

HB

102



HOUSE JUDICIARY COMMITTEE

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MEMORANDUM

Date: March 16, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HB102

Attached please find the referral file for HB102, which is represented by the following documents:

- Sponsor Statement
- Legal Memo
- CSHB102(JUD) 26-LS0059\S
- Explanation of Changes
- Sectional Analysis
- HB102 26-LS0059\E
- Information re: Uniform Law Commission
- CED Zero fiscal note
- Testifier Lists
- HJUD Committee Report



ALASKA STATE LEGISLATURE

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SPONSOR STATEMENT

CSHB 102(JUD) - UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

The Uniform Commercial Code is a uniform act created with the objective of synchronizing the law of sales and other commercial transactions in all fifty states. The UCC is a joint project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). The UCC is not itself law, but provides recommendation of the laws that should be adopted by individual states. All fifty states have adopted the UCC in one version or another, and it is a major part of Title 45 of the Alaska Statutes.

The UCC was originally released in 1952; periodically, the NCCUSL and ALI revisit the UCC and make appropriate recommendations for revisions to states statutes. This bill reflects the recent revisions of Articles 1 and 7 of the UCC. The Alaska Uniform Law commissioners have recommended passage of these revisions this legislative session.

Article 1 provides definitions and general provisions for the UCC; the updates to Article 1 modernize and reflect changing business practices and developments in the law and are necessary to bring Article 1 up to date. Thirty-four other states have already adopted the revised Article 1 language.

Article 7 of the UCC pertains to warehouse receipts, bills of lading, and other documents of title. The revisions to Article 7 introduce new rules concerning electronic documents of title. The substantive revisions to Article 7 fall into four main categories: recognition of electronic documents of title; extension of the statute of fraud requirements to include electronic records and signatures as equivalent to paper documents and written manual signatures; establishment of the unique original in electronic form; and interchangeability between electronic and tangible documents of title. Thirty-one other states have already adopted the revised Article 7 language.

An expert from the NCCUSL will be available to testify and answer questions at the hearing, along with an Alaska Commissioner to the NCCUSL and Chief Administrative Law Judge Terry Thurbon. Should you have questions before the hearing, please do not hesitate to call legislative aide Allison Laffen at 465-2840.

LEGAL SERVICES

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MEMORANDUM

February 24, 2009

SUBJECT: CSHB 102(JUD) relating to the Uniform Commercial Code, contractual duties, and liens (Work Order No. 26-LS0059\R)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

Single subject considerations. With the addition of just the lien language amendment in AS 34.35, the bill would have a single subject of "commercial transactions." With the addition of just the contract duty language amendment in AS 09.70.030, the bill would have to rely on a somewhat questionable single subject of "contracts." With the addition of both, the bill will have to rely on the somewhat questionable subject of "contracts."

Although I believe that this single subject would not ultimately be held to violate the constitutional single subject rule,¹ there is definitely an issue here. First, it is difficult to reduce the Uniform Commercial Code to "contracts," although that is the ultimate basis for its commercial transactions. The Supreme Court has held that the purpose of the constitutional provision is to guard against legislative log-rolling, "the practice of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."² However, it is likely that the general perception, at least of the legal community, of the UCC, the contract duty in AS 09.70.030, and the lien provisions would be that they are logically related. So they may not be considered dissimilar or incongruously placed together in the bill. Second, it is not clearly spelled out in the AS 34.35 lien language that the transactions it covers are based on a contract. However, the treatment in AS 34.35 suggests that there was some kind of expectation or agreement that the other party would pay for the services provided.

¹ Art. II, sec. 13, Constitution of the State of Alaska.

² Evans v. State, 56 P.3d 1046, 1069 (Alaska 2002), quoting from State v. First National Bank of Anchorage, 660 P.2d 406, 415 (Alaska 1982).

Representative Jay Ramras
February 24, 2009
Page 2

Although some justices in dissents have expressed concern that the court's broad construction may possibly make the rule meaningless,³ the Supreme Court has not overturned legislation because of a failure of the single-subject requirement. The Court has indicated that one meaning of the general subject is that all matters treated of should be so connected with or related to each other, either logically or in popular understanding as to be part of, or germane to, one general subject.⁴ It appears logical to group the amendments and the original bill together as related to contractual relations. As mentioned earlier, it also appears likely that, at least in the legal community, the general perception of the items in the bill would be that they are logically related.

When construing the single-subject rule, the Court will "resolve doubts in favor of validity."⁵ In order "to warrant the setting aside of enactments for failure to comply, the violation must be substantial and plain."⁶ In this case, the possible lack of a single subject among the provisions is not plain and it does not appear to be substantial.

In light of all these factors, I would say that relying on the single subject of "contracts" probably would not be fatal for the legislation. However, it is an issue and I wanted you to be aware of it.

If I may be of further assistance, please advise.

TLB:ljw
09-101.ljw

Enclosure

³ See Yute Air Alaska, Inc., et. al. v. Stephen A McAlpine, et al., 698 P.2d 1173, 1180 - 1183 (Alaska 1985); and Gellert v. State, 522 P.2d 1120, 1124 (Alaska 1974).

⁴ See State v. First National Bank of Anchorage, supra at 415.

⁵ See Suber v. Alaska State Bond Committee, 414 P.d 546, 557 (Alaska 1966).

⁶ See State v. First National Bank of Anchorage, supra at 415 (Alaska 1982), citing, among other cases, North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).



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EXPLANATION OF CHANGES – AMENDED 3/16/09

Changes between HB102 and CSHB102(JUD):

- Adds **Section 1**, which codifies in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract. The Alaska Supreme Court has previously found that the duty of good faith and fair dealing is implied in every contract in Alaska, and has gone so far as to call the duty “a long-standing tenet of Alaska law.” McConnell v. State, Dept of Health and Social Services, 991 P.2d 178, 184 (Alaska 1999). The covenant of good faith and fair dealing assures parties to a contract that no party “will do anything which will interfere with the right of [another] party to receive the benefits of the agreement.” Guin v. Ha, 591 P.2d 1281, 1291 (Alaska 1979). The covenant is implied “in order to effectuate the reasonable expectations of the parties to the agreement.” Ramsey v. City of Sand Point, 936 P.2d 126, 133 (Alaska 1997); see generally Casey v. Semco Energy, Inc, 92 P.3d 379, 384 (Alaska 2004); Keffer v. Keffer, 852 P.2d 394 (Alaska 1993); Municipality of Anchorage v. Gentile, 922 P.2d 248 (Alaska 1996). Since common law is more malleable than statutory law, codification through this legislation offers additional guarantees of the duty of good faith and fair dealing to all parties of a contract.
- Adds **Sections 4-7**, which modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually exclusive; an owner of property wrongfully disposed of has rights and remedies

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

under each statute in the event both statutes apply. Adds **Section 47** amending AS 45.07.210(g) clarifying that rights and remedies available under that section are in addition to rights and remedies under AS 34.35.225.

- Updates the language of **Section 50**, relating to AS 45.07.302. Professor William H. Henning, Distinguished Professor of Law at the University of Alabama School of Law, provide the following rationale for the change:

“The language in the uniform version of Section 7-302 was included because of the interface between state and federal law. At the time revised Article 7 was adopted by the Uniform Law Commission, federal law provided that performing or connecting carriers could not alter obligations if they were within the ambit of federal law regarding carrier obligations. The language in 7-302 designated what was outside that ambit and was included merely to point out what would have been true without the language - if the parties were outside federal law, the performing carrier COULD alter liability by agreement. Since the ULC adopted the act, much of federal law regarding carriers has been restated and reorganized and that exact formulation does not seem to be used. The new language that we suggested should be appropriate regardless of the scope of current federal law.”

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.



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SECTIONAL ANALYSIS

CSHB 102(JUD) – UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

(Sections Making Substantive, Non-technical Changes)

Section 1 codifies in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract.

Section 2 provides for the Uniform Electronic Transactions Act (UETA) to apply to sections of the Uniform Commercial Code (UCC) concerning warehouse receipts, bills of lading and documents of title previously excluded from application of UETA.

Sections 4 – 7 modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually exclusive; an owner of property wrongfully disposed of has rights and remedies under each statute in the event both statutes apply.

Section 8 adds a short title, describes the scope, and adds rules of construction and severability provision for the UCC, and addresses modification of federal electronic signatures laws.

Section 9 adds several new sections to AS 45.01 to promote uniformity in UCC-covered transactions by revising or modifying general rules. These include: general definitions; standards for determining when someone has notice or knowledge; provisions on distinguishing between leases and security interests, what constitutes value given for rights, and determining whether actions are timely performed and what facts must be

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presumed; choice of laws; good faith; course of performance and dealings, and usage of trade; and various rights and remedies.

Sections 15 & 17 amend payment requirement as it relates to delivery of goods and passage of title to goods to facilitate use of electronic documents of title.

Section 30 adds several new sections to AS 45.07 to modernize the UCC Documents of Title statutes, especially to reflect the use of electronic documents of title by the shipping and warehousing industries. These include: general definitions; negotiation of documents of title; use of alternative media (electronic versus tangible documents); and control of electronic documents of title.

Section 39 updates the language of warehouse lien provisions to include liens arising from storage agreements and clarifies (in this provision rather than by cross reference to another statute) the protection afforded the rights of a person with a perfected security interest in the goods who did not entrust the goods/document of title.

Section 54 amends the lien provisions applicable to the carrier of goods to ensure that a carrier's lien extends to the proceeds of the goods, not just the goods themselves.

Section 61 modernizes the language of and clarifies the ability to limit a carrier's liability by specifically referring to bills of lading and transportation agreements at the source documents for limitation of liability provisions.

Section 68 modernizes the standards for negotiation of documents of title to address use of negotiable electronic documents.

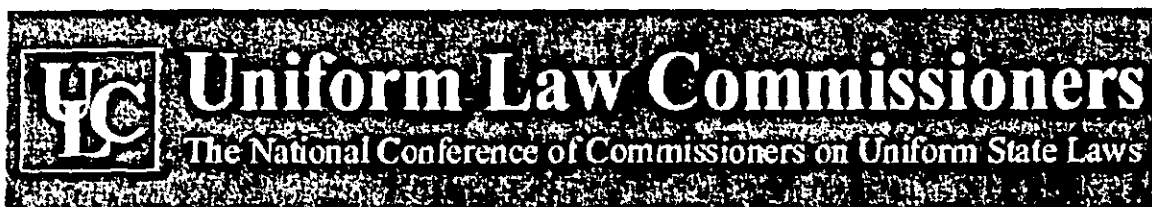
Section 71 amends provisions on the rights arising from transfer of documents of title to address the rights of lessors and lessees.

Section 77 revises remedial provisions for dealing with lost or missing documents of title by changing the standards for require the posting of security before the courts order delivery of goods or of a substitute document, and eliminates archaic classification and tariff-related conditions from the standard for whether delivery of goods in good faith constitutes conversion.

Section 100 amends duties of secured parties who must respond to debtors' demands to include duties for a party with control over an electronic document of title to respond to such demands.

Sections 114 & 118 describe two indirect amendments of the rules of evidence and provide for those changes to take effect only if the necessary two-thirds majority vote is achieved.

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.



A Few Facts About The...

**REVISED UNIFORM COMMERCIAL CODE ARTICLE 1,
GENERAL PROVISIONS (2001)**

PURPOSE:

Updates the general provisions section of the Uniform Commercial Code, to harmonize with ongoing UCC projects and recent revisions.

ORIGIN:

Completed by the Uniform Law Commissioners and the American Law Institute in 2001.

APPROVED BY:

American Bar Association

STATE ADOPTIONS:

- | | |
|-------------|---------------------|
| Alabama | Minnesota |
| Arizona | Montana |
| Arkansas | Nebraska |
| California | Nevada |
| Colorado | New Hampshire |
| Connecticut | New Mexico |
| Delaware | North Carolina |
| Florida | North Dakota |
| Hawaii | Oklahoma |
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| Indiana | South Dakota |
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| | Vermont |
| | Virginia |
| | West Virginia |

2009 INTRODUCTIONS:

For any further information regarding the Revised UCC Article 1, please contact Michael Kerr or Katie Robinson at 312-450-6600.



SUMMARY

Revised Article 1 of the Uniform Commercial Code

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

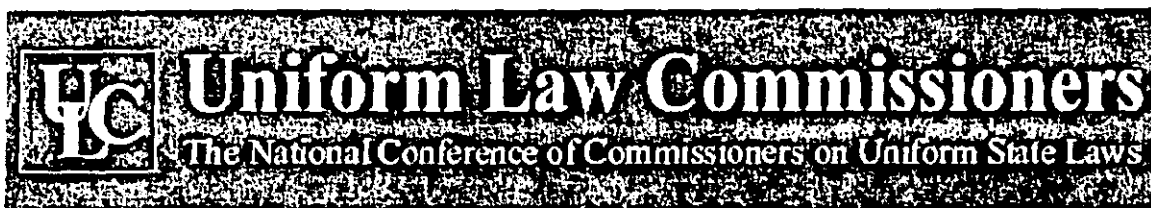
The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Perhaps the most important change to Article 1, however, has to do with default choice-of-law provisions found in 1-301, which replaces previous 1-105. Under the Article 1 before the 2001 amendments, parties to a transaction may agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances.

With respect to all transactions, an agreement by the parties to use the law of any state (or in the case of an international transaction, country) is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice-of-law provision in a contract may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country which has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

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A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 7 (2003)

PURPOSE:

The 2003 Revision of UCC Article 7 updates the original UCC7 to provide a framework for the further development of electronic documents of title, and to update the article for modern times in light of state, federal and international developments.

ORIGIN:

Completed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 2003.

ENDORSED BY:

International Association of Refrigerated Warehouses
International Warehouse Logistics Association

STATE ADOPTIONS:

- | | |
|-------------|----------------|
| Alabama | Nebraska |
| Arizona | Nevada |
| Arkansas | New Hampshire |
| California | New Mexico |
| Colorado | North Carolina |
| Connecticut | North Dakota |
| Delaware | Oklahoma |
| Hawaii | Pennsylvania |
| Idaho | Rhode Island |
| Illinois | Tennessee |
| Indiana | Texas |
| Iowa | Utah |
| Kansas | Virginia |
| Maryland | West Virginia |
| Minnesota | |
| Mississippi | |
| Montana | |

2009 INTRODUCTIONS:



SUMMARY

Uniform Commercial Code - Revised Article 7 (2003)

Revision in 2003

The original Article 7 of the Uniform Commercial Code, "Warehouse Receipts, Bills of Lading and Other Documents of Title," combined two earlier uniform acts, the Uniform Warehouse Receipts Act (1906) and the Uniform Bills of Lading Act (1909), with some principles from the Uniform Sales Act (which became Article 2-Sales of the UCC). Article 7 had not been revisited after the 1951 promulgation of the original Uniform Commercial Code until 2003, a period of 52 years. The longevity of the principles of warehouse receipts and bills of lading suggests very successful law and law-making as it pertains to the commercial storage and shipment of goods. The basic principles do not change basically in the 2003 revision. But there are reasons to readdress this area of the commercial law in 2003, which shall be discussed a little later. First, it is necessary to establish some of the basics.

Introduction to Documents of Title

The storage and shipment of tangible goods for commercial purposes has been going on for centuries. The physical side of the business is carried on by entities that provide warehouses (warehousemen) and entities that carry the goods from place of origin to destination (common carriers). These are tangible, visible businesses. What is not tangible and visible is the transfer of rights in the goods while they are stored and/or shipped. The common law provided the rules of bailment. The terminology of bailor and bailee is still incorporated in the Uniform Act. As the law developed, the transfer of rights came to depend upon the transfer of specific documents of title. The transfer of the documents from one person to another became the transfer of the rights. The title documents were warehouseman's receipts on the storage/warehouse side, and the bill of lading on the carrier side. The original uniform acts and the 2003 revision all incorporate these basics.

One of the important principles carried forward into the 2003 revision is that of negotiability. Free transfer of interests is an important policy norm throughout the UCC. In Article 7, documents of title may be negotiable. Whether a document is negotiable or non-negotiable depends upon how it identifies the transferee and how it is transferred. A negotiable document may be one of two kinds of paper documents, bearer paper or order paper. A document made out to bearer may be transferred from one person to another by simple delivery of possession. The delivery transfers the rights to the goods (therefore the title) to the transferee. Order paper is made out to a specific person. After initial delivery to the person named on the document, it may be negotiated to another person by the indorsement of the named person and delivery of possession to that other person. The rights to the goods (and therefore the title) pass with the negotiation to the transferee.

Documents of title may also be made non-negotiable. This is primarily done by a statement on the face of the instrument. Non-negotiable documents of title may also be assigned or transferred. The difference between negotiable and non-negotiable documents is the rights that they may transfer. A non-negotiable document of title transfers only the actual interests of the transferor. A negotiable document of title may transfer more than the actual interests of the transferor. If negotiated, for example, it transfers free of any claims against the issuer of the document. A non-negotiable document is not free of such claims.

Negotiation as a concept exists to make commerce in goods possible. Goods would not be transferred if the purchaser always has to look behind the transaction to see who may come after the goods after the transfer is complete. Negotiation erases the peril. The principle enunciated in Article 7 is consistent with other parts of the UCC governing notes, drafts, checks and investment securities.

Electronic Documents of Title

Article 7 governs other important aspects of the transfer of rights in goods when stored or shipped, such as the liens of warehousemen and carriers and their enforcement and allocation of risk of loss of the goods either in storage or transit, but the issue of negotiation has been its most important aspect, up to the revisions in 2003. Something very important has happened to change the way we look at the principle of negotiation. That something is computers, electronic communications and the ability to create electronic documents of title. Computers have been accused and applauded for their impact on commerce and business. Their impact on storage and shipment of goods is profound. Federal law has actually recognized electronic documents for some time, but electronic documents of title cannot be substituted one to one with tangible documents of title. Their characteristics in electronic form are not the same as their characteristics in tangible form.

The tangible form is a written document on paper with signatures of issuers and subsequent transferors. The individual document is a unique token of the rights and interests it represents. Even if there is a copy, there is always the original. This is not so with electronic documents. Originals and copies are indistinguishable from each other in electronic form. Signatures in the sense of an individual's scribing them uniquely on a piece of paper cannot be equally duplicated in an electronic document. Transferors and transferees, who are remote from each other when tangible documents are transferred, are not remote from each other in electronic media. Electronic communications can occur between any two persons anywhere in the world. Yet, it is difficult for each participant in an electronic communication to verify or authenticate the identity of the other party. To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7, therefore, is the new rules for electronic documents of title.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules for electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in the favor of either form. Only the actual marketplace should determine users' choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.

Recognition of Electronic Documents of Title

Recognition of electronic documents of title begins in the definition of "Document of Title:" "An electronic document of title is evidence by a record consisting of information stored in an electronic medium." Other definitions have been modified to accord with this root definition. For example, "Holder" is defined to include: "a person in control of a negotiable electronic document of title." Electronic documents of title become the equal to tangible documents of title.

Statute of Frauds Requirements

Revised Article 7 extends statute of fraud requirements to include electronic records and signatures. Any writing requirement that relates to enforceability of a document is a statute of frauds requirement. Article 7 treats electronic records and signatures as the equivalent of paper documents and written, manual signatures. This initially occurs in new definitions of "record" and "sign." A record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The term "sign" is defined to

"execute or adopt a tangible symbol" and "to attach or logically associate with the record an electronic sound, symbol or process." Within Revised Article 7, wherever the term "writing" or an equivalent may have been used before revision, the term "record" is uniformly used. When a document is required to be signed anywhere in Revised Article 7, electronic signing meets the test.

In addition, Revised Article 7 provides language stating expressly that it modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act. This express language, permitted in the federal act, avoids any issue of federal preemption. The federal statute allows specific tailoring for the purposes of incorporating electronic records and signatures into state law.

Establishing the Unique Token

It is not possible to transfer an electronic document of title in the same manner as a tangible document of title, particularly in terms of negotiating it. It cannot be guaranteed that a transfer directly from one person to the next by delivery and/or signature will transfer the authentic original document of title. An electronic alternative to the tangible system is necessary. To accomplish the equivalent system for electronic documents of title, Article 7 adapts the concept of "control" to the purpose. It is not a brand-new concept. It initially was developed in Article 8 of the Uniform Commercial Code for investment securities in the indirect holding system. The 1999 revisions to Article 9 adapted the concept further for secured transactions. Further adaptation of the concept occurred in Section 16 of the Uniform Electronic Transactions Act for promissory notes. This latter adaptation is most important for Revised Article 7, because the issues of negotiation for promissory notes are very similar to those for documents of title.

A person has control of a document of title for Article 7 purposes "if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." Such a system exists when it establishes a "single authoritative copy ...which is unique, identifiable and ... unalterable." The authoritative copy must identify the person in control or the next person to whom the document has transferred. The person in control determines to whom the document is next transferred. Further, the standard requires that copies that are not authoritative, including copies of the authoritative copy, must be readily identifiable as not being the authoritative copy.

There is more than one way to meet this set of standards, unlike negotiation of a paper document, which occurs in one way only. One way to establish the single authoritative document is to have a single custodian of the electronic record, who enters all transfers of the document and identifies the person in control on its records, records that for all who want to know is the source of the single authoritative copy. In such a system, the person in control notifies the custodian of any transfer or authorized change in the document, who then notates its records appropriately and notifies the person in control and other relevant parties of the action. A transfer would obviously shift control from transferor to transferee. The transferee would become the new person in control.

Encryption technology may provide other methods for meeting these standards. Some kind of hybrid system of encryption and custodian may arise. UCC Article 7 prescribes no system per se and more than one system may develop over time. It is not possible to predict what technology may finally bring to electronic transfer systems. Revised Article 7 allows the technology to develop without need to amend it later when a new kind of technology comes along.

Interchangeability

UCC Article 7 provides for an electronic system of transfer for electronic documents of title and for the traditional paper system of documents of title which includes negotiable documents of title. There are dual tracks. Control is the operative term with electronic documents and negotiation is the operative term for tangible documents of title. With respect to the transfer of rights in a particular group of goods, can electronic documents be converted to tangible documents and vice versa? UCC Article 7 provides for such conversions. An electronic document may be converted

when the person in control surrenders control to the issuer, which then issues a tangible document of title containing a statement that it substitutes for the electronic document. The same kind of process will convert a tangible document to an electronic one. The person entitled to enforce a tangible document surrenders possession to the issuer. The electronic document must also state that it is a substitute for the tangible document. Without the ability to convert from tangible to electronic documents, this system would not work.

Other Benefits to Revision

The revisions to UCC Article 7, beyond making way for electronic documents of title, primarily update or clarify existing rules of law. There are references to tariffs and regulations in original UCC Article 7 that no longer exist with deregulation. These have been eliminated in the revision. There is nothing as significant as the rules for electronic documents of title. But these rules alone make it imperative for the states to enact the revision to UCC Article 7 as soon as practicable. Documents of title are fundamental to the transfer of goods in interstate commerce. The new rules are wholly commerce friendly and every state needs them as soon as possible.

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FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 102
 (H) Publish Date: 2/16/09

Identifier (file name): HB102-CED-CO-2-9-09 Dept. Affected: DCCED
 Title: Uniform Commercial Code RDU: Commissioner's Office
 Component: Commissioner's Office
 Sponsor: House Labor & Commerce
 Requester: House Labor & Commerce Component Number: 1027

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)
 The Department of Community, Commerce and Economic Development does not anticipate any fiscal impact due to passage of this legislation.

Prepared by: Tyson Fick, Legislative Liaison Phone 465-2503
 Division: DCCED Date/Time 2/9/09 6:00pm
 Approved by: Emil Notti, Commissioner Date 2/9/2009
Department of Commerce, Community and Economic Development

HB 102: UNIFORM COMMERCIAL CODE

Witness List (H) JUD 3 15 09

Terry Thurbon (in person)
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Professor Henning currently serves as Distinguished Professor of Law at the University of Alabama School of Law. Before coming to Alabama, he was the R.B. Price Professor of Law at the University of Missouri-Columbia School of Law. At Missouri, he was a three-time winner of the Distinguished Faculty Teaching Award and the first member of the law faculty to be selected for a William T. Kemper Fellowship for Teaching Excellence, awarded annually to ten faculty members from all areas of the university. He has published widely in the field of commercial law, including several books on aspects of the Uniform Commercial Code. In 1994, Professor Henning was appointed to serve as a Missouri Commissioner with the Uniform Law Commission (ULC), and in that capacity he served from 1999-2001 as Chair of the Drafting Committee to Amend Uniform Commercial Code Article 2 (Sales) and Article 2A (Leases). In 2001, he became the ULC's Executive Director, a position he held until 2007. He now serves as an Alabama Commissioner. Professor Henning is a member of the American Law Institute, where he serves as an Adviser to the *Principles of the Law Governing Software Contracts* project.

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Michael R. Kerr is Legislative Director for the National Conference of Commissioners on Uniform State Laws (NCCUSL), and is responsible for the planning and execution of nation-wide enactment efforts for NCCUSL's Uniform and Model Acts. Prior to joining NCCUSL he was a Deputy Legislative Counsel for the State Of California. He holds a bachelor's degree in public policy from Stanford University, a J.D. from the University of Southern California, and a Certificate in Government Practice from the McGeorge School of Law at the University of the Pacific. He works with a broad range of uniform and models acts on behalf of NCCUSL, with an emphasis in business organizations, commercial transactions, regulatory measures, health law, family law, and land use acts.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 16, 2009

FURTHER REFERRALS:

Date of Committee Action: 3/16/09

The JUDICIARY Committee considered:

HOUSE BILL NO. 102

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

HB 102 UNIFORM COMMERCIAL CODE

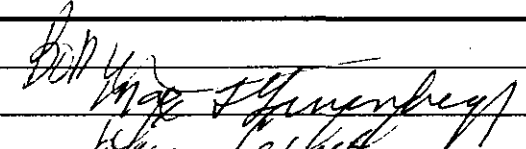
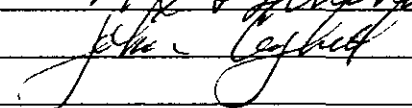
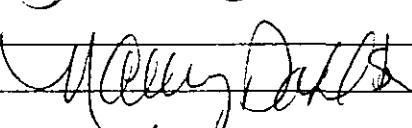
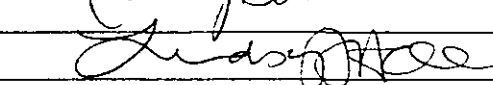
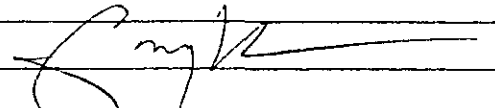
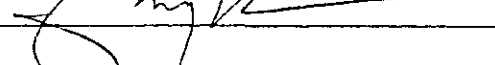
Recommends it be replaced with HCS or CS for HB 102 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 DHS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<u>CED</u>	<u>1</u>			<input checked="" type="checkbox"/>

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Lynn Suenkel			<input checked="" type="checkbox"/>	
	John Galt			<input checked="" type="checkbox"/>	
	Molly Dahl			<input checked="" type="checkbox"/>	
	Linda Hill				
Chair: 	Chair	<input checked="" type="checkbox"/>			
Chair: 	Chair	<input checked="" type="checkbox"/>			