ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6948 HOUSE JUDICIARY

'92

NAIC MODEL LAW ON CREDIT FOR REINSURANCE

(ILU Provision as approved in Wilmington, Delaware in September, 1989. Technical corrections adopted in Baltimore, Maryland in June, 1990).

"In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation; and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of $10,000,000,000; the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant."

FAILED PROMISES

Insurance Company Insolvencies

A REPORT

BY THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 1990

U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1990

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ferences. The primary difference is that European countries are geographically much smaller, their insurance markets are more centralized, and entrance to their markets is more restricted. Regulatory officials and industry participants say these factors mean that reputations of individuals and companies are better known, and exchange of significant information is easier. They point to their limited number of reported insolvencies as proof that their regulatory systems work.

Ireland and Great Britain rely upon independent auditors to check insurance company reports for accuracy, while Switzerland uses government examiners to perform that task. Both Ireland and Great Britain have legal requirements for auditors to report important problems directly to government regulators, and actuaries in Great Britain have a professional responsibility to report such problems, even if they are company employees. The United States currently has no equivalent requirements for actuaries and independent auditors. Great Britain also has useful provisions for prior regulatory approval of key executives and shareholders, as well as restrictions on reentering the insurance industry for senior company officials associated with prior insolvencies.

Another difference in Great Britain is the existence of self-regulating insurance markets such as Lloyd's of London and the Institute of London Underwriters. These organizations enable many participating entities to operate in a centralized marketplace using common support functions. They are generally supervised by British regulators, but have important self-regulatory mechanisms intended to assure the solvency of their markets. Efforts to establish similar organizations in New York and Miami have failed.

Lloyd's is best known as an exclusive market where selected brokers and underwriters are permitted to write insurance and reinsurance coverages in a free-form atmosphere. Specific risks are insured by separate syndicates representing groups of Lloyd's "names", who are wealthy individuals pledging their full assets to satisfy claims taken on by the syndicates. As a market, Lloyd's is one of the world's largest reinsurers and has an impressive record of solvency and dependability, but a few notable problems have arisen in recent years.

Lloyd's has experienced fraudulent and incompetent behavior by some syndicate managers and brokers, as well as resistance to paying large claims by syndicate members whose personal fortunes are threatened. The process of screening "names" for good character and financial worth has not included strong background checks or regular financial reports on individual syndicate members, and has not prevented persons such as Carlos Miro from using his status as a Lloyd's "name" as an advertisement of his respectability. Industry participants have also complained to the Subcommittee that Lloyd's syndicates are becoming very slow in paying legitimate claims presented to them.

The Institute of London Underwriters is another exclusive market organized to permit its members open negotiation and joint participation in insurance coverages. Unlike Lloyd's, the Institute of London Underwriters' members are actual insurance companies operating in the London market, many of which are affiliated with large international companies. They use the organization to facili-

tate the writing of purely marine and aviation business. Although much newer than Lloyd's, the Institute of London Underwriters has achieved success in securing a solvent market through initial screening and regular monitoring of member companies.

The challenge for the United States is to strengthen its own system of solvency regulation, while determining which foreign regulatory systems are worthy of recognition and reliance in regard to solvency matters. This must be accompanied by an acknowledgment that United States and foreign regulatory bodies, like the companies they regulate, vary widely in terms of size, resources, competence, and commitment to the public. The key to resolving solvency problems may well lie in placing more reliance on those who deserve it, while more closely monitoring and restricting those who do not meet appropriate standards.

Regulating international insurance entities and transactions requires international cooperation and coordination, which seems lacking under the present system. A lot can be learned and copied from successful foreign regulatory efforts, but the United States is a geographic giant with decentralized markets and an economic culture based on open entry and competition. There must be better balance among the insurance industry's solvency needs, the unavoidable realities of the United States market, and present tendencies to let everyone participate equally and freely under ineffective rules. The existing regulatory system treats Lafayette Re the same as Munich Re, and Great Britain the same as the Cayman Islands. This dissipates limited resources and ignores obvious differences.

The Subcommittee plans further inquiry into foreign regulatory and business practices, particularly in the area of reinsurance. Solvency and reliability are common international objectives, but the Subcommittee has also noted common international weaknesses, such as failure to control MGA's, failure to require actuaries for establishing property/casualty loss reserves, and too little focus on the activities and solvency of reinsurers. If the reform efforts of concerned government regulators, self-regulatory organizations, and industry participants can be promoted and coordinated, there could be a real opportunity to substantially improve international solvency regulation for the mutual benefit of everyone involved. The Subcommittee looks forward to working with all interested parties in developing a system that is more rigid in addressing solvency requirements, and more flexible in recognizing where and how such requirements should be implemented.

ISSUES TO BE ADDRESSED

The Subcommittee's inquiry into solvency issues thus far has documented many problems and weaknesses in the present regulatory framework, some of which fundamentally affect the well-being of the system. The inquiry has been conducted with an open attitude for seeing and describing things the way they really are, but with no preconceived agenda of solutions for correcting problems found by the Subcommittee. The focus of the inquiry will continue to be on understanding the causes of insolvency, and finding work-

The Institute of London Underwriters
Reinsurance Accreditation
Position Paper

The Role of the Institute in the U.K. and World Markets

The Institute of London Underwriters ("the Institute), the trade association for London-based companies underwriting marine and aviation insurance and reinsurance risks, plays a central role in the administration of marine, aviation and transportation ("M.A.T.") insurance business in the London Market.

The Institute's London operations are both a headquarters and an underwriting marketplace for the placement of highly specialized covers with companies that meet only the highest standards of solvency.

Policies issued by the Institute are freely subscribed to by the individual member companies who have accepted specified shares of a particular risk. The payment of premiums and the reporting and payment of claims are processed centrally by the Institute. Once a risk has been written by member companies, all premium and claims accounting and policy issuing are then handled centrally on their behalf by the Institute's processing departments. The typical portion of a risk taken by a member generally becomes smaller as the size and the degree of exposure of the risk increases, particularly when one or more risks may face a catastrophe exposure, e.g., where several risks are in a region prone to windstorms.

The Institute's authoritative role in the international M.A.T. market is highlighted by the fact that the wide variety of policy wordings developed by the Institute is found not only in the policies it issues on behalf of its member companies but also in most M.A.T. policies worldwide. The Institute, together with Lloyd's, has developed a range of clauses, covering such risks as cargo, hull, shipowners liability and war, all of which are used by Lloyd's underwriters, as well as by their company counterparts as standard policy wording. The Institute's influence in the markets is also exercised through joint Institute-Lloyd's committees, prominent among which are those relating to hull, cargo, excess loss, rig & associated business and war risks. The work of both these joint market committees, as well as of the Institute's own internal committees, has escalated as a result of new problems faced by international M.A.T. insurers, placing the Institute at the nerve center of market trends and developments.

The central importance of the Institute in the U.K. M.A.T. insurance and reinsurance market is underscored by the total net premiums received through the Institute in 1989 - over 42,200,000,000 (U.S.).

Kroll & Tract

The Institute's Membership

The Institute's security is simply as good as can be found anywhere in the world.

The Institute counts among its members some of the most reputable and financially sound insurers in Britain, the United States, Japan, France, West Germany and other major insurance centers.

In the more than 104 years of its existence no Institute member company has ever been the subject of an insolvency proceeding.

Exhibit A shows the unparalleled stability of the Institute's membership. As you will note, out of the Institute's total membership, nine are founding members. Nearly half of the Institute's companies have been members for over 20 years. Nearly 90% have been in existence for over 50 years.

The Institute's standards for membership are high and are embodied in a series of rigorous financial tests and review procedures. Once admitted, a member must comply with annual reporting requirements, by which the Institute monitors the member's financial strength. The member companies of the Institute have a more than substantial surplus to support their writings. For example, over 50 of the Institute's member companies maintain trust funds in the U.S. for the security of their respective policyholders. The aggregate market value of such funds, as of January 1, 1990, exceeded $125,000,000. The aggregate capital and surplus of Institute companies is currently in excess of $15,000,000,000.

The Institute currently has at least 56 of its member companies on the Non-Admitted Insurers Information Office list of Non-Admitted Insurers. Their inclusion, of course, indicates that each has put up the requisite NAIC trust fund of not less than $2.5 million.

Parent Company Guarantee

As stated above, no member of the Institute has ever become insolvent. For a fuller understanding of just how the Institute's security works, however, let us suppose that an Institute member were unable to pay its obligations.

In such an unlikely event the claimant would first have a claim against the member's assets. (Once elected, a member must undertake to honor all of its liabilities incurred on Institute policies during its period of membership for as long as such liabilities remain.) To the extent that the obligations were not

Knoll & Tract

then totally satisfied, the claimant would then have recourse to the assets of the member's guarantor, because, over the past twenty years, any company elected to membership that has a parent company must be guaranteed by that parent in respect of those liabilities. The guarantee is unlimited in amount and time and is irrevocable.

The Institute Program for Accreditation

In September, 1989, the Institute achieved a significant breakthrough when the Reinsurance Task Force and the Special Issues Committees of the National Association of Insurance Commissioners at the NAIC Northeast Zone Meeting in Wilmington, Delaware voted favorably to amend the Reinsurance Credit Model Law to add language permitting the Institute to qualify for reinsurance accreditation thereby placing them on an equal footing with Lloyd's. A copy of this amendment along with various technical modifications that were approved at the NAIC Summer Meeting in June, 1990 is attached herewith as Exhibit B.

Further evidence of State recognition of the Institute is apparent from recent action taken by the New York Insurance Department. On March 23, 1990, the New York Insurance Department promulgated the Sixth Amendment to their Regulation No. 20 (11 NYCRR 125) to enable a group of individual incorporated assuming insurers located outside the United States to receive a certificate of recognition as an accredited reinsurer. Essentially, New York law permitted that Department to permit by regulation that which the Institute amendment to the NAIC Model Law will accomplish.

On July 11, 1990, Missouri Governor John Ashcroft signed into law House Bill 1739 which, among other provisions, adopts the NAIC's Credit for Reinsurance Model Act as amended. By enacting this law, Missouri becomes the first state to adopt the entire NAIC Model Act thereby permitting the Institute as a group of incorporated underwriters, to qualify as an accredited reinsurer on the same basis as the Model Act permitted a group of unincorporated underwriters to qualify.

On June 29, 1990, Alabama Insurance Commissioner Mike Weaver accepted the member companies of the Institute as accredited reinsurers for wet marine and transportation reinsurance for the year ending May 31, 1991 in accordance with Section 27-5-12, Code of Alabama, 1975 (as amended May, 1990). This approval follows similar action taken by the State of Maryland in June 1987.

Removal of Restrictions on Competition

Despite the Institute's superlative record, recognition by state legislators has not kept pace with recognition by state regulators. The great disparity in treatment by state insurance laws with regard to non-U.S. insurers has been a continuing obstacle to the Institute's achieving collective recognition for

its member companies. Legislatures should be careful to distinguish, we submit, protection of assureds and reassureds, which the Institute wholeheartedly supports, from anti-competitive protectionism. The Institute opposes protectionism, on a global basis, just as it seeks to give it members, regardless of nationality, the opportunity to compete effectively with each and on the world market. It is the Institute's aim to see this freedom of competition equally available to members wishing to underwrite American business.

The financial stability, integrity and solvency of the Institute and its member companies are reinforced by standards substantially in excess of those set by the United States and United Kingdom regulators. The accreditation of these companies as reinsurers would be of major benefit to the United States domestic insurers and reinsurers who could effectively utilize the resulting growth in reinsurance and retrocession capacity.

We ask your support, on behalf of the Institute, for revisions to your state's law, that would permit the Institute and its member companies to provide the highest quality reinsurance capacity essential to the American markets.

Respectfully submitted,

KROLL & TRACT

THE INSTITUTE OF LONDON
UNDERWRITERS

July 20, 1990

Kenneth D. Merin

Kroll & Tract

Attorneys at Law

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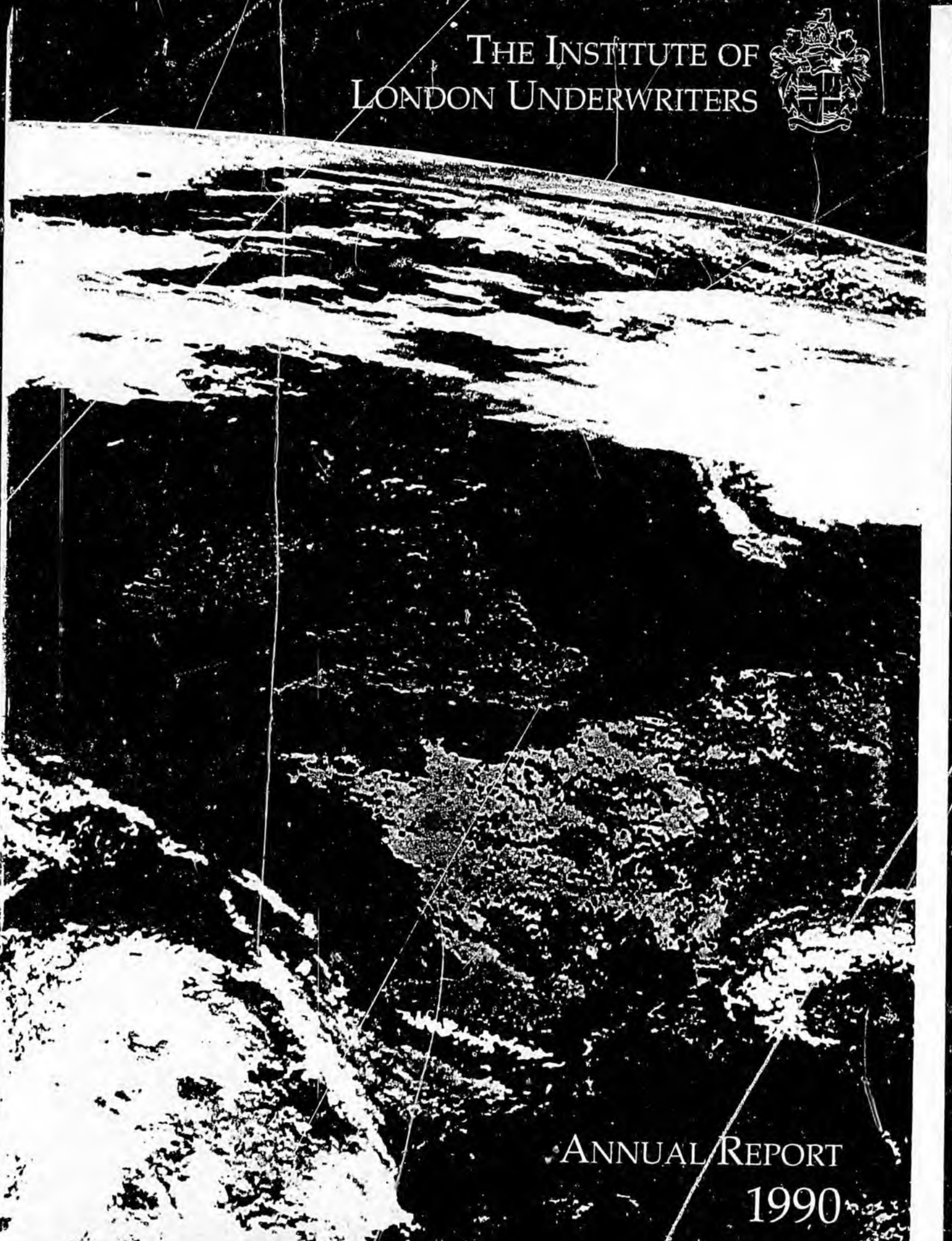
(212) 921-9100

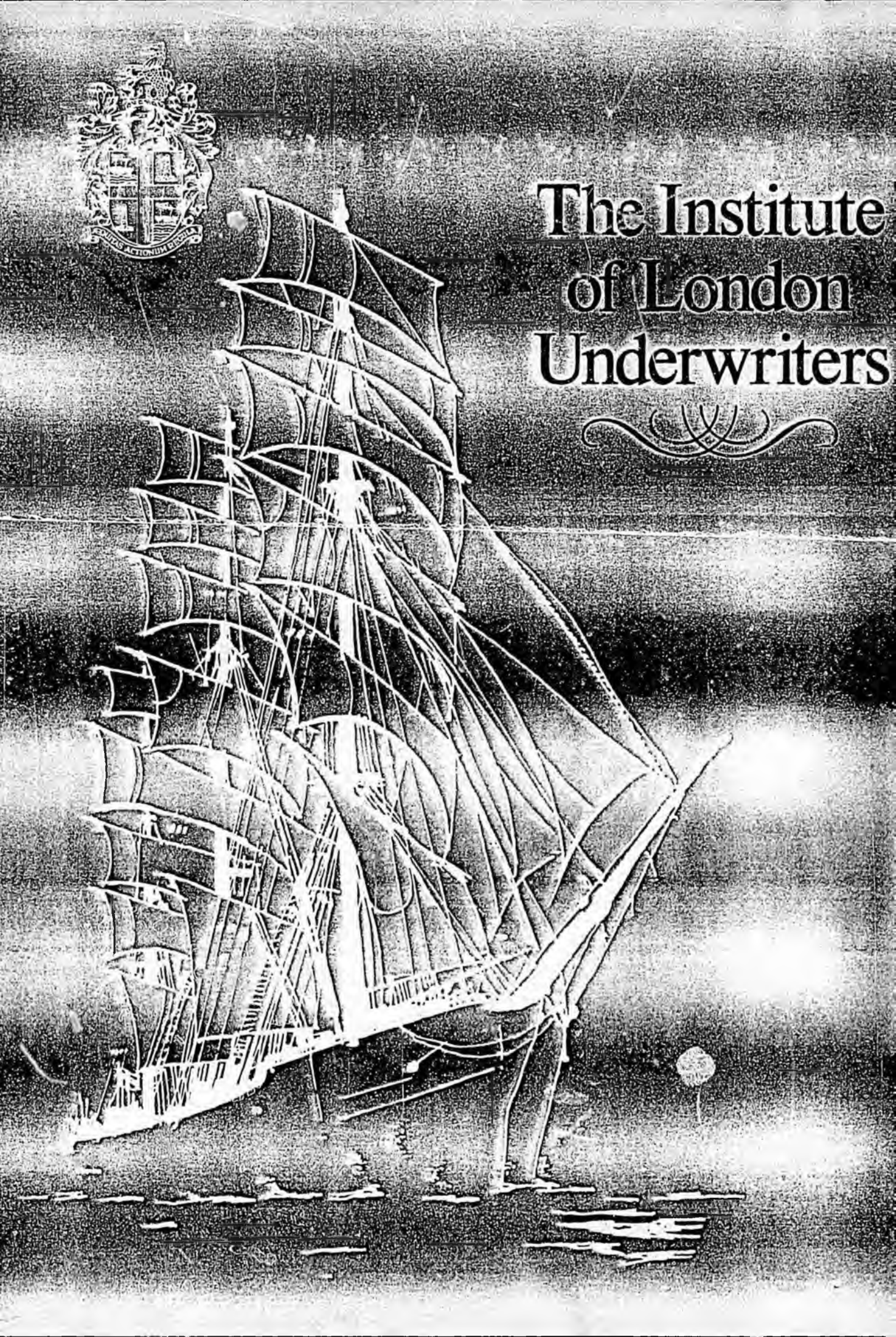
Fax: (212) 869-3657
Telex: 668838

THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

The Institute of London Underwriters



Annual Report 1990


The Institute
of London
Underwriters

THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

HB
280

Division of Insurance
March 1, 1991

HB 280 - Holding Companies

The Division of Insurance currently has statutes requiring registration and reporting of information by insurance companies who are a member of an insurance holding company system. An insurance holding company system is a group of two or more affiliated companies, one or more of which is an insurance company. HB 280 adopts specific provisions that are part of model laws adopted by National Association of Insurance Commissioners (NAIC) and included in the accreditation standards which were not present in our current law.

The bill:

- sets out what kinds of companies an insurance company may own as a subsidiary and gives other requirements for subsidiaries;
- provides criteria for evaluating the acquisition of an insurer by another insurer and the effects on market concentration of the sale;
- adds more standards which must be met for transactions between affiliates;
- clarifies the definition of an extraordinary dividend; and
- allows recovery on transactions from affiliated persons when an insurer is in liquidation or rehabilitation.

The division needs this legislation to meet accreditation standards of the NAIC. This bill adds accreditation requirements that were not included in prior statutes or were subsequently adopted by the NAIC.

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Version: CSHB 280(L&C)
(H) Publish Date: 5/9/91

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to regulation of insurance holding companies . . . . BRU: Insurance

Component: Operations

Sponsor: House Labor & Commerce

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance DK Phone: 465-2572

Division: Insurance Date: 4/25/91

Approved by Commissioner: Glenn A. Olds Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 4-25-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90
DK/dg19460D-3/042591a

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HB

281

Division of Insurance
March 1, 1991

HB 281 - Examination Bill

The Division of Insurance is required to conduct periodic examinations of all licensed insurance companies and has the authority to examine those holding any license from the division. HB 281 will adopt current model legislation on examinations adopted by National Association of Insurance Commissioners (NAIC) and included in the NAIC's accreditation standards.

The bill:

- adds criteria that may be used in determining what examination need to be performed;
- adds procedures for conducting the examination and adoption of the examination reports by the director;
- provides that after December 31, 1993, the director may only accept examination reports prepared by accredited states in lieu of the division conducting all company exams; and
- provides that insurance company accounting records must be kept in accordance with manuals adopted by the NAIC.

The division needs this legislation to meet the NAIC accreditation standards and to more clearly provide procedures for conducting examinations.

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 281(L&C)
(H) Publish Date: 5/9/91

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to examination of insurers, agents, brokers, adjusters, and solicitors BRU: Insurance

Component: Operations

Sponsor: House Labor & Commerce

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance Phone: 465-2572
Division: Insurance Date: 4/25/91

Approved by Commissioner: Glenn A. Olds Asst. Comm.
Agency: Department of Commerce & Economic Development Date: 4-25-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90
DK/dg19460D/042591a

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HB
282

Division of Insurance
March 1, 1991

HB 282 - Managing General Agent

The Division of Insurance currently licenses agent, general agents, brokers and solicitors who conduct the business of insurance in Alaska. HB 282 modifies the term "general agent" to the more correct term "managing general agent" and adopts provisions in the National Association of Insurance Commissioners (NAIC) model law which has been adopted as an NAIC accreditation standard.

A managing general agent is a person who has been given authority by an insurance company to make decisions on its behalf regarding some aspect of the business normally conducted by the insurance company such as determining who will be insured, what claims will be paid, which agents will represent the company, etc. The bill;

- amends the term "general agent" to "managing general agent" in several locations of the statute;
- requires that a contract be in place between the managing general agent and the insurance company;
- sets out what the managing general agent may not do; and
- makes adjustments to the definition of persons which must be licensed under this category.

The division needs this legislation to meet accreditation standards of the NAIC. This bill adds requirements to the already existing licensing categories administered by the division.

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

ill Version: CSHB 282(L&C)
(H) Publish Date: 5/9/91

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to licensing, employing, and the authority of managing general agents . . . . BRU: Insurance

Component: Operations

Sponsor: House Labor & Commerce

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance Phone: 465-2572

Division: Insurance Date: 4/25/91

Approved by Commissioner: Glenn A. Olds Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 4-25-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90
DK/dg19460D-2/042591a

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HB

283

Division of Insurance
HB 283 - Reinsurance Intermediary March 1, 1991

The Division of Insurance is committed to obtaining accreditation from the NAIC signifying that we have met the minimum standards of regulation as determined by NAIC. HB 283 will adopt current model legislation on licensing reinsurance intermediaries adopted by the National Association of Insurance Commissioners (NAIC) and included in the accreditation standards.

This bill will add two new categories of licensing to be administered by the Division. Those categories are reinsurance intermediary broker and reinsurance intermediary manager. A reinsurance intermediary broker is a person who is working for an insurance company to plan a program of reinsurance (placing part or all of an insurance risk written by one insurance company with another company) and negotiate those reinsurance contracts. A reinsurance intermediary manager is a person who, on behalf of an insurance company, negotiates and binds contracts for assuming reinsurance business from other insurance companies. The bill:

- sets the requirements for licensure;
- requires that contracts with insurance companies and the reinsurance intermediary be in place;
- requires that the reinsurance intermediary maintain records for transactions;
- and that insurance companies receive periodic financial information on the reinsurance intermediary.

The Division needs this legislation to meet the NAIC accreditation standards and to put in place a mechanism for regulating a person in the insurance industry that can have very significant affect on an insurance company's operations.

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 283(L&C)
(H) Publish Date: 5/9/91

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to brokers and managers who act as reinsurance intermediaries BRU: Insurance

Component: Operations

Sponsor: House Labor & Commerce

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance (a) Phone: 465-2572

Division: Insurance Date: 4/25/91

Approved by Commissioner: Glenn A. Olds for Walloway Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 4-25-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90
DK/dg19460D-4/042591a

COMMITTEE COPY

HB

292

Aleutian Housing Authority

401 East Fireweed Lane, Suite 101, Anchorage, Alaska 99503
Phone (907) 258-5614 FAX (907) 276-5975
TOLL FREE 1-800-478-5614

April 24, 1991

Representative George Jacko
Alaska House of Representatives
Fax # 465-2997
(attn Ingrid Jacobsen)
P.O. Box V
Juneau, Alaska 99811

Dear Representative Jacko:

As a nonprofit permittee, and a member of Lucky Strike Bingo, we would like to thank you for having introduced HB 292 relating to multiple beneficiary charitable gaming activities.

Lucky Strike Bingo is a self directed multi beneficial consortium of non-profits (4) , managed by a board of directors composed of one member from each of the participating organizations. Revenues earned from our gaming activities are used to fund health and social services in rural Alaska. Our membership includes the following non-profits:

1) Aleutian/Pribilof Islands Association

2) Aleutian Housing Authority

3) Kodiak Area Native Association

4) Alaska Native Health Board

The changes proposed in this measure will increase revenues returned to our non-profits in two ways:

1) Allowing six permittees to work together reduces expenses through sharing a common facility with a centralized administrative staff. As expenses decrease a greater portion of gaming revenues are returned to the non-profits.

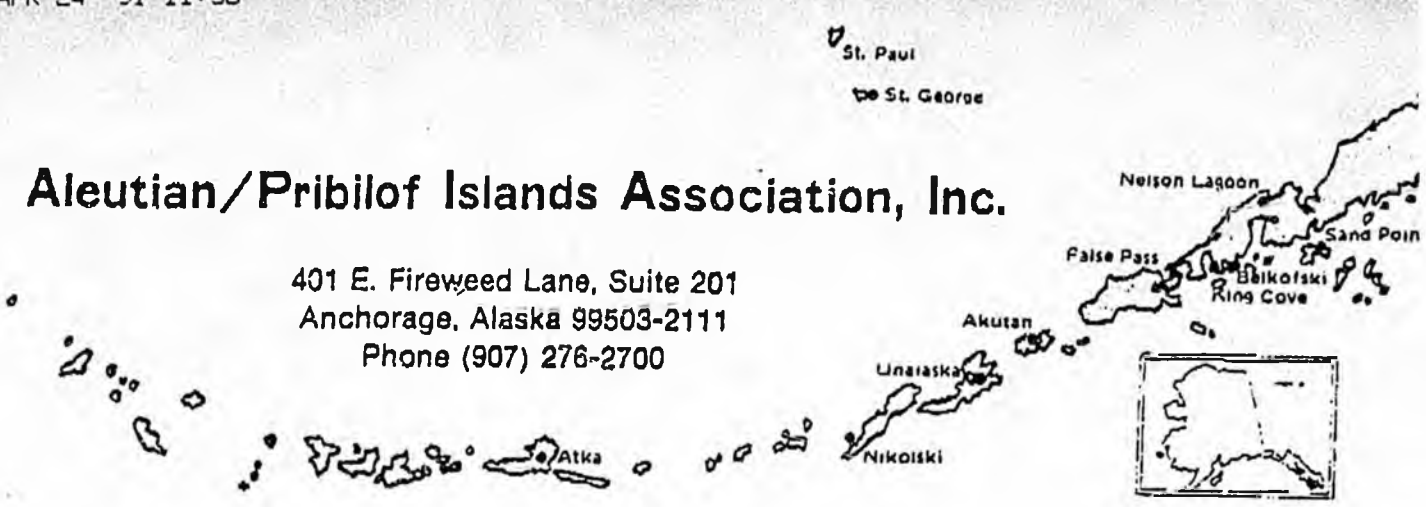
2. Increasing the maximum annual prize pay out will allow for more gaming activities in the aggregate.

3. The Multi beneficial permittees are not dependent on outside operators, consistent with the original intent of the legislature to foster the maximum benefit to the intended beneficiaries. The public policy of allowing benefits from gaming activities to accrue to non-profits is consistent with the legislative history of the charitable gaming issue.

Thank you for having introduced this measure, we appreciate your assistance.

Sincerely,

David Valdez
Executive Director



Aleutian/Pribilof Islands Association, Inc.

401 E. Fireweed Lane, Suite 201
Anchorage, Alaska 99503-2111
Phone (907) 276-2700

ADM-130/91

April 24, 1991

Representative George Jacko
Alaska House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Representative Jacko:

As a nonprofit permittee, and a member of Lucky Strike Bingo, we would like to thank you for having introduced HB-292 relating to multiple beneficiary charitable gaming activities.

Lucky Strike Bingo is a self directed consortium of four nonprofits, managed by a board of directors composed of one member from each of the participating organizations. Revenues earned from our gaming activities are used to fund health and social services in rural Alaska. Our membership includes the following nonprofits:

1) Aleutian/Pribilof Islands Association, Inc.;
2) Kodiak Area Native Association;
3) Alaska Native Health Board;
4) Aleutian Housing Authority.

The changes proposed in this measure will increase revenues returned to our nonprofits in two ways:

1) Allowing six permittees to work together reduces expenses through sharing a common facility with a centralized administrative staff. As expenses decrease a greater portion of gaming revenues are returned to the nonprofits.
2) Increasing the maximum annual prize payout will allow for more gaming activities in the aggregate.

The public policy of allowing benefits from gaming activities to accrue to nonprofits is certainly consistent with the legislative history of the charitable gaming issue.

Again, we would like to thank you for having introduced this measure, and we appreciate your assistance in helping us maximize the return of gaming revenues to our nonprofits.

Sincerely,

Dimitri Philemonof
Executive Director

DP/nlb

Kodiak Area Native Association

102 Center Avenue
Kodiak, Alaska 99615
Phone (907) 486-5725

April 24, 1991

Representative George Jacko
Alaska House of Representatives
PO Box V
Juneau, Alaska 99811

Dear Representative Jacko:

The Kodiak Area Native Association (KANA) would like to thank you for introducing HB 292 relating to multiple gaming activities.

Lucky Strike Bingo is a self directed consortium of 4 nonprofits, managed by a board of directors composed of one member from each of the participating organizations. The membership includes the following nonprofits: Kodiak Area Native Association; Aleutian/Pribilof Islands Association; Alaska Native Health Board and the Aleutian Housing Authority.

We feel the changes proposed in this measure will increase revenues returned to our nonprofits: 1) allowing six permittees to work together will reduce expenses and allow a larger portion of the revenues to be brought back to the nonprofits; 2) by increasing the maximum prize payout it will allow for more gaming activities in the aggregate.

Again, KANA would like to thank you for having introduced HB 292, and we appreciate your assistance in helping us maximize the return of gaming revenues to our nonprofits.

Sincerely,

KODIAK AREA NATIVE ASSOCIATION

Kelly Simeonoff, Jr.
President

KS:np

cc: Julie Knaglin, LSD representative

RECEIVED MAY 1 3 1991

House of Representatives

While in Session:
Box V
Juneau, AK 99811
(907)465-4942

P.O. Box 47001
Pedro Bay, Alaska 99647
(907)850-2208

Member:
Finance Comittee

Finance
Subcommittee Chair:
Courts
Department of Public Safety

Finance
Subcommittee Member:
Department of Fish and Game

Rep. George Jacko, Jr.

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Judiciary Committee

FROM: Representative George Jacko, Jr.

DATE: May 13, 1991

SUBJECT: Request For Hearing On House Bill 292

I respectfully request House Bill 292 be scheduled at your earliest convenience. House Bill 292 is "An Act relating to multiple-beneficiary charitable gaming permits, maximum prize awards, and door prizes for charitable gaming; and providing for an effective date." This bill would establish Multiple Beneficiary Permits under AS 05.15 (Games of Chance & Contests of Skill). The holders of multiple-beneficiary permits would be allowed to conduct the same number of sessions as an individual permit holder. The bill would also allow up to six, rather than four, qualified organizations or municipalities to join together and apply for a multi-beneficiary permit. HB 292 would establish a permit fee of $100 and increase the existing charitable gaming fee from $100 to $250, which results in a revenue positive fiscal impact.

Currently, charitable gaming activities provide funding to several nonprofit organizations, which allows them to meet health and social services and other needs in their respective regions. House Bill 292 allows them to continue to reduce their fixed operation costs by sharing centralized facilities and maintenance expenses.

As the State looks for ways to encourage local and regional entities to take on more of the funding responsibility for the services they provide, it makes good sense to encourage organizations that have found a successful way of meeting some of their funding responsibilities. HB 292 would do this.

Thank you for your consideration of this matter.

GJ/eij

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 292(L&C)
(H) Publish Date: 5/14/91

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: SEE ATTACHED BRU: Occupational Licensing

Component: Administration

Sponsor: Rep. Jacko

Requestor: Rep. Jacko **COMPONENT SERIAL NO.** 0 3 5 6

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: John N. Hansen, Jr., Gaming Program Manager Phone: 465-2581

Division: Occupational Licensing Date: April 24, 1991

Approved by Commissioner: Glenn A. Olds 4-25-91

Agency: Department of Commerce & Economic Development Date: April 24, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY

FISCAL NOTE - HB 292

TITLE:

An Act relating to multiple-beneficiary charitable gaming permits, maximum prize awards, and door prizes for charitable gaming; and providing for an effective date.

ANALYSIS:

Under this bill, no restrictions exist on how many permittees may be issued the MBP permit for a single facility in a calendar year. Does not provide for an annual permit fee. Current fees range from $20.00 to $100.00 depending on prior year's gross receipts, or if the applicant is "new," and $500.00 for an operator license. The department recommends a fee of $100.00 per permittee that applies for a multiple-beneficiary permit. This fee would be in addition to the regular base permit fee.

Relaxes the requirements currently set in regulation 12 AAC 34.200(c) on permittees who join together to conduct gaming at a single facility without the use of an operator.

9447D-2/042591b

HB

291

ASSOCIATION OF ALASKA HOUSING AUTHORITIES

Entitled: Requesting the Secretary of HUD to approve a Waiver of the Permanent Fund Dividend Checks from consideration in gross income for rent calculations

Resolutions 91-03

WHEREAS, the Alaska Permanent Fund Dividend (APFD) checks are considered income by the U.S. Department of Housing and Urban Development in determining annual adjusted gross income for rent calculations; and

WHEREAS, the amount of the APFD varies, based upon the earnings of the APFD account; and

WHEREAS, the amount of the APFD checks has varied from a low of $331 to a high of $1,000, and has avaraged $670 since its inception in 1982; and

WHEREAS, income from the APFD arrives in one annual check, sometime within the last three-month period of the year, and

WHEREAS, the APFD of every family member is currently included in determining the total adjusted annual income; and

WHEREAS, the total family's APFD may place many families above qualification income limits for housing assistance; and

WHEREAS, monthly rental payments are based on the total adjusted income; and

WHEREAS, this causes seniors and low-income families to pay a high percentage of their income each month in order to compensate for this once-a-year payment; and

WHEREAS, it is the intention of HUD to provide opportunities for low-income residents to save money for homeownership, self-employment, or other self-sufficiency opportunities; and

AAHA Resolution

WHEREAS, it is the intent of this resolution to provide these opportunities to all low-income Alaskans to increase their quality of life.

NOW, THEREFORE, BE IT RESOLVED, by the Association of Alaska Housing Authorities, that through a campaign of support letters from residents and Alaska public and Indian housing authorities, and support from the Alaska Legislature, a campaign be waged to request the Secretary of HUD to grant a waiver of the Alaska Permanent Fund Dividend checks from inclusion in annual adjusted gross income for rent calculations.

Gayle Kildal
Secretary, AAHA

Jacqueline L. Johnson
President, AAHA

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 291

Revision Date:
Title: An Act relating to the exemption for permanent fund dividends from collection of debts
Sponsor: Rules Committee by request
Requestor:

Department Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 02/11/92

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 02/11/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 1/92

SECTIONAL ANALYSIS

HB 291 "An Act relating to the exemption for permanent fund dividends from the collection of debts, to the collection of debts by execution on dividends, and to claims on a dividend; and providing for an effective date."

Section 1. Amends AS 09.38.015(a) to clarify that an individual is entitled to an exemption of a portion of a permanent fund dividend under AS 43.23.064(a).

Section 2. Amends AS 09.38.030(b) to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend.

Section 3. Conforms AS 14.43.120(i) with the change made in section 4 of the bill, by renumbering the statutory reference from AS 43.23.065(b)(3) to (b)(4).

Section 4. Amends AS 43.23.065 in three ways: First, it conforms with section 2 of this bill, to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend. Second, it adds court-ordered fines to the list of debts for which a permanent fund dividend exemption is not available to an individual. Third, it provides that claims listed in AS 43.23.065(b) have priority over other debts whether payment is sought through legal action or through assignment.

Section 5. Provides that AS 09.38.080(c) and 09.38.085, relating to notice, do not apply to a levy on a permanent fund dividend. Instead, the Department of Revenue must provide notice of the levy to a debtor.

Section 6. Amends AS 43.23.067(b), relating to seizure of a dividend to pay a student loan, to clarify that a debtor's request for a hearing must be made to the Postsecondary Education Commission, rather than the Department of Revenue.

Section 7. Amends AS 43.23.067(c) to conform with the amendment made by section 6.

Section 8. Immediate effective date.

Sectional Analysis

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

January 17, 1992

The Honorable Pat Carney, Co-Chair
The Honorable Georgianna Lincoln, Co-Chair
House HESS Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representatives Carney and Lincoln:

I am writing to request that the HESS Committee schedule HB 291, relating to claims on a permanent fund dividend, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court, and was drafted with the assistance of the Department of Law and the Department of Revenue. Its primary purpose is to improve the procedures surrounding execution by a creditor on the permanent fund dividend of a debtor.

As you know, existing law provides that a creditor may execute on the dividend of a debtor, just as a creditor may execute on a debtor's bank account or other property. The amount which the creditor may seize is limited to 55% of a dividend, unless the creditor is executing on the dividend in order to satisfy a child support obligation, court-ordered restitution, or a debt owed to the state. In such cases, the entire dividend may be seized.

The current procedures surrounding execution on a dividend are contradictory, cumbersome, expensive, and frequently fail to give adequate notice to the debtor. Specific problems, and the corrections proposed in HB 291, are as follows:

1. Existing law requires the creditor to serve notice of the execution on the debtor. This causes several problems. First, aside from being unwieldy and expensive, existing notice procedures are unnecessary, since the Department of Revenue automatically notifies a debtor that the dividend

Court System Overview

has been seized. Second, the creditor frequently does not know where the debtor can be reached in order to be notified of the claim. Great expense can be incurred in attempting to locate and serve the debtor, and if he cannot be found, the execution may take place without notice. Third, since the state is frequently the creditor seeking execution, the unnecessary expense of the notice requirement prevents it from attempting to recover many small debts.

HB 291 corrects these problems by eliminating the existing notice requirement, and instead requiring the Department of Revenue to provide legally adequate notice to the debtor. Because the department already sends notice of seizure to debtors, no additional expense will be incurred by expanding the information provided in that notice. Because the debtor has provided a current address to the department in order to receive a dividend, the debtor is more likely to receive notice of the seizure than under the existing procedure. Finally, because notice procedures will be less expensive, the state will be able to economically pursue far more debts than it does now (section 5).

2. As noted above, AS 43.23.065 provides that 45% of a dividend is exempt from execution for most debts. However, AS 9.38.030(b) provides a liquid assets exemption for debtors which can be read to exempt all of a dividend from execution. Most courts have rejected this reading, because it subverts the legislature's purpose in enacting the 45% exemption. HB 291 resolves this issue by making it clear that the liquid assets exemptions does not apply to dividends (sections 2 and 4).

3. As noted above, creditors may seize an entire dividend, not just 55% of it, to pay for child support obligations, restitution, or other debts owed to a state agency, in that priority. While court-ordered fines (such as a fine imposed as the penalty in a criminal case) are owed to the state, some argue that they are not "a debt owed . . . to a state agency" and thus are subject to the exemption. Also, criminal fines imposed by a municipality are subject to the exemption. HB 291 corrects this problem by adding court-ordered fines for either state or municipal violations to the list of exemptionless debts (section 4).

4. While current law prioritizes claims against a dividend, it is not clear whether the listed priorities apply only in the case of execution, or if the listed priorities also apply to voluntary assignments of a dividend. HB 291 provides that the priorities apply in both cases (section 4).

Passage of HB 291 will improve the procedures surrounding execution on a permanent fund dividend by giving better notice to debtors that their dividend is being seized, and making it less expensive for the state to execute on persons who fail to pay child support or other debts. We urge your favorable consideration.

Very truly yours,

C. S. Christensen III
Staff Counsel

CSC:bh

HB

294

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM March 23, 1992

SUBJECT: Uniform Commercial Code funds transfers bill (CSHB 294 (L&C), Work Order No. 7-GH0001\G, dated 3/18/92)

TO: Representative David Finkelstein
Attn: Steve

FROM: Theresa L. Bannister TB
Legislative Counsel

The above-mentioned bill draft contains a new chapter on funds transfers (AS 45.12), and other modifications of the UCC that are necessary to add the chapter to the UCC.

When preparing the draft, changes were made to put the material into the form normally required for Alaska statutes. However, certain approaches were left in the material to keep the material uniform with other states.

1. AS 45.12.205 was added to the funds transfer chapter; it appears in the Uniform Act, but appeared to have been inadvertently dropped from the material provided to us.

2. AS 45.12.209(b) was somewhat rewritten to make it clearer.

3. A new reference in AS 45.03.102 to AS 45.12 was deleted; although it appeared in the material provided to us, it did not appear in the Uniform Act as a change necessary to enact AS 45.12.

4. Some of the sections were rearranged to comply with our drafting style (e.g. sec. 45.14.205).

5. The word "any" was replaced with "an" or "a", or deleted, where appropriate.

6. To a limited degree, definitions were rearranged to comply with our drafting style.

7. A new term, "code", was inserted, used, and defined to refer to the expanded UCC provided in the bill.

8. The structure of a sentence was changed when a sentence used the form "No delivery is necessary" (changed to "Delivery is not necessary").

9. An applicability section was added in sec. 14 to provide some guidance for the application of the amendments and new chapter; there was no guidance on this in the uniform laws; this section should be examined in detail to determine if it handles the transition as you want it handled.

10. In sec. 7, "Notwithstanding AS 01.05.006, section headings" was added to AS 45.01.109 in order to coordinate AS 45.01.109 with the section that provides that section headings are not part of state law.

11. In AS 45.12.105(b), references to definitions in AS 45.12.103 and 45.12.104 were deleted since the terms were already defined for the chapter in those sections, which immediately precede this section.

12. Miscellaneous style changes were made.

If you wish to have the changes identified further, please advise.

You may wish to consider deleting AS 45.12.305(e) and the last sentence of AS 45.12.404(b), which authorize the award of attorney fees in certain situations. These provisions are helpful in those jurisdictions that do not routinely allow the award of attorney fees. However, Alaska Rule of Civil Procedure 82 already provides generally for the award of attorney fees to the party who prevails in a court action. If the attorney fee provisions in the bill were deleted, Rule 82 would fill in to govern the award of attorney fees in cases under AS 45.12, the bill's new chapter on funds transfers.

If I may be of further assistance, please advise.

TLB:gc:lmb:mi
92-070.lmb

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM April 9, 1992

SUBJECT: Amendment of court rule in draft CSHB 294 (L&C) (Work Order No. 7-GH0001\G, dated 3-18-92)

TO: Representative David Finkelstein
Attn: Steve

FROM: Theresa L. Bannister
Legislative Counsel

You have asked for a brief memo stating the oral opinion I had provided on the extent to which AS 45.12.305(e) and 45.12.404(b) amend Alaska Rule of Civil Procedure 82, which relates to the award of attorney's fees. Essentially the issue is whether under the two subsections attorney fees are only recoverable where a demand is made and refused (therefore eliminating Rule 82 from applying at all to the situations where a demand is not made and refused), or whether the making and refusing of a demand creates a special situation in which Rule 82 does not apply (thus allowing Rule 82 to apply to the situations where a demand is not made and refused). It is my conclusion that the language in both subsections is unclear on this point and may be read either way. Therefore, I would recommend that the language of the subsections be rewritten to clearly state the approach that the committee chooses. If the committee does not want to rewrite the language because this is a uniform act, the committee may wish to consider providing the bill with a letter of intent on this point. Please remember, though, that although courts do give some consideration to letters of intent when interpreting statutes, letters of intent are not binding and the statute itself should state its intent clearly.

If I may be of further assistance, please advise.

TLB:pl
92-255.plm

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 294

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Personal property under the Uniform Commercial Code

BRU: Banking, Securities & Corporations

Component: _____

Sponsor: Rules Committee

Requestor: House Labor & Commerce

COMPONENT SERIAL NO. 1 2 3 3

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Willis Phone: 465-2521

Division: Banking, Securities & Corporations Date: 4/9/92

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: 4.9.92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(ies).

KP/dgl91710/040992c

(Rev. 12/91)

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 10, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 5/4/92

The JUDICIARY Committee considered: HB 294

HOUSE BILL NO. 294 UCC: LEASES OF PERSONAL PROPERTY

"An Act relating to leases of personal property under the Uniform Commercial Code."

RECOMMENDATIONS:
be replaced with CS HB 294 (JUD)

[ ] the same title
[X] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the [redacted] Committee

ADOPTS: House L&C Committee letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[X] zero fiscal note(s) DNR 4/22/92 Commerce 4-10-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM

Dave Donley
CHAIRMAN'S SIGNATURE

CSHB 294 (Labor & Commerce)

HOUSE LABOR AND COMMERCE COMMITTEE

LETTER OF INTENT

It is the intent and understanding of House Labor and Commerce Committee that the reasonable attorney's fees provisions in proposed Sections 45.12.305(e) and 45.12.404(b) are to operate in addition to, but do not replace or preempt, the operation of Rule 82 of the Alaska Rules of Civil Procedure.

Rep. David Finkelstein

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 4
Bill Version: CSHB 294(L&C)
(H) Publish Date: 4-10-92

Revision Date: _____
Department Affected: Commerce & Econ. Dev.
Title: Personal property under the Uniform Commercial Code
BRU: Banking, Securities & Corporations
Component: _____
Sponsor: Rules Committee
Requestor: House Labor & Commerce
COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director — Willis — Phone: 465-2521
Division: Banking, Securities & Corporations — Date: 4/9/92
Approved by Commissioner: Glenn A. Olds — Glenn — Acting Comm.
Agency: Department of Commerce & Economic Development — Date: 4.9.92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(les).

KP/dgl 9171D/040992c
(Rev. 12/91)

COMMITTEE COPY

FISCAL NOTE

No. 3
Bill Version: HB 294
(H) Publish Date: 4/22/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Natural Resources
Title: Personal Property Leases / UCC BRU: ~~Administration and Management~~
Component: Recorder's Office and UCC
Sponsor: Rules (Gov)
Requestor: Governor COMPONENT SERIAL NO. 802

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 3/25/91

Approved by Commissioner: _____
Agency: Department of Natural Resources Date: 3-26-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 2
Bill Version: HB 294
(H) Publish Date: 4/22/91

Revision Date: _____ Department Affected: Commerce & Economic Dev.
Title: Personal property under the Uniform Commercial Code BRU: Banking, Securities & Corporations
Component: _____
Sponsor: Rules Committee
Requestor: Governor COMPONENT SERIAL NO. 1 2 3 3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
Division: Banking, Securities & Corporations Date: _____
Approved by Commissioner: Glenn A. Olds Asst. Comm.
Agency: Department of Commerce & Economic Development Date: 3-20-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90
KP/dg191710/031891a

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
Bill Version: HB 294
(H) Publish Date: 4/22/91

Revision Date: _____ Department Affected: Administration
Title: Leases of Personal Property Under the Uniform Commercial Code BRU: General Services
Component: Purchasing
Sponsor: Governor
Requestor: _____ COMPONENT SERIAL NO. 6 0

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

This bill should have no impact on purchasing activities.

Prepared By: Robert J. Link Phone: 465-2250
Division: General Services Date: March 22, 1991
Approved by Commissioner: Milbert Keller
Agency: Administration Date: 3/22/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

(7)

HOUSE COMMITTEE REPORT

Date Referred: April 22, 1991 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 4/9/92

The LABOR AND COMMERCE Committee considered: HB 294

HOUSE BILL NO. 294 UCC: LEASES OF PERSONAL PROPERTY

"An Act relating to leases of personal property under the Uniform Commercial Code."

RECOMMENDATIONS:
be replaced with CSHB 294 (L+C)
[ ] the same title
[X] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: House Labor + Comm. letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact: _ _____
[X] zero fiscal note D.C.E.D.

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Calvin L. Taylor	X				
		Ivan M. Lean (Ivan)		✓	
Brad Buckman (Buckman)					
Carl Finkelstein (Finkelstein)	✓				

Carl Finkelstein
CHAIRMAN'S SIGNATURE

CSHB 294 (Labor & Commerce)

LETTER OF INTENT

It is the intent and understanding of House Labor and Commerce Committee that the reasonable attorney's fees provided by proposed Sections 45.12.305(e) and 45.12.404(b) are additional to, but do not replace or preempt, the operation of Rule 82 of the Alaska Rules of Civil Procedure.

UNIFORM COMMERCIAL CODE
ARTICLE 4A — FUNDS TRANSFERS

— A Summary —

The payment of obligations is of vital importance to almost all commercial transactions. Occasionally problems arise when payment is not made, or is made improperly. It is neither convenient nor prudent to pay large or even modest obligations in actual cash. So, individuals and corporations, big account holders and small, have turned to bank accounts and bank credit, and have paid obligations by written instruments that accomplish a transfer of bank credit - check, money order, bank draft, etc. For the past twenty years, in every state, the rights and obligations of parties to payment by check have been governed by Articles 3 and 4 of the Uniform Commercial Code (UCC). Checks will remain the method by which many obligations are paid for the foreseeable future. However, electronic technology is now a fact of life and new methods for transferring bank credit for the purposes of payment are a result. Article 4A is a reflection of this fact.

How has technology affected systems of payment? Most people are aware of automated teller machines for their personal use. Indeed, these machines have become very popular. But such technology is widely used to make large transfers of funds that satisfy obligations arising from commercial transactions as well. The technology is simply too convenient and too fast not to be used for the transfer of large sums around the world.

The amounts which move through the large value automated systems are truly staggering. In 1989 as Article 4A is promulgated, one trillion dollars are transferred on an average day. In 1989, a record day of three trillion dollars was recorded. This is roughly the 1989 gross national product of the United States. Undoubtedly, this record will be surpassed in due course and probably frequently in the future. Such figures indicate the impact of the technology. They also indicate the need for some governing law.

In 1989, as the new Article 4A is proposed to the states for adoption, there is no backstop statutory law to govern funds transfers. The rules for checks in Articles 3 and 4, which utilize the signatures and endorsements on the check as the basis for determining liability, do not apply to electronic funds transfers. Nor are the rules governing the liability of banks to customers under Article 4 helpful. Many transfers in the United States are effected through electronic transfer networks; one is owned and operated by the Federal Reserve and is known as FedWire and the other is owned and operated by the New York Clearing House and is known as CHIPS (Clearing House Interbank Payments Systems). Each of these systems has rules to govern transactions between participating banks, but they do not affect bank customers. Outside FedWire and CHIPS, common-law contract rules are the basis for determining liability. However, serviceable, negotiated contracts are rare. Bank customers usually need a funds transfer immediately and do not take the time to negotiate a contract. Transfers are frequently made in a legal void.

Article 4A is the remedy for this void. Because the total volume of funds transfers is very great and because many individual transactions are very large, the cost of uncertainty in the law could be very high. Article 4A is necessary to the continued usage of existing funds transfers and for the anticipated future expansion in this usage.

Some terminology is necessary to follow a funds transfer under Article 4A. A "sender" is any person or entity who sends a "payment order." The first sender

is the originator, and subsequent senders are banks participating in the transfer. A sender communicates a "payment order" to a "receiving bank." Receiving banks become senders if they forward "payment orders" to other banks. The last bank in the communications chain is the beneficiary's bank, and it can never be a sender with respect to the specific funds transfer. The "beneficiary" is the entity that the sender intends to pay. A "payment order" is simply the form of communication that the parties to a funds transfer agree to use. The payment order's salient characteristics are that it calls for an unconditional payment of money from the sender to the beneficiary and that it is transmitted to a receiving bank.

Unless the persons or entities involved in a payment of money use the same bank, a funds transfer involves at least four parties: the originator of the payment; the bank to which the originator communicates the first payment order; the beneficiary's bank that receives the final payment order; and last, the beneficiary. Intermediary receiving and sending banks also may be involved. These are banks that act as conduits of payment when there is no capacity to communicate directly between the originator's bank and the beneficiary's bank.

An example illustrates the process of a funds transfer. Suppose Alpha Corporation wants to pay money to Beta Corporation to satisfy a large contractual obligation. Alpha is in New York, and Beta is in California. Alpha has a bank account with a balance sufficient to pay Beta at First Bank in New York. Beta maintains an account at Second Bank in California. The process of payment is simple. Alpha orders First Bank to pay the owed money to Beta through a transfer to Second Bank. Alpha's order is pursuant to an agreement that Alpha has with First Bank. When First Bank receives the payment order from Alpha, it communicates with Second Bank. The communication indicates that a specific amount at First Bank held for Alpha will be transferred to Second Bank with the understanding that it will be passed on to Beta. Second Bank accepts this second payment order and notifies Beta that the money is available to Beta. Value passes between the two banks through accounting entries in a process known as settlement.

With simple transactions, why do we need a whole new article in the Uniform Commercial Code? New law - or any law - isn't necessary if everything works. But what if something goes wrong? What if First Bank makes a mistake as to the amount to be paid? What happens if Second Bank doesn't notify Beta? What happens if the payment order is fraudulent, and not actually issued by Alpha? What happens if there is a bank failure? These are a few examples of possible errors.

A funds transfer is like a string of Christmas lights: everything is fine until a light burns out. There must be a remedy for the burned out light, and to the extent there are losses they must be paid. What are the remedies if someone takes a loss? Who bears the risk of loss at a given time in the transactional process? No adequate answers to these questions exist without a backstop statutory law that allocates the loss at the appropriate places in the funds transfer. Article 4A provides clear and reliable answers, and thereby keeps the string of lights burning.

To resolve the problem of who is responsible when something in a funds transfer goes wrong, Article 4A divides the actions of the parties to a funds transfer into three essential parts. First, a funds transfer is initiated by the originator and accepted by the originator's bank. Part 2 of Article 4A, entitled "Issue and Acceptance of Payment Order," governs the relationship between the sender of a payment order and the receiving bank that will execute the payment order. What constitutes acceptance and rejection (both rightful and wrongful) of a payment order, and what must be done to amend a payment order, are determined by the rules of Part 2, as these involve the relationship between the sender and receiving bank in a funds transfer.

As between sender and receiving bank, who suffers a loss if there is a mistake? Part 2 of Article 4A resolves this critical issue. Two kinds of mistakes can occur between sender and receiving bank, an un-

authorized payment order and an erroneous payment order. The key to the rules on an unauthorized payment order is the "security procedure" that exists between sender and receiving bank. This is the agreed procedure that verifies the authenticity of a payment order or other relevant communication. In electronic funds transfer systems, the security procedure is an important element, and may involve codes, encryption, callback procedures, and the like. Any procedure that can be devised to protect the transaction is eligible. To be legally effective, it must only be commercially reasonable.

The security procedure determines who takes the risk of loss when there is an unauthorized payment order. If there is a commercially reasonable security procedure that is followed by the receiving bank, the sender must absorb the loss. If the sender proves that the security procedure was not followed or was breached by someone outside the control of the sender, the receiving bank takes the loss. The assumption is that the security procedure, if followed and not breached, will verify the authenticity of payment orders.

The risk of loss for an erroneous payment order also hinges upon compliance with a security procedure for detecting error. If the sender proves that it complied with the security procedure, the receiving bank takes the loss. Otherwise, the sender is responsible for erroneous orders.

The second part of a funds transfer is the passage of funds from receiving bank to receiving bank, until the beneficiary's bank is contacted. This is covered by Part 3 of Article 4A, which is entitled "Execution of Sender's Payment Order by Receiving Bank."

Rules governing the relationship between receiving banks are contained in this part. A principal obligation of a receiving bank (other than the beneficiary's bank) is to "execute" a payment order once it has accepted the order - that is, pass it on to the next bank in the string. It executes by issuing a payment order to the next bank. (The beneficiary's bank has a different obligation. It must pay the obligation to the beneficiary, and that is covered in Part 4 of Article 4A.) Unless agreed otherwise, a bank may use any commercially reasonable method to issue a payment order. A receiving bank is, generally, responsible for any error it commits in issuing a payment order. If a receiving bank overpays the beneficiary of a payment order, the excess is recovered from the beneficiary, not from prior senders. If a receiving bank pays a person or entity that is not the intended beneficiary, recovery is from the person receiving the money, and not from any prior sender. Only if a receiving bank underpays in a payment order, may the bank recover from prior senders, and then only an amount to cover the error and only if it issues a curative order.

Part 3 of Article 4A covers other issues pertaining to receiving banks. For instance, rules on reporting an erroneous payment order and late execution of a payment order are furnished.

The last part of a funds transfer involves actual payment to the beneficiary. It is the subject of Part 4 of Article 4A, "Payment." Each sender, going back to the originator, is obligated to pay. At a given time, the beneficiary is considered to have been paid. There is a two step approach to actual payment, although the steps are accomplished simultaneously if the transfer is made by Fedwire. First, credit is extended by each receiving bank to each sender when the sender's payment order is accepted - basically, a communications function. The second stage involves settling up between participants - the actual passage of value.

Perhaps the most important section in Part 4 is Section 4A-402. It provides that a sender of a payment order is obliged to pay the amount of the order to the receiving bank if the funds transfer is properly completed. It is essential to distinguish, in this regard, a payment order from a check.

A check is a kind of payment order. When a person writes a check on an account, it orders the institution in which the account resides to pay money to a named person (whose technical name is the payee). Although a check suspends the liability of the person

who writes it for an underlying obligation until the instrument is rightfully presented for payment and paid at the institution in which the account resides, it can be passed from person to person as payment for other obligations and accrues and extinguishes liabilities for those persons as it passes between them. If the institution refuses to pay when the check is presented, then the person who initially wrote the check is liable for the underlying obligation as well as for the check. In contrast, acceptance of a payment order for a funds transfer by a receiving bank obligates the sender to pay that bank, and that bank alone. There is no instrument that may be passed from hand to hand as payment between other people. There are no lingering liabilities that result from the negotiability of an instrument. A payment order for a funds transfer is simple and direct.

How does settlement take place? If the sender is a bank, and the funds transfer is through one of the funds transfer systems, payment takes place according to the rules of the system that govern settlement between banks. Typically, payment is a matter of debiting an account of the sender with the receiving bank, and crediting the receiving bank's account. These methods hold whether the sender is an individual or a bank.

The beneficiary's bank, the last bank in the string, is responsible for paying the beneficiary. Payment generally takes place by crediting an account of the beneficiary, although satisfaction of a beneficiary's debt also constitutes payment, and payment in general occurs when the funds are available to the beneficiary for withdrawal. The originator of a payment order, that first light in the string of lights, generally is deemed to have paid the beneficiary on the underlying commercial obligation when the beneficiary's bank accepts the payment order. If it seems premature to discharge the originator, it is because at the time of acceptance by the beneficiary's bank, the originator has done all in its power to see that the beneficiary has obtained a credit balance at the beneficiary's bank in the agreed-upon amount. It is analogous to a situation where the originator has deposited cash to the beneficiary's account at beneficiary's bank. At that point, the originator's obligation to the beneficiary should be considered satisfied.

Finally, there are some other features of Article 4A to be considered. First, any transaction that is subject to the Electronic Funds Transfer Act of 1978 is not subject to Article 4A. This express exclusion places consumer transactions outside Article 4A, and leaves them to federal law. Second, the regulations and operating circulars of the Federal Reserve Board supersede any inconsistent provision of Article 4A. Third, transfer system rules will prevail if inconsistent with any part of Article 4A. Fourth, it is possible to vary the effect of most of the provisions of Article 4A, honoring the general Uniform Commercial Code policy of freedom of contract.

The fifth matter of special interest needs extra emphasis. Funds transfers occur and are useful so long as it is fast, efficient and inexpensive to use current and future electronic methods. A great deal of money can be passed through the current system for very little comparative cost. Therefore, Article 4A limits consequential damages for improper payment orders. Consequential damages might raise costs, reduce transaction speed by requiring the exercise of discretion by management, and increase uncertainty.

Article 4A of the Uniform Commercial Code is essential law. The continuance and viability of funds transfers depends upon its advancement in the states. And uniformity is an absolute requirement in every state, unconditionally and without deviation. Otherwise, there will be impairment of the functioning of funds transfers for the long term.

Important Information on Article 4A of the UCC

In 1989, as Article 4A of the UCC is proposed for enactment by the states, over $1 trillion is transferred daily by "funds transfers." Five years ago the daily average was $300 million and two years ago it rose to $500 million. Some peak days now exceed $2 trillion, while utilization continues to grow. "Funds transfers" exceed the total amounts transferred in all other payment systems — credit and debit cards and checks combined. The average "fund transfer" exceeds $5 million.

Yet there is no comprehensive law governing commercial "funds transfers." Regulation J covers the interbank part of any commercial "funds transfer" by the Federal Reserve network (Fedwire). The Clearing House Interbank Payment System (CHIPS) rules cover the bank participants in that system. The Electronic Funds Transfer Act of 1978 covers consumer transactions. In spite of all of that, when a commercial customer initiates a "funds transfer" through a bank for payment to a designated beneficiary, no comprehensive rules and no readily ascertainable law pertains. As a result, most commercial "funds transfers" are made with no provision for the significant liabilities that will accrue if something goes wrong.

Article 4A fills the void. It comprehensively provides coverage of commercial "funds transfers" from the order of the originator to the originator's bank, through intermediary banks, to the beneficiary's bank. No other country has such a comprehensive law, proposed or in being.

Article 4A sets forth safety net rules absent agreement of the parties, covering liabilities and obligations arising from: unauthorized payment orders; proper and improper (wrongful and erroneous) execution of payment orders; fraud; and, insolvency of participating banks. What constitutes payment for the discharge of an underlying obligation is, also, governed by Article 4A.

The major objectives of Article 4A are to preserve a fast, efficient, reliable system for the transfer of large volumes of funds rapidly at a low cost; to provide certainty as to the obligations and liabilities; to safeguard the integrity of the "funds transfer" system; and to establish the basic rights and responsibilities of the participants, except as varied by agreement of the parties.

Benefits to Corporate Users

Most senders of payment orders in a "funds transfer" are banks and corporations. Senders under Article 4A enjoy the following benefits:

1. *Finality of payment* — Funds transferred are essentially equivalent to cash with a more certain degree of finality than is currently the case.
2. *Moneyback guarantee* — If the "funds transfer" is not completed, the originator's bank must return the originator's money.
3. *Discharge of underlying obligation* — A statutory discharge of the underlying obligation generally occurs upon acceptance by the beneficiary's bank.
4. *Commercially reasonable security procedures* — Substantial incentives for banks to provide reasonable security procedures are fostered or the bank may absorb the loss for an unauthorized order.
5. *Error reporting* — While users have a duty to report errors, failure to do so within a reasonable time results only in possible interest losses. No other damages are imposed.

6. *Loss apportionment* — If a loss results from an unauthorized order, when there is an agreed security procedure, the receiving bank suffers the loss unless the bank can prove:

the security procedure was commercially reasonable;

the bank followed the procedure;

the bank acted in good faith; and

the bank complied with the customer's written agreement or instructions restricting acceptance of payment orders.

Even if the bank proves the above, should the customer prove that it's without fault, pure interloper losses fall on the bank.

7. *Damages for dishonor* — If the beneficiary's bank has accepted the order and the beneficiary demands payment, the bank, for failure to pay, may be liable for damages, including consequential damages, if the beneficiary gave notice of the particular circumstances that would give rise to such damages and indication of the magnitude of them.

Benefits to Banks

The banking community will benefit as follows from Article 4A:

1. *Certainty* — There is no statutory or case law that adequately governs these transactions. Frequently, contracts between customers and banks are absent or inadequate. Perhaps no contract could be adequate to govern the risks, given the paucity of applicable law. Therefore, all parties to "funds transfers" operate in an uncertain legal environment. Article 4A removes the uncertainty. Certainty as to liability and responsibility promotes sound credit policy and financial management. Since Article 4A largely embraces current operating practices, the efficiency of the present system is preserved.

2. *Banks as users* — As the principal users of the "funds transfer" system, banks will enjoy all of the benefits of Article 4A listed above for users.

3. *Limitation of liability* — Article 4A limits liability to loss of interest and principal, or in certain cases other incidental costs and reasonable attorney's fees. Only in the event of intentional dishonor and with specific notice of the particular circumstances and contemplated magnitude, are consequential damages recoverable.

4. *Statute of limitations* — Article 4A precludes objection to payment of an order executed by a bank unless made within one year from the time the customer receives notice the order was sent.

5. *Creditor processes* — Under Section 4A–502, banks are protected from creditor processes during the fast electronic batch processing of payment orders.

6. *Choice of law* — Section 4A–507 contains rules as to choice of applicable law that will promote certainty.

7. *Netting of obligations* — If banks owe other banks and are owed by those same banks on payment orders sent and received, Section 4A–403

gives statutory authorization for bilateral and unilateral netting of payment obligations among banks to reduce insolvency risk.

8. *Number and name of account* – If a bank discloses to its customer that it may rely upon numbers to identify a beneficiary in a payment order, Section 4A–305(3) authorizes it to rely upon the number used by the customer to identify the beneficiary. Because processing is electronic and rapid, reliance on numbers facilitates "funds transfers."

9. *Rely on tested message* – Banks can rely upon the message that tests against the security procedure, unless the customer proves that the payment order is unauthorized and the breach of the confidential security information did not result from a source controlled by the customer. The bank, however, must have offered a commercially reasonable security procedure to the customer and have followed that procedure and any customer written agreement or instruction, all in good faith.

Why states should adopt Article 4A of the UCC

New Article 4A of the Uniform Commercial Code concerns a type of payment made through the banking system called a "funds transfer." (A popular term for the bulk of these kinds of transfers is "wholesale wire transfer." This term is not used in Article 4A because all "funds transfers" are not "wholesale" and not "wire" transfers.) A "funds transfer" is, generally, a large, rapid money transfer between commercial entities. In the average "funds transfer" $5,000,000.00 changes hands. In most instances, such transfers will occur between banks using computers and electronic communications. (Consumer transfers through credit cards and ATM machines are not governed by Article 4A, but are governed by federal law.) Article 4A provides a body of law on the rights and obligations connected with "funds transfers."

There is currently no comprehensive body of law that defines the rights and obligations that arise from "funds transfers." Some aspects of "funds transfers" are governed by rules of the principal transfer systems. Transfers made by the Federal Reserve network (Fedwire) are governed by Federal Reserve Regulation J and transfers over the Clearing House Interbank Payment System (CHIPS) are governed by CHIPS rules. But these rules apply to only limited aspects of "funds transfer" transactions.

Article 4A will provide:

CERTAINTY

Currently, no participant in a "funds transfer" can know with certainty what the rights and obligations of parties are. Enactment of Article 4A solves the problem.

BALANCE

Article 4A carefully addresses the interests of banks, commercial users of this payment method and the public. It seeks a fair balance between interests involved in "funds transfers."

REMEDIES

What law exists does not provide clear remedies for "funds transfers" when something goes wrong. UCC–4A establishes who takes the risk of loss, who will be liable and what will be the damages.

A Few Facts About

New Article 4A of the Uniform Commercial Code

— Funds Transfers —

Purpose: To provide a comprehensive body of law on the rights and obligations connected with funds transfers.

Origin: Completed by the Uniform Law Commissioners in 1989.

Endorsed by:
American Law Institute
American Bankers Association
American Bar Association

State Adoptions:

Arizona *	Montana *
Arkansas *	Nebraska *
California	Nevada *
Colorado	New York
Connecticut	North Dakota *
Florida *	Ohio *
Hawaii *	Oklahoma
Idaho *	Oregon *
Illinois	Rhode Island *
Indiana *	South Dakota *
Kansas	Tennessee *
Louisiana	Utah
Maryland *	Virginia
Massachusetts *	Washington *
Minnesota	West Virginia
Mississippi *	Wyoming *

1991 Introductions:

District of Columbia	New Jersey
Georgia	New Mexico
Iowa	Pennsylvania
Michigan	Texas
Missouri	Vermont

For any further information regarding Article 4A of the Uniform Commercial Code, please contact John McCabe or Katie Robinson at 312-915-0195.

** 1991 Adoption*

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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EFFICIENCY

Article 4A is designed to facilitate a speedy and inexpensive system to transmit huge sums that are substantially cash equivalent, benefiting both the national and international economies.

FREEDOM OF CONTRACT

Users and banks are free to vary many provisions of UCC–4A by individual contract. They are not locked into invariable rules that might impede transactions between them.

UNIFORMITY

"Funds transfers" are an important part of business and are interstate in character. Uniformity is as important to the conduct of "funds transfers" as it is to other current payment methods.

CONCLUSION

The growing role that "funds transfers" have in the business world today makes it clear that modern law on this subject is needed. Users of "funds transfers" now depend mainly on court cases, or their own rules, to resolve disputes. This creates great uncertainty. UCC–4A answers these immediate needs.

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* *1991 Adoption*

THE NATIONAL
LAW JOURNAL

The Weekly Newspaper for the Profession

A Price Communications Corporation Newspaper Monday, August 14, 1989

Big-Buck Transfers A Big Risk

The law tries to catch up with technology.

BY MARCIA COYLE
National Law Journal Staff Reporter

TAKE A COOL half-billion dollars. Through the miracle of electronic wizardry, zip it from your bank account in Dallas to another account in Zurich — and pray that nothing goes wrong.

If prayers fail, prepare to enter the twilight zone of rights and liabilities, where technology has outpaced law, and law is scrambling to catch up.

The denizens of this uncomfortable twilight zone are big banks, big corporations, big bucks and big risks.

For nearly four years, a committee of the Uniform Law Commissioners, in conjunction with the American Law Institute, has been working feverishly to end the legal ambiguities surrounding so-called wholesale wire transfers, a particular way of making a dollar payment. That effort — expected to produce a new article to the Uniform Commercial Code — has often involved an intense battle between banking and corporate interests.

There is no comprehensive body of law governing wholesale wire transfers, as currently exists for checks and other types of payments, and the financial fallout can be enormous when errors occur. The average transfer — typically between banks and their corporate customers — is $5 million, and total daily transfers now average more than $1 trillion.

"When you look at the amount of money moving, it's striking that there are no backstop rules," says one bank lawyer. "People are transferring the net worth of their companies routinely and relying on private agreements with their banks, or no agreements at all."

Risky Business

The wholesale wire transfer is basically a very simple transaction, says Prof. Robert L. Jordan of the University of California at Los Angeles School of Law, reporter for the ULC drafting committee. If, for example, someone in Los Angeles wants to make a payment to someone in New York, he simply tells his Los Angeles bank to send the money to the other person's bank account in New York, explains the professor. By electronic transfer, the Los Angeles bank sends the payment order to the New York bank, which then credits the amount to the account of the so-called beneficiary — often before the money arrives from L.A.

Small-business users pick up the phone, call their bank and use a code word for authentication to order payment. Large corporate users, such as oil companies that engage in "Star Wars"-like transfers, may be so sophisticated that their computers talk to their banks, adds Thomas Baxter, associate general counsel of the Federal Reserve Bank of New York.

"You really have a spectrum of use," says Mr. Baxter, who, along with the American Bar Association and others, has been advising and monitoring the ULC effort. "In the middle of all this, you have banks debiting accounts of senders and crediting the banks of receivers. We accomplish this by the wonders of technology."

Wholesale wire transfers generally travel over two payment systems — the Fed Wire, operated by the Federal Reserve System, and CHIPS, the Clearing House Interbank Payments System in New York, the largest and only competitor to the Fed Wire. Another system — SWIFT — ties the U.S. systems with other international funds-transfer systems.

Although CHIPS and the Fed Wire have rules and regulations governing certain aspects of interbank transfers among their members, there are no rules governing the entire transaction — beginning with the so-called originator, who initiates a payment order, and ending with the so-called beneficiary, who gets paid.

Some banks and corporate users rely on private agreements to apportion risks if something goes wrong. "But there has been difficulty getting these agreements," says Mr. Baxter. "It also became clear over time that the rights of third parties could be affected by those agreements."

For example, he adds, what if there is a third-party intermediary bank in the transaction and it fails to settle, i.e., pay the balance? "Neither the originator nor the beneficiary may have selected that bank," he explains. "Who bears the loss?"

There never has been a failure on the CHIPS system, says general counsel Norman Nelson, but that does not mean the clearinghouse is ignoring the potential for one. Although working with the ULC to draft a uniform law, CHIPS also has been working independently to ensure so-called settlement finality, he says.

"If a bank is unable to pay the balance, we're looking at having all other participants to the agreement pay pro rata to make sure the system will settle," Mr. Nelson explains.

CHIPS has 140 participants, international banks with offices in New York through which funds are transferred. "Our record day was the day after Memorial Day when we moved $1.25 trillion," says Mr. Nelson. "On a normal day, we move $600 billion to $700 billion."

DIFFICULT: Washington attorney Carlyle C. Ring Jr. says it's difficult to work out uniform wire transfer laws.

Established in 1970, CHIPS, he says, has "grown and grown and grown," as has the entire wholesale wire transfer system. "The main thing now is to get a comprehensive body of law."

Commercial lawyers and others close to the wire-transfer field estimate that 90 percent of these transfers are now done without agreements covering rights and obligations.

Computer-Age Growth

Wire transfers have existed for many years, says ULC reporter Professor Jordan, but the volume of money moved has grown dramatically in the past two decades. One major reason for the increase in the number of wholesale wire transfers and their amounts is the arrival of computers, he explains.

Before the computer age, transfers were made on a more primitive basis, such as by paper-fed telex machines, recalls Professor Jordan.

"Along with the computer, there has grown up a whole new profession of cash managers who make sure that business is always using its money so it is earning money," he adds. "The ability to move instantly large sums of money from one part of the world to another has increased the volume of transfers.

"And the potential liability of banks has grown also, to the point where they have become very uncomfortable with the lack of any body of law governing what happens when something goes wrong."

The wholesale wire transfer, says Professor Jordan, is a system based on speed and low cost. The liability question for banks is very important, he explains, adding, "If you load up the liabilities, the costs will be greater."

Some of the financial land mines in the wholesale wire transfer are also a product of the new technology.

"There is now great danger that a computer hacker could get on the line, intercept a payment message and change the beneficiary," says Professor Jordan. "Unauthorized messages also present great potential for fraud."

There also are potential bank insolvency problems, he adds. In many cases, the beneficiary bank pays the beneficiary before it gets the money from the originator bank, he explains. It is customary then for the beneficiary to immediately withdraw the money.

"If the originator bank becomes insolvent, the beneficiary bank has a problem and it's not clear whether the beneficiary bank can get its money back from the beneficiary," he says.

And then there are transfers involving multiple transactions, says Professor Jordan. "What happens if there is a large bank failure? It could set off a chain reaction of other banks failing because of the enormous sums of money they are dealing with."

When errors occur and banks and their corporate users find themselves in litigation, he says, the courts "have to make up the law as they go along."

Court decisions have been unsatisfactory, according to the professor, because courts must fall back on ordinary negligence rules or analogize the situation to problems involving the more traditional check.

"The rules governing payment by check don't always apply," he explains.

Mr. Baxter agrees, noting that in a check transfer, the authentication device is the signature of the drawer. "In the wire transfer world, we don't have any signature. We're getting into an area where the law is not that sophisticated. Payment law is built around the signature. Now we have to think about new alternatives."

Growing Pains

For the past four decades, the Uniform Commercial Code has been the "premiere product" of the ULC, a confederation of state commissioners on uniform laws, says Carlyle C. Ring Jr., of counsel to Washington, D.C.'s Ober, Kaler, Grimes & Shriver. But it was getting rapidly out of date, he adds.

Ten years ago, he recalls, the permanent editorial board of the UCC appointed a committee to look at whether the commercial code needed to be revised because of electronic developments. The committee launched an ambitious effort to draft a comprehensive payment code covering checks, wholesale wire transfers and other payment instruments.

"The committee got into trouble because it was trying to do too much," explains Mr. Ring, a UCC board member. "Consumer groups and banks were not happy at all."

In 1986, the project was scaled down to focus only on wholesale wire transfers. "Uniform laws have been successful where we've been able to get the various interest groups together," says Mr. Ring. "When we step into an area of strong policy disagreement, it's very difficult to achieve uniformity."

If the uniform law effort fails to address the changing technology, he adds, the federal government will preempt the field. Pressures driving the modernization move, he says, include the Federal Reserve System's concern about major bank failures given the uncertainty over rights and liabilities, banks' anxiety over how they fare in the courts when problems occur and corporate users' demands for fair rules.

When the wholesale wire transfer project began three years ago, Mr. Ring, who is co-chairman of the ULC drafting committee, was in private practice. "My role was to be a neutral facilitator, to keep it on track." Today, still co-chairman, he is also general counsel and vice president of Atlantic Research Corp., a corporate user.

After roughly 12 drafts, proposed Article 4A, governing wholesale wire transfers, has the support of the banking and corporate communities and the Federal Reserve System, according to Mr. Ring, who calls the article "basically a safety net." It will not apply to consumer transactions, which continue to be governed by the federal Electronic Fund Transfer Act.

A 'Hard Fight'

But bringing those three groups together was neither easy nor pleasant, says Arthur L. Herold of Washington, D.C.'s Webster, Chamberlain & Bean.

Mr. Herold is not a member of the drafting committee, but he does represent the National Corporate Cash Management Association, an organization of corporate treasury officers. The corporate community, he recalls, was not aware of the 4A movement until about a year after the drafting committee began work.

During that year, he and colleagues from Exxon, Shell Oil Co., Kidder Peabody and Sears, Roebuck and Co., attended drafting meetings where, he says, "We were treated as outsiders, shouted down and outvoted."

Throughout 1988, he recalls, his association built a coalition of the oil companies, insurance and railroad industries, and retailers to increase its "voice" at the drafting sessions.

"We felt 4A was being bank-driven," Mr. Herold says. "We don't object to a 4A that equitably distributes risks, but if the rules aren't fair, we'd rather take our chances in the courts.

"We told the committee if they wanted corporate support, they would have

ACTIVE: Thomas Baxter is associate general counsel of the Federal Reserve Bank of New York.

to begin to accommodate our concerns, and if they didn't care, we would have to vigorously oppose enactment of 4A in the states. That tended to get their attention."

Mr. Herold called the effort a "hard fight" that became unnecessarily hostile and personal at times. His association has taken a neutral position on Article 4A even though an internal vote showed more members would support it than oppose it. "We felt the members should feel free to express their own feelings," he says.

But whether Article 4A ultimately will be equitable or will impose significant risks on the corporate community, Mr. Herold says, is still unknown.

"The banks are free from a lot of risk," he adds. "Banks don't like having no law and don't like the current common law. If anyone has a worse reputation with juries than big corporations, it's banks. The banks felt it was better to play with rules than without, and they basically wrote the rules."

But Mr. Herold and others involved in the drafting process credit Professor Jordan for pulling the disparate interests together. "He's a special person," says Mr. Herold. "We had great confidence in his fairness. Without him, I don't think this would ever have been done."

Article 4A, says Professor Jordan, tries to provide more certain rules for these transfers and to reduce the possibility of litigation. "It represents compromises and trade-offs," he explains. "We think we've come up with a fairly well-balanced statute for allocating risks and liabilities."

Into the States

The proposed Article 4A already has been approved by the American Law Institute. Following ULC approval, the next step will be to win enactment in state legislatures, says Mr. Ring.

"Our goal is to pick up four or five big banking states — New York, California, Texas, Illinois, Georgia and Massachusetts — and then the remaining states, we think, will move quickly," he says. "The rest will want to act rapidly to preserve banking business for themselves and because the courts probably will adopt the rules of 4A even before the legislatures act."

Taking the uniform law route is often time-consuming, notes Mr. Ring, adding there was considerable debate about whether new rules should be enacted instead at the federal level.

"But the federal government and the other parties are willing to give us a chance to use the prestige of the UCC to get these rules adopted," he says.

There has been historical deference to state development of commercial law, he explains. The Federal Reserve, he adds, is reluctant to take on new and substantial regulation. And Congress, he says, has become "such a grab bag" that the banking and corporate communities feared legislation could become enmeshed in extraneous issues.

Most uniform laws, Mr. Ring says, draw on experiments in states or other nations. But Article 4A, he adds, did not fit the pattern. England, Japan and the United Nations are looking to the ULC for guidance on similar projects.

"We're not looking at any models because there are none," he says. "As a matter of fact, we're ahead of the rest of the world."

Early Warning

ONE OF THE BEST and worst aspects of the law is the speed with which it changes. A slow, deliberate pace of legislative enactments produces the most error-free laws. And the doctrine of stare decisis — by which courts generally adhere to decided cases — helps to guarantee stability in the law.

But none of this is helpful in confronting the megaleaps of today's technology, and nowhere is this more apparent than in computers, banking and high finance.

In an era when trillions of dollars move across state and international borders in electronic blips, the law has failed to keep pace. Eventually mistakes, even big ones that could cause banks to fail, are bound to occur. There is currently no comprehensive body of law that will help lawyers and the courts unscramble the ensuing mess. As one bank lawyer noted, "When you look at the amount of money moving, it's striking that there are no backstop rules. People are transferring the net worth of their companies routinely and relying on private agreements with their banks, or no agreements at all."

For the past 3½ years, one group — the Uniform Law Commissioners — has been drafting a model law that tries to apportion risks and liability fairly when problems arise in these multibillion-dollar wire transfers. The ULC, bringing to the process its unique approach to building consensus, apparently has succeeded in gathering together such disparate interests as the nation's banking community, corporate users and the federal government.

But the ULC's effort is just the first step toward bringing the law into the 21st century of finance. The real challenge rests with the states. If fairness and certainty — the two primary goals of the model law — are to govern, the states must move quickly to enact this model legislation. For the entire legal profession — from bar groups to legislators — the ULC effort should serve as one more lesson on the need for early warning systems to detect and confront changes in the law mandated by rapidly changing technology.

Business and the Law | Stephen Labaton

States to Regulate Money Transfers

THE sweeping set of regulations for commercial transactions is about to get the most significant addition in decades.

The Uniform Commercial Code is the law in all states except Louisiana and governs everything from checks to the sale of all goods of more than $500. Despite its broad scope, the Code has failed to keep pace with technology: it does not address the electronic transfer of money among banks, a process that has grown in recent times more than 20 percent a year.

But that is about to change. Within the coming months, a new chapter is expected to be adopted by several large states that will for the first time regulate the computerized transfer of funds between banks. Businesses and banks now move more than $1 trillion a day electronically without any clear guidelines about what happens if someone goofs. The average transfer is $5 million.

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As a practical matter, the courts have tended to define the liabilities and rights of businesses who use the system in terms of contract law. Yet lawyers and banks say only a small percentage of those businesses have signed any contracts with the banks or other businesses on the transfer of funds.

In a typical transfer, the computer of a corporate customer notifies the computer of a bank, which then forwards the information about the transfer to a clearinghouse's computer. It, in turn, notifies the computer of the receiving bank to credit the account of the intended beneficiary of the funds.

Stuart Goldenberg

While the clearinghouses have their own sets of rules, no established laws govern the relationship between the sender and receiver of money. As a result, it is left uncertain who bears the loss for a glitch in the system, a mistake in the transaction, an unauthorized transfer or the meddling of a computer hacker. In many of the dozens of cases that have cropped up, courts have had to draw imprecise analogies to other provisions of the code that do not directly speak to the issue of computer transfers.

A four-year effort to draft the new chapter, known as Article 4A, has recently been completed and legislators say it will soon be introduced in New York, California, Massachusetts, Connecticut, Virginia and West Virginia. With the support of the American Bankers Association and the expected approval soon of the American Bar Association, some legislators in New York and California say the chapter will likely be approved by the summer.

"It will bring a substantial amount of certainty to these kinds of transactions," said Carlyle C. Ring Jr., a co-chairman of the committee that wrote the new rules. "No one really knew in the event of a mishap what would happen. And since such a large amount of money is being transmitted, there is a substantial incentive to litigate these issues."

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The draft was completed by the National Conference of Commissioners on Uniform State Laws, the organization that drafted the code more than 30 years ago. The nonprofit organization consists of lawyers, judges and academics, many of whom are selected as commissioners by state governors.

Like the other sections of the code, Article 4A will operate as a safety net. It will enable the banks and businesses in most instances to write contracts that differ from the Code. It would generally be applicable in those instances in which there are no contracts or when the contracts are ambiguous.

By adopting Article 4A, the states will enter an area of regulation in which the Treasury Department has also announced its intention to intervene. Earlier this year, the Bush Administration said that to combat the use of the electronic transferring system to launder money to avoid taxes and evade narcotics laws, Treasury regulations would be adopted to make it easier to trace the flow of money through the banking system.

One rule will require that the banks that send and receive transfers keep records, including the name and account of the customer transmitting and receiving the funds. Another rule would require that financial institutions receive more information about the nature of the business of a customer who makes use of international transfers. The Treasury guidelines, which do not appear to pre-empt any move by the states, are expected to go into effect this spring.

Sending Large Dollars

U.C.C. Article 4A to Provide Safety Net

Funds transferred by check amount to millions and millions of dollars each year. The legal rules for the check system, although recently somewhat shaken up by federal legislation and regulation CC, basically are well established. Funds transferred by electronic means, including FedWire (operated by the Federal Reserve System) and CHIPS (a funds transfer system operated by the New York Clearing House), often exceed $2 trillion a day. Yet any resulting problems are resolved only to a limited extent by regulation J for FedWire, a few published cases, the Electronic Funds Transfer Act and regulation E for some consumer aspects, and in some cases by the agreements of the parties. In short, the transfers involving the really large dollars, and the most risk if the transfer goes awry, have the least settled guidelines for conduct and for resolving disputes. Uniform Commercial Code article 4A, the U.C.C.'s newest, will fill this void.

As part of the U.C.C., article 4A is the product of the National Conference of Commissioners on Uniform State Laws ("NCCUSL") and the American Law Institute ("ALI"). The drafting committee also was assisted by two Reporters, whose role was to advise the members of the drafting committee as to the pertinent legal issues and what law exists to resolve those issues, and to embody the decisions of the drafting committee in proper statutory form with comments to elaborate on the meaning of the statute. In addition, a number of advisers from the Federal Reserve System, the banking industry, and the businesses that use funds transfers (including banks) worked with the drafting committee. The American Bar Association also appointed an adviser to the drafting committee from the Business Law Section, and members of the Section's Ad Hoc Committee on Payment Systems and its U.C.C. Committee scrutinized and commented on drafts prepared by the drafting committee.

Preparation of article 4A took almost three years. The new article was approved by the ALI at its annual meeting in May 1989 and by NCCUSL at its annual meeting in July–August 1989. Final approval by the ALI is anticipated in December at the latest.

The Council of the Business Law Section has tentatively decided to recommend ABA approval of article 4A when requested by NCCUSL and the ALI. Thus article 4A is ready for enactment by the state legislatures. A number of key commercial states are expected to introduce it soon. Expeditious enactment is contemplated because of the recognized need for greater legal certainty in the governing rules, the general support for article 4A by the interests involved in funds transfers, and the expressed concern of the Federal Reserve System that, unless the states address the significant issues involved in these types of transfers, federal law may become necessary to avoid unacceptable risks to the payment system.

Funds transfers under article 4A

Article 4A creates a series of rules to govern the resolution of legal issues that may arise out of funds transfers. The effect of these rules, like most of those in the U.C.C., may be varied by the agreements of the parties and operating rules of a funds transfer system, with some specific exceptions necessary to protect fundamental policy choices that should not be subject to variance due to fortuitous circumstances of a particular bargain (U.C.C. § 4A-501; *see also* § 4A-107). The ability to vary the effect of the statutory rules allows flexibility and development of new methods. but at the same time, the statutory rules stand as a "safety net" to resolve matters upon which the parties either do not or cannot agree.

Under article 4A, a "funds transfer" (§ 4A-104(1)) is the payment order (§ 4A-103(1)) or series of payment orders by which an originator (§ 4A-104(2)) accomplishes payment to the beneficiary (§ 4A-103(6)) of the originator's order. It can be a very simple transaction in which a corporate originator orders its bank to debit one of its accounts and credit an account of another party at the same bank. In this instance the funds transfer and the payment order are coextensive. If the originator instructs its bank ("originator's bank"—§ 4A-104(3)) to pay a beneficiary that is a customer of another bank, however, that payment order will require the originator's bank, in turn, to issue at least another payment order, perhaps to the beneficiary's bank directly, perhaps over a funds transfer system like FedWire or CHIPS (§ 4A-105(1)(e)), or perhaps to an intermediary bank (§ 4A-104)) that will then issue another order to the beneficiary's bank (§ 4A-103(7)).

Payment orders, unlike checks, do not embody independent rights and liabilities for the payment of money. Rather, the rights and liabilities of the parties to a payment order arise out of the contract formed, generally subject to article 4A and any agreement of the parties, when the payment order is accepted by the receiving bank (§ 4A-103(5)). Apart from contract outside article 4A, a bank has no duty under article 4A to accept a payment order (§ 4A-209). A receiving bank other than the beneficiary's bank accepts a payment order if it executes it (§ 4A-209(1)), and need not reject those orders it does not accept, unless otherwise provided by agreement or the receiving bank had sufficient funds of the sender on hand to cover the order (§§ 4A-210(2), 4A-212).

A receiving bank that accepts a payment order and that is not the beneficiary's bank is obliged to issue a payment order complying with the order of the sender (§ 4A-103(4)) that it accepted and generally to follow any instructions as to routing and method (§ 4A-302). If the resulting payment order does not comply, the sender is not responsible for the error and need not pay the bank other than to the extent of proper execution (§ 4A-303) but, upon learning of improper execution, may have a duty to notify the bank of that fact (§ 4A-304). Indeed, if a funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary in accordance with the sender's order, the sender is not obligated to pay for its order, or is entitled to its money back (§ 4A-402(3), (4)).

A beneficiary's bank may accept a payment order in a variety of ways, such as by paying or notifying the beneficiary, and acceptance also may occur when the bank receives payment of the sender's order (§ 4A-403) or by the passage of time if the amount of the sender's order is fully covered by a withdrawable credit balance (§ 4A-209(2)). Acceptance of the order entitles the bank to payment by the sender (§ 4A-402(2)) and generally obliges it to pay the amount of the order to the beneficiary (§§ 4A-404, 4A-405). Failure to do so and to give notice of the receipt of the order may subject the bank to liability. If the beneficiary's bank ac-