

HB

373



# ALASKA STATE LEGISLATURE

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## **Sponsor Statement**

**HB 373**

### **Requiring state treasury warrants to be negotiable instruments.**

House Bill 373 continues the committee's work last session on House Bill 109—State Dated Warrants. It clarifies existing statutes governing state treasury warrants by providing that warrants, like bank checks, are negotiable instruments under the Uniform Commercial Code.

During the 1980s, there was a long-standing dispute between commercial banks and the State of Alaska regarding the negotiability of state treasury warrants. This dispute was ultimately resolved by the Alaska Supreme Court in National Bank of Alaska v. Univentures 1231, 824 P.2d 1377 (Alaska 1992), which held that state treasury warrants were negotiable instruments under the Uniform Commercial Code and were therefore subject to the "holder in due course" defense. This was an important protection for businesses with financial dealings with the State. Although the Division of Finance amended its business practices to comply with the supreme court ruling, state statutes have never been amended to incorporate this holding. HB 373 simply codifies the holding the National Bank of Alaska v. Univentures 1231.

The State Affairs Committee is introducing this legislation in order to clarify the state statutes and continue the modernization of the state treasury warrant system.

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Released: January 15, 2004

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## Sectional Analysis

**HB 373**

**Requiring state treasury warrants to be negotiable instruments.**

### Section 1. Payment of warrants.

Adds language that clarifies the nature of a warrant issued by the Department of Administration against the state treasury. The language originates in a 1992 Supreme Court decision, *National Bank v. Univentures*, and it states that state treasury warrants (those things that we think of as "checks") constitute a negotiable instrument, and they must be paid according to the terms of the Uniform Commercial Code § 3-104(1)(b).

Adds language stating that "negotiable instrument" has the meaning given in AS 45.03.104(a).

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Title 45 TRADE AND COMMERCE  
Chapter 45.03 NEGOTIABLE INSTRUMENTS

Sec. 45.03.104. Negotiable instrument.

(a) Except as provided in (c) - (d) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if the unconditional promise or order

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

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

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

LEXSEE 824 P.2d 1377

NATIONAL BANK OF ALASKA, National Banking Association, Appellants, v.  
UNIVENTURES 1231 and STATE OF ALASKA, DEPARTMENT OF  
ADMINISTRATION, Appellees.

No. 3799, Supreme Court File No. S-4087

SUPREME COURT OF ALASKA

824 P.2d 1377; 1992 Alas. LEXIS 10; 17 U.C.C. Rep. Serv. 2d (Callaghan) 482

January 24, 1992, Decided

**PRIOR HISTORY:**

[\*\*1] Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, J. Justin Ripley, Judge. Superior Court File No. 3AN-88-278 Civil

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Appellant sought relief from an order by the Superior Court of the State of Alaska, Third Judicial District, Anchorage, that held the appellant was not a holder in due course under *Alaska Stat. § 45.03.302(a)* because the state treasury warrant was not a negotiable instrument.

**OVERVIEW:** Appellee government agency was directed to hold its rent in abeyance until a court-appointed receiver was named after a dispute arose among the partners of appellee business. The state treasury placed a stop-payment order on the state treasury warrant that was issued to pay the lease. Appellant paid appellee business on the warrant but did not debit the appellee government agency's account because of the stop-payment order. Appellant moved for summary judgment and claimed it was a holder in due course. The lower court denied the appellant's motion and held that the state treasury warrant was not a negotiable instrument. The supreme court reversed the lower court's holding. The court looked to *Alaska Stat. § 45.03.104(a)* and determined that the warrant met the statutory definition of a negotiable instrument. Therefore, the appellant's claim that it was a holder in due course under *Alaska Stat. § 45.03.302(a)* was valid.

**OUTCOME:** The supreme court reversed the lower court's decision and held that the state treasury warrant

met the statutory definition of a negotiable instrument, therefore entitling the appellant to claim itself as a holder in due course of the negotiable instrument.

**CORE TERMS:** holder, negotiable instrument, negotiability, stop-payment, state treasury, summary judgment, notice, non-negotiable, negotiable, statutory definition, definite time, cross-motion, warrant issued, transferee, unconditional promise, improvement district, general principles, payable to order, third person, order to pay, municipal, customer, sanitary, drawer, reasonable opportunity, simple contract, deference, evidenced, clearing, deposit

LexisNexis(TM) HEADNOTES - Core Concepts

*Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder*

[HN1] *Alaska Stat. § 45.03.305* provides that the holder in due course of an instrument takes the instrument free of all but a very limited class of defenses that the original payor might have against the original payee.

*Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder*

[HN2] *Alaska Stat. § 45.03.302(a)* defines a holder in due course as one who takes a negotiable instrument for value, in good faith, and without notice that the instrument is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

*Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder*

[HN3] If a holder of an instrument is not a holder in due course, the holder takes the instrument subject to all

valid claims to the instrument, as well as subject to several classes of defenses. *Alaska Stat. § 45.03.306.*

*Civil Procedure > Appeals > Standards of Review > De Novo Review*

*Commercial Law (UCC) > Negotiable Instruments (Article 3)*

[HN4] Whether a warrant is a negotiable instrument is a question of law, which the supreme court examines de novo.

*Commercial Law (UCC) > Negotiable Instruments (Article 3)*

[HN5] See *Alaska Stat. § 45.03.104(a).*

*Governments > Legislation > Interpretation*

[HN6] See *Alaska Stat. § 45.01.102(a).*

*Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment*

[HN7] A promise or order otherwise unconditional is not made conditional by the fact that the instrument is limited to payment out of a particular fund if the instrument is issued by a government or governmental agency or unit. *Alaska Stat. § 45.03.105 (a)(7).*

*Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment*

[HN8] See *Alaska Stat. § 45.03.109(a)(1).*

*Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment*

[HN9] An instrument is payable to order if by its terms it is payable to the order or assigns of a person specified in the instrument with reasonable certainty. *Alaska Stat. § 45.03.110(a).*

*Governments > Legislation > Interpretation*

[HN10] While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct.

#### COUNSEL:

Appearances: David Floerchinger and Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Inc., Anchorage, for Appellants.

Sally J. Kucko and Rick L. Owen, Groh, Eggers & Price, Anchorage, for Appellees Univentures 1231.

Jeffrey W. Bush, Assistant Attorney General, and Charles E. Cole, Attorney General, Juneau, for Appellee State of Alaska, Department of Administration.

#### JUDGES:

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

OPINIONBY:  
MOORE

OPINION:

[\*1377] *OPINION*

MOORE, Justice.

National Bank of Alaska (NBA) brought an action against the State of Alaska, Univentures 1231 (Univentures), Charles D. LeViege, and Lee D. Garcia to recover the amount which NBA paid on a warrant issued by the state. The superior court held that the warrant is not a negotiable instrument under the Uniform Commercial Code as enacted in Alaska, and that NBA therefore could not recover as a holder in due course under the code. NBA appeals. The sole issue on appeal is whether the superior court was correct in finding that the state treasury [\*\*2] warrant is a non-negotiable instrument under Article III of the Uniform Commercial Code. We reverse.

I.

The State of Alaska is a tenant in a large office building which is owned by Univentures. On November 24, 1987, the state made a lease payment of \$ 28,143.47 to Univentures with state treasury warrant No. 21045102. Charles LeViege, the managing partner of Univentures, assigned the warrant on behalf of Univentures to Lee Garcia.

As a result of a dispute which arose among the partners of Univentures, the state was notified on November 25, 1987 that it should no longer pay Charles LeViege the monthly rent due the partnership. The state was directed to hold the rent in abeyance pending the naming of a court-appointed receiver. On November 27, 1987, the state treasury placed a stop-payment order on warrant No. 21045102.

Garcia presented the warrant to NBA, the state's clearing bank, on November 30, 1987. NBA paid Garcia \$ 28,143.47 on the warrant but did not debit the state's account [\*1378] because of the stop-payment order. On January 14, 1988, NBA filed an action against the State of Alaska, Charles LeViege, and Lee Garcia, to recover the sum of \$ 28,143.47 which NBA had paid [\*\*3] to Lee Garcia in exchange for the warrant. The state deposited an equivalent sum with the court and moved to join Univentures as a party. Samuel and Catherine LeViege answered on behalf of Univentures.

NBA moved for summary judgment claiming that it is a holder in due course under *AS 45.03.302(a)*. NBA

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
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argued that the warrant is a negotiable instrument and that it paid the warrant in good faith, without knowledge of facts which would indicate the instrument may not be payable as its terms provide. As such, NBA maintained that it took the warrant free from the defenses presented by Univentures and the state. The state and Univentures opposed NBA's motion, arguing that NBA is not a holder in due course because the warrant is not a negotiable instrument, and because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures filed a cross-motion for summary judgment.

The superior court granted Univentures' cross-motion for summary judgment and denied NBA's motion for summary judgment. Judge Ripley, in ruling for Univentures, specifically found that the warrant is not a negotiable instrument and that NBA therefore is not a holder in due course. Pursuant to [\*\*4] the parties' stipulation, \$ 16,000.00 of the money deposited with the court was immediately disbursed to Univentures and NBA in equal amounts. The court ordered that the remaining \$ 12,143.47 be held by the court pending appeal of the court's determination that the warrant is not negotiable. This appeal followed.

## II.

[HN1] Article III of the Uniform Commercial Code provides that the holder in due course of an instrument takes the instrument free of all but a very limited class of defenses that the original payor might have against the original payee. *AS 45.03.305*. n1 [HN2] The code defines a holder in due course as one who takes a negotiable instrument for value, in good faith, and "without notice that [the instrument] is overdue or has been dishonored or of any defense against or claim to it on the part of any person." *AS 45.03.302(a)*. [HN3] If a holder of an instrument is not a holder in due course, the holder takes the instrument subject to all valid claims to the instrument, as well as subject to several classes of defenses. *AS 45.03.306*. n2

n1 *AS 45.03.305* provides:

To the extent that a holder is a holder in due course the holder takes the instrument free from  
(1) all claims to it on the part of any person; and  
(2) all defenses of any party to the instrument with whom the holder has not dealt except  
(A) infancy, to the extent that it is a defense to a simple contract;  
(B) such other incapacity, or duress, or illegality of the transaction as renders the obligation of the party a nullity;

(C) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms;  
(D) discharge in solvency proceedings; and  
(E) any other discharge of which the holder has notice when the holder takes the instrument.  
[\*\*5]

n2 *AS 45.03.306* provides:

Unless the person has the rights of a holder in due course, a person takes the instrument subject to

(1) all valid claims to it on the part of any person;  
(2) all defenses of a party which would be available in an action on a simple contract;  
(3) the defenses of want or failure of consideration, nonperformance of a condition precedent, nondelivery, or delivery for a special purpose (*AS 45.03.408*); and  
(4) the defense that the person or a person through whom the person holds the instrument acquired it by theft, or that payment or satisfaction to the holder would be inconsistent with the terms of a restrictive endorsement; the claim of a third person to the instrument is not otherwise available as a defense to a party liable on the instrument unless the third person personally defends the action for the party.

The superior court held that NBA was not a holder in due course because the state treasury warrant involved is not a negotiable instrument to which the Uniform [\*1379] Commercial Code applies. n3 As a result, the superior court concluded that NBA took the warrant [\*\*6] subject to the state's defense that it had issued a valid stop-payment order pursuant to *AS 45.04.403(a)*. n4 NBA argues that the warrant is a negotiable instrument, and that NBA is therefore a holder in due course. [HN4] Whether the warrant is a negotiable instrument is a question of law, which we examine de novo. See *Hicklin v. Orbeck*, 565 P.2d 159, 163 n.6 (Alaska 1977) rev'd on other grounds, 437 U.S. 518, 57 L. Ed. 2d 397, 98 S. Ct. 2482 (1978).

n3 Univentures argued in its cross-motion for summary judgment that even if the warrant is a negotiable instrument, NBA is not a holder in due course because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures claimed that NBA was given notice of the stop-payment order on

November 27, 1987, in its role as the clearing bank for state treasury warrants. The superior court apparently found that NBA did not have knowledge of the stop-payment order when it accepted the warrant, for the final judgment provides that NBA is entitled to the funds on deposit with the court if this court determines warrant No. 21045102 is a negotiable instrument. We do not consider whether NBA had knowledge of the stop-payment order, for that issue is not a stated point on appeal, and was not briefed by either party. [\*\*7]

n4 *AS 45.04.403(a)* provides:

A customer may, by order to the bank, stop payment of an item payable for the customer's account, but the order must be received at a time and in a manner which afford the bank a reasonable opportunity to act on it before an action by the bank with respect to the item described in *AS 45.04.303*.

[HN5] *Alaska Statute 45.03.104(a)* provides that for a writing to be a negotiable instrument it must:

- (1) be signed by the maker or drawer;
- (2) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power given by the maker or drawer except as authorized by this chapter;
- (3) be payable on demand or at a definite time, and
- (4) be payable to order or to bearer.

[HN6] *Alaska Statute 45.01.102(a)* provides that the Code is to be "liberally construed and applied to promote the underlying purposes and policies." The underlying purposes and policies of the Uniform Commercial Code are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;
- (2) to permit the continued expansion of commercial practices through [\*\*8] custom, usage, and agreement of the parties;
- (3) to make uniform the law among the various jurisdictions.

*AS 45.01.102(b)*.

Warrant No. 21045102 satisfies all four elements of the definition of a negotiable instrument. First, the warrant is signed by the maker, Governor Steve Cowper. Second, the warrant contains an unconditional promise or order to pay a sum certain of \$ 28,143.47. [HN7] A

promise or order otherwise unconditional is not made conditional by the fact that the instrument is limited to payment out of a particular fund if the instrument is issued by a government or governmental agency or unit. *AS 45.03.105(a)(7)*. Third, the warrant is payable at a definite time. Although the warrant states that it "will be deemed paid unless redeemed within two years after the date of issue," [HN8] *AS 45.03.109* provides that an instrument is payable at a definite time if by its terms it is payable on or before a stated date. *AS 45.03.109(a)(1)*. Finally, the warrant clearly indicates that it is payable to the order of Univentures. [HN9] An "instrument is payable to order if by its terms it is payable to the order or assigns of a person specified in the instrument with reasonable certainty." *AS 45.03.110(a)*. [\*\*9] Because the warrant meets the statutory definition in *AS 45.03.104*, we hold that the warrant is a negotiable instrument. n5

n5 *AS 45.03.104(b)* classifies certain writings which satisfy the definition of "negotiable instrument" as drafts, checks, certificates of deposit, and notes. We reject the state's argument that an instrument must fit within one of these categories before it can qualify as a negotiable instrument. Negotiability is determined by the four-pronged test of *AS 45.03.104*, not by the name affixed to a particular writing. If it were necessary to categorize the warrant at issue in this case, it would be a draft. An instrument is a draft if it is an order. *AS 45.03.104(b)(1)*.

[\*1380] The purposes for which the Uniform Commercial Code was enacted support the conclusion that warrants which satisfy the statutory definition of negotiability must be deemed negotiable. Univentures claims that state warrants should be deemed non-negotiable because the state must retain its rights to assert the defenses of a [\*\*10] maker in order to maintain and protect its fiscal policies, practices, and procedures. This argument is directly contrary to the Code's policy of promoting commercial transactions by allowing a party to ascertain the negotiability of an instrument from its face. 5 R. Anderson, Uniform Commercial Code, § 3-104:4 (1984) ("The whole idea of the facilitation of easy transfer of notes and instruments requires that a transferee be able to trust what the instrument says, and be able to determine the validity of the note and its negotiability from the language in the note itself."). To carve out an exception to the statutory definition of negotiability would jeopardize Article III's purposes of clarifying and modernizing commercial transactions by allowing

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reliance on written instruments. The transferee of an instrument must be able to rely on the negotiability of the instrument as evidenced by the instrument's terms, so that the transaction is not stalled while the transferee verifies its rights on the instrument. n6

n6 If the state truly believes that the non-negotiability of treasury warrants is essential to maintain and protect its fiscal policies, the state could make its warrants non-negotiable simply by printing "non-negotiable" on the face of the warrants.

[\*\*11]

No Alaska case law addresses the issue of whether a state treasury warrant constitutes a negotiable instrument. Prior to the enactment of the Uniform Commercial Code, warrants issued by states, local governments, and municipalities were almost universally deemed non-negotiable. See, e.g., *Negotiability of County, Municipal, School, State, or Town Warrants*, 36 A.L.R. 949, 949 (1925); *Hamilton Nat'l Bank v. Pool*, 144 S.W.2d 670, 671 (Tex. App. 1940); *State v. Liberty Nat'l Bank & Trust Co.*, 414 P.2d 281, 283 (Okla. 1966). The drafters of the Uniform Commercial Code apparently intended to change this body of law, however, as evidenced by the Official Code Comment to § 3-105. 5 R. Anderson, *Uniform Commercial Code*, § 3-105:1, at 228 (1984) ("[Section 3-105(1)(g)] will permit some municipal warrants to be negotiable if they are in proper form."). n7

n7 All of the cases cited by Univentures and the state are distinguishable from the present case for the reason that all were based upon the "law merchant" which has now been replaced in Alaska by the Uniform Commercial Code. See *Prince v. LeVan*, 486 P.2d 959, 962 (Alaska 1971) ("By legislative declaration the code is the law, and if general principles appear inconsistent, they must be considered displaced under [this section]. Moreover, even where inconsistency does not exist, the code must be regarded as supreme; general principles even when consistent with the code are merely supplementary.").

[\*\*12]

Those courts which have considered the negotiability of government warrants have generally found those warrants to be negotiable so long as they satisfy the codes requirements. The Louisiana Court of Appeals held that a warrant issued by a levee district to

pay a construction company was a negotiable instrument. *St. James Bank & Trust Co. v. Board of Comm'rs*, 354 So. 2d 233 (La. App. 1978). The construction company in that case had negotiated the warrant to a bank. After the levee's Board of Commissioners stopped payment on the warrant, the warrant was returned to the bank unpaid. The court found that the warrant was a negotiable instrument because it satisfied the requirements of § 10:3-104 of the Louisiana statutes. That section is identical to AS 45.03.104. *Id. at 234.*

Similarly, the Supreme Court of Nebraska held that a warrant issued by a county sanitary and improvement district was a negotiable instrument. *Sanitary & Improvement Dist. v. Continental Western*, 215 Neb. 843, 343 N.W.2d 314 (Neb. 1983). In that case, the sanitary and improvement district which had issued capital and improvement warrants sought [\*\*13] a judicial declaration of the invalidity of the warrants. After examining the warrants in light of § 5-104 of the Nebraska Uniform Commercial [\*\*1381] Code, which is almost identical to AS 45.03.104, the Supreme Court of Nebraska held that they were negotiable instruments.

We are mindful of a 1987 attorney general opinion which concluded that state treasury warrants are not negotiable. [HN10] While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct. n8 In this instance we are unconvinced by the attorney general's opinion. It fails to consult the language and policies of the Uniform Commercial Code, and it relies mainly on cases examining the negotiability of warrants arising prior to the enactment of the Uniform Commercial Code.

n8 *Carney v. State Board of Fisheries*, 785 P.2d 544, 548 (Alaska 1990) ("Opinions of the attorney general, while not controlling on matters of statutory interpretation, are entitled to some deference."); *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221, 1225 (Alaska 1975) ("We hold that the 1962 Attorney General's opinion is in error insofar as it concludes that the territorial government of Alaska had no power to accept the right-of-way granted in 43 U.S.C. § 932 (1964).").

[\*\*14]

The decision of the superior court is REVERSED. The \$ 12,143.47 on deposit with the court is awarded to NBA. n9

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n9 The parties to this appeal stipulated that if we reverse the superior court's determination that the warrant is a negotiable instrument, Univentures waives all other claims to the interpled money against NBA and the state,

including the claim that NBA was not a holder in due course of the instrument.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 373  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration/Revenue  
 Title An Act requiring warrants issued by RDU None  
the state to be negotiable instruments Component None  
 Sponsor House State Affairs  
 Requester House State Affairs Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</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>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</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>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This statute change codifies in law a 1992 ruling by the Alaska Supreme Court (National Bank of Alaska vs. Univentures and the State of Alaska, Department of Administration, file #S-4087) that reversed a Superior Court ruling on the negotiability of warrants issued by the state. The Supreme Court held that state warrants are negotiable instruments subject to the UCC rules governing holders in due course.

Since that Supreme Court decision, the state has administered its warrants as negotiable instruments, so no administrative changes are necessary if this legislation passes. It will simply codify in statute the ruling of the Supreme Court.

Prepared by: Kim J. Garnero Phone 465-3435  
 Division Finance Date/Time 1/19/04 1:17 PM  
 Approved by: Ray Matiashowski, Deputy Commissioner Date 1/19/2004  
 Agency Department of Administration