

HB

9

<TARGET><BILL>HB 9</BILL><SUBJECT>HB
9</SUBJECT><COMM>HJUD28</COMM></TARGET>

Alaska State Legislature
House of Representatives



Representative Max F. Gruenberg, Jr.
House District 14
Anchorage (Russian Jack, College Gate, Nunaka Valley)
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TO: Rep. Wes Keller, Chair
House Judiciary Committee

FROM: Rep. Max Gruenberg 

DATE: February 21, 2013

RE: HB 9 Hearing Request

.....

Please consider this memorandum as a request for House Bill 9 to be heard in the House Judiciary Committee. Accompanying this memo are the following documents:

- HB 9 Sponsor Statement
- HB 9 Sectional Analysis
- HB 9 (28-LS0035\N)
- Fiscal Note Dept. of Law
- Fiscal Note DNR
- UCC Article 4A Amendments (2012) Summary
- UCC Article 9 Amendments (2010) Summary
- UCC Article 4A Amendments Legislative Fact Sheet
- UCC Article 9 Amendments Legislative Fact Sheet
- Supporting Document- Letter Alaska Bankers Association 1-28-2013
- Supporting Document- Letter Department of Law 2-21-2013

Thank you for considering my request for a hearing on HB 9. Please contact my legislative aide, Miles Brookes, at 465-4940 with any questions.

Alaska State Legislature

House of Representatives



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HB 9 - SECURED TRANSACTIONS AND FUNDS TRANSFERS

"An Act relating to secured transactions under the Uniform Commercial Code and to the regulation of funds transfers, including remittance transfers, under the Uniform Commercial Code and federal law; and providing for an effective date."

Article 9 of the Uniform Commercial Code (U.C.C.) governs secured transactions and personal property. It has been adopted in all 50 states and in the District of Columbia. In 1998 Article 9 was extensively amended. These amendments have been adopted in all states and in the District of Columbia. In 2010, additional new amendments responding to filing issues and other matters were drafted. These amendments were promulgated by the Uniform Law Commission in order to keep uniformity and prevent ambiguities within the Uniform Commercial Code. The commissioners have requested and the states are attempting to adopt these new statutory amendments to make them effective July 1, 2013. Therefore it is important that this bill pass this year.

The 2010 amendments are of great importance, as they provide greater guidance as to the identity of a debtor on financial statements, improve the system for filing financial statements, remove some extraneous information currently required on financing statements, and make some technical changes responding to issues arising in the marketplace. HB 9 amends AS 45.29 (U.C.C. Art. 9) to make these changes. Currently, 30 states have adopted these changes, with legislation pending in 12 others and in the District of Columbia.

The Federal Electronic Fund Transfer Act (EFTA) was drafted in 1978 to govern consumer wire transfers. Article 4A of the Uniform Commercial Code was drafted, with this in mind and governs transfers between commercial parties. The Dodd-Frank Wall Street Reform Act amended EFTA that has an important impact on the scope of U.C.C. Article 4A. When the Dodd-Frank amendments went into effect in February 2013, discrepancies between federal law (EFTA) and state law (U.C.C. Art. 4A) arose. As a result, certain transfers are not covered by either law. HB 9 amends AS 45.14 (U.C.C. 4A) to fix this problem and to provide that if there is an ambiguity between federal and state law, federal law rules supreme.

If HB 9 is not passed this session, interstate secured transactions and fund transfers occurring between companies in Alaska and companies in states that have adopted the 2010 Article 9, and 2012 Article 4A amendments to the U.C.C. could result in no statutory rules for remittance transfers that may involve

mistaken addresses or payees, duties of intermediaries, and other issues beyond the initial sending of the transfer. Failure to pass HB 9 may significantly increase the cost and uncertainty surrounding the affected transactions.

Adopting these changes this session will benefit the State of Alaska so that it may continue to benefit from the existing Article 9 and keep it up to date.

If you have any questions, contact Representative Gruenberg's aide, Miles Brookes, at (907) 465-4940.

HOUSE BILL 9

Relating to secured transactions under the Uniform Commercial Code and to the regulation of funds transfers, including remittance transfers, under the Uniform Commercial Code and federal law

Sectional Analysis

Sections 1 and 2 address a needed change to Uniform Commercial Code, Article 4A to maintain coverage under state law for certain types of remittance of funds transfers in commercial transactions. Without the change, neither federal nor state law would apply to these transfers. It restores regulatory certainty and clarity necessary to prompt commerce.

Sections 3 through 7 update definitions in the Uniform Commercial Code, Secured Transactions (Article 9). The changes are necessary to update language on electronic signature for these transactions, to clarify that other records may serve as "certificates of title" if they are maintained as an alternative for indication of a security interest, and to introduce the term "public organic record" to reduce confusion as to which document must be consulted to locate the correct debtor name for a financing statement.

Section 8 makes technical amendments to set out the general test for the control of electronic chattel paper. Subsection (b) sets out a safe harbor that, if satisfied, establishes control under the general test in subsection (a).

Section 9 makes technical changes by recognizing in statute that designating a state of location of the registered organization, branch, or agency includes designating its main office, home office, or other comparable location. Previously this concept was contained in official comments to the Uniform Commercial Code, Article 9, but has been moved to the text in the interest of certainty.

Section 10 makes technical changes to conform to the revised definition of "certificate of title."

Section 11 relates to when a debtor changes location from one state to another. Under current law, the debtor has a four-month grace period to re-perfect filing in the new state as to the collateral it held before the move but it has no grace period as to collateral acquired after the move. **Section 11** would provide the same grace period for the after move acquired collateral that current law provides for pre-move collateral. **Section 14** makes conforming changes concerning priority of security interests created by a new debtor. **Section 22** makes a conforming change to implement the new debtor name rules.

Sections 12 and 13 make technical changes in language to conform to other provisions of Uniform Commercial Code, Article 9.

Sections 15 and 16 make clear that a secured party that takes an assignment of a payment intangible or promissory note as collateral for an obligation may take advantage of the remedies available under Uniform Commercial Code, Article 9.

Sections 17 through 19 provide greater clarity on the name of the debtor to be used in a financing statement for different types of debtors, such as registered organizations, trusts, decedent of estate, or individual debtors.

Section 20 makes technical changes to conform to the new rules governing individual debtor names on financing statements.

Section 21 makes a technical change to parallel other provisions of the section. The change is needed for ease of administration by filing offices.

Sections 22 through 24 change the term "correction statement" to "information statement" in order not to give the impression that a filing of the statement has a legal effect of correcting a problem. The changes also allow a secured party of record to file an information statement regarding a filed record if the secured party believes that the person that filed the record was not entitled to do so under Uniform Commercial Code, Article 9. Without this change only a debtor could file such a statement.

Section 25 clearly states what is current law, that in order for a secured party to record an affidavit to facilitate foreclosure on a mortgage serving as collateral for a promissory note in which the secured party has an interest, the secured party must state in the affidavit that the mortgagor is in default on the note.

Section 26 sets out an applicability provision for the Act.

Sections 27 through 33 set out transition provisions for the Act.

Section 34 gives instructions to the Department of Natural Resource on implementation of the act, especially concerning regulations and filing statements. **Section 36** provides an immediate effective date of these instructions.

Section 35 provides a savings clause for an action, case, or proceeding commenced before July 1, 2013.

Section 37 provides generally for an effective date of July 1, 2013, for the Act. All states are supposed to have this uniform effective date to avoid implementation issues across the states.

Prepared by:
Deborah Behr
Chair
Alaska Uniform Law Commission
(2/11/2013)

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

February 19, 2013

SUBJECT: Sectional summary of bill relating to the Uniform Commercial Code (HB 9; Work Order No. 28-LS0035N)

TO: Representative Max Gruenberg
Attn: Miles Brookes

FROM:  Terry Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Bill Sections 1 - 2. These sections amend AS 45.14, the chapter of the state's Uniform Commercial Code that governs funds transfers.

Bill Section 1. Amends AS 45.14.108, which states how the chapter applies when the funds transfers are governed by federal law. Adds an exception (found in bill sec. 2) to the general provision that the chapter does not apply to a funds transfer that is governed by the federal Electronic Fund Transfer Act of 1978.

Bill Section 2. Adds two subsections to AS 45.14.108. Subsection (b) states that AS 45.14 applies to a remittance transfer under 15 U.S.C. 1693o-1, unless it is an electronic fund transfer under 15 U.S.C. 1693a. Subsection (c) states that federal law governs if there is an inconsistency between a provision of AS 45.14 and the Electronic Fund Transfer Act of 1978.

Bill Sections 3 - 25. These sections amend AS 45.29, the chapter of the Uniform Commercial Code that governs secured transactions. Secured transactions are transactions that give a creditor an interest in a debtor's personal property to secure payment of the debt.

Bill Sections 3 - 7. These sections amend AS 45.29.102, a definition section for the chapter. They amend the definitions of "authenticate," "certificate of title," "jurisdiction of organization," and "registered organization," and add a definition of "public organic record."

Bill Section 8. Amends AS 45.29.105, which determines when a secured party is considered to have control over electronic chattel paper. The secured party has control if a system reliably establishes that the chattel paper was assigned to that person. The system must satisfy the criteria described in (b) of the section.

Bill Section 9. Amends AS 45.29.307, which determines where a debtor is located. The amendment applies to certain federal organizations and certain bank branches and agencies.

Bill Section 10. Amends AS 45.29.311(a), which lists when the filing of a financing statement is not necessary or effective to perfect a security interest. Makes changes to the use of "certificate of title" in AS 45.29.311(a)(3).

Bill Section 11. Amends AS 45.29.316, which addresses the continued perfection of security interests following changes in the governing law caused by changes in the original or a subsequent debtor's location to another state. Adds two new subsections. Subsection (h) addresses the situation where a debtor changes its location to another state. Subsection (i) addresses the situation where a subsequent debtor is located in another state from that of the original debtor. The subsections basically allow the security interest to attach to collateral acquired after the change of location or change of debtor if certain conditions are met.

Bill Section 12. Amends AS 45.29.317(b). Changes a term in the subsection to use "certificated security," which is defined in AS 45.29.102 for AS 45.29. The full definition of the term is found at AS 45.08.102(a).

Bill Section 13. Amends AS 45.29.317(d). Allows certain licensees and buyers of collateral, except for the items listed, to take free of a security interest in the collateral if the licensee or buyer gives value for the collateral, does not know about the security interest, and does this before the security interest is perfected.

Bill Section 14. Amends AS 45.29.326, which relates to the priority of security interests created by a new debtor. Most of the changes handle the addition of AS 45.29.316(i) by bill sec. 11.

Bill Section 15. Amends AS 45.29.406(e). The subsection exempts sales of payment intangibles and promissory notes from the limitations on terms contained in (d). The amendment limits (e)'s exemption by stating that the exemption in (e) does not apply to two situations: a sale under a disposition of collateral after default under AS 45.29.610 and an acceptance of collateral in satisfaction of an obligation under AS 45.29.620.

Bill Section 16. Amends AS 45.29.408(b). The subsection states that (a)(2) (which makes certain terms in certain types of agreements ineffective) applies only to security interests in payment intangibles or promissory notes if the security interest arises out of the sale of the payment intangible or promissory note. The amendment limits (b)'s

application by making two exceptions: a sale under a disposition of collateral after default under AS 45.29.610 and an acceptance of collateral in satisfaction of an obligation under AS 45.29.620.

Bill Section 17. Rewrites AS 45.29.503(a), which relates to the name of the debtor given on a financing statement. Indicates when a financing statement sufficiently provides the debtor's name for different types of debtors, including organizations, individuals, decedents, and trusts.

Bill Section 18. Amends AS 45.29.503(b), which indicates that a financing statement giving the debtor's name as required by (a) of the section is not rendered ineffective by the absence of a trade name, another name of the debtor, or in certain cases the names of partners, members, associates, or other persons making up the debtor. Makes technical changes to reflect the rewriting of (a) (see bill sec. 17) and to correct terminology.

Bill Section 19. Adds new subsections to AS 45.29.503, which addresses the name of the debtor and the secured party. Subsection (f) addresses the name of a decedent with a personal representative. Subsection (g) clarifies that the most recently issued driver's license or identification card is the one to use. Subsection (h) defines "name of the settlor or testator."

Bill Section 20. Amends AS 45.29.507(c). Changes the application of the subsection from a debtor's change of name causing a financing statement to become seriously misleading to the debtor's name becoming insufficient under AS 34.19.503(a), so that the financing statement becomes seriously misleading. Replaces former references to name "change" with the financing statement becoming seriously misleading.

Bill Section 21. Amends AS 45.29.515, which addresses the duration of a financing statement. States that if the debtor is a transmitting utility it is the initial financing statement that is effective until a termination statement is filed.

Bill Section 22. Amends AS 45.29.516(b), which states that filing does not occur when the filing office refuses to accept a record for the reasons listed in the subsection. Replaces "correction statement" with the new term, "information statement." Clarifies that "last name" means "surname." Includes in certain cases a failure to indicate whether the debtor's name provided is the name of an individual or that of an organization. Removes the current requirement that certain details be provided for debtors who are organizations.

Bill Section 23. Amends AS 45.29.518, which addresses claims that filed records are inaccurate or wrongfully filed. Replaces "correction statement" with the new term, "information statement," to refer to the document that is filed to claim that a filed record is inaccurate or wrongfully filed. The new term is used in order to avoid giving the impression that the filing of the statement has the legal effect of correcting the problem.

Bill Section 24. Adds two new subsections to AS 45.29.518, which addresses claims that filed records are inaccurate or wrongfully filed. Subsection (d) allows a secured party to file an information statement about a filed record related to the financing statement, if the secured party believes that the person who filed the record was not entitled to file the record. Subsection (e) describes what an information statement under (d) must contain.

Bill Section 25. Amends AS 45.29.607(b). The change relates to an affidavit a secured party may record to enable the secured party to exercise the right of a debtor to enforce a mortgage nonjudicially for a default. Requires the affidavit to state that the default relates to the obligation secured by the mortgage.

Bill Section 26. Provides an applicability section for the bill.

Bill Sections 27 - 33. These provide transition sections for the bill.

Bill Section 34. Provides instructions for the Department of Natural Resources (department) as it implements the bill. Directs the department to adopt, amend, or repeal regulations to implement the bill. Directs that the listed forms to be filed under AS 45.29, as amended by this bill, be identical to the forms adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws to implement this bill.

Bill Section 35. Provides a saving clause for the bill so that the bill does not affect an action, case, or proceeding started before July 1, 2013.

Bill Section 36. Makes bill sec. 34 effective immediately after enactment so that the department can start preparing the regulations and forms.

Bill Section 37. Gives the bill an effective date of July 1, 2013, except for bill sec. 34.

If I may be of further assistance, please advise.

TLB:lnd
13-093.lnd

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 9
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB009-LAW-CIV-02-15-13
Title: SECURED TRANSACTIONS AND FUNDS
TRANSFERS
Sponsor: GRUENBERG
Requester: (H) Labor & Commerce

Department: Department of Law
Appropriation: Civil Division
Allocation: Commercial and Fair Business
OMB Component Number: 2717

Expenditures/Revenues

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

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Loretta Withington, Division Operations Manager
Division: Administrative Services Division
Approved By: Michael C. Geraghty, Attorney General
Department of Law

Phone: (907)465-5427
Date: 02/15/2013 12:00 AM
Date: 02/15/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 9

Analysis

HB 9 would update Alaska's Uniform Commercial Code Article 4A (Funds Transfers) and 9 (Secured Transactions). The changes are recommended for adoption by July 1, 2013 by the states by the Uniform Law Commission. An updated Uniform Commercial Code is essential for predictable and reliable commerce across interstate lines. Thirty states have already adopted the changes, and bills are pending in 13 other states to make the changes by the July 1, 2013 deadline.

The changes have no fiscal impact on the Department of Law.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 9
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB009-DNR-REC-2-15-13
Title: SECURED TRANSACTIONS AND FUNDS
TRANSFERS
Sponsor: GRUENBERG
Requester: House Labor & Commerce

Department: Department of Natural Resources
Appropriation: Administration & Support Services
Allocation: Recorder's Office/Uniform Commercial Code
OMB Component Number: 802

Expenditures/Revenues

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

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 09/16/13

Why this fiscal note differs from previous version:

Initial Version

Prepared By: Jeanmarie Davis, Director	Phone: (907)465-2422
Division: Support Services Division	Date: 02/15/2013 01:00 PM
Approved By: Daniel S. Sullivan, Commissioner	Date: 02/15/13
Department of Natural Resources	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB009

Analysis

HB 9 amends the Uniform Commercial Code (UCC), which governs secured transactions in personal property. The Uniform Law Commission, in conjunction with the American Law Institute, amended the UCC Article 9 in 2010 to respond to filing issues and provide greater guidance as to the name of an individual debtor to be provided on a financing statement.

HB 9 amends definitions related to certain financing statements that are filed with the Uniform Commercial Code Central Filing office or recorded with the Recorder's office.

Section 34 instructs DNR to adopt, amend, or repeal regulations and this section takes effect immediately per Section 36. The Recorders/UCC Central Section has begun work on amending definitions that exist in regulations and thus DNR anticipates completing regulations by September 16, 2013.



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

UCC Article 4A Amendments (2012) Summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act is an amendment to the Federal Electronic Funds Transfer Act (EFTA) that will have an important impact on the scope of Article 4A of the Uniform Commercial Code. Presently Article 4A does not apply to a funds transfer any part of which is governed by EFTA. The implementing regulations for the federal act were published in the Federal Register in November 2011, with a delayed effective date of the rules to February 2013, expressly to permit changes to UCC 4A so it might continue to govern aspects of some remittance transfers. Absent a change to Article 4A, there could be legal uncertainty for a class of remittance transfers currently governed by Article 4A. The Permanent Editorial Board for the Uniform Commercial Code has recommended an amendment to §4A-108 and its comments. Both the ALI and the ULC have approved the amendment.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the EFTA governed only consumer wire transfers. UCC §4A-108 was drafted with that in mind. When the amendment to EFTA goes into effect in 2013, EFTA will govern "remittance transfers", whether or not those remittance transfers are also "electronic fund transfers" as defined in EFTA. Thus, when the amendment and its implementing regulation go into effect, the result of UCC §4A-108 in its present form will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer (not a consumer remittance transfer). Thus a number of important issues in those remittance transfers will be governed neither by Article 4A or the EFTA.

The proposed amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA.

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Contact Us: 312.450.6600

UCC Article 9 Amendments (2010) Summary

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

Article 9 was substantially revised in 1998, and the 1998 revisions are in effect in all states and the District of Columbia. The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following over a decade of experience with the revised Article 9.

Of most importance, the 2010 amendments provide greater guidance as to the name of a debtor to be provided on a financing statement. For business entities and other registered organizations, the amendments clarify that the proper name for perfection purposes is the name filed with the state and provided on the organization's charter or other constitutive documents, to the extent there is a conflict with the name on an entity database. More importantly, the 2010 Amendments provide significantly greater clarity as to the name of an individual debtor to be provided on a financing statement.

Since the adoption of the 1998 revision of Article 9, there have been at least a dozen court decisions dealing with the question of what name needs to be provided on a financing statement for an individual debtor. Several states have adopted non-uniform amendments to Article 9 to address this issue. The 2010 Amendments to Article 9 give greater guidance by providing states with two alternatives.

Alternative A, known as the "only-if" rule, requires a filer to provide on the financing statement the name on the debtor's driver's license, if the license has not on its face expired. If the debtor does not have a driver's license, the filer must use either the individual name of the debtor (i.e., whatever the debtor's name is under current law) or the debtor's surname and first personal name. A state considering adopting Alternative A should in particular consider whether the state's driver's license database is compatible with its Uniform Commercial Code database as to characters, field length and the like.

Alternative B, known as the "safe harbor" rule, leaves intact the requirement that the financing statement use the debtor's "individual name," but provides that the name on the driver's license will also be sufficient as well as the debtor's surname and first personal name.

If a state issues from the same office a non-driver's identification card, and it is not possible for the same individual to hold both a driver's license and a non-driver's identification card, the name provided on the non-driver's identification card may be used with the same effect as a driver's license name under either alternative.

A number of related changes were also made – for example the 2010 amendments make it clear that a change in the name used on a debtor's driver's license or the expiration of the driver's license may qualify as a name change for purposes of 9-507

(c). With respect to trusts, if collateral is held by a statutory trust or in Massachusetts type business trust, the trust is a registered organization and the trust's name is the debtor name. For common law trusts that are not Massachusetts type business trusts, the financing statement must provide the name of the trust as identified in the trust's organic records if it has name indicated there, or otherwise the name of the settlor or testator and sufficient additional information to distinguish a

particular trust from others held by that same settlor or testator.

The Amendments also deal with perfection issues arising on after-acquired property when a debtor (individual or organization) moves to a new jurisdiction. Article 9 currently provides that perfection by filing continues for four months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral unless and until the secured party perfects pursuant to the law of the new jurisdiction. The amendments change this by giving the filer perfection for four months in collateral acquired post-move. A similar change is made with respect to a new debtor that is a successor by merger. The new rule provides for temporary perfection in collateral owned by the successor before the merger or collateral acquired by the successor within four months after the merger.

Existing Section 9-518 authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized. While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed. The amendments change section 9-518 in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the amendments authorize the secured party of record to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized. The change addresses concerns of secured parties that an amendment to a different financing statement may be inadvertently filed on the secured party's financing statement because the amendment contains an error when referring to the file number of the financing statement to be amended. The comments also make clear that the secured party has no duty to file an information statement, even if it knows of the unauthorized filing.

A number of additional technical amendments are also included in this package. For example, some extraneous information currently provided on financing statements will no longer be required. A safe harbor for the transfer of chattel paper in conformance with the Uniform Electronic Transactions Act is included in the amendments, and the amendments make it clear that the broader override contractual restrictions found in Section 9-406(d) applies with respect to enforcement of a security interest through the sale or strict foreclosure of payment intangibles and promissory notes. Clarification is given with respect to certificates of title for title goods where the certificates of title are, in whole or in part, in electronic form, and greater guidance is given with respect to the notice requirements applicable to electronic dispositions of collateral (specifically, time and "electronic location" of online auctions) when a security interest is enforced by sale or other disposition of the collateral.

The amendments are accompanied by changes to the official comments to Article 9 to explain the amendments and also provide some additional clarifications in the official comments.

The amendments are slated to have a uniform effective date of July 1, 2013, so as to allow states to adopt the amendments uniformly and have them become operative simultaneously (thereby avoiding unnecessary conflicts and confusion with respect to interstate transactions). All states are urged to adopt the 2010 Amendments to Article 9 of the Uniform Commercial Code as quickly as possible.

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Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Legislative Fact Sheet - UCC Article 9 Amendments (2010)

Act UCC Article 9 Amendments (2010)

Origin Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 2010.

Description The Uniform Commercial Code (UCC) Article 9 governs secured transactions in personal property. UCC9 was substantially revised in 1998 and adopted in all states. The 2010 Amendments to UCC9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the 1998 version of UCC9. Of most importance, the 2010 Amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement.

Endorsements (Approved by the American Bar Association)

Enactments Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin

2013 Introductions Alaska, Arizona, Delaware, District of Columbia, Massachusetts, Mississippi, Missouri, Montana, New Mexico, Oklahoma, Pennsylvania, Utah, Wyoming

Staff Liaison(s) Nicole Julal

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Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Why States Should Adopt 2010 Amendments to UCC Article 9

Article 9 of the Uniform Commercial Code governs secured transactions in personal property. Article 9 was substantially revised in 1998, and the 1998 revisions are in effect in all states and the District of Columbia. The **2010 amendments to Article 9** modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the revised Article 9.

Of most importance, the amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments offer two alternatives to each state:

- Alternative A provides that, if the debtor holds a driver's license issued by the state where the financing statement is filed, the debtor's name as it appears on the driver's license is the name required to be used on the financing statement. If the debtor does not have such a driver's license, either the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.
- Alternative B provides that the debtor's driver's license name, the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.

A state considering adopting Alternative A should in particular consider whether the state's driver's license database is compatible with its Uniform Commercial Code database as to characters, field length and the like.

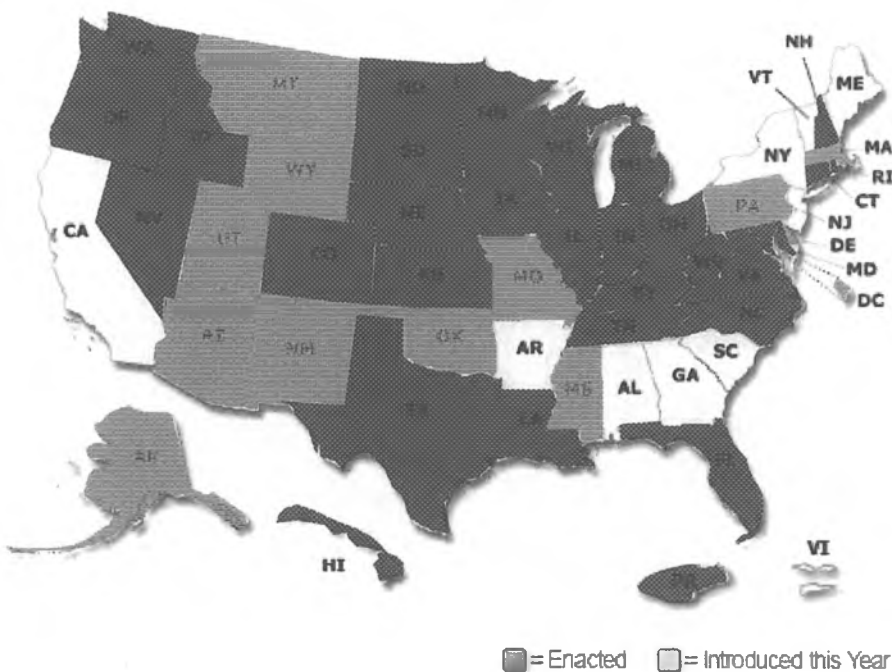
The amendments further improve the filing system for the filing of financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership or when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required.

In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.

The amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

A state should adopt the 2010 amendments so that its Article 9 rules will benefit from the experience with the existing statute and are up to date.

Enactment Status Map



Legislative Tracking

2013 Introductions & Enactments

State	Bill	Sponsor	Status
Alaska	HB 9	Gruenberg	Introduced
Arizona	SB 1039	Reagan	Introduced
Delaware	HB 8	Walker	Introduced
District of Columbia	19-222	Alexander	Introduced
Massachusetts	HB 28		Introduced
Mississippi	SB 2609	Doty	Introduced
Missouri	HB 212	Cox	Introduced
Montana	HB 212		Introduced
New Mexico	SB 146	Ivey-Soto	Introduced
Oklahoma	SB 371	Ivester	Introduced
Pennsylvania	HB 24	Grell	Introduced
Utah	SB 41	Hillyard	Introduced
Wyoming	SB 13		Introduced



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Legislative Fact Sheet - UCC Article 4A Amendments (2012)

Act UCC Article 4A Amendments (2012)

Origin Completed by Uniform Law Commissioners in 2012.

Description Section 4A-108 was amended in 2012 by the PEB for UCC.

Endorsements

Enactments California, New York, Ohio

2013 Introductions Alaska, District of Columbia, Hawaii, Indiana, Nebraska, New Jersey, North Dakota, Pennsylvania, South Dakota, Virginia, Washington

Staff Liaison(s) Nicole Julal

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Why States Should Adopt the Amendment to UCC Article 4A

Preemptive federal regulations for remittance transfers will become effective in February 2013. The delayed implementation was given to provide the Uniform Law Commission and/or interested parties time to make changes that would permit some aspects of remittance transfers to continue to be covered by UCC Article 4A. The federal regulation is intended to cover primarily consumer remittance provider disclosure and limited other issues in funds transfers (remittances) that go out of the United States.

The proposed amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act (EFTA). The amendment maintains the coverage of UCC 4A for some aspects of wire transfers, while initial aspects of generated consumer remittance transfers will be covered by the federal rules. Without enactment of the amendment, neither the federal rule nor UCC 4A will apply to some aspects of remittance transfers. The result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries and other issues beyond the initial sending of the transfer.

Enactment Status Map



Legislative Tracking

2013 Introductions & Enactments

State	Bill	Sponsor	Status
Alaska	HB 9	Gruenberg	Introduced
District of Columbia	19-136	Alexander	Introduced
Hawaii	HB 135	McKelvey	Introduced
Indiana	HB 1224	Price	Introduced
Nebraska	LB 146	Gloor	Introduced
New Jersey	SB 2144	Gill	Introduced
North Dakota	HB 1127		Introduced
Ohio	SB 333	Obhof	Enacted
Pennsylvania	HB 22	Grell	Introduced
South Dakota	SB 111	Soholt	Introduced
Virginia	SB 1066	Edwards	Introduced
Washington	HB 1115	Pedersen	Introduced

Alaska Bankers Association

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January 28, 2013

Representative Gruenberg
State Capitol
Room 110
Juneau, AK 99801

RE: Alaska House Bill 9 -- Secured Transactions and Funds Transfers

Dear Representative Gruenberg:

The Alaska Bankers Association consists of the following eight member banks: Alaska Pacific Bank, Denali State Bank, First Bank Ketchikan, First National Bank Alaska, KeyBank, Mt. McKinley Bank, Northrim Bank, and Wells Fargo Bank.

The Alaska Bankers Association supports House Bill 9.

This is a bill to clarify the relationship between UCC Article 4A and the federal Electronic Fund Transfer Act (the "Act") and to confirm Article 4A's applicability to remittance transfers under the Act.

The Act and Regulation E issued under the Act cover "electronic fund transfers," an electronic payment initiated by or on behalf of a consumer to debit or credit a consumer's account.

Generally, UCC Article 4A governs "funds transfers," such as a wholesale wire transfer originated on behalf of a business enterprise. Article 4A governs the rights and responsibilities among commercial parties to a wire transfer, including payment obligations among the parties and allocation of risk of loss.

Under current law, UCC Article 4A does not apply to a funds transfer governed by the Act. By virtue of this section 4A-108 (A.S. section 45.14.108), funds transfers governed by the Act and funds transfers governed by UCC Article 4A are clearly separated by a statutory firewall.

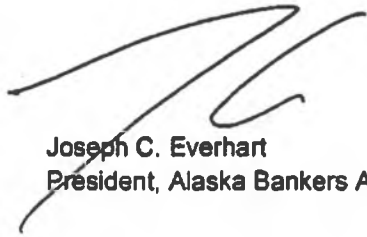
Section 1073 to the federal Dodd-Frank Act amended the Act to add a new section 919 governing "remittance transfers." A remittance transfer includes a wire transfer originated by a consumer to send funds to a designated recipient located in a foreign country. When the federal Consumer Financial Protection Bureau implemented section 919 by issuing amendments to Regulation E, a wire transfer sent on a consumer's behalf that is a remittance transfer became governed by the Act. Consequently, to the extent some funds transfers, such as an international wire transfer originated by a consumer, are remittance transfers under Regulation E, the transfers are governed by the Act, even if they are not electronic fund transfers, as defined in the Act.

Thus, section 1073 changes current law. If UCC section 4A-108 remains unchanged, the effect of current section 4A-108 is to make funds transfers that are remittance transfers (but not electronic fund transfers) fall outside the coverage of Article 4A, leaving the rights and responsibilities among providers of international funds transfers, such as international wire transfers, unregulated by Article 4A. The amendment to section 4A-108 makes such remittance transfers subject to Article 4A so long as the transfers do not fall within the definition of an electronic fund transfer and so long as such coverage is not inconsistent with the Act.

In summary, this bill will continue the firewall between the Act and Article 4A. Therefore, the rights and responsibilities among providers of international funds transfers, including international wire transfers, will continue to be regulated by Article 4A. Further, the consumer's rights and protections afforded under the Act and Regulation E to such remittance transfers will continue to be available to consumers, as the Act will be the governing law between the consumer sender and the remittance transfer provider.

Thank you for the opportunity to provide comment on Alaska House Bill 9.

Sincerely,



Joseph C. Everhart
President, Alaska Bankers Association

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR

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February 21, 2013

Representative Wes Keller
House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: Hearing Request re: HB 9 -- Secured Transactions and Funds Transfers

Dear Representative Keller:

The Department of Law would appreciate scheduling of the above bill for a hearing in your committee, at your earliest convenience.

We have reviewed the bill and have found no legal concerns.

If you have any questions, please feel free to contact me.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: 

Deborah E. Behr
Chief Assistant Attorney General

MCG:DEB:pav

cc: Heather Brakes, Legislative Director, Office of the Governor
Representative Max Gruenberg, Sponsor