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Rep. Brian Porter, Chairman

House Judiciary Committee

Date: April 19, 1993
Place: Capitol Room 120

HB 187 Interception of Private Communications
HB 132 Extend Resource Extraction Permit/Lease
SB 149 Revision of Banking Code
SB 112 Uniform Commercial Code Revisions

Subject of Meeting: SB 84 Revoke Driver's License
if False ID Used; SB 86 Fund Transfers Under the UCC

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
LT. CHRIS STOCKARD	PUBLIC SAFETY	450 Whittier St Juneau				(Y) N	HB 187 - FOR QUESTIONS ONLY ✓
Juanita Hensley	DPS/DMV	Box 111200 Room 427, Capitol Bldg Juneau 99801-1122	99811		4335	(Y) N	SB 84 ✓
Bill Kelder	Sen. KORTALA				4834	(Y) N	SB 86 + SB 112 ✓
JOSH FINK	SEN. KELLY				3819	(Y) N	SB 84 ✓
JOSH FINK	SEN. KELLY				3819	(Y) N	SB 149 ✓
BOB JAEGER	ALASKA INSURANCE AGENTS	301 SEWARD ST. JUNEAU	99801		586-2414	(Y) N	SB 149 ✓
BOB WILLIAMS	REP. TOM BRICE	STATE CAPITOL	99801		73466	(Y) N	CSHB 132 (WD)
Margot Knuth	Law - Crim	Box 110300	99811		X4049	(Y) N	HB 187
JEFF BUSH	Commerce - Banking + Securities	175 S. Franklin, Ste. 318, Juneau	99801		463-4150	(Y) N	SB 149 ✓
						Y N	
						Y N	
						Y N	

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Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
Art Peterson	NCCUSL	One Sealsack Place Suite 202 Lynn, MA	99801			<input checked="" type="radio"/> Y <input type="radio"/> N	86
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 14, 1993

FURTHER REFERRALS:

Date of Committee Action: 4-19-93

The JUDICIARY Committee considered:

SB 86

SENATE BILL NO. 86

FUND TRANSFERS UNDER THE UCC

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

RECOMMENDATIONS: the same title
 be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) D.C.E.D. + D.O.LAW

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian S. Porter</i>	✓				
<i>Gail Phillips</i>	✓				
<i>Lee Todd</i>	✓				
<i>Geoff Brown</i>	✓				

Brian S. Porter

 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 1
Version: SB 86
(S) Publish Date: 3-3-93

Revision Date: _____
Title: Fund transfers under the UCC
Sponsor: Senator Kerttula
Requestor: _____

Department Affected: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component: _____
COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GFMHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: _____

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 3-2-93

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FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 86

(S) Publish Date: 3-3-93

Revision Date: February 10, 1993
Title: "...dealing with fund transfers under the Uniform Commercial Code..."
Sponsor: Senator Kerttula
Requestor: Senator Kerttula

Department Affected: Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
-------------------------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Approved by Commissioner: Richard I. Pegues / RIR
Agency: Department of Law

Phone: 465-3672
Date: February 10, 1993
Date: February 10, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 86

ANALYSIS: (continued)

This bill amends the state's Uniform Commercial Code (AS 45.01.100 - AS 45.09.507) in accordance with recommendations of the National Conference of Commissioners on Uniform State Laws (NCCUSL). This amendment modernizes regulation of fund transfers between banks and other financial institutions by recognizing the use of electronic transactions. In 1989 the average amount transferred daily throughout the United States was one trillion dollars. Many of the financial transactions that take place today are accomplished by electronic means, reducing the shear load of paper transactions that would otherwise be required. Forty-four states have already adopted these provisions and incorporating them in Alaska's Uniform Commercial Code will help Alaska financial institutions keep up with the rest of the country. These provisions will not change the rules in Articles 3 and 4 dealing with signatures and endorsements on checks as the basis for determining liability. It is not anticipated that the changes proposed in the UCC will have any direct fiscal impact on the Department of Law or the state, because they deal primarily with private sector transactions.

STATEMENT OF
SEN. JAY KERTTULA
ON
S.B. 86 AND S.B. 112
"UNIFORM COMMERCIAL CODE"
BEFORE THE
HOUSE JUDICIARY COMMITTEE
HONORABLE BRIAN PORTER, CHAIRMAN
MONDAY, APRIL 19, 1993

GOOD AFTERNOON. I'D LIKE TO THANK COMMITTEE CHAIRMAN PORTER AND THE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE FOR SCHEDULING SENATE BILLS 86 AND 112 FOR PUBLIC HEARING TODAY. THE BILLS ARE COMPANION PIECES OF LEGISLATION AMENDING ALASKA'S UNIFORM COMMERCIAL CODE.

AS SPONSOR, I WILL PROVIDE AN OVERVIEW OF THE BILLS. I HAVE ALSO ASKED A REPRESENTATIVE OF THE DEPARTMENT OF LAW, AND ALASKA UNIFORM LAW COMMISSIONER ART PETERSON TO BE HERE TODAY TO EXPLAIN THE MORE TECHNICAL ASPECTS OF THE BILLS, SHOULD THE COMMITTEE DESIRE SUCH AN EXPLANATION.

I WILL BEGIN WITH SENATE BILL 86, ALSO KNOWN AS THE "FUNDS TRANSFERS' BILL.

SPONSOR STATEMENT-SB 86 AND AB 112
PAGE 2

GENERALLY SPEAKING, SENATE BILL 86 BRINGS THE FUNDS TRANSFERS PORTION OF ALASKA'S UNIFORM COMMERCIAL CODE UP TO DATE WITH REGARD TO CURRENT ELECTRONIC TECHNOLOGY AS IT APPLIES TO MODERN BUSINESS PRACTICES.

S.B. 86 WILL ENACT THE NEW ARTICLE 4A INTO THE STATE'S UNIFORM COMMERCIAL CODE. THE U.C.C. IS A COMPREHENSIVE CODIFICATION OF COMMERCIAL LAW THROUGHOUT THE COUNTRY. UNTIL 1989, HOWEVER, THE U.C.C. DID NOT DEAL WITH FUNDS TRANSFERS BETWEEN COMMERCIAL ENTITIES. AS BUSINESS PRACTICE HAS COME TO RELY MORE HEAVILY ON THE SPEED, EFFICIENCY, RELIABILITY AND RELATIVELY LOW COST OF ELECTRONIC TECHNOLOGY, IT IS APPARENT THAT ALASKA'S COMMERCIAL LAWS NEED TO BE BROUGHT UP TO DATE.

THE NEW ARTICLE 4A EMBODIED IN S.B. 86 DOES THIS. THE PROVISIONS IN S.B. 86 HAVE ALREADY BEEN ADOPTED BY 44 OTHER STATES, INCLUDING NEW YORK, ILLINOIS AND CALIFORNIA--THE MAJOR FINANCIAL CENTERS FOR AMERICA.

THE SHEER VOLUME OF COMMERCIAL FUNDING TRANSACTIONS VIA MODERN TECHNOLOGY MAKES ENACTMENT OF S.B. 86 NECESSARY. IN 1989, A RECORD THREE TRILLION DOLLARS WERE TRANSFERRED ON A SINGLE DAY--MORE MONEY THAN THE 1989 U.S. GROSS NATIONAL PRODUCT. THE AVERAGE INDIVIDUAL FUNDS TRANSFER IN 1989 WAS FIVE MILLION DOLLARS, AND THE AVERAGE DAILY TRANSFER WAS ONE TRILLION DOLLARS.

UNLESS THE PARTIES TO A TRANSACTION USE THE SAME BANK, A FUNDS TRANSFER, ON AVERAGE, INVOLVES AT LEAST FOUR ENTITIES: THE ORIGINATOR OF THE PAYMENT; THE BANK TO WHICH THE ORIGINATOR COMMUNICATES THE FIRST PAYMENT ORDER; THE BANK OF THE ENTITY RECEIVING THE ORDER; AND THE RECIPIENT OR BENEFICIARY.

BECAUSE THESE TRANSACTIONS ARE DONE ELECTRONICALLY, AND NOT IN CASH, A NUMBER OF QUESTIONS REGARDING RESPONSIBILITY AND LIABILITY ARISE. QUESTIONS SUCH AS: WHAT HAPPENS IF THE FIRST

SPONSOR STATEMENT--SB 86 AND SB 112
PAGE 4

BANK MAKES A MISTAKE ON THE AMOUNT TO BE PAID? WHAT
IF THE SECOND BANK FAILS TO NOTIFY THE RECIPIENT?
WHAT HAPPENS IF THE ORIGINAL PAYMENT ORDER IS
FRAUDULENT AND NOT ACTUALLY ISSUED BY THE
ORIGINATOR? WHO BEARS THE RISK OF LOSS AT A GIVEN
TIME IN THE TRANSACTION PROCESS? AND WHAT
CONSTITUTES ACCEPTANCE AND REJECTION OF A PAYMENT
ORDER?

THESE AND OTHER QUESTIONS ARE ANSWERED IN THE
ARTICLE 4A ENACTED BY SENATE BILL 86 WHICH,
BASICALLY, ESTABLISHES THE RULES GOVERNING THE
PAYMENT OF LARGE SUMS OF MONEY.

THE BILL PROVIDES A SIGNIFICANT IMPROVEMENT IN
ALASKA COMMERCIAL LAW. IT WILL HELP KEEP ALASKA'S
UNIFORM COMMERCIAL CODE UP TO DATE WHICH, IN TURN,
HELPS ASSURE A FAVORABLE COMMERCIAL CLIMATE IN
ALASKA--ONE THAT IS IN LINE WITH THE REST OF THE
NATION AND CAN, ACCORDINGLY, HELP ENCOURAGE
ECONOMIC DEVELOPMENT AND GROWTH IN ALASKA.

SPONSOR STATEMENT-SB 86 AND SB 112
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S.B. 86 HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW. IN ADDITION, FEDERAL FINANCIAL REGULATORS ARE ENCOURAGING INDIVIDUAL STATES TO ENACT THE PROVISIONS EMBODIED IN S.B. 86. TO BRING THEIR RESPECTIVE STATE LAWS INTO COMPLIANCE WITH FEDERAL LAW. UNLESS STATES ADOPT THESE PROVISIONS, THE FEDERAL GOVERNMENT WILL STEP IN AND PERFORM THE REGULATORY AND ENFORCEMENT DUTIES RELATING TO FUNDS TRANSFERS.

THE PROVISIONS IN S.B. 86 HAVE BEEN ENDORSED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

SENATE BILL 112

SENATE BILL 112, IN GENERAL, ALSO MAKES AMENDMENTS TO ALASKA'S UNIFORM COMMERCIAL CODE. IN MOST INSTANCES THESE CHANGES ARE DESIGNED TO BRING THE CODE UP TO DATE WITH THE REST OF THE COUNTRY.

SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 6

THE FIRST CHANGE ADDS A NEW ARTICLE 2A TO THE EXISTING LAW. WHILE THE EXISTING LAW COVERS COMMERCIAL PROPERTY LEASES, THERE IS NO LANGUAGE RELATING TO PERSONAL PROPERTY LEASING.

PERSONAL PROPERTY BEING LEASED RANGES FROM CARS, HORSES, AND MOVING VANS TO CONSTRUCTION EQUIPMENT AND OIL RIGS.

ARTICLE 2A DEALS WITH WHAT ARE CALLED "TRUE" LEASES AND "FINANCE" LEASES. THE ARTICLE PROVIDES THE STATUTORY ANSWERS TO A BROAD RANGE OF LEGAL ISSUES, COVERING SUCH MATTERS AS OFFER AND ACCEPTANCE, WARRANTIES, MISTAKE, FAILURE TO PERFORM, RISK OF LOSS AND REMEDIES.

THE CURRENT ABSENCE OF THESE RULES PROMOTES LITIGATION.

ARTICLE 3 OF S.B. 112, FOR THE MOST PART, REORGANIZES THE EXISTING MATERIAL IN THE STATE CODE TO MAKE IT MORE CLEAR AND TO ACCOUNT FOR MODERN

TECHNOLOGIES. THESE REVISIONS FIX MANY OF THE PROBLEMS THAT HAVE ARISEN OVER THE PAST 40 YEARS WITH THE UNIFORM COMMERCIAL CODE AND WITH NEGOTIABLE INSTRUMENTS. SOME OF THE CHANGES INCLUDED IN ARTICLE 3 AND ARTICLE 1 OF S.B. 112 ARE NECESSARY TO BRING THESE ARTICLES INTO COMPLIANCE WITH THE NEW LANGUAGE IN ARTICLE 4A AS IT APPEARS IN S.B. 86.

ONE IMPORTANT CHANGE IN ARTICLE 3 IS THAT THE REVISION RECOGNIZES THAT THERE ARE TWO TYPES OF INSTRUMENTS--NOTES AND DRAFTS--WHICH USUALLY PERFORM DIFFERENT FUNCTIONS AND, THEREFORE, MERIT DIFFERENT TREATMENT.

BENEFITS FROM ENACTING ARTICLE 3 OF S.B. 112 INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: CERTAINTY OF THE LAW, SPEED AND RELIABILITY, LOWER COSTS, REDUCED LITIGATION, AND STRICTER STANDARDS FOR FIDUCIARIES.

FINALLY, SENATE BILL 112 SEEKS TO REPEAL ARTICLE 6 OF THE PRESENT UNIFORM COMMERCIAL CODE. ARTICLE 6 DEALS WITH BULK SALES. A BULK SALE IS ONE IN WHICH A BUSINESS SELLS ALL OR A LARGE PART OF ITS INVENTORY TO A SINGLE BUYER OUTSIDE THE ORDINARY COURSE OF BUSINESS.

THE EXISTING LAW WAS DESIGNED TO PROTECT CREDITORS OF SUCH BUSINESSES FROM THE PROPRIETOR WHO ABSCONDS WITH THE PROCEEDS OF SUCH A SALE. THESE LAWS WERE ENACTED IN A CLIMATE OF SMALLER BUSINESSES.

BUT THE CREDIT ENVIRONMENT HAS CHANGED DRASTICALLY OVER THE YEARS, SO THAT THE RISK OF THE ABSCONDING PROPRIETOR IS NO LONGER VERY GREAT. IT IS NOW EASIER FOR BUSINESSES TO ESTABLISH THE CREDITWORTHINESS OF A PROPRIETOR OR MERCHANTISER, AND EASIER TO PURSUE THOSE FEW WHO DO "TAKE THE MONEY AND RUN".

SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 9

IN ADDITION, UNDER ARTICLE 9 OF THE EXISTING CODE, PROTECTIONS FOR CREDITORS ARE MORE SIGNIFICANT THAN IN THE PAST.

BECAUSE OF THESE FACTORS, THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, AND A GROUP OF 16 ALASKA BUSINESS LAW ATTORNEYS, HAVE RECOMMENDED THAT ARTICLE 6 BE REPEALED. AS OF 1991, 14 STATES HAD APPROACHED THIS ISSUE AND TEN OF THEM OPTED FOR THE REPEAL APPROACH ENACTED IN SENATE BILL 112.

THIS BILL RECEIVED A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW'S DIVISION OF LEGAL SERVICES. ACCORDING TO THE DEPARTMENT'S ANALYSIS ACCOMPANYING THIS FISCAL NOTE, THE BASIC CHANGES PROPOSED IN S.B. 112 ARE--AND I QUOTE:

". . .NEEDED TO HELP BRING ALASKA BUSINESSES AND CONSUMERS INVOLVED IN COMMERCIAL TRANSACTIONS UP TO DATE WITH BUSINESSES AND CONSUMERS IN THE REST OF THE COUNTRY." (END QUOTE).

SPONSOR STATEMENT-SB 86 AND SB 112
PAGE 10

BECAUSE OF THIS, AND THE OTHER REASONS I HAVE
OUTLINED IN MY STATEMENT, IT IS MY HOPE THAT THIS
COMMITTEE WILL LOOK FAVORABLY ON BOTH SENATE BILL 86
AND SENATE BILL 112, GIVING IT A "DO PASS"
RECOMMENDATION.

(end statement)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 14, 1993

Hon. Brian Porter, Chair
House Judiciary Committee
Alaska House of Representatives
State Capitol Building, Room 122
Juneau, AK 99811

Re: SB 86

Dear Representative Porter:

The Department of Law has reviewed SB 86 and finds no legal problems.

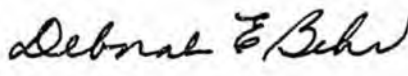
The bill makes important improvements to the Uniform Commercial Code.

We understand that the bill is before your committee. We would request early scheduling of a hearing on the bill.

If you have questions, please let us know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: Alaska's Uniform Law Commissioners Delegation
Justice Jay Rabinowitz
Arthur H. Peterson, Esq.
Jerry Kurtz, Esq.
Tam Cook, Esq.
Grant Callow, Esq.

Kris Lethin, Legislative Liaison
Office of the Governor

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February 10, 1993

The Honorable Tim Kelly
Chair, Senate Labor and Commerce Committee
Alaska State Legislature
Room 101, Capitol Building
Juneau, AK 99801-1182


Re: SB 86 -- Uniform Commercial Code, Article 4A
(Funds Transfers)

Dear Senator Kelly:

Word was relayed to me yesterday that your assistant, Josh Fink, has requested a section-by-section description of this bill. I have prepared the attached description, which I trust will be helpful for your committee's deliberations.

SB 86 is essential in Alaska's effort to keep its Uniform Commercial Code up to date and to facilitate doing business in Alaska by using modern technology and business practices. Therefore, I urge your committee to schedule it for an early hearing, to catch up with the 44 other states that have already enacted it.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/mh

Enclosure

cc w/encl: The Honorable Jay Kerttula ✓
Alaska State Senate

Deborah E. Behr, Assistant Attorney General
Legislation/Regulations Section
Alaska Department of Law

Rest of Alaska's ULC Delegation

Section-by-Section Description of SB 86
(UCC, Article 4A, Funds Transfers)

2/9/93
AHP

Introduction.

Section 12 of SB 86 is the heart of the bill. It adds a new chapter to the Alaska Statutes. The new chapter embodies Uniform Commercial Code (UCC), Article 4A, Funds Transfers, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), in conjunction with the American Law Institute, in 1989. It has been approved by the American Bar Association and endorsed by the American Bankers Association. As of February 1, 1993, it had been enacted by 44 states. The NCCUSL's official text includes detailed commentary for each section of the new article. The description below is based on that commentary.

The basic point of the whole bill is to recognize modern electronic technology and business practices. It provides statutory, nationally consistent answers to the myriad of questions currently arising. There is no comprehensive body of law, outside of Article 4A, that defines the rights and obligations that arise from wire transfers.

The banking system uses various mechanisms for making payments. Most are covered in whole or part by state or federal statutes. Most actual payments are made by check or credit card. Payment by check is covered by Articles 3 and 4 of the UCC, and some aspects of payment by credit card are covered by federal law. Some aspects of electronic funds transfers (i.e., most payments made by use of automated clearing houses) are covered by federal statute, the Electronic Fund Transfer Act (EFTA). Those kinds of transactions are not covered by the new Article 4A.

Wholesale wire transfers are the primary focus of the new article. These are overwhelmingly between business or financial institutions. The dollar volume of these payments far exceeds the dollar volume of payment made by all other means. The volume of payments by wire transfer over the two principal wire payment systems -- the Federal Reserve Wire Transfer Network (Fedwire) and the New York Clearing House Interbank Payments Systems (CHIPS) -- exceeds one trillion dollars a day. Regulations embodying the new Article 4A have been adopted to cover those two systems, and they would not be governed by state law (i.e., by this new Article 4A), but the substance will be the same. However, a significant volume of nonconsumer automated clearing house (ACH) payments that closely resemble wholesale wire transfers are also covered by Article 4A as enacted by the states.

Here is an example of a funds transfer covered by Article 4A: X, a debtor, wants to pay an obligation owed to Y. Instead of delivering to Y a negotiable instrument such as a check that would enable Y to obtain payment from a bank, X transmits an instruction

to X's bank to credit a sum of money to the bank account of Y. Typically, two different banks are involved at that point. X's instruction to its bank is a "payment order." X is the "sender." With respect to X's order, X's bank is the receiving bank. With respect to the funds transfer, X is the "originator," X's bank is the "originator's bank," Y is the "beneficiary," and Y's bank is the "beneficiary's bank." X's bank may carry out X's instruction by electronically telling Y's bank to credit Y's account in the amount that X requested. In more complex transactions, there can be one or more additional banks, known as "intermediary banks" involved. Since the payment order itself may be transmitted by a slow means such as first class mail, the broader term "funds transfer" rather than the narrower term "wire transfer" is used in Article 4A to describe the overall payment transaction.

Section-by-section description.

Sections 1 -- 11 of the bill make minor style amendments and corrections and, primarily, amend various citations to recognize the existence of the new chapter (i.e., the new Article 4A). Many of the citation updates are made by referring to "the code" (i.e., the UCC), which term is then defined in Section 8 of the bill (amending existing AS 45.01.201, at page 5, lines 11 and 12). This approach simplifies the citation system.

Section 12 of the bill adds a new "funds transfers" chapter -- AS 45.14. In the following description, the section numbers alone, without the title and chapter numbers, will be set out to identify the respective provisions.

- Section 101. For ease of reference to this batch of material, this section gives the short title, following the standard practice for the Uniform Commercial Code.

- Section 102. This is a simple statement of the applicability of the chapter. The exception refers to consumer transactions governed by federal law.

- Sections 103 -- 105. These definition sections set out definitions of basic terms, and include some cross references to other definitions. Central to this material is the definition of "funds transfer" in proposed Sec. 104 (page 11, lines 17 -- 22).

- Section 106. This section identifies the time that a payment order is received by applying the same rules that determine when a notice is received. This provision is important because the specified time usually defines the payment date or the execution date of a payment order.

- Section 107. This section merely provides for the Federal Reserve Board regulations to supersede inconsistent

provisions of state law -- a standard concept. This could occur in transfers made by Fedwire.

- Section 108. Comparable to Sec. 107, this section merely provides for the superseding applicability of federal law.

- Section 201. A large percentage of payment orders and communications amending or canceling payment orders are transmitted electronically, and it is standard practice to use security procedures that are designed to assure the authenticity of the message. This section defines "security procedure."

- Sections 202 and 203. Acceptance of a payment order by the receiving bank is based on the belief by the bank that the order was authorized by the person identified as the sender. These two sections set out the rules governing liability and obligation to pay.

- Section 204. This section sets out the rules with regard to refund of payment, etc., when what appears to be a payment order is actually an unauthorized one. This section applies only where (1) there is no commercially reasonable security procedure in effect, (2) the bank did not comply with a commercially reasonable security procedure that was in effect, and (3) the sender can prove that the culprit did not obtain confidential security information controlled by the customer. It also covers the situation where the bank, under Sec. 203, agreed to take all or part of the loss resulting from an unauthorized payment order.

- Section 205. This section covers three types of error in the content or in the transmission of payment orders. .

- Section 206. This section applies an agency concept when an intermediary bank is used for the purpose of transmitting payment orders and related messages for the sender. This section deals only with errors by the intermediary.

- Section 207. Subsection (a) deals with the problem of payment orders issued to the beneficiary's bank for payment to nonexistent or unidentifiable persons or accounts. Since it is not possible in that case for the funds transfer to be completed, subsection (a) states that the order cannot be accepted. Subsection (b), which takes precedence over subsection (a), deals with the problem of payment orders in which the description of the beneficiary does not allow identification of the beneficiary because the beneficiary is described by name and by an identifying number or an account number, and the name and number refer to different persons.

- Section 208. This section is similar to Sec. 207. Because of automation in the processing of payment orders, a payment order may identify the beneficiary's bank or an

intermediary bank by an identifying number. This section covers the situation where the bank identified by number might or might not also be identified by name.

- Section 209. This section, on the acceptance of a payment order, treats the sender's payment order as a request by the sender to the receiving bank to execute or pay the order, and that request can be accepted or rejected by the receiving bank. This section tells when acceptance occurs. The next section covers rejection. Acceptance imposes an obligation.

- Section 210. With respect to payment orders issued to a receiving bank other than the beneficiary's bank, notice of rejection is not necessary to prevent acceptance of the order. Acceptance can occur only if the receiving bank executes the order. But notice of rejection will routinely be given by such a bank in cases in which the bank cannot or is not willing to execute the order for any of various reasons. This section sets out the rules governing rejection.

- Section 211. This section states the conditions under which cancellation or amendment of a payment order is both effective and proper.

- Section 212. This section describes the liability of a receiving bank.

- Section 301. This section defines "executed" and "execution date." These terms are used only with respect to a payment order to a receiving bank other than the beneficiary's bank. The beneficiary's bank can accept the payment order that it receives, but it does not "execute" the order. Execution refers to the act of the receiving bank in issuing a payment order "intended to carry out" the payment order that the bank received.

- Section 302. In the absence of agreement, the receiving bank is not obliged to execute an order of the sender. (See Sec. 212.) This section states the manner in which the receiving bank may execute the sender's order if execution occurs.

- Section 303. This section states the effect of erroneous execution of a payment order by the receiving bank. Under Sec. 402(c), below, the sender of a payment order is obliged to pay the amount of the order to the receiving bank if the bank executes the order, but the obligation to pay is excused if the beneficiary's bank does not accept a payment order instructing payment to the beneficiary of the sender's order. If erroneous execution of the sender's order causes the wrong beneficiary to be paid, the sender is not required to pay. If erroneous execution causes the wrong amount to be paid, the sender is not obliged to pay the receiving bank an amount exceeding that specified in the sender's order.

- Section 304. This section, on the duty of a sender to report an erroneously executed payment order, is the same in effect as Section 204 above, which applies to unauthorized orders issued in the name of a customer of the receiving bank.

- Section 305. Subsection (a) covers cases of delay in completion of a funds transfer resulting from an execution by a receiving bank in breach of Sec. 302(a). The receiving bank is obliged to pay interest on the amount of the order for the period of the delay. Subsection (b) applies to cases of breach of Sec. 302 that involve more than mere delay.

- Section 401. "Payment date" refers to the day the beneficiary's bank is to pay the beneficiary. It may be expressed in various ways, so long as it indicates the day that the beneficiary is to receive payment. In certain transfers, the payment date is the equivalent of "settlement date" or "effective date."

- Section 402. This section sets out the general rules specifying the obligation of a sender to pay the receiving bank. Subsection (b) states that the sender of a payment order to the beneficiary's bank must pay the order when the beneficiary's bank accepts the order. At that point, the beneficiary's bank is obliged to pay the beneficiary. A payment order is not like a negotiable instrument on which the drawer or maker has liability. Acceptance of the order by the receiving bank creates an obligation of the sender to pay the receiving bank the amount of the order. That is the extent of the sender's liability to the receiving bank, and no other person has any rights against the sender with respect to the sender's order.

- Section 403. This section defines when a sender pays the obligation stated in Sec. 402. If a group of two or more banks engages in funds transfers with each other, the participating banks will sometimes be senders and sometimes receiving banks. This section deals with situations where a federal reserve bank is, and situations where it is not, involved.

- Section 404. The first sentence of subsec. (a) states the time when the obligation of the beneficiary's bank arises. The second and third sentences state when the beneficiary's bank must make funds available to the beneficiary. They also state the measure of damage for failure, after demand, to comply. Subsection (b) states the duty of the beneficiary's bank to notify the beneficiary of receipt of the order.

- Section 405. This section defines when the beneficiary's bank pays the beneficiary and when the obligation of the beneficiary's bank under Sec. 404 to pay the beneficiary is satisfied. In almost all cases, the bank will credit an account of the beneficiary when it receives a payment order.

- Section 406. Subsection (a) states the fundamental rule of Article 4A (the proposed AS 45.14) that payment by the originator to the beneficiary is accomplished by providing to the beneficiary the obligation of the beneficiary's bank to pay. Since this obligation arises when the beneficiary's bank accepts a payment order, the originator pays the beneficiary at the time of acceptance and in the amount of the payment order accepted.

- Section 501. This section, allowing variation by agreement, is designed to give some flexibility to Article 4A. Funds transfer system rules govern rights and obligations between banks that use this system. They may cover a wide variety of matters such as form and content of payment orders, security procedures, cancellation rights and procedures, indemnity rights, compensation rules for delays in completion of a funds transfer, time and method of settlement, credit restrictions with respect to senders of payment orders, and risk allocation with respect to suspension of payments by a participating bank.

- Section 502. When a receiving bank accepts a payment order, the bank normally receives payment from the sender by debiting an authorized account of the sender. In accepting the sender's order, the bank may be relying on a credit balance in the account. In certain situations, it is unjust to the bank to allow the "creditor process" to take the credit balance on which the bank may have relied. Subsec. (b) allows the bank to obtain payment from the sender's account in this kind of situation. Subsection (c) deals with payment orders issued to the beneficiary's bank. The bank may credit the beneficiary's account when the order is received, but, under Sec. 404(a), the bank incurs no obligation to pay the beneficiary until the order is accepted under Sec. 209(b). "Creditor process" is defined in subsec. (a) of this section to cover a variety of devices by which a creditor of the holder of a bank account or a claimant to a bank account can seize the account. Procedure and nomenclature vary widely from state to state.

- Section 503. This section, on injunctions and restraining orders with respect to a funds transfer, is designed to prevent interruption of a funds transfer after it has been set in motion. Only certain kinds of injunctions are permitted. In particular, intermediary banks are protected, and injunctions against the originator and the originator's bank are limited to issuance of a payment order.

- Section 504. Subsection (a) concerns priority among various obligations that are to be paid from the same account. The problem addressed arises when an account balance is not sufficient to cover all of the checks and payment orders issued by the owner of the account.

- Section 505. This section is in the nature of a "statute of repose" (like a "statute of limitation") for objecting to debits made to the customer's account.

- Section 506. A receiving bank is required to pay interest on the amount of a payment order received by the bank in a number of situations. Sometimes the interest is payable to the sender, and in other cases it is payable to either the originator or the beneficiary of the funds transfer. This section tells how the rate of interest is determined.

- Section 507. Since funds transfers are typically interstate or international in character, this section sets out the rules stating which law applies to questions that arise.

Section 13 of the bill simply requires the reviser of statutes to make sure that all Uniform Commercial Code citations accurately reflect the new chapter.

Section 14 of the bill, related to the effective date specified in Sec. 16 of the bill, identifies the causes of action that will be covered by the new AS 45.14 and those that will still be covered by the common law of Alaska.

Section 15 of the bill, in conjunction with the bill title itself, facilitates compliance with Article II, Section 13, and Article IV, Section 15, of the Alaska Constitution, identifying changes in the court rules.

Section 16 of the bill makes the Act effective as of January 1, 1994. This appears to be a reasonable beginning date, giving adequate notice and preparation time to those concerned with this subject, while not unduly delaying Alaska's joining the rest of the country in making these provisions effective.

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HOUSE COMMITTEE REPORT

(7)

Date Referred: April 2, 1993

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/13/93

The LABOR AND COMMERCE Committee considered:

SB 86

SENATE BILL NO. 86

FUND TRANSFERS UNDER THE UCC

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

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

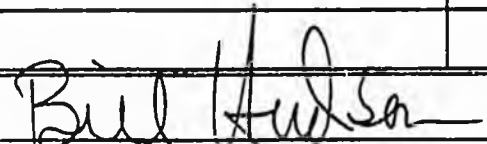
APPROVES PREVIOUS: _____ (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____ 2 zero fiscal note(s) DCED, LAW

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Joe Sutton	✓	Brand Hapter		✓	
Bill Hudson	✓	Alan Wells		✓	
		Joseph [unclear]		✓	
		[unclear]		✓	
		[unclear]		✓	


 CHAIRMAN'S SIGNATURE

National Bank of Alaska



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April 7, 1993

Representative Bill Hudson
Capitol Office Building
Room 108
Juneau, AK 99801

Dear Representative Hudson:

I urge your support in scheduling Senate Bill 86 for house consideration. This rather lengthy and unglamorous bill is extremely important in conducting business in and outside of Alaska. Briefly the bill sets out clear lines of responsibility between parties utilizing electronic fund transfers. With more and more business being conducted through electronic transfers it is important to provide clear lines of responsibility which will reduce and eliminate legal disputes. The bill provides clear, fair and sound rules for all parties (not just financial institutions) in conducting business through fund transfers. This bill will eliminate disputes that could arise between the State of Alaska and the other 44 states which have adopted this regulation. I know that the Alaska Banker's Association as well as my company are solidly in support of this bill.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Peter M. Crandall'.

Peter M. Crandall
Senior Vice President