authorized agent specifying the lease term, the term  
4 specified;  
5 (2) if the party against whom enforcement is sought admits in that  
6 party's pleading, testimony, or otherwise in court a lease term, the term admitted; or  
7 (3) a reasonable lease term.

8 **Sec. 45.12.202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC**  
9 **EVIDENCE.** Terms with respect to which the confirmatory memoranda of the parties  
10 agree or that are otherwise set out in a writing intended by the parties as a final  
11 expression of their agreement with respect to the terms that are included in the  
12 memoranda or other writing may not be contradicted by evidence of a prior agreement  
13 or of a contemporaneous oral agreement but may be explained or supplemented

14 (1) by course of dealing or usage of trade or by course of performance;  
15 and

16 (2) by evidence of consistent additional terms unless the court finds the  
17 writing to have been intended also as a complete and exclusive statement of the terms  
18 of the agreement.

19 **Sec. 45.12.203. SEALS INOPERATIVE.** The affixing of a seal to a writing  
20 evidencing a lease contract or an offer to enter into a lease contract does not render  
21 the writing a sealed instrument, and the law with respect to sealed instruments does  
22 not apply to the lease contract or offer.

23 **Sec. 45.12.204. FORMATION IN GENERAL.** (a) A lease contract may be  
24 made in any manner sufficient to show agreement, including conduct by both parties  
25 that recognizes the existence of a lease contract.

26 (b) An agreement sufficient to constitute a lease contract may be found  
27 although the moment of its making is undetermined.

28 (c) Although one or more terms are left open, a lease contract does not fail for  
29 indefiniteness if the parties have intended to make a lease contract and there is a  
30 reasonably certain basis for giving an appropriate remedy.

31 **Sec. 45.12.205. FIRM OFFERS.** An offer by a merchant to lease goods to or

1 from another person in a signed writing that by its terms gives assurance that it will  
2 be held open is not revocable, for lack of consideration, during the time stated or, if  
3 no time is stated, for a reasonable time; however, in no event may the period of  
4 irrevocability exceed three months. A term of assurance under this section on a form  
5 supplied by the offeree shall be separately signed by the offeror.

6 **Sec. 45.12.206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE**  
7 **CONTRACT.** (a) Unless otherwise unambiguously indicated by the language or  
8 circumstances, an offer to make a lease contract must be construed as inviting  
9 acceptance in any manner and by any medium reasonable under the circumstances.

10 (b) If the beginning of a requested performance is a reasonable mode of  
11 acceptance, an offeror who is not notified of acceptance within a reasonable time may  
12 treat the offer as having lapsed before acceptance.

13 **Sec. 45.12.207. COURSE OF PERFORMANCE OR PRACTICAL**  
14 **CONSTRUCTION.** (a) If a lease contract involves repeated occasions for  
15 performance by either party with knowledge of the nature of the performance and  
16 opportunity for objection to it by the other, any course of performance accepted or  
17 acquiesced in without objection is relevant to determine the meaning of the lease  
18 agreement.

19 (b) The express terms of a lease agreement and any course of performance, as  
20 well as any course of dealing and usage of trade, must be construed whenever  
21 reasonable as consistent with each other; but if that construction is unreasonable,  
22 express terms control course of performance, course of performance controls both  
23 course of dealing and usage of trade, and course of dealing controls usage of trade.

24 (c) Subject to the provisions of AS 45.12.208 on modification and waiver,  
25 course of performance is relevant to show a waiver or modification of any term  
26 inconsistent with the course of performance.

27 **Sec. 45.12.208. MODIFICATION, RESCISSION, AND WAIVER.** (a) An  
28 agreement modifying a lease contract does not need consideration to be binding.

29 (b) A signed lease agreement that excludes modification or rescission except  
30 by a signed writing may not be otherwise modified or rescinded, but, except as  
31 between merchants, such a requirement on a form supplied by a merchant must be

1 separately signed by the other party.

2 (c) Although an attempt at modification or rescission does not satisfy the  
3 requirements of (b) of this section, it may operate as a waiver.

4 (d) A party who has made a waiver affecting an executory portion of a lease  
5 contract may retract the waiver by reasonable notification received by the other party  
6 that strict performance will be required of any term waived, unless the retraction would  
7 be unjust in view of a material change of position in reliance on the waiver.

8 **Sec. 45.12.209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF**  
9 **SUPPLY CONTRACT.** (a) The benefit of a supplier's promises to the lessor under  
10 the supply contract and of all warranties, whether express or implied, including those  
11 of a third party provided in connection with or as part of the supply contract, extends  
12 to the lessee to the extent of the lessee's leasehold interest under a finance lease  
13 related to the supply contract, but is subject to the terms of the warranty and of the  
14 supply contract and all defenses or claims arising from the warranty or supply contract.

15 (b) The extension of the benefit of a supplier's promises and of warranties to  
16 the lessee under (a) of this section does not

17 (1) modify the rights and obligations of the parties to the supply  
18 contract, whether arising from it or otherwise; or

19 (2) impose a duty or liability under the supply contract on the lessee.

20 (c) A modification or rescission of the supply contract by the supplier and the  
21 lessor is effective between the supplier and the lessee unless, before the modification  
22 or rescission, the supplier has received notice that the lessee has entered into a finance  
23 lease related to the supply contract. If the modification or rescission is effective  
24 between the supplier and the lessee, the lessor is considered to have assumed, in  
25 addition to the obligations of the lessor under the lease contract, promises of the  
26 supplier to the lessor and warranties that were so modified or rescinded as they existed  
27 and were available to the lessee before modification or rescission.

28 (d) In addition to the extension of the benefit of the supplier's promises and  
29 of warranties to the lessee under (a) of this section, the lessee retains all rights that the  
30 lessee may have against the supplier that arise from an agreement between the lessee  
31 and the supplier or under other law.

1                   **Sec. 45.12.210. EXPRESS WARRANTIES.** (a) Express warranties by the  
2 lessor are created as follows:

3                   (1) an affirmation of fact or promise made by the lessor to the lessee  
4 that relates to the goods and becomes part of the basis of the bargain creates an  
5 express warranty that the goods will conform to the affirmation or promise;

6                   (2) a description of the goods that is made part of the basis of the  
7 bargain creates an express warranty that the goods will conform to the description;

8                   (3) a sample or model that is made part of the basis of the bargain  
9 creates an express warranty that the whole of the goods will conform to the sample or  
10 model.

11                   (b) It is not necessary to the creation of an express warranty that the lessor use  
12 formal words, such as "warrant" or "guarantee," or that the lessor have a specific  
13 intention to make a warranty, but an affirmation merely of the value of the goods or  
14 a statement purporting to be merely the lessor's opinion or commendation of the goods  
15 does not create a warranty.

16                   **Sec. 45.12.211. WARRANTIES AGAINST INTERFERENCE AND AGAINST**  
17 **INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT.** (a)  
18 There is in a lease contract a warranty that for the lease term a person does not hold  
19 a claim to or interest in the goods that arose from an act or omission of the lessor,  
20 other than a claim by way of infringement or the like, that will interfere with the  
21 lessee's enjoyment of its leasehold interest.

22                   (b) Except in a finance lease, there is in a lease contract by a lessor who is a  
23 merchant regularly dealing in goods of the kind a warranty that the goods are delivered  
24 free of the rightful claim of any person by way of infringement or the like.

25                   (c) A lessee who furnishes specifications to a lessor or a supplier shall hold  
26 the lessor and the supplier harmless against any claim by way of infringement or the  
27 like that arises out of compliance with the specifications.

28                   **Sec. 45.12.212. IMPLIED WARRANTY OF MERCHANTABILITY.** (a)  
29 Except in a finance lease, a warranty that the goods will be merchantable is implied  
30 in a lease contract if the lessor is a merchant with respect to goods of that kind.

31                   (b) Goods to be merchantable must be at least goods that

- 1 (1) pass without objection in the trade under the description in the lease
- 2 agreement;
- 3 (2) in the case of fungible goods, are of fair average quality within the
- 4 description;
- 5 (3) are fit for the ordinary purposes for which goods of that type are
- 6 used;
- 7 (4) run, within the variation permitted by the lease agreement, of even
- 8 kind, quality, and quantity within each unit and among all units involved;
- 9 (5) are adequately contained, packaged, and labeled as the lease
- 10 agreement may require; and
- 11 (6) conform to any promises or affirmations of fact made on the
- 12 container or label.

13 (c) Other implied warranties may arise from course of dealing or usage of

14 trade.

15 **Sec. 45.12.213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR**

16 **PURPOSE.** Except in a finance lease, if the lessor at the time the lease contract is

17 made has reason to know of a particular purpose for which the goods are required and

18 that the lessee is relying on the lessor's skill or judgment to select or furnish suitable

19 goods, there is in the lease contract an implied warranty that the goods will be fit for

20 that purpose.

21 **Sec. 45.12.214. EXCLUSION OR MODIFICATION OF WARRANTIES. (a)**

22 **Words or conduct relevant to the creation of an express warranty and words or conduct**

23 **tending to negate or limit a warranty shall be construed wherever reasonable as**

24 **consistent with each other; but, subject to the provisions of AS 45.12.202 on parol or**

25 **extrinsic evidence, negation or limitation is inoperative to the extent that the con-**

26 **struction is unreasonable.**

27 (b) Subject to (c) of this section, to exclude or modify the implied warranty

28 of merchantability or a part of it the language must mention "merchantability," be by

29 a writing, and be conspicuous. Subject to (c) of this section, to exclude or modify an

30 implied warranty of fitness the exclusion must be by a writing and be conspicuous.

31 Language to exclude all implied warranties of fitness is sufficient if it is in writing, is

1 conspicuous, and states, for example, "There is no warranty that the goods will be fit  
2 for a particular purpose."

3 (c) Notwithstanding (b) of this section, but subject to (d) of this section,

4 (1) unless the circumstances indicate otherwise, all implied warranties  
5 are excluded by expressions like "as is," or "with all fault," or by other language that  
6 in common understanding calls the lessee's attention to the exclusion of warranties and  
7 makes plain that there is no implied warranty, if in writing and conspicuous;

8 (2) if the lessee before entering into the lease contract has examined  
9 the goods or the sample or model as fully as desired or has refused to examine the  
10 goods, there is no implied warranty with regard to defects that an examination ought  
11 in the circumstances to have revealed; and

12 (3) an implied warranty may also be excluded or modified by course  
13 of dealing, course of performance, or usage of trade.

14 (d) To exclude or modify a warranty against interference or against  
15 infringement described in AS 45.12.211 or a part of the warranty, the language must  
16 be specific, be by a writing, and be conspicuous, unless the circumstances, including  
17 course of performance, course of dealing, or usage of trade, give the lessee reason to  
18 know that the goods are being leased subject to a claim or interest of any person.

19 **Sec. 45.12.215. CUMULATION AND CONFLICT OF WARRANTIES**  
20 **EXPRESS OR IMPLIED.** Warranties, whether express or implied, shall be construed  
21 as consistent with each other and as cumulative, but if that construction is  
22 unreasonable, the intention of the parties determines which warranty is dominant. In  
23 ascertaining that intention the following rules apply:

24 (1) exact or technical specifications displace an inconsistent sample or  
25 model or general language of description;

26 (2) a sample from an existing bulk displaces inconsistent general  
27 language of description;

28 (3) express warranties displace inconsistent implied warranties other  
29 than an implied warranty of fitness for a particular purpose.

30 **Sec. 45.12.216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND**  
31 **IMPLIED WARRANTIES.** A warranty to or for the benefit of a lessee under this

1 chapter, whether express or implied, extends to any natural person who may reasonably  
2 be expected to use, consume, or be affected by the goods and who is injured in person  
3 by breach of the warranty. This section does not displace principles of law and equity  
4 that extend a warranty to or for the benefit of a lessee to other persons. The operation  
5 of this section may not be excluded, modified, or limited, but an exclusion,  
6 modification, or limitation of the warranty, including an exclusion, a modification, or  
7 a limitation with respect to rights and remedies, effective against the lessee is also  
8 effective against the beneficiary designated under this section.

9 Sec. 45.12.217. IDENTIFICATION. Identification of goods as goods to which  
10 a lease contract refers may be made at any time and in any manner explicitly agreed  
11 to by the parties. In the absence of explicit agreement, identification occurs

12 (1) when the lease contract is made if the lease contract is for a lease  
13 of goods that are existing and identified;

14 (2) when the goods are shipped, marked, or otherwise designated by  
15 the lessor as goods to which the lease contract refers if the lease contract is for a lease  
16 of goods that are not existing and identified; or

17 (3) when the young are conceived if the lease contract is for a lease of  
18 unborn young of animals.

19 Sec. 45.12.218. INSURANCE AND PROCEEDS. (a) A lessee obtains an  
20 insurable interest when existing goods are identified to the lease contract even though  
21 the goods identified are nonconforming and the lessee has an option to reject them.

22 (b) If a lessee has an insurable interest only by reason of the lessor's  
23 identification of the goods, the lessor, until default or insolvency or notification to the  
24 lessee that identification is final, may substitute other goods for those identified.

25 (c) Notwithstanding a lessee's insurable interest under (a) - (b) of this section,  
26 the lessor retains an insurable interest until an option to buy has been exercised by the  
27 lessee and risk of loss has passed to the lessee.

28 (d) This section does not impair an insurable interest recognized under another  
29 statute or rule of law.

30 (e) The parties by agreement may determine that one or more parties have an  
31 obligation to obtain and pay for insurance covering the goods and by agreement may

1 determine the beneficiary of the proceeds of the insurance.

2 **Sec. 45.12.219. RISK OF LOSS.** (a) Except in the case of a finance lease,  
3 risk of loss is retained by the lessor and does not pass to the lessee. In the case of a  
4 finance lease, risk of loss passes to the lessee.

5 (b) Subject to the provisions of AS 45.12.220 on the effect of default on risk  
6 of loss, if risk of loss is to pass to the lessee and the time of passage is not stated, the  
7 following rules apply:

8 (1) if the lease contract requires or authorizes the goods to be shipped  
9 by carrier

10 (A) and it does not require delivery at a particular destination,  
11 the risk of loss passes to the lessee when the goods are duly delivered to the  
12 carrier, but

13 (B) if it does require delivery at a particular destination and the  
14 goods are there duly tendered while in the possession of the carrier, the risk of  
15 loss passes to the lessee when the goods are there duly so tendered as to enable  
16 the lessee to take delivery;

17 (2) if the goods are held by a bailee to be delivered without being  
18 moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the  
19 lessee's right to possession of the goods;

20 (3) in a case not covered in (1) or (2) of this subsection, the risk of loss  
21 passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of  
22 a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on  
23 tender of delivery.

24 **Sec. 45.12.220. EFFECT OF DEFAULT ON RISK OF LOSS.** (a) Where risk  
25 of loss is to pass to the lessee and the time of passage is not stated

26 (1) if a tender or delivery of goods so fails to conform to the lease  
27 contract as to give a right of rejection, the risk of their loss remains with the lessor,  
28 or, in the case of a finance lease, the supplier, until cure or acceptance;

29 (2) if the lessee rightfully revokes acceptance, the lessee, to the extent  
30 of a deficiency in the lessee's effective insurance coverage, may treat the risk of loss  
31 as having remained with the lessor from the beginning.

1 (b) Whether or not risk of loss is to pass to the lessee, if the lessee as to  
2 conforming goods already identified to a lease contract repudiates or is otherwise in  
3 default under the lease contract, the lessor, or, in the case of a finance lease, the  
4 supplier, to the extent of a deficiency in the lessor's or supplier's effective insurance  
5 coverage may treat the risk of loss as resting on the lessee for a commercially  
6 reasonable time.

7 **Sec. 45.12.221. CASUALTY TO IDENTIFIED GOODS.** If a lease contract  
8 requires goods identified when the lease contract is made, and the goods suffer  
9 casualty without fault of the lessee, the lessor, or the supplier before delivery, or the  
10 goods suffer casualty before risk of loss passes to the lessee under the lease agreement  
11 or AS 45.12.219 then, if the loss is

- 12 (1) total, the lease contract is avoided; and  
13 (2) partial or the goods have so deteriorated as to no longer conform  
14 to the lease contract, the lessee may nevertheless demand inspection and at the lessee's  
15 option either treat the lease contract as avoided or, except in a finance lease that is not  
16 a consumer lease, accept the goods with due allowance from the rent payable for the  
17 balance of the lease term for the deterioration or the deficiency in quantity but without  
18 further right against the lessor.

19 **ARTICLE 3. EFFECT OF LEASE CONTRACT.**

20 **Sec. 45.12.301. ENFORCEABILITY OF LEASE CONTRACT.** Except as  
21 otherwise provided in this chapter, a lease contract is effective and enforceable  
22 according to its terms between the parties, against purchasers of the goods, and against  
23 creditors of the parties.

24 **Sec. 45.12.302. TITLE TO AND POSSESSION OF GOODS.** Except as  
25 otherwise provided in this chapter, each provision of this chapter applies whether the  
26 lessor or a third party has title to the goods, and whether the lessor, the lessee, or a  
27 third party has possession of the goods, notwithstanding a statute or rule of law that  
28 possession or the absence of possession is fraudulent.

29 **Sec. 45.12.303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE**  
30 **CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION**  
31 **OF PERFORMANCE; TRANSFER OF RIGHTS.** (a) Except as provided in (b) - (d)

1 of this section, a provision in a lease agreement that does either of the following gives  
2 rise to the rights and remedies provided in (e) of this section, but a transfer that is  
3 prohibited or is an event of default under the lease agreement is otherwise effective:

4 (1) prohibits the voluntary or involuntary transfer, including a transfer  
5 by sale, sublease, creation or enforcement of a security interest, or attachment, levy,  
6 or other judicial process, of

7 (A) an interest of a party under the lease contract; or

8 (B) the lessor's residual interest in the goods; or

9 (2) makes a transfer under (1) of this subsection an event of default.

10 (b) A provision in a lease agreement that does either of the following is not  
11 enforceable unless, and then only to the extent that, there is an actual transfer by the  
12 lessee of the lessee's right of possession or use of the goods in violation of the  
13 provision or there is an actual delegation of a material performance of either party to  
14 the lease contract in violation of the provision:

15 (1) prohibits the creation or enforcement of a security interest in

16 (A) an interest of a party under the lease contract; or

17 (B) the lessor's residual interest in the goods; or

18 (2) makes a transfer under (1) of this subsection an event of default.

19 (c) In (b) of this section, neither the granting nor the enforcement of a security  
20 interest in either the lessor's interest under the lease contract or the lessor's residual  
21 interest in the goods is a transfer that materially impairs the prospect of obtaining  
22 return performance by, materially changes the duty of, or materially increases the  
23 burden or risk imposed on, the lessee within the purview of (e) of this section unless,  
24 and then only to the extent that, there is an actual delegation of a material performance  
25 of the lessor.

26 (d) A provision in a lease agreement that does either of the following is not  
27 enforceable, and the transfer is not a transfer that materially impairs the prospect of  
28 obtaining return performance by, materially changes the duty of, or materially increases  
29 the burden or risk imposed on, the other party to the lease contract within the purview  
30 of (e) of this section:

31 (1) prohibits a transfer of a right to damages for default with respect

1 to the whole lease contract or of a right to payment arising out of the transferor's due  
2 performance of the transferor's entire obligation; or

3 (2) makes a transfer under (1) of this subsection an event of default.

4 (e) Subject to (b) - (d) of this section,

5 (1) if a transfer is made that is made an event of default under a lease  
6 agreement, the party to the lease contract not making the transfer, unless that party  
7 waives the default or otherwise agrees, has the rights and remedies under  
8 AS 45.12.501(b);

9 (2) if (1) of this subsection is not applicable and if a transfer is made  
10 that is prohibited under a lease agreement or that materially impairs the prospect of  
11 obtaining return performance by, materially changes the duty of, or materially increases  
12 the burden or risk imposed on, the other party to the lease contract, unless the party  
13 not making the transfer agrees at any time to the transfer in the lease contract or  
14 otherwise, then, except as limited by contract, the transferor is liable to the party not  
15 making the transfer for damages caused by the transfer to the extent that the damages  
16 could not reasonably be prevented by the party not making the transfer, and a court  
17 having jurisdiction may grant other appropriate relief, including cancellation of the  
18 lease contract or an injunction against the transfer.

19 (f) A transfer of "the lease" or of "all my rights under the lease," or a transfer  
20 in similar general terms, is a transfer of rights, and, unless the language or the  
21 circumstances, as in a transfer for security, indicate the contrary, the transfer is a  
22 delegation of duties by the transferor to the transferee. Acceptance by the transferee  
23 constitutes a promise by the transferee to perform those duties. The promise is  
24 enforceable by either the transferor or the other party to the lease contract.

25 (g) Unless otherwise agreed by the lessor and the lessee, a delegation of  
26 performance does not relieve the transferor as against the other party of any duty to  
27 perform or any liability for default.

28 (h) In a consumer lease, to prohibit the transfer of an interest of a party under  
29 the lease contract or to make a transfer an event of default, the language must be  
30 specific, by a writing, and conspicuous.

31 (i) In this section, "creation of a security interest" includes the sale of a lease

1 contract that is subject to AS 45.09, on secured transactions, by reason of  
2 AS 45.09.102(a)(2).

3 **Sec. 45.12.304. SUBSEQUENT LEASE OF GOODS BY LESSOR. (a)**

4 Subject to AS 45.12.303, a subsequent lessee from a lessor of goods under an existing  
5 lease contract obtains, to the extent of the leasehold interest transferred, the leasehold  
6 interest in the goods that the lessor had or had power to transfer, and except as  
7 provided in (b) of this section and AS 45.12.527(d), takes subject to the existing lease  
8 contract. A lessor with voidable title has power to transfer a good leasehold interest  
9 to a good faith subsequent lessee for value, but only to the extent set out in the  
10 preceding sentence. If goods have been delivered under a transaction of purchase, the  
11 lessor has that power even though

12 (1) the lessor's transferor was deceived as to the identity of the lessor;

13 (2) the delivery was in exchange for a check that is later dishonored;

14 (3) it was agreed that the transaction was to be a "cash sale"; or

15 (4) the delivery was procured through fraud punishable as larcenous  
16 under criminal law.

17 (b) A subsequent lessee in the ordinary course of business from a lessor who  
18 is a merchant dealing in goods of that kind to whom the goods were entrusted by the  
19 existing lessee of that lessor before the interest of the subsequent lessee became  
20 enforceable against that lessor obtains, to the extent of the leasehold interest  
21 transferred, all of that lessor's and the existing lessee's rights to the goods, and takes  
22 free of the existing lease contract.

23 (c) A subsequent lessee from the lessor of goods that are subject to an existing  
24 lease contract and are covered by a certificate of title issued under a statute of this  
25 state or of another jurisdiction does not take greater rights than those provided both  
26 by this section and by the certificate of title statute.

27 **Sec. 45.12.305. SALE OR SUBLEASE OF GOODS BY LESSEE. (a)**

28 Subject to the provisions of AS 45.12.303, a buyer or sublessee from the lessee of  
29 goods under an existing lease contract obtains, to the extent of the interest transferred,  
30 the leasehold interest in the goods that the lessee had or had power to transfer, and  
31 except as provided in (b) of this section and AS 45.12.511(d), takes subject to the

1 existing lease contract. A lessee with a voidable leasehold interest has power to  
2 transfer a good leasehold interest to a good faith buyer for value or a good faith  
3 sublessee for value, but only to the extent set out in the preceding sentence. If goods  
4 have been delivered under a transaction of lease, the lessee has that power even though

5 (1) the lessor was deceived as to the identity of the lessee;

6 (2) the delivery was in exchange for a check that is later dishonored;

7 or

8 (3) the delivery was procured through fraud punishable as larcenous  
9 under criminal law.

10 (b) A buyer in the ordinary course of business or a sublessee in the ordinary  
11 course of business from a lessee who is a merchant dealing in goods of that kind to  
12 whom the goods were entrusted by the lessor obtains, to the extent of the interest  
13 transferred, all of the lessor's and lessee's rights to the goods, and takes free of the  
14 existing lease contract.

15 (c) A buyer or sublessee from the lessee of goods that are subject to an  
16 existing lease contract and are covered by a certificate of title issued under a statute  
17 of this state or of another jurisdiction does not take greater rights than those provided  
18 both by this section and by the certificate of title statute.

19 **Sec. 45.12.306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION**  
20 **OF LAW.** If a person in the ordinary course of the person's business furnishes  
21 services or materials with respect to goods subject to a lease contract, a lien upon  
22 those goods in the possession of that person given by statute or rule of law for those  
23 materials or services takes priority over any interest of the lessor or lessee under the  
24 lease contract or this chapter unless the lien is created by statute and the statute  
25 provides otherwise or unless the lien is created by rule of law and the rule of law  
26 provides otherwise.

27 **Sec. 45.12.307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR**  
28 **LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS.** (a)  
29 Except as otherwise provided in AS 45.12.306, a creditor of a lessee takes subject to  
30 the lease contract.

31 (b) Except as otherwise provided in (c) and (d) of this section and in

1 AS 45.12.306 and 45.12.308, a creditor of a lessor takes subject to the lease contract  
2 unless

3 (1) the creditor holds a lien that attached to the goods before the lease  
4 contract became enforceable;

5 (2) the creditor holds a security interest in the goods and the lessee  
6 gave value and received delivery of the goods with knowledge of the security interest;  
7 or

8 (3) the creditor holds in the goods a security interest that was perfected  
9 under AS 45.09.303 before the lease contract became enforceable.

10 (c) A lessee in the ordinary course of business takes the leasehold interest free  
11 of a security interest in the goods created by the lessor even though the security  
12 interest is perfected under AS 45.09.303 and the lessee knows of its existence.

13 (d) A lessee other than a lessee in the ordinary course of business takes the  
14 leasehold interest free of a security interest to the extent that the leasehold interest  
15 secures future advances made after the secured party acquires knowledge of the lease  
16 or more than 45 days after the lease contract becomes enforceable, whichever first  
17 occurs, unless the future advances are made pursuant to a commitment entered into  
18 without knowledge of the lease and before the expiration of the 45-day period.

19 Sec. 45.12.308. SPECIAL RIGHTS OF CREDITORS. (a) A creditor of a  
20 lessor in possession of goods subject to a lease contract may treat the lease contract  
21 as void if as against the creditor retention of possession by the lessor is fraudulent, but  
22 retention of possession in good faith and current course of trade by the lessor for a  
23 commercially reasonable time after the lease contract becomes enforceable is not  
24 fraudulent.

25 (b) Nothing in this chapter impairs the rights of creditors of a lessor if the  
26 lease contract

27 (1) becomes enforceable, not in current course of trade but in  
28 satisfaction of or as security for a preexisting claim for money, security, or the like;  
29 and

30 (2) is made under circumstances that under law apart from this chapter  
31 would constitute the transaction a fraudulent transfer or voidable preference.

1 (c) A creditor of a seller may treat a sale or an identification of goods to a  
2 contract for sale as void if as against the creditor retention of possession by the seller  
3 is fraudulent but retention of possession of the goods under a lease contract entered  
4 into by the seller as lessee and the buyer as lessor in connection with the sale or  
5 identification of the goods is not fraudulent if the buyer bought for value and in good  
6 faith.

7 **Sec. 45.12.309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS**  
8 **BECOME FIXTURES.** (a) Under this chapter a lease may be of goods that are  
9 fixtures or may continue in goods that become fixtures, but a lease does not exist  
10 under this chapter of ordinary building materials incorporated into an improvement on  
11 land.

12 (b) This chapter does not prevent creation of a lease of fixtures under real  
13 estate law.

14 (c) The perfected interest of a lessor of fixtures has priority over a conflicting  
15 interest of an encumbrancer or owner of the real estate if

16 (1) the lease is a purchase money lease, the conflicting interest of the  
17 encumbrancer or owner arises before the goods become fixtures, the interest of the  
18 lessor is perfected by a fixture filing before the goods become fixtures or within 10  
19 days after becoming fixtures, and the lessee has an interest of record in the real estate  
20 or is in possession of the real estate; or

21 (2) the interest of the lessor is perfected by a fixture filing before the  
22 interest of the encumbrancer or owner is of record, the lessor's interest has priority  
23 over a conflicting interest of a predecessor in title of the encumbrancer or owner, and  
24 the lessee has an interest of record in the real estate or is in possession of the real  
25 estate.

26 (d) The interest of a lessor of fixtures, whether or not perfected, has priority  
27 over the conflicting interest of an encumbrancer or owner of the real estate if

28 (1) the fixtures are readily removable factory or office machines,  
29 readily removable equipment that is not primarily used or leased for use in the  
30 operation of the real estate, or readily removable replacements of domestic appliances  
31 that are goods subject to a consumer lease, and before the goods become fixtures the

1 lease contract is enforceable;

2 (2) the conflicting interest is a lien on the real estate obtained by legal  
3 or equitable proceedings after the lease contract is enforceable;

4 (3) the encumbrancer or owner has consented in writing to the lease or  
5 has disclaimed an interest in the goods as fixtures; or

6 (4) the lessee has a right to remove the goods as against the  
7 encumbrancer or owner; if the lessee's right to remove terminates, the priority of the  
8 interest of the lessor continues for a reasonable time.

9 (e) Notwithstanding (c)(1) of this section but otherwise subject to (c) and (d)  
10 of this section, the interest of a lessor of fixtures, including the lessor's residual  
11 interest, is subordinate to the conflicting interest of an encumbrancer of the real estate  
12 under a construction mortgage recorded before the goods become fixtures if the goods  
13 become fixtures before the completion of the construction. To the extent given to  
14 refinance a construction mortgage, the conflicting interest of an encumbrancer of the  
15 real estate under a mortgage has this priority to the same extent as the encumbrancer  
16 of the real estate under the construction mortgage.

17 (f) In cases not within (a) - (e) of this section, priority between the interest of  
18 a lessor of fixtures, including the lessor's residual interest, and the conflicting interest  
19 of an encumbrancer or owner of the real estate who is not the lessee is determined by  
20 the priority rules governing conflicting interests in real estate.

21 (g) Subject to (h) of this section, if the interest of a lessor of fixtures,  
22 including the lessor's residual interest, has priority over all conflicting interests of all  
23 owners and encumbrances of the real estate, the lessor or the lessee may remove the  
24 goods from the real estate, free and clear of all conflicting interests of all owners and  
25 encumbrancers of the real estate, but the lessor or the lessee must reimburse an  
26 encumbrancer or owner of the real estate who is not the lessee and who has not  
27 otherwise agreed, for the cost of repair of physical injury, but not for a diminution in  
28 value of the real estate caused by the absence of the goods removed or by a necessity  
29 of replacing them. A person entitled to reimbursement may refuse permission to  
30 remove until the party seeking removal gives adequate security for the performance  
31 of this obligation.

1 (h) The lessor or the lessee may remove the goods under (g) of this section  
2 (1) on default, expiration, termination, or cancellation of the lease  
3 agreement but subject to the lease agreement and this chapter; or

4 (2) if necessary to enforce other rights and remedies of the lessor or the  
5 lessee under this chapter.

6 (i) Even though the lease agreement does not create a security interest, the  
7 interest of a lessor of fixtures, including the lessor's residual interest, is perfected by  
8 recording a financing statement as a fixture filing for leased goods that are or are to  
9 become fixtures under the relevant provisions of AS 45.09 on secured transactions.

10 (j) In this section,

11 (1) "encumbrance" includes real estate mortgages and other liens on  
12 real estate and all other rights in real estate that are not ownership interests;

13 (2) a "fixture filing" is the recording, in the office where a mortgage  
14 on the real estate would be recorded, of a financing statement covering goods that are  
15 or are to become fixtures and conforming to the requirements of AS 45.09.402(f);

16 (3) "fixtures" means goods that become so related to particular real  
17 estate that an interest in them arises under real estate law;

18 (4) a lease is a "purchase money lease" unless the lessee has possession  
19 or use of the goods or the right to possession or use of the goods before the lease  
20 agreement is enforceable; and

21 (5) a mortgage is a "construction mortgage" to the extent that it secures  
22 an obligation incurred for the construction of an improvement on land including the  
23 acquisition cost of the land if the recorded writing indicates.

24 Sec. 45.12.310. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS  
25 BECOME ACCESSIONS. (a) "Accessions" means goods when they are installed in  
26 or affixed to other goods.

27 (b) The interest of a lessor or a lessee under a lease contract entered into  
28 before the goods became accessions is superior to all interests in the whole except as  
29 stated in (d) of this section.

30 (c) The interest of a lessor or a lessee under a lease contract entered into at  
31 the time or after the goods became accessions is superior to all subsequently acquired

1 interests in the whole except as stated in (d) of this section but is subordinate to  
2 interests in the whole existing at the time the lease contract was made unless the  
3 holders of those interests in the whole have in writing consented to the lease or  
4 disclaimed an interest in the goods as part of the whole.

5 (d) The interest of a lessor or a lessee under a lease contract described in (b)  
6 or (c) of this section is subordinate to the interest of

7 (1) a buyer in the ordinary course of business or a lessee in the  
8 ordinary course of business of any interest in the whole acquired after the goods  
9 became accessions; or

10 (2) a creditor with a security interest in the whole perfected before the  
11 lease contract was made to the extent that the creditor makes subsequent advances  
12 without knowledge of the lease contract.

13 (e) When under (b) - (d) of this section, and subject to (f) of this section, a  
14 lessor or a lessee of accessions holds an interest that is superior to all interests in the  
15 whole, the lessor or the lessee may remove the goods from the whole, free and clear  
16 of all interests in the whole, but the lessor or lessee must reimburse a holder of an  
17 interest in the whole who is not the lessee and who has not otherwise agreed, for the  
18 cost of repair of physical injury but not for a diminution in value of the whole caused  
19 by the absence of the goods removed or by a necessity for replacing them. A person  
20 entitled to reimbursement may refuse permission to remove until the party seeking  
21 removal gives adequate security for the performance of this obligation.

22 (f) The lessor or the lessee may remove the goods under (e) of this section

23 (1) on default, expiration, termination, or cancellation of the lease  
24 contract by the other party but subject to the provisions of the lease contract and this  
25 chapter; and

26 (2) if necessary to enforce other rights and remedies of the lessor under  
27 this chapter.

28 Sec. 45.12.311. PRIORITY SUBJECT TO SUBORDINATION. Nothing in  
29 this chapter prevents subordination by agreement by a person entitled to priority.

30 ARTICLE 4. PERFORMANCE OF LEASE CONTRACT.

31 Sec. 45.12.401. INSECURITY: ADEQUATE ASSURANCE OF

1 PERFORMANCE. (a) A lease contract imposes an obligation on each party that the  
2 other's expectation of receiving due performance will not be impaired.

3 (b) If reasonable grounds for insecurity arise with respect to the performance  
4 of either party, the insecure party may demand in writing adequate assurance of due  
5 performance. Until the insecure party receives that assurance, if commercially  
6 reasonable, the insecure party may suspend any performance for which the insecure  
7 party has not already received the agreed return.

8 (c) A repudiation of the lease contract occurs if assurance of due performance  
9 adequate under the circumstances of the particular case is not provided to the insecure  
10 party within a reasonable time, not to exceed 30 days after receipt of a demand by the  
11 other party.

12 (d) Between merchants, the reasonableness of grounds for insecurity and the  
13 adequacy of any assurance offered must be determined according to commercial  
14 standards.

15 (e) Acceptance of nonconforming delivery or payment does not prejudice the  
16 aggrieved party's right to demand adequate assurance of future performance.

17 Sec. 45.12.402. ANTICIPATORY REPUDIATION. (a) If either party  
18 repudiates a lease contract with respect to a performance not yet due under the lease  
19 contract, the loss of which performance will substantially impair the value of the lease  
20 contract to the other, the aggrieved party may

21 (1) for a commercially reasonable time, await retraction of repudiation  
22 and performance by the repudiating party;

23 (2) make demand under AS 45.12.401 and await assurance of future  
24 performance adequate under the circumstances of the particular case; or

25 (3) resort to any right or remedy upon default under the lease contract  
26 or this chapter, even though the aggrieved party has notified the repudiating party that  
27 the aggrieved party would await the repudiating party's performance and assurance and  
28 has urged retraction.

29 (b) In addition to pursuing the remedies in (a) of this section and whether or  
30 not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party  
31 may suspend performance or, if the aggrieved party is the lessor, proceed under the

1 provisions of this chapter on the lessor's right to identify goods to the lease contract  
2 notwithstanding default or to salvage unfinished goods under AS 45.12.524.

3 **Sec. 45.12.403. RETRACTION OF ANTICIPATORY REPUDIATION.** (a)  
4 Until the repudiating party's next performance is due, the repudiating party can retract  
5 the repudiation unless, since the repudiation, the aggrieved party has cancelled the  
6 lease contract or materially changed the aggrieved party's position or otherwise  
7 indicated that the aggrieved party considers the repudiation final.

8 (b) Retraction may be by any method that clearly indicates to the aggrieved  
9 party that the repudiating party intends to perform under the lease contract and  
10 includes any assurance demanded under AS 45.12.401.

11 (c) Retraction reinstates a repudiating party's rights under a lease contract with  
12 due excuse and allowance to the aggrieved party for any delay occasioned by the  
13 repudiation.

14 **Sec. 45.12.404. SUBSTITUTED PERFORMANCE.** (a) If without fault of  
15 the lessee, the lessor, and the supplier, the agreed berthing, loading, or unloading  
16 facilities fail or the agreed type of carrier becomes unavailable or the agreed manner  
17 of delivery otherwise becomes commercially impracticable, but a commercially  
18 reasonable substitute is available, the substitute performance must be tendered and  
19 accepted.

20 (b) If the agreed means or manner of payment fails because of domestic or  
21 foreign governmental regulation

22 (1) the lessor may withhold or stop delivery or cause the supplier to  
23 withhold or stop delivery unless the lessee provides a means or manner of payment  
24 that is commercially a substantial equivalent; and

25 (2) if delivery has already been taken, payment by the means or in the  
26 manner provided by the regulation discharges the lessee's obligation unless the  
27 regulation is discriminatory, oppressive, or predatory.

28 **Sec. 45.12.405. EXCUSED PERFORMANCE.** Subject to AS 45.12.404 on  
29 substituted performance, the following rules apply:

30 (1) delay in delivery or nondelivery in whole or in part by a lessor or  
31 a supplier who complies with (2) and (3) of this section is not a default under the lease

1 contract if performance as agreed has been made impracticable by the occurrence of  
2 a contingency the nonoccurrence of which was a basic assumption on which the lease  
3 contract was made or by compliance in good faith with an applicable foreign or  
4 domestic governmental regulation or order, whether or not the regulation or order later  
5 proves to be invalid;

6 (2) if the causes mentioned in (1) of this section affect only part of the  
7 lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate  
8 production and deliveries among the customers of the lessor or supplier but at the  
9 option of the lessor or supplier may include regular customers not then under contract  
10 for sale or lease as well as the requirements of the lessor or supplier for further  
11 manufacture; the lessor or supplier may allocate under this paragraph in a manner that  
12 is fair and reasonable;

13 (3) the lessor seasonably shall notify the lessee and in the case of a  
14 finance lease the supplier seasonably shall notify the lessor and the lessee, if known,  
15 that there will be delay or nondelivery and, if allocation is required under (2) of this  
16 section, of the estimated quota made available for the lessee.

17 Sec. 45.12.406. PROCEDURE ON EXCUSED PERFORMANCE. (a) If the  
18 lessee receives notification of a material or indefinite delay or an allocation justified  
19 under AS 45.12.405, the lessee may by written notification to the lessor as to any  
20 goods involved, and with respect to all of the goods if under an installment lease  
21 contract the value of the whole lease contract is substantially impaired under  
22 AS 45.12.510,

23 (1) terminate the lease contract (AS 45.12.505(b)); or

24 (2) except in a finance lease that is not a consumer lease, modify the  
25 lease contract by accepting the available quota in substitution, with due allowance from  
26 the rent payable for the balance of the lease term for the deficiency but without further  
27 right against the lessor.

28 (b) If, after receipt of a notification from the lessor under AS 45.12.405, the  
29 lessee fails to modify the lease agreement as provided in (a)(2) of this section within  
30 a reasonable time not exceeding 30 days, the lease contract lapses with respect to  
31 deliveries affected.



1 with that party's rights and remedies in respect of the real property, in which case  
2 AS 45.12.501 - 45.12.532 do not apply.

3 **Sec. 45.12.502. NOTICE AFTER DEFAULT.** Except as otherwise provided  
4 in this chapter or the lease agreement, the lessor or lessee in default under the lease  
5 contract is not entitled to notice of default or notice of enforcement from the other  
6 party to the lease agreement.

7 **Sec. 45.12.503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND**  
8 **REMEDIES.** (a) Except as otherwise provided in this chapter, the lease agreement  
9 may include rights and remedies for default in addition to or in substitution for those  
10 provided in this chapter and may limit or alter the measure of damages recoverable  
11 under this chapter.

12 (b) Resort to a remedy provided under this chapter or in the lease agreement  
13 is optional unless the remedy is expressly agreed to be exclusive. If circumstances  
14 cause an exclusive or limited remedy to fail of its essential purpose, or provision for  
15 an exclusive remedy is unconscionable, remedy may be had as provided in this  
16 chapter.

17 (c) Consequential damages may be liquidated under AS 45.12.504, or may  
18 otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion  
19 is unconscionable. Limitation, alteration, or exclusion of consequential damages for  
20 injury to the person in the case of consumer goods is prima facie unconscionable but  
21 limitation, alteration, or exclusion of damages where the loss is commercial is not  
22 prima facie unconscionable.

23 (d) Rights and remedies on default by the lessor or the lessee with respect to  
24 an obligation or a promise collateral or ancillary to the lease contract are not impaired  
25 by this chapter.

26 **Sec. 45.12.504. LIQUIDATION OF DAMAGES.** (a) Damages payable by  
27 either party for default, or another act or omission, including indemnity for loss or  
28 diminution of anticipated tax benefits or loss or damage to lessor's residual interest,  
29 may be liquidated in the lease agreement but only as an amount or by a formula that  
30 is reasonable in light of the then anticipated harm caused by the default or other act  
31 or omission.

1 (b) If the lease agreement provides for liquidation of damages, and the  
2 provision does not comply with (a) of this section, or the provision is an exclusive or  
3 limited remedy that circumstances cause to fail of its essential purpose, remedy may  
4 be had as provided in this chapter.

5 (c) If the lessor justifiably withholds or stops delivery of goods under  
6 AS 45.12.525 or 45.12.526 because of the lessee's default or insolvency, the lessee is  
7 entitled to restitution of any amount by which the sum of the lessee's payments  
8 exceeds

9 (1) the amount to which the lessor is entitled by virtue of terms  
10 liquidating the lessor's damages under (a) of this section; or

11 (2) in the absence of the terms under (1) of this subsection, 20 percent  
12 of the then present value of the total rent the lessee was obligated to pay for the  
13 balance of the lease term, or, in the case of a consumer lease, the lesser of that amount  
14 or \$500.

15 (d) A lessee's right to restitution under (c) of this section is subject to offset  
16 to the extent the lessor establishes

17 (1) a right to recover damages under the provisions of this chapter other  
18 than (a) of this section; and

19 (2) the amount or value of any benefits received by the lessee directly  
20 or indirectly by reason of the lease contract.

21 **Sec. 45.12.505. CANCELLATION AND TERMINATION, AND EFFECT OF**  
22 **CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND**  
23 **REMEDIES. (a) On cancellation of the lease contract, all obligations that are still**  
24 **executory on both sides are discharged, but any right based on prior default or**  
25 **performance survives, and the cancelling party also retains a remedy for default of the**  
26 **whole lease contract or an unperformed balance.**

27 (b) On termination of the lease contract, all obligations that are still executory  
28 on both sides are discharged but a right based on prior default or performance  
29 survives.

30 (c) Unless the contrary intention clearly appears, expressions of "cancellation,"  
31 "rescission," or the like of the lease contract may not be construed as a renunciation

1 or discharge of a claim in damages for an antecedent default.

2 (d) Rights and remedies for material misrepresentation or fraud include all  
3 rights and remedies available under this chapter for default.

4 (e) Neither rescission nor a claim for rescission of the lease contract nor  
5 rejection or return of the goods bars or is inconsistent with a claim for damages or  
6 other right or remedy.

7 **Sec. 45.12.506. STATUTE OF LIMITATIONS.** (a) An action for default  
8 under a lease contract, including breach of warranty or indemnity, must be commenced  
9 within four years after the cause of action accrued. By the original lease contract the  
10 parties may reduce the period of limitation to not less than one year.

11 (b) A cause of action for default accrues when the act or omission on which  
12 the default or breach of warranty is based is or should have been discovered by the  
13 aggrieved party, or when the default occurs, whichever is later. A cause of action for  
14 indemnity accrues when the act or omission on which the claim for indemnity is based  
15 is or should have been discovered by the indemnified party, whichever is later.

16 (c) If an action commenced within the time limited by (a) of this section is so  
17 terminated as to leave available a remedy by another action for the same default or  
18 breach of warranty or indemnity, the other action may be commenced after the  
19 expiration of the time limited and within six months after the termination of the first  
20 action unless the termination resulted from voluntary discontinuance or from dismissal  
21 for failure or neglect to prosecute.

22 (d) This section does not alter the law on tolling of the statute of limitations.

23 **Sec. 45.12.507. PROOF OF MARKET RENT: TIME AND PLACE.** (a)  
24 Damages based on market rent under AS 45.12.519 or 45.12.528 are determined  
25 according to the rent for the use of the goods concerned for a lease term identical to  
26 the remaining lease term of the original lease agreement and prevailing at the times  
27 specified in AS 45.12.519 or 45.12.528, as appropriate.

28 (b) If evidence of rent for the use of the goods concerned for a lease term  
29 identical to the remaining lease term of the original lease agreement and prevailing at  
30 the times or places described in this chapter is not readily available, the rent prevailing  
31 within any reasonable time before or after the time described or at any other place or

1 for a different lease term that in commercial judgment or under usage of trade would  
2 serve as a reasonable substitute for the one described may be used, making proper  
3 allowance for the difference, including the cost of transporting the goods to or from  
4 the other place.

5 (c) Evidence of a relevant rent prevailing at a time or place or for a lease term  
6 other than the one described in this chapter offered by one party is not admissible until  
7 the party has given the other party notice the court finds sufficient to prevent unfair  
8 surprise.

9 (d) If the prevailing rent or value of goods regularly leased in an established  
10 market is in issue, reports in official publications or trade journals or in newspapers  
11 or periodicals of general circulation published as the reports of that market are admis-  
12 sible in evidence. The circumstances of the preparation of the report may be shown  
13 to affect its weight but not its admissibility.

14 Sec. 45.12.508. LESSEE'S REMEDIES. (a) If a lessor fails to deliver the  
15 goods in conformity with the lease contract (AS 45.12.509) or repudiates the lease  
16 contract (AS 45.12.402), or a lessee rightfully rejects the goods (AS 45.12.509) or  
17 justifiably revokes acceptance of the goods under AS 45.12.517, then with respect to  
18 the goods involved, and with respect to all of the goods if under an installment lease  
19 contract, the value of the whole lease contract is substantially impaired (AS 45.12.510),  
20 the lessor is in default under the lease contract and the lessee may

- 21 (1) cancel the lease contract under AS 45.12.505(a);  
22 (2) recover as much of the rent and security as has been paid and as  
23 is just under the circumstances;  
24 (3) cover and recover damages under AS 45.12.518 and 45.12.520 as  
25 to all goods affected whether or not they have been identified to the lease contract, or  
26 recover damages for nondelivery under AS 45.12.519 and 45.12.520;  
27 (4) exercise other rights or pursue other remedies provided in the lease  
28 contract.

29 (b) If a lessor fails to deliver the goods in conformity to the lease contract or  
30 repudiates the lease contract, the lessee may also

- 31 (1) if the goods have been identified, recover them under AS 45.12.522;

1 or  
2 (2) in a proper case, obtain specific performance or replevy the goods  
3 under AS 45.12.521.

4 (c) If a lessor is otherwise in default under a lease contract, the lessee may  
5 exercise the rights and pursue the remedies provided in the lease contract, which may  
6 include a right to cancel the lease, and AS 45.12.519(c).

7 (d) If a lessor has breached a warranty, whether express or implied, the lessee  
8 may recover damages under AS 45.12.519(d).

9 (e) On rightful rejection or justifiable revocation of acceptance, a lessee has  
10 a security interest in goods in the lessee's possession or control for any rent and  
11 security that has been paid and any expenses reasonably incurred in their inspection,  
12 receipt, transportation, and care and custody, and may hold those goods and dispose  
13 of them in good faith and in a commercially reasonable manner, subject to  
14 AS 45.12.527(e).

15 (f) Subject to AS 45.12.407, a lessee, on notifying the lessor of the lessee's  
16 intention to do so, may deduct all or part of the damages resulting from a default  
17 under the lease contract from a part of the rent still due under the same lease contract.

18 Sec. 45.12.509. LESSEE'S RIGHTS ON IMPROPER DELIVERY;  
19 RIGHTFUL REJECTION. (a) Subject to the provisions of AS 45.12.510 on default  
20 in installment lease contracts, if the goods or the tender or delivery fail in any respect  
21 to conform to the lease contract, the lessee may reject or accept the goods or accept  
22 any commercial unit or units and reject the rest of the goods.

23 (b) Rejection of goods is ineffective unless it is within a reasonable time after  
24 tender or delivery of the goods and the lessee seasonably notifies the lessor.

25 Sec. 45.12.510. INSTALLMENT LEASE CONTRACTS: REJECTION AND  
26 DEFAULT. (a) Under an installment lease contract a lessee may reject a delivery that  
27 is nonconforming if the nonconformity substantially impairs the value of that delivery  
28 and cannot be cured or the nonconformity is a defect in the required documents; but  
29 if the nonconformity does not fall within (b) of this section and the lessor or the  
30 supplier gives adequate assurance of its cure, the lessee must accept that delivery.

31 (b) If nonconformity or default with respect to one or more deliveries

1 substantially impairs the value of the installment lease contract as a whole, there is a  
2 default with respect to the whole. The aggrieved party reinstates the installment lease  
3 contract as a whole if the aggrieved party accepts a nonconforming delivery without  
4 reasonably notifying of cancellation or brings an action with respect only to past  
5 deliveries or demands performance as to future deliveries.

6 **Sec. 45.12.511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY**  
7 **REJECTED GOODS.** (a) Subject to a security interest of a lessee under  
8 AS 45.12.508(e), if a lessor or a supplier does not have an agent or place of business  
9 at the market of rejection, a merchant lessee, after rejection of goods in the lessee's  
10 possession or control, shall follow any reasonable instructions received from the lessor  
11 or the supplier with respect to the goods. In the absence of those instructions, a  
12 merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the  
13 goods for the lessor's account if they threaten to decline in value speedily.  
14 Instructions are not reasonable if on demand indemnity for expenses is not  
15 forthcoming.

16 (b) If a merchant lessee under (a) of this section or another lessee disposes of  
17 goods under AS 45.12.512, the lessee is entitled to reimbursement either from the  
18 lessor or the supplier or out of the proceeds for reasonable expenses of caring for and  
19 disposing of the goods and, if the expenses do not include a disposition commission,  
20 to the commission as is usual in the trade, or if there is none, to a reasonable sum not  
21 exceeding 10 percent of the gross proceeds.

22 (c) In complying with this section or AS 45.12.512, the lessee is held only to  
23 good faith. Good faith conduct under this provision is neither acceptance or  
24 conversion nor the basis of an action for damages.

25 (d) A purchaser who purchases in good faith from a lessee under this section  
26 or AS 45.12.512 takes the goods free of any rights of the lessor and the supplier even  
27 though the lessee fails to comply with one or more of the requirements of this chapter.

28 **Sec. 45.12.512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED**  
29 **GOODS.** (a) Except as otherwise provided under AS 45.12.511, with respect to goods  
30 that threaten to decline in value speedily and subject to a security interest of a lessee  
31 under AS 45.12.508(e),

1 (1) the lessee, after rejection of goods in the lessee's possession, shall  
2 hold them with reasonable care at the lessor's or the supplier's disposition for a  
3 reasonable time after the lessee's reasonable notification of rejection;

4 (2) if the lessor or the supplier does not give instructions within a  
5 reasonable time after notification of rejection, the lessee may store the rejected goods  
6 for the lessor's or the supplier's account or ship them to the lessor or the supplier or  
7 dispose of them for the lessor's or the supplier's account with reimbursement in the  
8 manner provided in AS 45.12.511; but

9 (3) the lessee does not have further obligations with regard to goods  
10 rightfully rejected.

11 (b) Action by the lessee under (a) of this section is not acceptance or  
12 conversion.

13 Sec. 45.12.513. CURE BY LESSOR OF IMPROPER TENDER OR  
14 DELIVERY; REPLACEMENT. (a) If a tender or delivery by the lessor or the  
15 supplier is rejected because it is nonconforming and the time for performance has not  
16 yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's  
17 or the supplier's intention to cure and may then make a conforming delivery within  
18 the time provided in the lease contract.

19 (b) If the lessee rejects a nonconforming tender that the lessor or the supplier  
20 had reasonable grounds to believe would be acceptable with or without money  
21 allowance, the lessor or the supplier may have a further reasonable time to substitute  
22 a conforming tender if the lessor or supplier seasonably notifies the lessee.

23 Sec. 45.12.514. WAIVER OF LESSEE'S OBJECTIONS. (a) In rejecting  
24 goods, a lessee's failure to state a particular defect that is ascertainable by reasonable  
25 inspection precludes the lessee from relying on the defect to justify rejection or to  
26 establish default

27 (1) if, stated seasonably, the lessor or the supplier could have cured it  
28 under AS 45.12.513; or

29 (2) between merchants if the lessor or the supplier after rejection has  
30 made a request in writing for a full and final written statement of all defects on which  
31 the lessee proposes to rely.

1 (b) A lessee's failure to reserve rights when paying rent or other consideration  
2 against documents precludes recovery of the payment for defects apparent on the face  
3 of the documents.

4 Sec. 45.12.515. ACCEPTANCE OF GOODS. (a) Acceptance of goods occurs  
5 after the lessee has had a reasonable opportunity to inspect the goods and

6 (1) the lessee signifies or acts with respect to the goods in a manner  
7 that signifies to the lessor or the supplier that the goods are conforming or that the  
8 lessee will take or retain them in spite of their nonconformity; or

9 (2) the lessee fails to make an effective rejection of the goods under  
10 AS 45.12.509(b).

11 (b) Acceptance of a part of a commercial unit is acceptance of that entire unit.

12 Sec. 45.12.516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF  
13 DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE;  
14 NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER. (a)  
15 A lessee must pay rent for goods accepted in accordance with the lease contract, with  
16 due allowance for goods rightfully rejected or not delivered.

17 (b) A lessee's acceptance of goods precludes rejection of the goods accepted.  
18 In the case of a finance lease, if made with knowledge of a nonconformity, acceptance  
19 cannot be revoked because of it. In any other case, if made with knowledge of a  
20 nonconformity, acceptance cannot be revoked because of it unless the acceptance was  
21 on the reasonable assumption that the nonconformity would be seasonably cured.  
22 Acceptance does not of itself impair another remedy provided by this chapter or the  
23 lease agreement for nonconformity.

24 (c) If a tender has been accepted

25 (1) within a reasonable time after the lessee discovers or should have  
26 discovered a default, the lessee shall notify the lessor and the supplier, if any, or be  
27 barred from a remedy against the party not notified;

28 (2) except in the case of a consumer lease, within a reasonable time  
29 after the lessee receives notice of litigation for infringement or the like under  
30 AS 45.12.211 the lessee shall notify the lessor or be barred from a remedy over for  
31 liability established by the litigation; and

- 1 (3) the burden is on the lessee to establish a default.
- 2 (d) If a lessee is sued for breach of a warranty or other obligation for which  
3 a lessor or a supplier is answerable over, the following apply:
- 4 (1) the lessee may give the lessor or the supplier, or both, written  
5 notice of the litigation; if the notice states that the person notified may come in and  
6 defend and that if the person notified does not do so that person will be bound in an  
7 action against that person by the lessee by a determination of fact common to the two  
8 litigations, then unless the person notified after reasonable receipt of the notice does  
9 come in and defend that person is so bound;
- 10 (2) the lessor or the supplier may demand in writing that the lessee turn  
11 over control of the litigation including settlement if the claim is one for infringement  
12 or the like under AS 45.12.211 or else be barred from a remedy over; if the demand  
13 states that the lessor or the supplier agrees to bear all expense and to satisfy an adverse  
14 judgment, then, unless the lessee after reasonable receipt of the demand does turn over  
15 control, the lessee is so barred.
- 16 (e) Subsections (c) and (d) of this section apply to an obligation of a lessee  
17 to hold the lessor or the supplier harmless against infringement or the like under  
18 AS 45.12.211.
- 19 **Sec. 45.12.517. REVOCATION OF ACCEPTANCE OF GOODS.** (a) A  
20 lessee may revoke acceptance of a lot or commercial unit whose nonconformity  
21 substantially impairs its value to the lessee if the lessee has accepted it,
- 22 (1) except in the case of a finance lease, on the reasonable assumption  
23 that its nonconformity would be cured and it has not been seasonably cured; or  
24 (2) without discovery of the nonconformity if the lessee's acceptance  
25 was reasonably induced either by the lessor's assurances or, except in the case of a  
26 finance lease, by the difficulty of discovery before acceptance.
- 27 (b) Except in the case of a finance lease that is not a consumer lease, a lessee  
28 may revoke acceptance of a lot or commercial unit if the lessor defaults under the  
29 lease contract and the default substantially impairs the value of that lot or commercial  
30 unit to the lessee.
- 31 (c) If the lease agreement provides, the lessee may revoke acceptance of a lot

1 or commercial unit because of other defaults by the lessor.

2 (d) Revocation of acceptance must occur within a reasonable time after the  
3 lessee discovers or should have discovered the ground for it and before a substantial  
4 change in condition of the goods that is not caused by the nonconformity. Revocation  
5 is not effective until the lessee notifies the lessor.

6 (e) A lessee who revokes under this section has the same rights and duties  
7 with regard to the goods involved as if the lessee had rejected them.

8 **Sec. 45.12.518. COVER; SUBSTITUTE GOODS.** (a) After a default, by a  
9 lessor under the lease contract, of the type described in AS 45.12.508(a), or, if agreed,  
10 after other default by the lessor, the lessee may cover by making a purchase or lease  
11 of or contract to purchase or lease goods in substitution for those due from the lessor.

12 (b) Except as otherwise provided under AS 45.12.504 with respect to damages  
13 liquidated in the lease agreement or otherwise determined under agreement of the  
14 parties under AS 45.01.102(c) and AS 45.12.503, if a lessee's cover is by lease  
15 agreement substantially similar to the original lease agreement and the new lease  
16 agreement is made in good faith and in a commercially reasonable manner, the lessee  
17 may recover from the lessor as damages

18 (1) the present value, as of the date of the commencement of the term  
19 of the new lease agreement, of the rent under the new lease agreement applicable to  
20 that period of the new lease term that is comparable to the then remaining term of the  
21 original lease agreement minus the present value as of the same date of the total rent  
22 for the then remaining lease term of the original lease agreement; and

23 (2) incidental or consequential damages, less expenses saved in  
24 consequence of the lessor's default.

25 (c) If a lessee's cover is by lease agreement that for any reason does not  
26 qualify for treatment under (b) of this section, or is by purchase or otherwise, the  
27 lessee may recover from the lessor as if the lessee had elected not to cover and  
28 AS 45.12.519 governs.

29 **Sec. 45.12.519. LESSEE'S DAMAGES FOR NONDELIVERY,**  
30 **REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO**  
31 **ACCEPTED GOODS.** (a) Except as otherwise provided under AS 45.12.504 with

1 respect to damages liquidated in the lease agreement or otherwise determined under  
2 agreement of the parties under AS 45.01.102(c) and AS 45.12.503, if a lessee elects  
3 not to cover or a lessee elects to cover and the cover is by lease agreement that for any  
4 reason does not qualify for treatment under AS 45.12.518(b), or is by purchase or  
5 otherwise, the measure of damages for nondelivery or repudiation by the lessor or for  
6 rejection or revocation of acceptance by the lessee is the present value, as of the date  
7 of the default, of the then market rent minus the present value as of the same date of  
8 the original rent, computed for the remaining lease term of the original lease  
9 agreement, together with incidental and consequential damages, less expenses saved  
10 in consequence of the lessor's default.

11 (b) Market rent is to be determined as of the place for tender or, in cases of  
12 rejection after arrival or revocation of acceptance, as of the place of arrival.

13 (c) Except as otherwise agreed, if the lessee has accepted goods and given  
14 notification under AS 45.12.516(c), the measure of damages for non-conforming tender  
15 or delivery or other default by a lessor is the loss resulting in the ordinary course of  
16 events from the lessor's default as determined in any manner that is reasonable  
17 together with incidental and consequential damages, less expenses saved in  
18 consequence of the lessor's default.

19 (d) Except as otherwise agreed, the measure of damages for breach of warranty  
20 is the present value at the time and place of acceptance of the difference between the  
21 value of the use of the goods accepted and the value if they had been as warranted for  
22 the lease term, unless special circumstances show proximate damages of a different  
23 amount, together with incidental and consequential damages, less expenses saved in  
24 consequence of the lessor's default or breach of warranty.

25 Sec. 45.12.520. **LESSEE'S INCIDENTAL AND CONSEQUENTIAL**  
26 **DAMAGES.** (a) Incidental damages resulting from a lessor's default include expenses  
27 reasonably incurred in inspection, receipt, transportation, and care and custody of  
28 goods rightfully rejected or goods the acceptance of which is justifiably revoked, any  
29 commercially reasonable charges, expenses, or commissions in connection with  
30 effecting cover, and any other reasonable expense incident to the default.

31 (b) Consequential damages resulting from a lessor's default include

1 (1) any loss resulting from general or particular requirements and needs  
2 of which the lessor at the time of contracting had reason to know and that could not  
3 reasonably be prevented by cover or otherwise; and

4 (2) injury to person or property proximately resulting from a breach of  
5 warranty.

6 **Sec. 45.12.521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR**  
7 **REPLEVIN.** (a) Specific performance may be decreed if the goods are unique or in  
8 other proper circumstances.

9 (b) A decree for specific performance may include any terms and conditions  
10 as to payment of the rent, damages, or other relief that the court considers just.

11 (c) A lessee has a right of replevin, detinue, sequestration, claim and delivery,  
12 or the like for goods identified to the lease contract if after reasonable effort the lessee  
13 is unable to effect cover for those goods or the circumstances reasonably indicate that  
14 the effort will be unavailing.

15 **Sec. 45.12.522. LESSEE'S RIGHT TO GOODS ON LESSOR'S**  
16 **INSOLVENCY.** (a) Subject to (b) of this section and even though the goods have not  
17 been shipped, a lessee who has paid a part or all of the rent and security for goods  
18 identified to a lease contract under AS 45.12.217 on making and keeping good a tender  
19 of any unpaid portion of the rent and security due under the lease contract may recover  
20 the goods identified from the lessor if the lessor becomes insolvent within 10 days  
21 after receipt of the first installment of rent and security.

22 (b) A lessee acquires the right to recover goods identified to a lease contract  
23 only if they conform to the lease contract.

24 **Sec. 45.12.523. LESSOR'S REMEDIES.** (a) If a lessee wrongfully rejects  
25 or revokes acceptance of goods or fails to make a payment when due or repudiates  
26 with respect to a part or the whole, then, with respect to the goods involved, and with  
27 respect to all of the goods if under an installment lease contract the value of the whole  
28 lease contract is substantially impaired (AS 45.12.510), the lessee is in default under  
29 the lease contract and the lessor may

30 (1) cancel the lease contract (AS 45.12.505(a));

31 (2) proceed respecting goods not identified to the lease contract under

- 1 AS 45.12.524;
- 2 (3) withhold delivery of the goods and under AS 45.12.525 take  
3 possession of goods previously delivered;
- 4 (4) stop delivery of the goods by a bailee under AS 45.12.526;
- 5 (5) dispose of the goods under AS 45.12.527 and recover damages, or  
6 retain the goods and recover damages under AS 45.12.528, or in a proper case recover  
7 rent under AS 45.12.529;
- 8 (6) exercise any other rights or pursue any other remedies provided in  
9 the lease contract.
- 10 (b) If a lessor does not fully exercise a right or obtain a remedy to which the  
11 lessor is entitled under (a) of this section, the lessor may recover the loss resulting in  
12 the ordinary course of events from the lessee's default as determined in any reasonable  
13 manner, together with incidental damages, less expenses saved in consequence of the  
14 lessee's default.
- 15 (c) If a lessee is otherwise in default under a lease contract, the lessor may  
16 exercise the rights and pursue the remedies provided in the lease contract, which may  
17 include a right to cancel the lease. In addition, unless otherwise provided in the lease  
18 contract,
- 19 (1) if the default substantially impairs the value of the lease contract  
20 to the lessor, the lessor may exercise the rights and pursue the remedies provided in  
21 (a) or (b) of this section; or
- 22 (2) if the default does not substantially impair the value of the lease  
23 contract to the lessor, the lessor may recover as provided in (b) of this section.
- 24 Sec. 45.12.524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE  
25 CONTRACT. (a) After default, by the lessee under the lease contract, of the type  
26 described in AS 45.12.523(a) or (c)(1) or, if agree, after other default by the lessee,  
27 the lessor may
- 28 (1) identify to the lease contract conforming goods not already  
29 identified if at the time the lessor learned of the default they were in the lessor's or  
30 the supplier's possession or control; and
- 31 (2) dispose of goods under AS 45.12.527(a) that demonstrably have

1           been intended for the particular lease contract even though those goods are unfinished.

2           (b) If the goods are unfinished, in the exercise of reasonable commercial  
3 judgment for the purposes of avoiding loss and of effective realization, an aggrieved  
4 lessor or the supplier may either complete manufacture and wholly identify the goods  
5 to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the  
6 goods for scrap or salvage value or proceed in another reasonable manner.

7           Sec. 45.12.525. LESSOR'S RIGHT TO POSSESSION OF GOODS. (a) If  
8 a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

9           (b) After a default, by the lessee under the lease contract, of the type described  
10 in AS 45.12.523(a) or (c)(1), or, if agreed, after other default by the lessee, the lessor  
11 has the right to take possession of the goods. If the lease contract provides, the lessor  
12 may require the lessee to assemble the goods and make them available to the lessor  
13 at a place to be designated by the lessor that is reasonably convenient to both parties.  
14 Without removal, the lessor may render unusable any goods employed in trade or  
15 business, and may dispose of goods on the lessee's premises under AS 45.12.527.

16           (c) The lessor may proceed under (b) of this section without judicial process  
17 if it can be done without breach of the peace, or the lessor may proceed by action.

18           Sec. 45.12.526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR  
19 OTHERWISE. (a) A lessor may stop delivery of goods in the possession of a carrier  
20 or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery  
21 of carload, truckload, planeload, or larger shipments of express or freight if the lessee  
22 repudiates or fails to make a payment due before delivery, whether for rent, security,  
23 or otherwise under the lease contract, or for any other reason the lessor has a right to  
24 withhold or take possession of the goods.

25           (b) In pursuing its remedies under (a) of this section, the lessor may stop  
26 delivery until

27                   (1) receipt of the goods by the lessee;

28                   (2) acknowledgment to the lessee by a bailee of the goods, except a  
29 carrier, that the bailee holds the goods for the lessee; or

30                   (3) such an acknowledgment to the lessee by a carrier via reshipment  
31 or as warehouseman.

1 (c) To stop delivery, a lessor shall so notify as to enable the bailee by  
2 reasonable diligence to prevent delivery of the goods.

3 (d) After notification, the bailee shall hold and deliver the goods according to  
4 the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges  
5 or damages.

6 (e) A carrier who has issued a nonnegotiable bill of lading is not obliged to  
7 obey a notification to stop received from a person other than the consignor.

8 **Sec. 45.12.527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.** (a) After  
9 a default, by a lessee under the lease contract, of the type described in AS 45.12.523(a)  
10 or (c)(1) or after the lessor refuses to deliver or takes possession of goods under  
11 AS 45.12.525 or 45.12.526, or, if agreed, after other default by a lessee, the lessor may  
12 dispose of the goods concerned or the undelivered balance of them by lease, sale, or  
13 otherwise.

14 (b) Except as otherwise provided with respect to damages liquidated in the  
15 lease agreement under AS 45.12.504 or otherwise determined under agreement of the  
16 parties under AS 45.01.102(c) and AS 45.12.503, if the disposition is by lease  
17 agreement substantially similar to the original lease agreement and the new lease  
18 agreement is made in good faith and in a commercially reasonable manner, the lessor  
19 may recover from the lessee as damages

20 (1) accrued and unpaid rent as of the date of the commencement of the  
21 term of the new lease agreement;

22 (2) the present value, as of the same date, of the total rent for the then  
23 remaining lease term of the original lease agreement minus the present value, as of the  
24 same date, of the rent under the new lease agreement applicable to that period of the  
25 new lease term that is comparable to the then remaining term of the original lease  
26 agreement; and

27 (3) any incidental damages allowed under AS 45.12.530, less expenses  
28 saved in consequence of the lessee's default.

29 (c) If the lessor's disposition is by lease agreement that for any reason does  
30 not qualify for treatment under (b) of this section, or is by sale or otherwise, the lessor  
31 may recover from the lessee as if the lessor had elected not to dispose of the goods

1 and AS 45.12.528 governs.

2 (d) A subsequent buyer or lessee who buys or leases from the lessor in good  
3 faith for value as a result of a disposition under this section takes the goods free of the  
4 original lease contract and any rights of the original lessee even though the lessor fails  
5 to comply with one or more of the requirements of this chapter.

6 (e) The lessor is not accountable to the lessee for profit made on a disposition.  
7 A lessee who has rightfully rejected or justifiably revoked acceptance shall account to  
8 the lessor for any excess over the amount of the lessee's security interest under  
9 AS 45.12.508(e).

10 Sec. 45.12.528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE  
11 TO PAY, REPUDIATION, OR OTHER DEFAULT. (a) Except as otherwise  
12 provided with respect to damages liquidated in the lease agreement under  
13 AS 45.12.504 or otherwise determined under agreement of the parties under  
14 AS 45.01.102(c) and AS 45.12.503, if a lessor elects to retain the goods or a lessor  
15 elects to dispose of the goods and the disposition is by lease agreement that for any  
16 reason does not qualify for treatment under AS 45.12.527(b), or is by sale or  
17 otherwise, the lessor may recover from the lessee as damages for a default described  
18 in AS 45.12.523(a) or (c)(1), or, if agreed, for other default of the lessee

19 (1) accrued and unpaid rent as of the date of default if the lessee has  
20 never taken possession of the goods, or, if the lessee has taken possession of the  
21 goods, as of the date the lessor repossesses the goods or an earlier date on which the  
22 lessee makes a tender of the goods to the lessor,

23 (2) the present value as of the date determined under (1) of this  
24 subsection of the total rent for the then remaining lease term of the original lease  
25 agreement minus the present value as of the same date of the market rent at the place  
26 where the goods are located, computed for the same lease term; and

27 (3) any incidental damages allowed under AS 45.12.530, less expenses  
28 saved in consequence of the lessee's default.

29 (b) If the measure of damages provided in (a) of this section is inadequate to  
30 put a lessor in as good a position as performance would have, the measure of damages  
31 is the present value of the profit, including reasonable overhead, the lessor would have

1 made from full performance by the lessee, together with any incidental damages  
2 allowed under AS 45.12.530, due allowance for costs reasonably incurred, and due  
3 credit for payments or proceeds of disposition.

4 Sec. 45.12.529. LESSOR'S ACTION FOR THE RENT. (a) After default, by  
5 the lessee under the lease contract, of the type described in AS 45.12.523(a) or (c)(1)  
6 or, if agreed, after other default by the lessee, if the lessor complies with (b) of this  
7 section, the lessor may recover from the lessee as damages

8 (1) for goods accepted by the lessee and not repossessed by or tendered  
9 to the lessor, and for conforming goods lost or damaged within a commercially  
10 reasonable time after risk of loss passes to the lessee under AS 45.12.219

11 (A) accrued and unpaid rent as of the date of entry of judgment  
12 in favor of the lessor;

13 (B) the present value as of the same date of the rent for the then  
14 remaining lease term of the lease agreement; and

15 (C) any incidental damages allowed under AS 45.12.530, less  
16 expenses saved in consequence of the lessee's default; and

17 (2) for goods identified to the lease contract if the lessor is unable after  
18 reasonable effort to dispose of them at a reasonable price or the circumstances  
19 reasonably indicate that effort will be unavailing

20 (A) accrued and unpaid rent as of the date of entry of judgment  
21 in favor of the lessor;

22 (B) the present value as of the same date of the rent for the then  
23 remaining lease term of the lease agreement; and

24 (C) any incidental damages allowed under AS 45.12.530, less  
25 expenses saved in consequence of the lessee's default.

26 (b) Except as provided in (c) of this section, the lessor shall hold for the lessee  
27 for the remaining lease term of the lease agreement any goods that have been  
28 identified to the lease contract and are in the lessor's control.

29 (c) The lessor may dispose of the goods at any time before collection of the  
30 judgment for damages obtained under (a) of this section. If the disposition is before  
31 the end of the remaining lease term of the lease agreement, the lessor's recovery

1 against the lessee for damages will be governed by AS 45.12.527 or 45.12.528, and  
2 the lessor will cause an appropriate credit to be provided against a judgment for  
3 damages to the extent that the amount of the judgment exceeds the recovery available  
4 under AS 45.12.527 or 45.12.528.

5 (d) Payment of the judgment for damages obtained under (a) of this section  
6 entitles the lessee to the use and possession of the goods not then disposed of for the  
7 remaining lease term of and in accordance with the lease agreement.

8 (e) After default, by the lessee under the lease contract, of the type described  
9 in AS 45.12.523(a) or (c)(1) or, if agreed, after other default by the lessee, a lessor  
10 who is held not entitled to rent under this section shall nevertheless be awarded  
11 damages for nonacceptance under AS 45.12.527 or 45.12.528.

12 Sec. 45.12.530. LESSOR'S INCIDENTAL DAMAGES. Incidental damages  
13 to an aggrieved lessor include commercially reasonable charges, expenses, or  
14 commissions incurred in stopping delivery, in the transportation, care, and custody of  
15 goods after the lessee's default, in connection with return or disposition of the goods,  
16 or otherwise resulting from the default.

17 Sec. 45.12.531. STANDING TO SUE THIRD PARTIES FOR INJURY TO  
18 GOODS. (a) If a third party so deals with goods that have been identified to a lease  
19 contract as to cause actionable injury to a party to the lease contract

20 (1) the lessor has a right of action against the third party; and

21 (2) the lessee also has a right of action against the third party if the  
22 lessee

23 (A) has a security interest in the goods;

24 (B) has an insurable interest in the goods; or

25 (C) bears the risk of loss under the lease contract or has since  
26 the injury assumed that risk as against the lessor and the goods have been  
27 converted or destroyed.

28 (b) If at the time of the injury the party plaintiff did not bear the risk of loss  
29 as against the other party to the lease contract and there is no arrangement between  
30 them for disposition of the recovery, the plaintiff's suit or settlement, subject to the  
31 plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

1 (c) Either party with the consent of the other may sue for the benefit of whom  
2 it may concern.

3 **Sec. 45.12.532. LESSOR'S RIGHTS REGARDING RESIDUAL INTEREST.**

4 In addition to any other recovery permitted by this chapter or other law, the lessor may  
5 recover from the lessee an amount that will fully compensate the lessor for any loss  
6 of or damage to the lessor's residual interest in the goods caused by the default of the  
7 lessee.

8 \* **Sec. 126.** AS 45.50.820 is amended to read:

9 **Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE**  
10 **UPON TERMINATION, ETC., OF AGREEMENT.** If the refiner or distributor  
11 terminates, cancels or fails to renew under AS 45.50.810(c)(1), (2), or (3) or for any  
12 good cause other than under AS 45.50.810(c)(4), the refiner or distributor shall  
13 compensate the dealer for the fair market value of the business, excluding goodwill.  
14 Refiners or distributors terminating, cancelling, or failing to renew under  
15 AS 45.50.810(c)(4) shall compensate the dealer for the fair market value of the  
16 business, including good will [GOODWILL]. Valuation other than good will  
17 [GOODWILL] shall include the fair market value of the dealer's inventory supplies,  
18 equipment and furnishings purchased from the refiner or distributor exclusive of  
19 personalized materials that do not [WHICH] have a [NO] value to the refiner or  
20 distributor and inventory supplies, equipment and furnishings not reasonably required  
21 in the conduct of the business. Compensation shall be made within 60 days from the  
22 date of termination unless it is necessary that a lawsuit be filed under AS 45.50.830  
23 [OR THE DEALER FAILS TO COMPLY WITH THE BULK SALES PROVISIONS  
24 OF AS 45.06]. The refiner or distributor may offset against accounts owed by the  
25 dealer under this section any amount owed by the dealer to the refiner or distributor.

26 \* **Sec. 127.** AS 45.03.120, 45.03.121, 45.03.122, 45.03.208, 45.03.506, 45.03.507,  
27 45.03.508, 45.03.509, 45.03.510, 45.03.511, 45.03.606, 45.03.701, 45.03.801, 45.03.802,  
28 45.03.803, 45.03.804, 45.03.805; AS 45.04.104(a)(9); AS 45.06; and AS 45.09.111 are  
29 repealed.

30 \* **Sec. 128. REVISOR CHANGES.** The revisor of statutes shall update the citations to the  
31 state's Uniform Commercial Code throughout the state statutes, especially in AS 45.01 -

1 AS 45.09, to reflect the changes made by this Act.

2 \* Sec. 129. APPLICABILITY. (a) Rights and obligations that arise before the effective  
3 date of this Act under AS 45.01 - AS 45.09, as those chapters exist before the effective date  
4 of this Act, remain valid and may be enforced under AS 45.01 - AS 45.09, as those chapters  
5 exist before the effective date of this Act, as though secs. 1 - 124 and 126 of this Act had not  
6 been enacted.

7 (b) Rights and obligations that arise before the effective date of this Act under  
8 AS 45.50.820, as that section exists before being amended by sec. 125 of this Act, remain  
9 valid and may be enforced as though AS 45.50.820 had not been amended.

10 \* Sec. 130. AMENDMENT OF COURT RULES. (a) AS 45.03.308(a), enacted by sec. 47  
11 of this Act, amends Alaska Rule of Civil Procedure 8(d) by requiring that the denial of certain  
12 facts be specific.

13 (b) AS 45.12.108(d), enacted by sec. 125 of this Act, amends Alaska Rule of Civil  
14 Procedure 82 by requiring the court to award a specified level of attorney fees without  
15 consideration of who prevails in the entire action even if the entitled party is not ultimately  
16 the prevailing party in the action, and without reference to the amount of recovery, even if the  
17 rule would require that the amount of the award of attorney fees be based on a percentage of  
18 the amount of recovery.

19 (c) AS 45.12.507(c), enacted by sec. 125 of this Act, amends Alaska Rule of Evidence  
20 402, by prohibiting the introduction of certain evidence even if it is relevant and otherwise  
21 admissible under the Alaska Rules of Evidence until sufficient notice is given to the other  
22 party to prevent unfair surprise.

23 \* Sec. 131. This Act takes effect January 1, 1994.