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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 86

Revision Date: February 10, 1993  
Title: "...dealino 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						
MISCELLANEOU:						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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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-

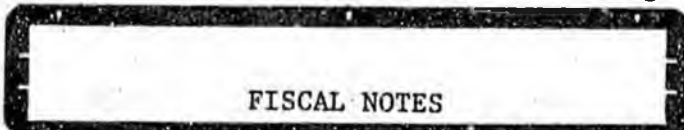
ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
Approved by Commissioner: Charles E. Cole, Attorney General  
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.

FISCAL NOTE

No. 1

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

I 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
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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 GF/MHTIA	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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February 10, 1993

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

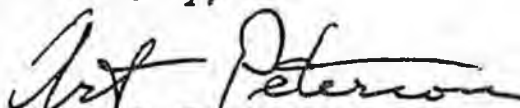
Re: SB 86 -- Uniform Commercial Code, Article 4A  
(Funds Transfers)

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

356 SECTIONAL ANALYSIS

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.

# # # # # # # # # # #

# National Bank of Alaska



Juneau Office P.O. Box 021189 Juneau, Alaska 99802-1189 (907) 586-3324 FAX (907) 463-3997

February 11, 1993

Senator Tim Kelly  
Capitol Bldg. Room 101  
Juneau, AK 99801

Dear Senator Kelly:

The use of electronic funds transfers as a method of conducting everyday business is growing rapidly. Senate Bill Number 86 which your committee will be hearing clarifies the responsibilities and rights of the involved parties in utilizing this method of commerce. Forty four other states have adopted these changes to the Uniform Commercial Code and we along with other financial institutions and businesses support adoption of the changes. Briefly these changes will have the following benefits:

- 1) Provide clear lines of responsibility for all parties utilizing electronic funds transfers.
- 2) Reduce and eliminate legal disputes between all parties that conduct business by fund transfers.
- 3) Eliminate disputes that could arise between the State of Alaska and the other 44 States about responsibilities between two different Uniform Commercial Codes.
- 4) Provides clear, fair and sound rules for all parties (not just financial institutions) in conducting business through fund transfer methods.

I urge you and your committee's support for this important bill. I will be glad to discuss this with you or any member of your committee.

Sincerely,

A handwritten signature in cursive script that reads "Peter Crandall".

Peter Crandall  
Senior Vice President

cc: Senator Jay Kerttula

SPONSOR LETTER

SB 86

1/20/93  
(long version)

DESCRIPTION OF BILL TO ENACT  
UNIFORM COMMERCIAL CODE, ARTICLE 4A  
(FUNDS TRANSFERS)

This bill will enact the new Article 4A of the Uniform Commercial Code (UCC). The new article, an essential piece of the modern commercial law of this country (with 44 enactments as of December 1992), provides legislative answers to the many issues involved in funds transfers (the bulk of which are called "wholesale wire transfers").

The UCC, promulgated in the 1950's and '60's by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in conjunction with the American Law Institute (ALI), and approved by the American Bar Association (ABA), is a comprehensive codification of commercial law. It has been enacted in all states and territories of the United States (except Louisiana, which has enacted parts of it) and serves as a model elsewhere. However, until promulgation of Article 4A in 1989 (endorsed by the American Bankers Association as well as the ABA and the ALI), it did not deal with funds transfers between commercial entities. As business practice has come to rely more heavily on the speed, efficiency, reliability, and comparatively low cost of electronic technology, the many questions that arise from that reliance demand answers.

The same technology that provides automated teller machines for personal use is also used to make large transfers of money to satisfy obligations arising from commercial transactions.

DESCRIPTION  
LONG VERSION

In 1989, a record three trillion dollars were transferred on a single day -- more money than the 1989 gross national product of the United States -- and the 1989 average was one trillion dollars a day. In the average single "funds transfer," \$5,000,000 change hands.

Ever since promulgation and enactment of the UCC several decades ago, the rights and obligations of the parties to payment by check have been governed by Articles 3 and 4 (currently, AS 45.03 and 45.04, in Alaska). The new article will not change that coverage, but will deal with electronic methods of transferring bank credit. The rules in Articles 3 and 4, relying on signatures and endorsements on pieces of paper (checks) as the basis for determining liability, do not apply to electronic funds transfers.

Many transfers in the United States are effected through electronic transfer networks; one is owned and operated by the Federal Reserve Board and is known as FedWire; the other is owned and operated by the New York Clearing House and is known as CHIPS (Clearing House Interbank Payments Systems). Each of these systems has rules (including the Federal Reserve Board's Regulation J) to govern transactions between participating banks, but they do not directly affect bank customers. A "consumer transaction," such as through a credit card or an automated teller machine, is covered by federal law -- the Electronic Funds Transfer Act of 1978 -- and is not subject to Article 4A. A huge range of transactions directly

affecting bank customers, and not covered by those federal provisions, is the subject of this bill.

Unless the parties to a transaction use the same bank, a funds transfer involves at least four entities: the originator of the payment; the bank to which the originator communicates the first payment order; the beneficiary's bank that receives the final payment order; and the beneficiary (the entity that the originator or subsequent sender intends to pay). Intermediary receiving and sending banks also may be involved. There are numerous opportunities for problems and questions to arise.

What happens if the first bank makes a mistake as to the amount to be paid? What happens if the second bank doesn't notify the beneficiary? What happens if the payment order is fraudulent and not actually issued by the originator? What happens if there is a bank failure? What are the remedies if someone takes a loss? Who bears the risk of loss at a given time in the transactional process? What constitutes acceptance and rejection (both rightful and wrongful) of a payment order, and what must be done to amend a payment order? These are some of the questions answered in Article 4A.

The new article carefully addresses the interests of banks, commercial users of this payment method, and the public. It provides for a fair balance between the interests of these groups.

The four-year drafting effort that produced Article 4A included participation by many representatives of competing interests, as well as the uniform law commissioners themselves. The result of the numerous meetings, discussions, debates, and roughly 12 drafts is an appropriate accommodation of the disparate interests. It fills a major gap in the statutes.

This bill provides for a significant improvement in Alaska law. It meticulously adheres to the national version, making only minor style and numbering adjustments to comply with Alaska's requirements. (Conforming to Alaska's statute-numbering system and present UCC, this new article is designated a chapter -- AS 45.14 -- but the section numbers are the same as in the NCCUSL's official version.) The bill will help keep Alaska's Uniform Commercial Code up to date, thus tending to assure a favorable commercial climate here -- one that is in line with the rest of the country. The 44 states that have already enacted Article 4A include the major financial centers -- New York, Illinois, and California. Enactment by all states will retain this subject for handling by the states and should preclude federal intervention.

# # # # #

A Few Facts About  
**New Article 4A of the Uniform Commercial Code**  
— Funds Transfers —

**Purpose:** To provide a comprehensive body of law on the rights and obligations connected with funds transfers.

**Origin:** Completed by the Uniform Law Commissioners in 1989.

**Endorsed by:** American Law Institute  
American Bankers Association  
American Bar Association

**State Adoptions:**

Alabama	Minnesota
Arizona	Mississippi
Arkansas	Missouri
California	Montana
Colorado	Nebraska
Connecticut	Nevada
Delaware	New Mexico
District of Columbia	New York
Florida	North Dakota
Georgia	Ohio
Hawaii	Oklahoma
Idaho	Oregon
Illinois	Pennsylvania
Indiana	Rhode Island
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Utah
Louisiana	Virginia
Maine	Washington
Maryland	West Virginia
Massachusetts	Wisconsin
Michigan	Wyoming

**1993**  
**Introductions:** New Jersey Puerto Rico

For any further information regarding Article 4A of the Uniform Commercial Code, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/10/93)

STATES THAT HAVE ADOPTED  
ARTICLE 4A - UCC

SB 86

1/20/93  
(short version)

DESCRIPTION OF BILL TO ENACT  
UNIFORM COMMERCIAL CODE, ARTICLE 4A  
(FUNDS TRANSFERS)

This bill, addressing the electronic technology revolution and modern business practices, will enact the new Article 4A of the Uniform Commercial Code (UCC). It is an essential piece of the current commercial law of this country, with 44 enactments as of December 1992 (including New York, Illinois, and California -- the major financial centers). It provides state legislative answers to the many issues involved in funds transfers (the bulk of which are called "wholesale wire transfers").

The UCC is a comprehensive codification of commercial law. However, until promulgation of Article 4A in 1989, it did not deal with funds transfers between commercial entities. As business practice has come to rely more heavily on the speed, efficiency, reliability, and comparatively low cost of electronic technology, the many questions that arise from that reliance demand answers.

In 1989, a record three trillion dollars were transferred on a single day -- more money than the 1989 gross national product of the United States -- and the 1989 average was one trillion dollars a day. In the average single "funds transfer," \$5,000,000 change hands.

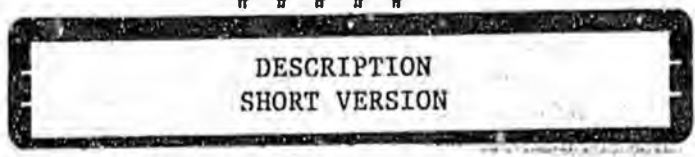
The new article will not change the rules in Articles 3 and 4 dealing with signatures and endorsements on pieces of paper (checks) as the basis for determining liability.

Unless the parties to a transaction use the same bank, a funds transfer involves at least four entities: the originator of the payment; the bank to which the originator communicates the first payment order; the beneficiary's bank that receives the final payment order; and the beneficiary. Numerous problems and questions can arise.

What happens if the first bank makes a mistake as to the amount to be paid? What happens if the second bank doesn't notify the beneficiary? What happens if the payment order is fraudulent and not actually issued by the originator? What happens if there is a bank failure? What are the remedies if someone takes a loss? Who bears the risk of loss at a given time in the transactional process? What constitutes acceptance and rejection (both rightful and wrongful) of a payment order, and what must be done to amend a payment order? These are some of the questions answered in Article 4A.

This bill provides for a significant improvement in Alaska law. It will help keep Alaska's Uniform Commercial Code up to date, thus tending to assure a favorable commercial climate here -- one that is in line with the rest of the country.

# # # # #



# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 1, 1993

Hon. Tim Kelly  
Alaska State Senate  
State Capitol Building, Room 101  
Juneau, AK 9980

Re: SB 86

Dear Senator Kelly:

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*  
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

WALTER J. HICKEL, GOVERNOR

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