

**HB**

**239**

**FISCAL NOTE** Bill Version: CSHB 239 (L&C)

B (H) Publish Date: 2/11/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: "An act relating to the Uniform Commercial Code...." BRU: Information/Data Management  
 Component: Recorder's Office/UCC  
 Sponsor: Rep. Murkowski  
 Requestor: (H) L&C Component No. 802

Expenditures/Revenues (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	1.5	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	16.5	24.0	0.0	0.0	0.0	0.0
SUPPLIES	2.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	6.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	3.0	0.0	0.0	0.0	0.0
GRANTS & CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>26.0</b>	<b>24.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (1005)</b>	<b>0.0</b>	<b>(20.0)</b>	<b>(16.0)</b>	<b>(12.0)</b>	<b>(9.0)</b>	<b>(6.7)</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	26.0	24.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>26.0</b>	<b>24.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of an current year (FY2000) cost: \$ 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

**ANALYSIS:** (Attach a separate page if necessary)

Under HB239, all UCC filings (except fixture filings, timber to be cut and as-extracted collateral) would be filed at the central filing office. Local district offices would continue to accept filings on fixtures, timber to be cut and as-extracted collateral, but all other filings would occur at the central office, simplifying the process immensely for filing officers and secured lenders alike.

The declining revenues shown above represent the decrease attributable to the gradual elimination of dual filings over the transitional period. Decreasing revenues are expected until all filings have transitioned to UCC Central, or lapsed.

..... continued on page 2.....

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 Division: Support Services Division Date: 03-Feb-00  
 Approved by Commissioner: John Shively Date: 03-02-2000  
 Agency: Natural Resources

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The initial anticipated increase in filings at UCC Central will be 30 to 40 percent per year, with a corresponding decrease at the local district level. After the transition period, the UCC Central volume should stabilize at 150 to 167 percent of its current total. The overall decrease in revenues for the component as a result of the change in filing office is expected to total \$63.7 over the five year transition period. The component regularly generates between \$1 and \$2.5 million in excess of its operating budget annually.

With the expected 50 to 67 per cent increase in UCC Central filings under this bill (approximately 10,000 to 15,000 documents per year), the component estimates that an additional two to two and a half FTE staff would be required in the UCC Central office to process the increased volume. This staffing would be handled via lateral transfers from the larger recording district offices. Little impact would be seen at the remote office sites as they do not currently have large volumes of UCC transactions under the current law. Because the component expects to utilize existing cross-trained employees from larger recording offices to handle the increased filing volume at UCC Central, the fiscal note does not request any new personal services funding to implement this bill. However, because this code revision would result in some major operational changes in the way UCC documents are processed, there are some secondary costs, including programming costs, that have to be considered in the implementation phase.

In order to meet the July 1, 2001 target implementation date, some programming costs would be incurred to implement usage of check digits as required by the bill, to establish a status code, to add a page count to UCC filings, and to facilitate purging of lapsed and terminated filings. This cost is estimated at one month of labor at a cost of \$6,000 in programming time. This expense would need to be incurred during FY01 in order to be ready for the July 1, 2001 target date. Other costs that would be required to implement this bill are related to staff training, user education sessions, notifications to users regarding changes, additional equipment for UCC Central public access library, and preparation and implementation of administrative rules and reporting mechanisms required under HB239. The component estimates a total expense in this area of \$20,000.

One of the goals of the revised UCC is to pave the way toward electronic filing and increased usage of technology in the UCC systems throughout the country. The component has identified costs of \$18,000 in information systems staff time to work toward accepting UCC filings electronically, accept payment for such filings electronically and utilize the national standard forms for electronic filings. An additional \$6,000 in programming time (one man-month) may be needed to update the UCC search programs to meet specifications expected to be included in the Model Administrative Rules referenced in the bill. Because the Model Rules are not yet in a final format, it is unknown at this time what their impact may be on existing programs.

# ALASKA STATE LEGISLATURE

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## Sponsor Statement House Bill 239

### Revised Uniform Commercial Code Article 9 – Secured Transactions

Trillions of dollars of commercial and consumer credit are granted each year in secured transactions under Article 9 of the Uniform Commercial Code (UCC). UCC Article 9 – Secured Transactions, provides a statutory framework that governs transactions in which a creditor takes a security interest in specific property of a debtor, allowing the creditor to take the property in the event the debtor defaults on the debt. Article 9 of the UCC has been adopted in every state and was last revised in 1972. Major revisions to Article 9 by the Uniform Law Commissioners were completed in 1998. These revisions bring Article 9 into the 21<sup>st</sup> Century.

There are many reasons Revised Article 9 should be adopted in Alaska:

- **Technology** Paper-based transactions are giving way to electronic transactions and revised Article 9 allows for this.
- **Volume** Article 9 was first proposed in 1951 and was last updated in 1972. Since then, the volume of commerce and credit has increased exponentially. The filing system revisions are particularly necessary to meet the problem of increased volume.
- **New Collateral** New kinds of property and transactions have been developed since Article 9 was last amended. The scope of Article 9 expands to keep up with these changes. Deposit accounts, health insurance receivables, and commercial tort claims are examples of new collateral.
- **Certainty of Perfection** Uncertainties about where to perfect a security interest under the original Article 9 are overcome in the revisions making the location of the debtor the place where the creditor perfects the security interest.
- **New Liens** Statutory, non-possessory liens have proliferated since Article 9 was originally approved. Such liens represent a risk for creditors, and a potential conflict with security interests in collateral if there is no public notice of their existence. Article 9 includes certain statutory,

non-possessory liens for the purposes of providing public notice and setting priorities between creditors.

- **Clarification of Rules** Historically, courts have interpreted provisions of Article 9 in conflicting ways. Some of their decisions have dealt with issues that were not explicitly addressed in the original Article 9. This has resulted in an ambiguous application of some rules. The revisions to Article 9 address and rectify the accrued ambiguities.
- **Simplified Filing** A simplified and unified statewide filing system of finance statements to perfect security interests replaces the original filing system, which allowed only certain local filing.
- **Consumer Impact** Revised Article 9 addresses consumer issues that were not considered in the original Article 9 such as a specific disclosure of creditor's deficiency rights and notice requirements upon repossession.
- **Commitment to Uniformity** Amendments to Article 9 have varied from state to state and thus have created differences that have impaired interstate transactions. In an effort to reestablish uniformity of the laws governing these transactions, the revisions address specific types of secured transactions like oil and gas and agriculture.

#### States that have adopted Revised Article 9

Arizona	Nebraska
California	Nevada
Maryland	Texas
Montana	

#### 2000 Introductions:

Alaska	Minnesota
Delaware	Missouri
District of Columbia	New Hampshire
Hawaii	New Mexico
Illinois	Oklahoma
Indiana	South Carolina
Kansas	Tennessee
Kentucky	Vermont
Maine	Virginia
Michigan	Washington

UNIFORM COMMERCIAL CODE, ARTICLE 9, SECURED TRANSACTIONS  
THE 1998 REVISIONS  
AN INTRODUCTION

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it takes place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs--a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests that the record displays, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following chapters of this backgrounder are meant to suggest and highlight Article 9 as revised in 1998. They are not a treatise on revised Article 9, but are meant to be a schematic guide to it. Each chapter addresses a specific topic qua issue. What follows in this introduction is an introduction to each of those issues.

1. The Scope Issue. The 1998 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9.

2. Perfection. Although filing a financing statement remains the dominant way to perfect a security interest in most kinds of property, there are expanded property types in which "control" is the operative method of perfection. Specific perfection rules are extended to property that comes under the scope of Article 9 for the first time in the 1998 revisions.

3. Choice of Law. In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1998 revisions to Article 9 change the rules substantially.

4. The Filing System. Improvements in the filing system in the 1998 revisions to Article 9 include a full commitment to centralized filing--one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records.

5. Consumer Transactions. Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1998 revisions to Article 9 than it was pre-1998. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1998 revisions to Article 9.

6. Default and Enforcement. Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor.

## SCOPE OF UCC ARTICLE 9

What kinds of property may become collateral under Uniform Commercial Code, Article 9? This is the "scope" question. In the 1998 revision to Uniform Commercial Code, Article 9, scope expands. That is, more kinds of property may be used as collateral and more types of transactions are covered. Also, some kinds of property that may have fallen into a more general category of collateral under pre-1998 Article 9, become defined and subject to specific rules.

### SCOPE OF UCC ARTICLE 9 BEFORE THE 1998 REVISIONS

These kinds of property were (and will continue to be in the 1998 revisions to Article 9) subject to Article 9:

1. Tangible personal property. Property that is not real estate, but is tangible in form. Subdivisions of "tangible personal property" include "consumer goods," "equipment," "farm products," and "inventory."

2. Fixtures. This category of tangible personal property is separated from other personal property. Fixtures are items of tangible personal property that become so attached to real property that they are treated as part of the real estate. Fixtures begin as personal property, become real estate, but become personal property again when removed from the real estate. Special rules apply to fixtures under Article 9.

3. Documents. These are "documents of title" which, in general, establish that the person in possession has the rights to the goods which are represented in the title document. Bills of lading, dock warrants, dock receipts and warehouse receipts are included.

4. Instruments. An instrument generally is a negotiable instrument that evidences a right to the payment of money. An instrument becomes negotiable when it meets the criteria for negotiability in Article 3 of the Uniform Commercial Code. A note or draft is an example.

5. General Intangibles. Any intangible (meaning not goods) property interest that is not specifically addressed in Article 9. This is a gap-filling concept. Investment property is intangible property, for

example, but because it is specifically addressed in Article 9, it is not a general intangible.

6. Chattel Paper. The writings that evidence a debt owed coupled with a security interest in goods or a lease of goods are chattel paper.

7. Accounts. An account is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. A "deposit account" like a bank account is not included.

### SPECIFIC EXCLUSIONS FROM UCC ARTICLE 9 BEFORE 1998

These kinds of property or transactions are specifically excluded in the pre-1998 Article 9:

1. Statutory or common law liens.
2. Tort claims.
3. Deposit accounts (except those represented by certificates of deposit).
4. Governmental transfers.
5. Insurance claims or interests.
6. A right represented by a judgment.
7. Creation or transfer of an interest in or a lien on real estate.
8. Federally preempted rights.
9. Set off.
10. Transfer of a claim for wages, salary or compensation.
11. Sale of accounts and chattel paper as part of a sale of the business from which they arose.
12. Assignment of accounts and chattel paper for collection only, and
13. Transfer for performance of a contract or transfer of a single account to satisfy a pre-existing indebtedness.
14. Transfer of interest in a letter of credit, except for proceeds of a written letter of credit.

### CHANGES IN THE SCOPE OF UCC ARTICLE 9 IN 1998

The 1998 revision to Article 9 keeps many of the exclusions in pre-1998 Article 9 but makes some significant changes as well. This list of changes tend to fall (though not wholly) into two categories, interests that are no longer excluded and interests that were included under more general categories such as "general intangibles" or "accounts" but that need to be addressed with specific secured transaction rules:

1. Nonpossessory, statutory agricultural liens. These liens were excluded under Article 9 prior to 1998. They are included for purposes of perfection and priority in revised Article 9. *Note other nonpossessory*

*statutory liens remain excluded.*

2. Sales of payment intangibles and promissory notes. Payment intangibles were a kind of general intangible, now distinguished by the characteristic of a primary monetary obligation. Promissory notes are a kind of instrument. These interests are sold, securitized and pooled. The interests sold are so like security interests that distinguishing these sales transactions from secured transactions is virtually impossible. The 1998 revision to Article 9 includes these kinds of property.

3. Security interests created by governmental debtors. The general pre-1998 exclusion has been narrowed. Only those governmental transfers that are subject to another statute on establishing and enforcing security interests are excluded. Federal preemption would, also, apply.

4. Health insurance receivables. The general exclusion of insurance proceeds in pre-1998 Article 9 is curbed for these specific kinds of receivables.

5. Consignments. Consignments of goods are included within the scope of Article 9 in the 1998 revisions. A consignment is a delivery of goods by the owner to another person, who sells for the consignor. A consignor is deemed to hold a purchase money security interest as against the consignee's secured creditors in the 1998 revisions to Article 9. Failure to comply with the requirements for a purchase money security interest potentially subjects the goods to the consignee's secured creditors. Before the 1998 revisions, a consignor had to perfect by filing a financing statement even though consignments fell within the scope of Article 2.

6. Commercial tort claims. The general exclusion of tort claims is narrowed so that security interests may be taken in commercial tort claims.

7. Liens on property. Certain liens on real property are included to the extent the lien establishes a right to payment.

8. Deposit accounts. Security interests may be taken in deposit accounts (with some restrictions). A security interest can be taken, therefore, in an ordinary bank account.

9. Supporting obligations. An example is a guarantee of payment or a letter of credit supporting an obligation to pay money.

## PERFECTION OF SECURITY INTERESTS

A security interest is perfected when the secured creditor has met the statutory requirements for notice to unsecured creditors, and most creditors who perfect their interests after the first secured creditor's perfection. There are four basic kinds of perfection: 1) perfection by filing; 2) perfection by possession; 3) perfection by control; and, 4) automatic perfection. All forms of perfection were available in Article 9 before 1998. However, Article 9 assigns a perfection method for each new kind of property within its scope in the 1998 revisions. "Control" as a method of perfection is expanded beyond the single kind of property, investment property, in which a security interest could be perfected by control in the pre-1998 Article 9. Thus "control" takes on new and larger significance after 1998 than it did before 1998.

Automatic perfection is specific to certain kinds of transactions. Purchase money security interests in consumer goods are a kind of security interest that perfects automatically. However, automatic perfection is usually temporary and extinguishes unless another appropriate form of perfection occurs during the temporary period of automatic perfection. There are more kinds of automatic perfection in the 1998 revisions than was the case before 1998.

Unless otherwise noted, conflicting security interests take priority in order of filing or other perfection in time. First in time usually wins, but note that purchase money security interests often provide a creditor priority notwithstanding the time perfection took place.

Each method of perfecting a security interest is discussed as follows:

1. Filing a financing statement. Filing a financing statement in the appropriate place of record maintained by a state will perfect almost every kind of security interest (There are some exceptions.). The 1998 revisions make it clearer that filing will perfect, even if there is another method of perfection available. The old maxim, "When in doubt, file," is even more appropriate after the 1998 revisions. This is the time-honored method of perfection.

2. Possession. A secured creditor may perfect a security interest in a broad range of collateral by taking possession of that collateral. Possession is the only way to perfect a security interest in money, except for proceeds from a sale of property subject to a security interest. The 1998 revisions to Article 9 clarify issues of possession as a method of perfection, but do not change the rules materially. For example, there is a method for a third-party bailee to acknowledge the creditor's interest. Such a method is not expressly provided pre-1998.

3. Control. Control as a method of perfection first applied to investment property in amendments to Article 9 that followed the 1994 revision of Uniform Commercial Code, Article 8. A creditor has control, and a perfected security interest, when the debtor's interest can be transferred by the secured creditor without the debtor's consent. For certain kinds of property, like certificated securities, possession is tantamount to control. The 1998 revisions of Article 9 allow a creditor to perfect a security interest in deposit accounts and letter-of-credit rights by control, as well as in investment property. Control is effectively the only way to perfect a security interest in deposit accounts and letter-of-credit rights. It is possible to perfect an interest in investment property by filing, but perfection by control always has priority over perfection by filing if there are conflicting security interests, no matter which kind of perfection occurs first in time.

4. Automatic perfection. In some kinds of secured transactions, attachment is perfection. The "purchase money security interest" (PMSI) in consumer goods is such a case of automatic perfection. It arises when credit is extended to purchase goods. Other types of security interests are automatically perfected but only temporarily. An example is a security interest in a certificated security perfected for 20 days even though there is no filing or possession when it is delivered for sale or the like. Generally, a purchase money security interest has priority over security interests perfected before it in time. There are new specific PMSI's in the 1998 revisions, such as a PMSI in computer software and livestock.

Examples of other kinds of security interests that perfect upon attachment are a sale of a payment intangible, a sale of a promissory note, a security interest in a healthcare insurance receivable (all new in 1998), and a broker's security interest in investment property created by the broker (from the 1994 Article 8 revisions). Most of these security interests will, also, have priority over other kinds of security interests that perfect earlier in time.

#### CHOICE OF LAW RULES

A transaction in which a creditor takes a "security interest" in the collateral of a debtor may involve more than one state. The creditor may be in one state, the debtor in another, and the collateral in another. Further, the collateral may move at some point in the transaction from one state to another. Both the creditor and the debtor may be able to claim more than one place as residence or domicile. Therefore, Article 9 has always had

rules that determine which state's law will apply to the perfection, the effect of perfection and the priority of creditors in collateral.

When perfection requires filing a "financing statement" it is important to identify with certainty the state in which to file the financing statement. It is also important that creditors know with certainty that same state is the state in which they must search the record for financing statements indicating the existence of prior security interests. The state which the "choice of law" rules identify as the state whose law governs perfection, effect of perfection and the priority of creditors in the collateral, is the state in which the financing statement must be filed.

The 1998 revisions to Article 9 both simplify and substantially change the "choice of law" rules, meaning that in some cases different states will be the states in which perfection, the effect of perfection and the priority of creditors will be established than is the case under pre-1998 Article 9. The ultimate result is greater certainty for those who file financing statements and those who search for filed financing statements about which state is the right state.

### *Major Changes*

There are two major changes in the "choice of law" rules:

1. Pre-1998, the basic rule chooses the law of the state in which the collateral is found to govern perfection and the effect of perfection of a security interest. If perfection occurs when a financing statement is filed, then the filing must take place in the state where the collateral is found. In the 1998 revisions, the basic rule chooses the law of the state in which the debtor is located as the law governing perfection, effect of perfection and the priority of a security interest in collateral. If a filing of a financing statement is required, then the statement must be filed where the debtor is, without regard for the location of the collateral. The location of the debtor is less likely to change than the location of the collateral and reliance on the location of the debtor provides creditors with more certainty about where to file and where to search. (Exceptions to both these rules to be discussed later on.)
2. If the debtor is a registered organization (corporation, limited partnership, limited liability partnership, limited liability company, etc.), pre-1998 treated the state with the chief executive office as the debtor's state. In the 1998 revisions, the debtor's state is the state in which it is a registered organization. Again, the objective of certainty about the place to file and the place to search is better served by the new rule than by the old rule, but the change will probably result in very little change in the actual place of filing in the vast number of cases.

### *Exceptions and Continuity*

There are prominent exceptions to the new general rule in the 1998 revisions to Article 9. In most instances these exceptions mean no practical change in the choice of law rules from pre-1998 Article 9:

1. All possessory (meaning that there is no filing of a financing statement) security interests are perfected under the law of the state in which the collateral is located (where the creditor has possession). The practical effect is to leave the law unchanged for possessory security interests in any kind of collateral.
2. For other kinds of collateral, there are also no effective changes in the "choice of law" rules. These other kinds of collateral include property subject to certificates of title, and minerals, letter of credit rights and investment property.

3. For deposit accounts, which were not in the scope of pre-1998 Article 9, the location of the bank determines the place for perfection, effect of perfection and non-perfection, and the priority of security interests.
4. For agricultural liens, which were not within the scope of pre-1998 Article 9, the location of the farm products determines the place for perfection, effect of perfection and non-perfection, and the priority of security interests.
5. There are security interests that perfect in the location of the debtor under pre-1998 Article 9. Since the location of the debtor is the fundamental rule in the 1998 revisions, perfection rules effectively do not change for these security interests under the 1998 revisions to Article 9. Included are security interests in accounts, general intangibles and mobile goods (no distinction between mobile and other goods in the 1998 revisions), automatic perfection of a broker in investment property, and automatic perfection of the security interest of a commodity broker in a commodity contract.

#### *Important Differences for Some Collateral*

Under the 1998 revisions, the law governing perfection may be different from the law governing effect of perfection and priority of security interests for some kinds of property. These kinds of property include negotiable documents, goods, instruments, money and tangible chattel paper. The effect of perfection and priority of nonpossessory security interests in these kinds of collateral will be determined by the location of the collateral. This means that the place to file or the place where automatic perfection takes place, is the location of the debtor, but the impact of filing may be determined under the law of the state where the collateral is.

### THE FILING SYSTEM

The primary and principal method for perfecting a security interest under Uniform Commercial Code, Article 9 is to file a financing statement with the filing authority or authorities in the appropriate state. Before 1998, most states had centralized the filing of financing statements covering most collateral in one state office. A few states continued to have both general central and local filing for all collateral. Many of the states that have centralized filing for most collateral, still continue to have local filing for some kinds of collateral. The result is a very mixed array of filing and search requirements. For filing must facilitate the search of records by subsequent creditors who must be able to find prior security interests. The fundamental objective of uniformity has been substantially impaired by the lack of uniformity just in the filing systems.

The new filing system is designed to forge a uniform system that is simpler and more reasonable to use:

1. Medium neutral. The new system is designed to be medium neutral. This simply means that the filing systems are no longer to be required to file paper only. The systems can convert to any and all forms of electronic communications for filing purposes.
2. Centralized filing. Every state will have a central filing authority. One place to file and one place to search. The only exception is fixture filings, which must continue to be made (and searched) in the real estate records.
3. Simplified financing statement. The statement must name debtor, creditor and generally describe some collateral. No signature is required. Identity of filer is immaterial.
4. Filing office operations. No discretion resides in the filing office as to sufficiency of a filing. A file cannot be cleared until one year after a termination occurs, extending the availability of the record for

one year longer than pre-1998 Article 9.

5. Correction statement. A debtor can file a correction to an improper or falsely filed financing statement.

6. Extended effective dates. Most financing statements lapse after five years from the date of filing. Two kinds of financing statements, those for public-finance transactions and for manufactured-home transactions are initially effective for 30 years.

7. National forms and fees. There is an effort to establish the same forms for filing in every state and to nationalize filing fees. Uniformity, therefore, is intended to go to the administration of filing as well as to the basic law.

## CONSUMER TRANSACTIONS

In the 1998 revisions to Uniform Commercial Code, Article 9, there are special provisions for secured transactions in which the debtor is a consumer. A "consumer transaction" is defined to be one in which an individual incurs an obligation primarily for personal, family, or household purposes, a security interest secures the obligation, and the collateral is held or acquired primarily for personal, family, or household purposes. Most consumer secured transactions are consumer-goods transactions, meaning that an individual purchases an item, i.e. a refrigerator, a couch, and finances the purchase. The item, i.e., the refrigerator, the couch, are the collateral. If the consumer debtor defaults on the debt, the item is repossessed. The 1998 revisions make a distinction between a consumer debtor and a consumer obligor. In Article 9, a "debtor" is defined in terms of an interest in the collateral. An "obligor" is a person obligated to pay the debt. Usually they are the same person, but there are obligors who are not debtors, i.e., a person who guarantees the payment of the debt for the debtor. Most of the special consumer transaction rules pertain to enforcement of a security interest after the debtor defaults on the basic obligation. Some of these rules are as follows:

1. Right to Redeem. A consumer-goods transaction debtor may not waive the right to redeem collateral taken to satisfy the debt, a right which all debtors have. Redemption is the right under Article 9 that collateral be returned to the debtor if the debt is satisfied after a default. Commercial and business debtors are able to waive that right as part of credit acquisition. Consumer debtors will not be able to waive their right.

2. Process Presumption. In an action against a secured creditor for errors in enforcement and collection process, the presumption is that the collateral is worth the debt. In order to establish a deficiency, a creditor must rebut the presumption. These rules do not apply to consumer transactions. The courts will determine the rule to apply in consumer transactions and could choose a different rule.

3. No Dual Status Rule. The 1998 revisions to UCC Article 9 provide that the same collateral may secure a purchase-money security interest and a non-purchase-money security interest. This "dual status" rule is adopted in the 1998 revisions to Article 9, rejecting the opposing "transformation" rule applied in some pre-1998 court cases. Because the "dual status" rule may limit the benefit of purchase money security interests, consumer-goods transactions are excepted from its application. In a consumer-goods transaction, the courts must determine the appropriate rule to apply.

4. Pre-Payment Rights. Amendments to Article 2 of the Uniform Commercial Code that accompany the 1998 revisions to Article 9 provide greater protection for a consumer buyer of goods who pays in whole or in part before delivery of the goods. The buyer has an enforceable interest under Article 2 that allows the buyer to obtain the goods.

5. FTC Rule 433. A consumer's rights under Federal Trade Commission Rule 433 on preservation of claims and defenses are specifically recognized in the 1998 revisions to Article 9, and will continue even if the required notification in the appropriate record is missing.

6. Deficiency Statement. A consumer-goods debtor or consumer obligor is entitled to a written statement which provides the amount of a deficiency (what is owed after collateral is sold to satisfy the debt) and the calculation which results in that amount.

7. No Partial Satisfaction. A secured party may not accept collateral as partial satisfaction of a consumer obligation.

8. Sufficient Description. A description of consumer goods, a security entitlement, a security account, or a commodity account that is by category only is not a sufficient description when there is a consumer transaction. A security entitlement, a security account and a commodity account are types of investment property under Article 8 of the Uniform Commercial Code.

### GOOD FAITH

The 1998 revisions to Article 9 adopt the more "objective" good faith standard: "honesty in fact and observance of reasonable commercial standards of fair dealing."

### DEFAULT AND ENFORCEMENT

When a debtor defaults on an obligation secured under Uniform Commercial Code, Article 9, a secured creditor has a right to take the collateral, sell that collateral, and apply the proceeds to pay off the debt. If the proceeds are insufficient to satisfy the debt, there may be a deficiency that the debtor will be obligated to pay. The creditor will be entitled to pursue the deficiency with the creditor's remedies available under other law. If there is a surplus after sale, that surplus will be the debtor's, unless other creditors act to obtain satisfaction of their debts, as well. Strict foreclosure is an alternative to sale. The creditor keeps the collateral in a strict foreclosure. The procedures under Article 9 are generally non-judicial procedures. (Although a creditor may seek enforcement in court.) Usually the secured creditor will repossess the collateral and pursue the available remedies without a court proceeding. Article 9 has its own procedural requirements for creditors. Not following them may mean that a creditor will not obtain a full remedy under Article 9.

The 1998 revisions do not fundamentally change the rules for enforcement of a security interest upon a debtor's default. The revisions provide for problems perceived in enforcement prior to 1998. Some of the important changes are as follows:

1. Secondary Obligors. A secured party owes duties to "secondary" obligors on the secured debt. A secondary obligor is liable for a debt only if the primary obligor does not satisfy the debt. A guarantor is an example. There are notifications that must be given to known secondary obligors by secured parties upon default. Contrary to the law of suretyship, the 1998 revisions generally prohibit waiver of rights by a secondary obligor. A secondary obligor can waive notification of disposition of the collateral, and (in a non-consumer transaction) the right to redeem, but only after the default has actually taken place.

2. Deposit Accounts. The enforcement rights of a depository bank holding a security interest in a deposit account are expressly provided for. Security interests in deposit accounts under Article 9 were not possible before the 1998 revision.

3. Warranties. A secured party is subject to warranties of title, quiet possession and the like, applicable under other law (usually Uniform Commercial Code, Article 2), including rules for their exclusion or

modification when disposing of collateral.

4. Notification of Junior Creditors. A secured party taking collateral and disposing of it upon default, has a broader obligation to notify other secured parties and lienholders who have filed financing statements against the debtor covering the same collateral than is the case under pre-1998 Article 9. There are specific notification requirements and a requirement for notification within a reasonable time (no less than 10 days after the earliest time of disposition of the collateral).

5. Transfer to a Secondary Obligor from Secured Party. A secondary obligor obtains the rights and assumes the duties of a secured party if it takes an assignment of the secured obligation, agrees to assume the secured party's obligations, or is subrogated to the rights of the secured party. This is not a disposition of the collateral by the secured party, but relieves the secured party of further duties and obligations.

6. Transfer of Title to Secured Party. The 1998 revisions make it clear that a transfer of record or legal title to a secured party in order to facilitate a disposition, is not of itself a disposition of the collateral.

7. Strict Foreclosure. A secured party may accept collateral in partial (except in consumer-goods transactions) or full satisfaction of a debt. Junior claimants rights are accounted for. Acceptance of collateral in satisfaction of a debt is not of itself an unreasonable delay of disposition. Strict foreclosure is permissible if it is commercially reasonable, and unreasonable delay can occur only if the foreclosure itself is not commercially reasonable.

8. Damages for Secured Party's Noncompliance. Secured parties are subject to a "rebuttable presumption" that the collateral value equals the debt if they do not comply with the enforcement procedures and requirements in Article 9 for non-consumer transactions. If there is breach on the part of the secured party, the obligor is credited with the difference between the actual disposition price and the price that would have been paid if the disposition had been conducted in a commercially reasonable manner. The "absolute bar" rule is not mentioned but should be unnecessary (except that it may be selected for consumer transactions).

9. Deficiency Calculation. If there is a procedurally regular disposition that nonetheless fetches a low price, and the disposition is to an insider transferee, the deficiency is calculated on the basis of what the price should have been in a commercially reasonable disposition.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 6, 2000

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

The Honorable Gene Therriault  
The Honorable Eldon Mulder  
Co-Chairs  
House Finance Committee  
State Capitol  
Juneau, AK 99801 - 1182

Re: HB 239(L&C) (relating to UCC, Article 9 -  
secured transactions)

Dear Representatives Therriault and Mulder:

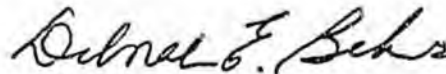
HB 239(L&C) has been referred to the House Finance Committee.

Alaska Uniform Law Commissioners request an early hearing on HB 239(L&C), relating to Uniform Commercial Code, Article 9 - secured transactions. The bill updates our statutes to conform to amendments recommended by the National Conference of Commissioners on Uniform State Laws. Uniform laws are especially important to keep Alaska as an attractive market for interstate commerce.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Deborah E. Behr  
Assistant Attorney General

DEB:jf

cc: Representative Lisa Murkowski  
House Judiciary Committee  
All Uniform Law Commissioners  
Chrystal Smith, Legislative Contact, Dept. of Law  
Pat Pourchot, Legislative Director, Office of the Governor

## STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
SUPPORT SERVICES DIVISION  
RECORDER'S OFFICE

TONY KNOWLES, GOVERNOR

550 WEST 7<sup>TH</sup> AVENUE, SUITE 1210  
ANCHORAGE, ALASKA 99501-3564  
PHONE: (907) 269-8882  
FAX: (907) 269-8912

January 25, 2000

The Honorable Lisa Murkowski  
House of Representatives  
Alaska State Legislature  
Alaska State Capitol  
Juneau, AK 99801-1182

Re: HB 239 - Uniform Commercial Code Revision

Dear Representative Murkowski:

HB239 contains a number of significant revisions of the Uniform Commercial Code in Alaska, including the modernization of the filing system operated by the Recorder's/UCC component in the Department of Natural Resources. As State Recorder, my duties include administration of the state's recording system as well as the Uniform Commercial Code Central File System in Alaska. I strongly support passage of this bill as it would serve to streamline the state's UCC filing system in a number of ways that are important to our customers.

While the bill contains other substantive changes that are important to secured lenders (e.g. making perfection easier, strengthening the purchase money security interest, facilitating foreclosure, etc.), our concern here in the Recorder's/UCC section is primarily with the filing provisions found in proposed Article 5 of AS 45.09. My office, with assistance from the Attorney General's office, had earlier submitted some minor revisions necessary to more closely align the filing provisions of the bill with the national version and to accommodate the implementation of HB239 under our present processing structure and indexing system. It is my understanding that these recommendations are being incorporated into the bill.

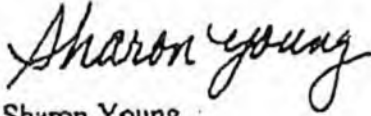
Since the objective of the national UCC revision process is to achieve uniformity in the handling of secured transactions among the states, it is critical that each state's legislation remain as close as possible to the recommended national version. While implementation of this bill would result in an increased workload in our UCC Central office, we anticipate handling this increase through lateral transfers from larger recording offices which would concurrently experience lower filing volumes.

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

Rep. Murkowski  
January 25, 2000  
Page Two

Passage of this bill would afford many benefits to our UCC customers. Among other benefits, this bill would eliminate the confusion regarding place of filing by doing away with all local district filings other than fixtures, it would eliminate signature requirements on all filings, it would limit the number of reasons that could be used to reject filings, and it would pave the way for implementation of electronic filings in the future. This is a long overdue step toward bringing real uniformity to the Uniform Commercial Code!

Sincerely,



Sharon Young  
State Recorder

Cc: Nico Bus  
Admin Services Manager

Linda Kesterson  
Assistant Attorney General



January 24, 2000

Representative Lisa Murkowski  
State Capitol  
Juneau, AK 99801-1182.

RE: House Bill 239  
Article 9

Dear Representative Murkowski:

Thank you for the opportunity for our association to comment on HB239.

After careful review, we find this bill to be a benefit to our industry as it simplifies the filing process.

In centralizing the file system, our risk is greatly reduced in searching the system for existing liens on our clients' personal property. We currently search the recording district where the property is located as well as the Central File System. As you can see, there is a larger margin for error if a filing district is missed.

We feel that this bill enhances the uniformity necessary for the Uniform Commercial Code and we support its passage.

Respectfully,

*Lucinda*

LUCINDA M. ECKERT  
Legislative Affairs Chairman  
Alaska State Escrow Association  
301 W. Northern Lights Blvd.  
Anchorage, AK 99503

# **ALASKA LAND TITLE ASSOCIATION**

*P. O. Box 241181, Anchorage Alaska 99524-1811*

January 24, 2000

Rep. Lisa Murkoswki  
State Capitol  
Juneau AK 99801-1182

RE: HB239 - Revision of Uniform Commercial Code

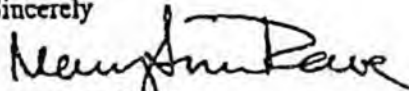
The Alaska Land Title Association represents more than 28 offices and over 400 employees statewide dealing in the title insurance industry.

We have reviewed SB239 and feel that this bill could help streamline the current UCC system in Alaska.

Our association is in full support of HB239 and urge the passage of said bill.

We appreciate your efforts on matters affecting our industry.

Sincerely



Mary Ann Rowe  
Legislative Co-Chair



Jeff Blake  
Legislative Co-Chair

BRIAN W. DURRELL P.C.  
L A W O F F I C E

BRIAN W. DURRELL

Direct: 907 258.3225  
bdurrell@durrell.com

1400 West Benson Blvd  
Suite 370  
Anchorage, Alaska 99503

Phone: 907 258.3224  
Fax: 907 258.3229

February 3, 2000

Representative Lisa Murkowski  
Alaska State Legislature  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Re: HB 239

Dear Representative Murkowski:

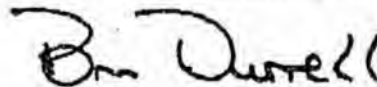
I send this letter to offer my support and endorsement of HB 239, which of course deals with the revisions to AS 45.09 (UCC Article 9). I have had substantial experience working with commercial law matters in Alaska. I spent the first fourteen years of my law career anchoring the commercial law practice at the Anchorage office of Bogle & Gates. Three years ago, I opened my own law office to continue my work in representing Alaska entrepreneurs, businesses and financial institutions in negotiating and documenting a wide variety of commercial transactions. I deal with issues controlled by AS 45.09 on a daily basis.

I believe that it is imperative that Alaska modernize its commercial code provisions to keep them up to date in light of changes in today's business world. I also believe that for Alaska to continue to develop of local, national and international commerce, we must have a set of commercial laws that follow as closely as possible the Uniform Commercial Code, deviating only when necessary to address matters peculiar to Alaska.

For these reasons, I urge the Alaska Legislature to act upon HB 239 so that it may be passed as swiftly as possible this session.

Very truly yours,

BRIAN W. DURRELL, P.C.



Brian W. Durrell

BWD:jk

# AlaskaUSA

Federal Credit Union

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Honorable Lisa Murkowski  
Alaska State House of Representatives  
Juneau, AK 99801

February 9, 2000

Dear Representative Murkowski:

Thank you for the opportunity to submit comment on HB 239 regarding proposed amendments to Article 9 of the Uniform Commercial Code (UCC). As you know, the revised Article 9 has been approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) with a target date for adoption in all 50 states by July 2001.

This legislation will not fundamentally alter the law of secured transactions; however, it will introduce numerous significant changes designed to clarify and modernize the current version. While we have not had an opportunity to review the sectional analysis directly associated with HB 239, we have reviewed the comparative information provided by the NCCUSL. We support the early adoption of this legislation and believe it is in the best interest of Alaska's lenders to maintain conformity with other states with respect to the rules associated with secured transactions.

Of particular interest is the introduction in this proposal to the concept of "electronic chattel paper," which refers to chattel paper in the form of a record or records consisting of information stored in an electronic medium. We believe this provision will significantly benefit the efficient and timely execution of secured transaction agreements and filings.

At your request, we have read the amendments being offered by the State Recorder's Office and find no areas of disagreement with their proposals. For the most part, they appear to be "housekeeping" in nature for the purposes of bringing the provisions of the UCC into line with State operational considerations.

This proposal can be somewhat intimidating due to its volume and complexity. It has been twelve years in the making. The benefits associated with Alaska's adoption of these provisions will provide certainty for lenders and with early adoption, the opportunity to transition to the new rules in a comprehensive and sensible manner.

Thank you again for the opportunity to comment. Should you be interested in a more specific discussion of these issues, I invite you to contact Mr. Tom Greene, Alaska USA's Senior Vice President, Consumer Lending, who will be pleased to discuss the implications of this proposal with you in greater detail. He may be reached in Anchorage at (907) 786-2733.

Sincerely,



Nancy Bear Usera  
Senior Vice President,  
Corporate Development

P.O. Box 100600

Alaska Bankers Association  
Anchorage, Alaska 99510-0600

(907) 265-2920

February 14, 2000

Representative Lisa Murkowski  
Alaska State Legislature  
Room #406 State Capital Building  
Juneau, AK 99801  
Via Fax (907) 465-2293

Re: HB 239- Revisions of Article 9, Uniform Commercial Code (UCC)

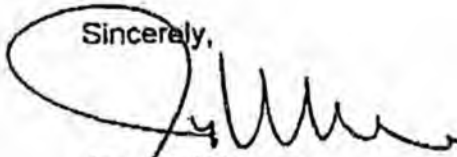
Dear Representative Murkowski:

The Alaska Bankers Association has voted to strongly support passage of HB 239 which will update and improve Article 9 of the UCC as it relates to secured transactions. The original UCC Article 9 has worked well to support commerce in Alaska for many years. We are convinced HB 239 refinements will improve the day-to-day work relationships with Article 9 and it clarify and resolves some controversies that have arisen over the last thirty years.

As I testified before the House of Labor and Commerce Committee last week the Alaska Bankers Association also believes HB 239 needs to become law this session of the legislature because we will only have one year from July 2000 to do the comprehensive training that will be necessary to inform and train both bankers and customers before the New Article 9 is introduced in most states of the Nation on July 1, 2001.

Your strong support is appreciated.

Sincerely,


Jerry K. Weaver  
Secretary/Treasurer

Post-it® Fax Note	7671	Date	2-15-00	# of pages	1
To	Mr. Alan Erickson	From	Jerry Weaver		
Co./Dept.	Office of Representative	Co.	NBA		
Phone #		Phone #	265-2920		
Fax #	907-465-2293	Fax #	265-2141		