

HB

102

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 102, relating to the Uniform Commercial Code,**
3 **to the general provisions of the Uniform Commercial Code, to documents of title under**
4 **the Uniform Commercial Code, to the Uniform Electronic Transactions Act, to lease-**
5 **purchases of personal property, to the contractual duty to act fairly and in good faith,**
6 **and to carrier, warehouse, and animal care liens; and amending Rules 403 and 902,**
7 **Alaska Rules of Evidence.**

8 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
10 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
11 changes to the title of a bill, are suspended in consideration of House Bill No. 102, relating to
12 the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code,
13 to documents of title under the Uniform Commercial Code, to the Uniform Electronic
14 Transactions Act, to lease-purchases of personal property, to the contractual duty to act fairly

1 and in good faith, and to carrier, warehouse, and animal care liens; and amending Rules 403
2 and 902, Alaska Rules of Evidence.

LEGAL SERVICES

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

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Juneau, Alaska 99801-1182
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MEMORANDUM

April 17, 2009

SUBJECT: SCS CSHB 102(JUD) relating to the Uniform Commercial Code, etc. (Work Order No. 26-LS0059\S)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Single subject considerations. The bill combines lien language from and contract duty language amendment in AS 09.70.030 with provisions throughout the Uniform Commercial Code. The bill has to rely on a somewhat questionable single subject of "contracts" for its single subject.

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).

Senator Hollis French

April 17, 2009

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Although some justices in dissents have expressed concern that the court's broad construction may possibly make the single subject 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 is not fatal for the legislation. However, it is an issue and I wanted you to be aware of it.

2. Title change. The change was made in the title from "animal care" to "livestock care." So, as you requested (unless not needed) we are preparing a concurrent resolution to waive the uniform rules for the title change. It is arguable that the change the committee made to the bill would not require the change to "livestock" because "animal" covers livestock and is not, therefore, misleading. However, because "animal" is broader than what is actually in the bill, it is safer to make the change and pass the resolution.

If I may be of further assistance, please advise.

TLB:plm
09-289.plm

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).



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

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Rep. John Coghill Rep. Bob Lynn
Rep. Lindsey Holmes Rep. Bob Buch

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."

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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 afford 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.

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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.



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

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 ADOPTIONS¹

Alabama	Minnesota
Arizona	Montana
Arkansas	Nebraska
California	Nevada
Colorado	New Hampshire
Connecticut	New Mexico
Delaware	North Carolina
Florida	North Dakota
Hawaii	Oklahoma
Idaho	Pennsylvania
Illinois	Rhode Island
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	U.S. Virgin Islands
Louisiana	Utah
	Vermont
	Virginia
	West Virginia

2009 INTRODUCTIONS:

Alaska
Oregon
Washington



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

Why States Should Adopt the...

Revised Uniform Commercial Code Article 1 - General Provisions (2001)

Article 1 serves all other articles of the Uniform Commercial Code with definitions and general provisions. Revised Article 1 improves old Article 1 in the following ways:

- **Modernization.** The UCC has entirely been amended or revised between 1985 and 2003. Most states have enacted these revisions and amendments. It is time to bring Article 1 as up-to-date as the rest of the UCC.
- **Narrower Scope.** The intentionally narrowed scope of the substantive rules in Article 1 prevent them from being applied outside the UCC with potentially serious unintended consequences.
- **Clarifies When Non-UCC Rules Apply.** Other law will clearly supplement, but does not supplant UCC rules. This reduces interpretation problems and the opportunities for litigation.
- **Good Faith.** Reasonable commercial standards will affect the determination of what is good faith in any given case for the entire UCC, not just individual articles. This is a fairer standard for courts to enforce and is the existing standard in most of the substantive articles of the UCC.
- **Broader Choice of Law.** Parties to transactions under the UCC may choose any law that best governs their transaction, except in a consumer transaction in which the choice of law would deprive a consumer of the protections of his or her own state's law. This amendment provides for greater flexibility in doing business interstate and is good for business.
- **Course of Performance Added.** Absent express terms, evidence of "course of performance" (a concept currently utilized only in Articles 2 and 2A of the UCC) may be used in court to interpret a contract along with course of dealing and usage of trade. Courts will have more complete evidence on the meaning of contracts and the intent of the parties to them.
- **Statute of Frauds Deleted.** General writing and signature requirements are deleted to make way for the specific provisions for electronic records and signatures that are contained in the substantive UCC articles.

UNIFORMITY

Modifications and revisions of other articles in the Uniform Commercial Code require the revision of Article 1 of the UCC. This required harmonization of Article 1 with the other revised articles as well as the need to reflect in Article 1 recent changes and developments in law are both expressed in Revised Article 1. It is important for every state to adopt Revised Article 1 of the Uniform Commercial Code.



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.



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

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:

Alaska
Georgia
South Dakota
Oregon

Washington

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

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Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

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 single 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

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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REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

MEMORANDUM

To: Senator Hollis French,
Chair, Senate Judiciary

From: Representative Craig Johnson 

Date: April 14, 2009

Subject: Request for scheduling for CS HB 201 (JUD)

I respectfully request that Committee Substitute for House Bill 201 (JUD), relating to concealed carry permits, be considered for scheduling. This legislation would allow Alaskans who require a conceal carry permit for reciprocity to have their permit expire on their birthday.

Please feel free to contact me, or my aide, Jeanne Ostnes, with questions or thoughts at our main office number of 465- 6871.