

HB

79

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 79

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Uniform Commercial Code: Letters of Credit BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor House Labor and Commerce by request
 Requester _____ Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Franklin T. Elder, Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/26/99 11:49 AM
 Approved by Commissioner Deborah B. Sedwick Date 2/26/99
 Agency Commerce and Economic Development

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**SPONSOR STATEMENT FOR
BILL REVISING UNIFORM COMMERCIAL CODE, ARTICLE 5
(LETTERS OF CREDIT)**

House Labor and Commerce Committee

The basic purpose of the revision of Article 5 of the Uniform Commercial Code is to update the law governing the \$200 billion U.S. letter-of-credit industry. All 50 states and Puerto Rico, Guam, and the District of Columbia have adopted the UCC, including Article 5. It is now necessary for Article 5 to be revised, to recognize changes in technology and in commercial practices, so as to avoid litigation over the increasing number of issues that are no longer adequately dealt with in the decades-old current law. One of the main features of this revision is the simplification of Article 5. Another is its recognition of the Uniform Customs and Practices for Documentary Credits, a body of material that is used in conjunction with most international letters of credit.

Letters of credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. Prior ambiguities in the law dealing with the concept of fraud in the transaction are clarified. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. It continues to provide rules that can be waived or modified by agreement between the parties.

This revision of Article 5, promulgated by the National Conference of Commissioners on Uniform State Laws in 1995, has already been enacted in 39 jurisdictions and, as of January 15 of this year, is pending in the legislature of an additional jurisdiction. It is necessary for Alaska to enact this bill in order to keep up with developments in the commercial law area, and avoid becoming a commercial backwater.

Thank you.

SPONSOR STATEMENT FOR BILL REVISING COMMERCIAL CODE ARTICLE 5
of the Uniform Commercial Code

Sponsor Statement

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM

February 17, 1999

SUBJECT: Sectional summary of HB 79 relating to letters of credit (Work Order No. 21-LS0375\ND)

TO: Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
Attn: Janet Seltz

FROM: *JB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The introductory remarks and the other descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

Basic description; definitions used in summary. In general, a letter of credit is an agreement by a bank or other person made at the request of a customer that the bank or other person will honor demands for payment (or a demand for delivery of an item of value) when the conditions in the letter of credit are met. As an example, a letter of credit may be used when a bank customer wants to buy some merchandise, but the manufacturer won't ship without assurance of payment. The bank issues a letter of credit and is the "issuer." The customer requesting the letter of credit is the "applicant." The manufacturer (or other person who will be paid) is the "beneficiary."

To obtain the payment or delivery, the beneficiary must present the required documents. This is referred to as a "presentation" of the documents or "presenting" the documents. When the bank pays or delivers the item to the manufacturer, the bank "honors" the letter of credit. If the bank doesn't pay or deliver upon presentation of the documents, the bank "dishonors" the letter of credit.

If the bank authorizes another person to make the payment or deliver under a letter of credit, that person is a "nominated person." If the nominated person also undertakes to honor a letter of credit, that person is a "confirmer."

An "adviser" is a person who notifies the beneficiary (or another "adviser" who will notify the beneficiary) that a letter of credit has been issued, confirmed, or amended.

Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
February 18, 1999
Page 2

This bill revises the rules that set up how letters of credit work and the relationships between all of the various parties involved.

Section 1. AS 09.30.070(b). Makes an amendment conforming this subsection to proposed AS 45.05.111(d). This bill section deals with interest on a court judgment and establishes when interest starts accruing before the judgment is handed down. Under AS 45.05.111(d), interest on money owed for a liability found under AS 45.05.111(a) - (c) starts when the letter of credit is wrongfully dishonored or on another appropriate date.

Section 2. AS 45.01.105(b). Makes an amendment conforming this subsection to the proposed AS 45.05 changes. AS 45.01.105 identifies which state or nation's law governs in certain cases involving more than one state or nation. The amendment states that AS 45.05.116 establishes what law governs for letters of credit.

Section 3. AS 45.02.512(a). Makes an amendment conforming this subsection to proposed AS 45.05.109(b). Excuses a buyer from making payment, even if the contract requires payment before inspection and the required documents are tendered, if the circumstances would justify an injunction under AS 45.05.109(b).

Section 4. AS 45.05.102. Defines the terms used in the revised chapter on letters of credit (AS 45.05). See the introductory comments to this memo for more simple definitions of the most important terms.

Section 5. AS 45.05.103. Defines the scope of AS 45.05.

AS 45.05.103(a). States that the chapter applies to letters of credit and transactions involving letters of credit.

AS 45.05.103(b). States that this chapter, by itself, does not govern how to treat another situation or person not covered by this chapter.

AS 45.05.103(c). States that you can change the provisions of this chapter by an agreement, except as provided by certain listed statutes. States that a general provision to excuse liability or limit remedies won't work to change the obligations imposed by this chapter.

AS 45.05.103(d). States that the rights and obligations of an issuer to a beneficiary, or to a nominated person, are independent of the contracts and arrangements underlying the letter of credit. In other words, the existence, performance, and nonperformance of the underlying contract or arrangement don't affect the rights and obligations under the letter of credit. Includes under this subsection contracts between the issuer and the applicant and between the applicant and the beneficiary.

Section 6. AS 45.05.104. Sets out just what a letter of credit and certain related documents must consist of. They must be in a form that can provide a record and must be authenticated

by a signature or authenticated as required under the parties' agreement or by the standard practice referred to in AS 45.05.108(e).

Section 7. AS 45.05.105. States that you don't need consideration (something of value to be received by a party) in order to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. Contracts usually require that each party receive something as consideration (not necessarily money or other property, but something of value to the party).

Section 8. AS 45.05.106(a). States that a letter of credit becomes enforceable against the issuer when the issuer sends it to the beneficiary or adviser. States that you can't revoke a letter of credit unless the letter says so.

AS 45.05.106(b). States that an amendment or cancellation of a letter of credit does not affect the rights and obligations of certain listed persons (e.g., beneficiary and applicant) unless they consent to the amendment or cancellation, or unless the letter of credit says it is revocable or that the issuer can amend or cancel it without the consent.

AS 45.05.106(c). States when a letter of credit expires if it does not state the date or does not have a provision that determines when it expires. The letter of credit expires one year after its stated date of issuance or, if not stated, one year after the date it is issued.

AS 45.05.106(d). States that a perpetual letter of credit expires five years after its stated date of issuance or, if not stated, five years after the date it is issued.

Section 9. AS 45.05.107(a). States that a confirmer is directly obligated on the letter of credit and has the rights and obligations of the issuer (as far as the letter of confirmation says it does). Also states that the confirmer has rights against, and obligations to, the issuer as if the issuer were the applicant and the confirmer had issued the letter of credit at the request of the issuer.

AS 45.05.107(b). States that a nominated person does not have to honor or give value when the necessary documents are presented to collect under a letter of credit, unless the person is also a confirmer.

AS 45.05.107(c). States that a person requested to advise may decline to act as an adviser. States that an adviser is not required to honor or give value when the necessary documents are presented to collect under a letter of credit, unless the adviser is also a confirmer. States that an adviser's job is to advise accurately about the terms of the letter of credit and related documents, and, with regard to the beneficiary, to check if the request to advise is authentic. States that a letter of credit, confirmation, or amendment is enforceable as issued even if the advice is not accurate.

AS 45.05.107(d). States that a person who notifies a transferee beneficiary (a person to whom the beneficiary has transferred the beneficiary's interest under the letter of credit)

about the terms of a letter of credit or related document has the rights and obligations of an adviser under (c) of this section. States that the terms of the notice to the transferee beneficiary and transferor beneficiary (the beneficiary who transferred the interest in the letter of credit) may be different, as allowed by the letter of credit or related document that is received by the person who notifies the transferee beneficiary.

Section 10. AS 45.05.108(a). Except as provided in the section on fraud and forgery, requires an issuer to honor a presentation that appears on its face to comply strictly with the letter of credit. The standard practice of financial institutions determines whether the presentation complies as required. Requires an issuer to dishonor a presentation that does not appear to comply, except as provided in AS 45.05.113 and otherwise agreed with the applicant.

AS 45.05.108(b). States that upon presentation an issuer has a reasonable time to perform certain acts. The reasonable time may not exceed seven business days after the day of receipt. These acts are to honor the presentation, to notify the presenter that there are problems, or, if the letter of credit provides for honor after seven business days after presentation, to accept a draft (check) or incur a deferred obligation.

AS 45.05.108(c). States that in two situations an issuer is prevented from asserting that a problem causes the issuer to dishonor the letter of credit. The first situation is when the issuer does not give timely notice of the problem. The second situation is if the issuer gives notice but the problem is not stated in the notice. This subsection is subject to the fraud, forgery, and expiration assertions under (d).

AS 45.05.108(d). States that an issuer can still assert that there has been fraud or forgery (under AS 45.05.109(a)) or that the letter of credit has expired before presentation in order to dishonor a presentation, even if the issuer failed to give the required notice or to mention the fraud, forgery, or expiration in the notice.

AS 45.05.108(e). Requires an issuer of a letter of credit to comply with the standard practice of financial institutions that regularly issue letters of credit when the issuer handles letters of credit. States that a court is the determiner of whether the issuer has complied with the standard practice. Directs a court to allow the parties to present evidence of what is the standard practice.

AS 45.05.108(f). States what an issuer is not responsible for. An issuer is not responsible for the performance or nonperformance of the contract, arrangement, or transaction underlying the letter of credit. An issuer is not responsible for another person's acts or omissions. An issuer is not responsible for knowing the usage of a particular trade, except for the standard practice of financial institutions issuing letters of credit.

AS 45.05.108(g). Directs an issuer to ignore certain nondocumentary conditions contained in a letter of credit.

AS 45.05.108(h). Requires an issuer who does not honor a presentation under a letter of credit to return the documents presented, or to hold them for the presenter and notify the presenter.

AS 45.05.108(i). Establishes certain rights and limitations for an issuer when the issuer honors a presentation under a letter of credit. The issuer is entitled to be reimbursed by the applicant; the reimbursement must be made in funds that are available immediately to the issuer not later than the date of payment. The issuer takes the documents presented without any claims by the beneficiary or presenter. The issuer may not claim a right of recourse under AS 45.03.414 - 45.03.415 on a draft (check). Except as provided in two other sections, the issuer may not get the money or another valuable back if there was a mistake, if the mistake involves obvious problems in the documents or tender that are apparent on the face of the presentation. The issuer is discharged unless a required signature of the beneficiary was forged.

Section 11. AS 45.05.109(a). Gives an issuer directions on what to do if presentation documents appear to meet the requirements of the letter of credit, but a document is either forged or materially fraudulent, and honoring the documents would result in a material fraud by the beneficiary on the issuer or applicant.

Directs the issuer to honor the presentation of the documents if honor is demanded by certain persons under certain circumstances. The first is a nominated person that has given value in good faith and without notice of the forgery or fraud. The second is a confirmer that has honored its confirmation in good faith. The third is a holder in due course of a draft (check) that was drawn up under the letter of credit and taken by the holder in due course after acceptance by the issuer or nominated person. The fourth is the person who has had the issuer's or nominated person's deferred (doesn't have to be paid immediately) obligation transferred (assigned) to the person, if before the obligation was incurred by the issuer or nominated person, the person gave value to get the assignment and did not have notice of the forgery or fraud.

Allows the issuer to honor or dishonor the request for payment if the issuer acts in good faith and if the situation does not fall under categories (1) - (4) above.

AS 45.05.109(b). Authorizes a court to enjoin an issuer from honoring a request for payment (or grant similar relief against the issuer or other persons) when an applicant claims forgery or fraud, but only if four listed conditions are met. The first is that the relief must not be prohibited under the law governing drafts that have been accepted by the issuer, or governing a deferred obligation incurred by the issuer. The second is that a beneficiary, issuer, or nominated person who may be adversely affected must be adequately protected against loss resulting from the court giving the relief. The third is that all of the conditions for obtaining the court relief in this state must be satisfied. The fourth is that applicant is likely to succeed on the claim of forgery or fraud and the person demanding that the presentation be honored does not qualify for protection under (a)(1).

Section 12. AS 45.05.110(a). Establishes certain things that the beneficiary warrants when the presentation is honored. The beneficiary warrants to the issuer, to another person to whom the presentation is made, and to the applicant that there is no fraud or forgery as those terms are described in AS 45.05.109(a). The beneficiary warrants to the applicant that the payment (or transfer of value) does not violate an agreement between the beneficiary and the applicant or another agreement connected to the letter of credit.

AS 45.05.110(b). States that the warranties in (a) are in addition to other warranties under AS 45.03 (UCC: negotiable instruments), AS 45.04 (UCC: bank deposits and collections), AS 45.07 (UCC: warehouse receipts, bills of lading, and other documents of title), and AS 45.08 (UCC: investment securities) that are related to the presentation or transfer of the documents.

Section 13. AS 45.05.111(a). Allows a beneficiary, successor beneficiary, or a nominated person to recover from the issuer of a letter of credit the amount in dispute if the issuer wrongfully dishonors or states that the issuer will not honor its obligation. If the issuer's obligation is not to pay money, this subsection allows the claimant to make the issuer perform what the issuer was supposed to perform, or, if the claimant elects, to recover an amount of money that equals the value of the performance. Allows the claimant to also recover damages that flow directly and immediately from the dishonor but not more remote damages. States that the claimant does not have to take action to avoid the damages that might result. However, reduces the awarded damages to the extent the claimant does avoid the damages. Requires the issuer to prove the amount of the damages that the claimant avoided. If the claim is based on the issuer repudiating the obligation before presentation of the documents, states that the claimant does not have to present the documents normally required to require the issuer to pay or deliver the value required.

AS 45.05.111(b). Allows the applicant to recover damages from the issuer if the issuer wrongfully dishonors a draft or demand presented under a letter of credit, or if the issuer wrongfully honors a draft or demand under the letter of credit. Allows the claimant to recover damages that flow directly and immediately from the wrongful act, but not the more remote "consequential" damages. Reduces the amount of awarded damages by any amount saved due to the wrongful act.

AS 45.05.111(c). Allows a person to recover from an adviser or nominated person, other than a confirmer, the person's damages resulting from the adviser's or nominated person's breach of an obligation under this chapter or from an issuer's breach of an obligation not covered by (a) or (b). Allows the person to recover only damages that flow directly and immediately from the breach, but not the more remote consequential damages, less any amount the person saves due to the breach. States that a confirmer has the liability of an issuer under (a), (b), and this subsection, to the extent of the confirmation.

AS 45.05.111(d). States that an issuer, a nominated person, or an adviser who is liable under (a) - (c) must pay interest on the amount owed from the date of the wrongful dishonor, or from another appropriate date.

AS 45.05.111(e). Directs the court to award attorney fees and costs to the party who wins a court action for a remedy under this chapter.

AS 45.05.111(f). Allows parties to establish ahead of time by agreement the amount of damages that would result from a breach of an obligation under this chapter. However, the amount or formula for calculating the amount must be reasonable.

Section 14. AS 45.05.112(a). Prohibits transferring the right of a beneficiary to payment or performance under a letter of credit, except when the transfer occurs by operation of law as provided under AS 45.05.113, or unless the letter of credit says the right is transferable.

AS 45.05.112(b). Allows in two circumstances an issuer to refuse to carry out or recognize a transfer, even if allowed under the letter of credit. The first circumstance is that the transfer would violate the law that applies to the situation. The second circumstance is that the transferor or the transferee has failed to comply with the letter of credit, or with another requirement that relates to the transfer, and that is within the standard practice of financial institutions regularly dealing with letters of credit or that is otherwise reasonable under the circumstances.

Section 15. AS 45.05.113(a). Allows a person who succeeds another person as the beneficiary under a letter of credit to perform certain listed acts without having to disclose that it is a successor of the beneficiary. The successor may consent to amendments. The successor may sign and present documents. The successor may receive payment or other items of value in the name of the beneficiary.

AS 45.05.113(b). Allows the successor of a beneficiary to perform certain listed acts in its own name as the disclosed successor to the beneficiary. The disclosed successor may consent to amendments. The disclosed successor may sign and present documents. The disclosed successor may receive payment or other items of value. Except as provided by (c), directs an issuer to recognize a person who is disclosed to be a successor beneficiary as a full beneficiary if the successor beneficiary complies with the standard practice for financial institutions regularly dealing in letters of credit, or, in the absence of the standard practice, with other reasonable procedures that will protect the issuer.

AS 45.05.113(c). States that an issuer does not need to determine whether a person alleging to be a successor beneficiary is actually such a beneficiary or whether the purported successor's signature is genuine or authorized.

AS 45.05.113(d) States that honoring a purported successor's presentation under (a) or (b) that appears to be in compliance has the consequences identified in AS 45.05.108(i) even if

the person is not really the successor of the beneficiary. States that documents signed in the name of the beneficiary or a disclosed successor by a person who is not really the beneficiary or the successor beneficiary are considered to be forged documents when applying AS 45.05.109.

AS 45.05.113(e). Allows an issuer (if the issuer's rights of reimbursement are not covered by (d) or by similar law), any confirmer, and any nominated person to decline a presentation as provided in (b).

AS 45.05.113(f). States that if a beneficiary changes its name after a letter of credit is issued, the beneficiary has the same rights and obligations as a successor beneficiary under this section.

Section 16. AS 45.05.114(a). Defines "proceeds of a letter of credit" for the section.

AS 45.05.114(b). Allows a beneficiary to assign (transfer to another person) its right to the proceeds of a letter of credit. Allows the beneficiary to do this before presentation, by assigning the right to receive proceeds when the conditions are satisfied in the letter of credit.

AS 45.05.114(c). Allows the issuer or nominated person to refuse to recognize an assignment of the proceeds of a letter of credit until the issuer or nominated person agrees to the assignment.

AS 45.05.114(d). States that an issuer or nominated person is not required to give or withhold its consent to an assignment (transfer to another person) of the proceeds of a letter of credit. Prohibits the issuer or nominated person from withholding the consent unreasonably if the assignee has and shows the letter of credit and if presentation of the letter of credit is required before honor.

AS 45.05.114(e). States that the rights of a transferee beneficiary (a subsequent beneficiary to whom a beneficiary's rights have been transferred) or of a nominated person do not depend on the beneficiary's assignment (transfer) of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

AS 45.05.114(f). States that the rights under this section between an assignee and an issuer, a transferee beneficiary, or a nominated person, and the issuer's or nominated person's payment of proceeds to an assignee or a third person, do not affect the rights between the assignee and a person other than the issuer, transferee beneficiary, or nominated person. States that the creation and perfecting (making effective) of a security interest (an interest taken to secure a payment) in (or granting) a beneficiary's rights to proceeds, and assignment of (transferring) those rights, are governed by AS 45.09 (UCC: secured transactions) or other law. States that the rights and obligations arising on the creation and perfection of a security interest or arising on another assignment (transfer) of a beneficiary's rights to

proceeds, are governed by AS 45.09 or other law, as against a person other than the issuer, transferee beneficiary, or nominated person.

Section 17. AS 45.05.115. Limits how long a person has to bring an action in court to enforce a right or obligation under this chapter. Limits the time to the later of (1) one year after the expiration date of the letter of credit, or (2) one year after the basis for the action occurs. States that a basis for the action arises when there is a breach (of an obligation) under this chapter, even if the injured party does not know about the breach.

Section 18. AS 45.05.116(a). States that the liability of an issuer, a nominated person, or an adviser is governed by the jurisdiction that the parties choose by agreement if the agreement is in the form of a record signed or otherwise shown to be authentic by the parties under AS 45.05.104 or by a provision in the letter of credit, confirmation, or other undertaking. States that the selected jurisdiction is not required to be related to the transaction involved.

AS 45.05.116(b). States which jurisdiction governs the liability of certain listed persons for their acts or failure to act, unless (a) applies. States that the jurisdiction is the jurisdiction where the person is located. Considers the person to be located at the address stated in the person's promise. States that if more than one address is indicated, the person is considered to be located at the address from which the promise of the person was issued. When dealing with jurisdiction, selection of whose law to apply, and recognition of letters of credit between bank branches, but not a court judgment, the branches of a bank are considered to be separate juridical entities, and a bank is considered to be located where the bank's branch that is related to the matter is considered to be located under this subsection.

AS 45.05.116(c). States that, except as provided otherwise in this subsection, the liability of certain listed persons is governed by rules of custom or practice that the parties expressly select for the letter of credit or confirmation, or undertaking. Gives as an example the Uniform Customs and Practice for Documentary Credits. States that if both this chapter and the rules of custom or practice apply to the liability, the rules govern, unless they conflict with a provision of this chapter that cannot be changed (see AS 45.05.103(c)).

AS 45.05.116(d). States that this chapter governs if a conflict occurs between this chapter and AS 45.03 (UCC: negotiable instruments), AS 45.04 (UCC: bank deposits and collections), AS 45.09 (UCC: secured transactions), and AS 45.14 (UCC: funds transfers).

AS 45.05.116(e). States that the location for settling disputes under this chapter may be chosen in the same manner as the governing law is chosen under (a), and that the selection has the same binding effect.

Section 19. AS 45.05.117(a). States that an issuer who honors a letter of credit is subrogated to the rights of (is substituted for and can claim the rights of) certain listed

Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
February 18, 1999
Page 10

persons. The first person is the beneficiary, and the substitution is the same as if the issuer were a back-up debtor on the underlying obligation owed to the beneficiary. The second person is the person who requested the issuer to issue a letter of credit and the subrogation is to the same extent as if the issuer were the back-up debtor on the obligation owed to the applicant.

AS 45.05.117(b). States that an applicant that reimburses an issuer is subrogated to the rights of (is substituted for and can claim the rights of) certain listed persons. The subrogation is to the same extent as if the applicant were the secondary debtor on the obligation owed to the issuer, and the applicant has the subrogation rights of the issuer to the rights of the beneficiary stated in (a).

AS 45.05.117(c). States that a nominated person who pays or gives value against a draft (check) or demand presented under a letter of credit is subrogated to the rights of (is substituted for and can claim the rights of) certain listed parties.

AS 45.05.117(d). States that the right of subrogation in (a) and (b) don't arise until the issuer honors the letter of credit or otherwise pays under the letter of credit. States that the rights of subrogation in (c) don't arise until the nominated person pays or otherwise gives value under the letter of credit. These provisions apply even if there is an agreement that states otherwise. Until the events occur, the persons do not obtain under this section any present or future rights that would form the basis for a claim, defense, or excuse.

Section 20. AS 45.09.103(a). This amendment adds "rights to proceeds of written letters of credit" to the items that are covered by this subsection. The subsection deals with determining which jurisdiction's law applies when perfecting (making effective) secured transactions (agreements where one party transfers an interest in property to secure a contract), and what happens when collateral that is subject to a perfected security interest in another jurisdiction is brought into and kept in this state.

Section 21. AS 45.09.104. States that AS 45.09 (UCC: secured transactions) does not apply to the transfer of an interest in a letter of credit, except for the rights to proceeds of a written letter of credit.

Section 22. AS 45.09.105(c). Adds two definitions to the definitions that apply in AS 45.09 (UCC: secured transactions): "letter of credit" and "proceeds of a letter of credit."

Section 23. AS 45.09.106. Adds "rights to proceeds of written letters of credit" to the definition of "general intangibles" that is used in AS 45.09 (UCC: secured transactions).

Section 24. AS 45.09.304(a). States that to perfect (make effective) a security interest (interest given to a person to secure performance of a contract) in the rights to proceeds of a written letter of credit, the party that is secured must take possession of the letter of credit.

Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
February 18, 1999
Page 11

Section 25. AS 45.09.305. Allows a person to obtain an interest that secures performance of an obligation in the "rights to proceeds of a written letter of credit" by taking possession of the letter of credit.

Section 26. Subsection (a) states that this Act applies to a letter of credit that is issued on or after the effective date of this Act. States that this Act does not apply to a transaction, event, obligation, or duty that is associated with a letter of credit issued before the effective date of this Act.

Subsection (b) states that a transaction associated with a letter of credit issued before the effective date of this Act, and the accompanying rights, obligations, and interests are governed by current law as if this Act had not occurred.

Section 27. Makes the Act effective January 1, 2000.

TLB:glc
99-066.glc

A Few Facts About UCC ARTICLE 5 - LETTERS OF CREDIT

PURPOSE: Letters of Credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits can govern many of the particulars of letters of credit. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the document plus incidental damages. Consequential damages are not permitted. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1995.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:	Alabama	Mississippi
	Arizona	Missouri
	Arkansas	Montana
	California	Nebraska
	Colorado	Nevada
	Connecticut	New Hampshire
	Delaware	New Jersey
	District of Columbia	New Mexico
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	Maryland	Vermont
	Massachusetts	Virginia
	Michigan	Washington
	Minnesota	West Virginia
		Wyoming

1999
INTRODUCTIONS: Texas

For any further information about UCC Article 5, Letters of Credit, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/99)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

UCC ARTICLE 5

UCC ARTICLE 5 - LETTERS OF CREDIT

- NCCUSL

- WHAT:** Modernizes and clarifies our country's principal law dealing with letters of credit.
- WHY:** Our present law was drafted almost 40 years ago. It is outmoded and no longer reflects commercial practice.
- New legal issues have developed which are resolved by the new law.
- Revised Article 5 also conforms our law with international law and practice, which facilitates international trade.
- Finally, the use of letters of credit has expanded enormously in the past decade or two. They are now used in many large domestic commercial transactions.
- WHEN:** Now.
- Revised Article 5 has been approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.
- American Bar Association approval is anticipated in due course.
- The final text of revised Article 5 is available now.
- HOW:** Introduction is anticipated this year or next year in about 20 states, including major money center states such as New York, California and Illinois.
- States which do not adopt revised Article 5 will find themselves behind the rest of the country and the rest of the world.
- WHO:** Drafted ^{by the NCCUSL} with the active participation of advisors from national and international businesses, banks, bar associations and government agencies.
- Professor James J. White, co-author of the White & Summers treatise on the Uniform Commercial Code, was the reporter.

WHY STATES SHOULD ADOPT UCC ARTICLE 5 – LETTERS OF CREDIT

—NCCUSL

The revision to Article 5 of the Uniform Commercial Code – Letters of Credit – updates the law governing the \$200 billion U.S. letter of credit industry. Banks, and occasionally other persons, issue letters of credit to better assure payment to a third party by a customer up to a stated amount, for a stated period of time. Half of all exports outside the U.S. are financed by letters of credit.

Since the 1950s when this article was originally promulgated, the practices and technologies employed with letters of credit have changed substantially, including the use of electronic and computer technology. Litigation has increased as the volume of credits and the uncertainties of the law have stimulated controversies. Thus revision to UCC5 is both appropriate and timely.

There are a number of reasons why every state should adopt revised UCC Article 5:

- **LETTERS OF CREDIT ARE IMPORTANT** – Letters of credit are very important in international trade. It has become a common method of guaranteeing and obtaining payment. The use of letters of credit has increased in recent years as foreign trade has expanded and increased. The law which regulates letters of credit – UCC Article 5 – is obviously an important component to expansion of foreign trade.
- **UCC5 RECOGNIZES THE UCP 500** – UCC5 recognizes the Uniform Customs and Practices for Documentary Credits (UCP 500), which is used in most international letters of credit. The UCP 500 was promulgated by the International Chamber of Commerce and provides operational rules and standards that have international acceptance.
- **STANDARDS OF PRACTICE ARE RECOGNIZED** – Revised UCC5 specifically includes the most commonly used standards of practice. The revision coordinates with current standards of practice by including: deferred payment obligations, reasonable time to examine documents, preclusion, and the return of documents.

• UCCS IS MODERNIZED – Original UCCS in many ways is out of touch with current practice and major gaps cause unnecessary litigation. The revised UCCS authorizes the use of electronic technology; expressly permits deferred payment letters of credit and two-party letters of credit; provides rules for unstated expiration dates and "perpetual" letters of credit; and conforms to existing practice for assignment of proceeds.

• UNIFORMITY – It is important that U.S. law regarding letters of credit be in accord with international rules and practices, but since letters of credit are a major instrument in domestic transactions as well, both international and domestic trade requires uniformity of law. These rules should be consistent within the United States.

• CONCLUSION – The revised UCC Article 5 is a significant improvement over current provisions, and will lessen litigation, clarify matters which had been disputed, and encourage sound practices, promoting international trade. For all of these reasons, UCCS should be adopted by all states as soon as possible.

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January 27, 1999

JAN 27 1999

The Honorable Norman Rokeberg, Chair
House Labor and Commerce Committee
Alaska State Legislature
Room 24, State Capitol
Juneau, Alaska 99801-1182

HAND DELIVERED

Re: Uniform Commercial Code, Revision of Article 5 -- Letters of Credit
(Last Legislature's HB 178)

Dear Representative Rokeberg:

As I discussed with your assistant, Janet Seitz, yesterday, last legislature's HB 178 appears ready for re-introduction this session. At her request, you will find attached a "sponsor statement" for the bill. I will not go into the bill here, other than to say that it is basically an update of the law governing the \$200 billion U.S. letter-of-credit industry.

Also attached are three information sheets (one of which is two-sided) provided by the NCCUSL. As usual, I would be happy to provide any additional information that you may need. As you know, however, in Alaska's Uniform Laws delegation, Jerry Kurtz is the one with the most expertise in this area. He can be reached in Anchorage at 276-6100.

Since the bill passed the House unanimously last year, and, despite the lack of opposition, inexplicably got stuck in the Senate Judiciary Committee, I trust that it will pass this year. Thanks again for your support and your work on it.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

The Honorable Norman Rokeberg, Chair
January 27, 1999

Page 2

AHP:dv

Enclosures (4)

cc w/encl: Rest of Alaska's ULC Delegation:
Honorable Jay A. Rabinowitz
W. Grant Callow, Esq.
Tamara Brandt Cook, Esq.
L. S. Kurtz, Jr., Esq.
Deborah E. Behr, Esq.

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February 22, 1999

Hon. Norman Rokeberg, Chair
House Labor & Commerce Committee
Alaska State Legislature
ATTN: Janet Seitz
Room 24, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: HB 79, Revision of UCC, Article 5 (Letters of Credit)
-- support

Dear Rep. Rokeberg:


I understand that HB 79 is scheduled for a hearing before your committee this Friday, February 26. Unfortunately, I will be in Anchorage on business that day and cannot attend your hearing.

However, I wanted to repeat my strong SUPPORT for this bill, and I urge your committee to act on it favorably, with a "Do Pass" recommendation.

This bill presents a necessary piece in the ongoing efforts of the National Conference of Commissioners on Uniform State Laws to keep the Uniform Commercial Code up to date. It resolves issues pertaining to modern technology, current business practices, and the interpretation of the decades-old existing law. It is described more specifically in the sponsor statement and attached materials that I provided you with my January 27, 1999 letter.

Thank you.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Rest of Alaska's ULC Delegation:
Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook
L. S. (Jerry) Kurtz, Jr.
Deborah E. Behr

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 19, 1999

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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FAX: (907)451-2846
- P.O. BOX 110300-DIAMOND COURT HI
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

Honorable Norman Rokeberg
Chair
House Labor & Commerce Committee
State Capitol, Rm 24
Juneau, AK 99801-1182

FEB 19 1999

Re: HB 79 - UCC: Letters of Credit

Dear Representative Rokeberg:

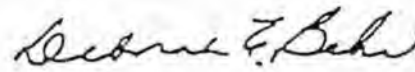
HB 79 (UCC: Letters of Credit) is presently before the House Labor and Commerce Committee. The bill was developed by the National Conference of Commissioners on Uniform State Laws after many years of study and consideration. The bill is important to provide a good business climate for interstate business transactions concerning letters of credit.

If you have questions, please contact me at 465-2122.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

DEB/jt

cc: Pat Pourchot, Legislative Dir.
Office of the Governor

Chrystal Smith, Legislative Contact
Dept. of Law

All Alaska Uniform Law Commissioners

Vince Usara
Mary Ellen Beardsley
Assistant Attorneys General
Juneau/Anchorage

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April 26, 1999

Rep. Joe Green
Alaska House of Representatives
Room 214, State Capitol
Juneau, Alaska 99801-11182

Re: HB 79 (Uniform Commercial Code, art. 5 - letters of credit)

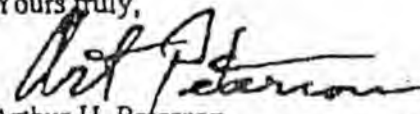
Dear Rep. Green:

With regard to your question about New York and Texas at the April 12 House Judiciary Committee hearing on this bill, you will find attached a copy of the April 21, 1999 Fact Sheet from the National Conference of Commissioners on Uniform State Laws and the April 23, 1999 e-mail message from NCCUSL Legislative Director and Legal counsel John McCabo to me.

The former shows 40 enactments (including Texas, about which you asked) and four pending introductions (including Alaska). The latter explains the New York approach, and shows that that state will be coming along soon.

I trust that this information helps with your support of the bill.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc w/cncs.: Rep. Norman Rokeberg, Chair, Hse. Labor & Commerce Com.
Rep. Pete Kott, Chair, Hse. Judiciary Committee
Rep. Lisa Murkowski
Rep. Eric Croft
Rep. Beth Kerttula
Rest of Alaska's Uniform Laws Delegation

A Few Facts About
UCC ARTICLE 5 - LETTERS OF CREDIT

PURPOSE: Letters of Credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits can govern many of the particulars of letters of credit. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the document plus incidental damages. Consequential damages are not permitted. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1995.

ENDORSED BY: American Bar Association

**STATE
ADOPTIONS:**

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of
Columbia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Maine
Maryland
Massachusetts
Michigan
Minnesota

Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Dakota
Ohio
Oklahoma
Oregon
South Dakota
Tennessee
Texas *
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming

40

1999
INTRODUCTIONS:

Alaska
Florida

North Carolina
Pennsylvania

For any further information about UCC Article 5, Letters of Credit, please contact John McCabe or Katie Robinson at 312-913-0195.

- 1999 Amendment

(4/21/99)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

Art Peterson 586-4000

From: John M. McCabe
Sent: Friday, April 23, 1998 6:50 AM
To: art@dillonfindley.com
Subject: Article 5 in New York

Dear Art:

Uniform Commercial Code Article 5 is slowly moving towards consideration in the New York Legislature. The Legislature requires a report from the New York Law Revision Commission. That report is done, and is very favorable. In the past, the New York Legislature has refused to handle more than one UCC bill in any legislative year. New York has not adopted Revised Article 3 and the Article 4 Amendments, and that may have to precede consideration of Article 5. However, the New York Department of State is now managing the UCC bills, and is trying to establish an improved schedule for legislative consideration of UCC revisions. This bodes well for all the UCC revisions, including Article 5, because it is the first time that the executive branch in New York has taken a serious interest in the UCC. But it is not clear that putting these bills on the Governor's agenda will accelerate consideration of Article 5 that much.

The New York Law Revision report is very favorable, as I indicated. The New York State Bar Association just voted to support Article 5 a couple of weeks ago. We are very certain of City Bar of New York support. The banks support Article 5. I am told that New York banks are making letters of credit subject to the law of states with Revised Article 5, a practice that is causing some embarrassment in Albany. I know of no opposition in New York. The bill will get favorable consideration, given all of these factors. It is just a matter of clearing all of the procedural requirements that the Legislature imposes on UCC bills.

Thanks for your kind attention.

John M. McCabe
Legal Counsel/Legislative Director
NCCUSL

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 3, 1999

Honorable Jerry Mackie
Chair
Senate Labor and Commerce Committee
State Capitol, Rm 427
Juneau, AK 99801-1182

MAY 03 1999

Re: HB 79 - UCC: Letters of Credit

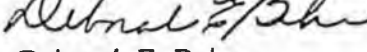
Dear Senator Mackie:

HB 79 (UCC: Letters of Credit) is presently before the Senate Labor and Commerce Committee. The bill was developed by the National Conference of Commissioners on Uniform State Laws after many years of study and consideration. The bill is important to provide a good business climate for interstate business transactions concerning letters of credit.

If you have questions, please contact me at 465-2122.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: Hon. Norman Rokeberg, Chair
House Labor & Commerce Committee

Pat Pourchot, Legislative Dir.
Office of the Governor

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