

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7072 HOUSE LABOR & COMMERCE

has been an increase in the unauthorized switching of customers during the past year, causing inconvenience for customers and creating expense for LECs who must resolve the resultant disputes. AT&T Petition at 7. Comments on AT&T's petition were filed on March 2, 1990; replies were filed March 19, 1990.

#### A. AT&T Petition for Rule Making

9. The AT&T petition contends that the Commission's existing carrier selection rules were designed to facilitate the equal access process during a period in which millions of customers made IXC selections within a relatively short time. It speculates that the LECs' involvement in distributing customer information and soliciting ballots at that time helped keep the initial rate of errors in processing customer selections reasonably low. AT&T Petition at 5. AT&T claims that recently, however, there has been a sharp increase in unauthorized switching. It reports that it conducted a survey of customers whose service was changed from AT&T to other IXCs, which showed that between 10 and 15 percent<sup>9</sup> of the residential customers switched away from AT&T between February and November, 1989, had not authorized the change. *Id.* at 6. These erroneous switches, AT&T charges, have resulted in inconvenience to customers and increased expense to ICs and LECs. *Id.* at 7. The remedy, it contends, is to change the Commission's rule to require that IXCs obtain written customer authorization prior to submitting customer information to the LEC for processing. AT&T emphasizes that the LOA would not be sent to the LEC, but would remain in possession of the IXC. *Id.* at 8.

10. Parties opposing AT&T's petition<sup>10</sup> assert that a change in the existing rules is not warranted by current market conditions, would be anticompetitive in its effect, and would be harmful to consumers. They argue that the current rules represent a reasonable balance between the IXCs' need for marketing flexibility and the need to protect the public against possible abuses. Opponents deny that the rules were appropriate only during the period of equal access conversions and contend that AT&T has failed to show why a more restrictive rule is necessary at this time. See, e.g., Sprint Comments at 2, 5; MCI Comments at 10-14.

11. According to parties opposing AT&T's petition, AT&T would be the primary beneficiary of any rule change that would make it more difficult for consumers to switch carriers. Sprint Comments at 8; Cromptel Comments at 5-7; MCI Comments at 15-16. MCI argues that requiring a signed LOA prior to submission of the customer's order would have little effect on AT&T, but would create a major burden for the rest of the interexchange industry, making it more difficult and costly for its competitors to penetrate the 40 percent of the market AT&T now serves. MCI Comments at 16-17.

12. Several commenters remark that the Commission previously considered and rejected AT&T's proposed rule in the *Waiver Order* and the *Illinois CLB Order*. They note that both MCI and AT&T, in their comments on the Illinois Club petition, supported continuation of the existing LOA rules, and opposed adoption of the signed LOA requirement. *Id.* at 6-7; Cromptel Comments at 2-4; Sprint Comments at 4-6. MCI observes that AT&T also argued at that time that the inability of a carrier to provide a signed document did not prove that the conversion was unauthorized. AT&T explained that "customers frequently ignore requests for return of letters of agency, delay their

signatures, or simply fail to comprehend the significance of confirmation forms." MCI Comments at 7, quoting AT&T Comments on Petition for Rule Making, filed July 15, 1986, at 4. Sprint observes that AT&T previously argued that if a signed customer statement were required prior to the submission of a PIC change to the LEC, "telemarketing will be virtually foreclosed . . . customer convenience will be hindered; and customer selections can be expected to decline." Sprint Comments at 4, quoting AT&T Petition for Clarification at 6.

#### B. Alternative Proposals

13. The National Association of Regulatory Utility Commissioners (NARUC) agrees that a change is needed in the Commission's current equal access conversion procedure, but cautions that any rule change should be sensitive to the needs of consumers and competing toll carriers. In lieu of the prior authorization requested by AT&T, NARUC recommends an alternative rule which would require the IC to supply to a customer requesting a change written verification within three business days of the request. NARUC believes that this system would protect against unauthorized changes while keeping the changeover process simple for consumers. NARUC Reply Comments at 1-3. Under the NARUC proposal, the IXC would be required to send the customer a form which would contain at least the following information concerning the changes requested:

- a. The current primary interexchange carrier's name;
- b. The name of the requested PIC of choice;
- c. A complete listing of any terms, conditions, or charges that will be incurred;
- d. The name of the person ordering the change;
- e. The name, address, and telephone number of the customer and the requested carrier of choice.

*Id.* at 4. NARUC asserts that its proposal would modify the Commission's current rules only slightly, and that by standardizing what is required of an IC before it initiates a changeover, the Commission would make it more difficult for an IXC to switch a customer without authorization.<sup>11</sup>

14. On December 11, 1990, AT&T and MCI jointly advised this Commission that they had settled their civil suits alleging false and deceptive advertising and telemarketing practices.<sup>12</sup> They further informed the Commission that, as part of the settlement agreement, each had agreed to support adoption by the Commission of certain confirmation procedures designed to guard against unauthorized switching.<sup>13</sup>

### III. DISCUSSION

15. We have reviewed AT&T's petition, the comments and letters filed in response to that petition, and the Settlement Proposal submitted by AT&T and MCI. In considering the advisability of imposing a signed LOA requirement, we cannot ignore the earlier arguments made by AT&T, and echoed by other IXCs, against the very rule AT&T, in its petition, seeks to reintroduce.

The telephone is a convenient and efficient way for customers to make an affirmative choice of a [PIC]. Customers can make a decision and have that decision implemented immediately, as they are accustomed to doing, without the inconvenience of signing and returning any documents and without the delay inherent in that process.

AT&T Petition for Clarification of *Waiver Order* at 4.

However, if the language of paragraph 10 of Appendix B [of the *Allocation Order*] . . . is construed to require a physical handwriting, customers will no longer be able to place orders over the telephone. Telemarketing will be virtually foreclosed under such a restrictive reading of the Order: customer convenience will be hindered; and customer selections can be expected to decline.

*Id.* at 6.

16. The Commission, in originally imposing the LOA requirement, anticipated that the signed LOA would be filed and retrieved by the IXC to resolve disputes. In the contemporary telecommunications marketplace, this seldom happens. Both MCI and AT&T offer similar descriptions of their ordering processes: the change order for the customer is entered onto a computer tape by the telemarketer, and the LOAs, if and when they are received, are shipped to a warehouse. If the customer challenges the change, the IXC frequently finds it more cost effective to pay the applicable change charges to the LEC rather than attempt to retrieve the LOA. It is unclear, therefore, that the mandatory LOA requirement would do anything other than slow down the telemarketing process.

17. We are concerned, however, that a large number of customers appear to have been switched to long distance carriers they did not select.<sup>14</sup> Although, as Sprint suggests, it may be impossible in a competitive market to totally eliminate errors in the ordering process, some revision in the procedures IXCs must follow in submitting change orders for long distance service appears to be necessary. In deciding what action to take, we have weighed the need to prevent fraudulent or abusive sales practices against the possibility that some remedies that have been suggested would unnecessarily impede the competitive process and thereby deny consumers the benefits of this process. We have tentatively concluded that the AT&T and MCI Settlement Proposal represents a reasonable method for resolving the problem of unauthorized switching.

18. The safeguards proposed under the Settlement Agreement would require that at least one of the following actions take place before a consumer's long distance service is switched:

1. The long distance carrier has on hand an authorization card signed by the customer and sent to the long distance carrier;
2. The consumer initiates a call from home to an automated 800 number, and through a sequence of prompts, confirms the choice of long distance carrier; or
3. The consumer's choice of a long distance carrier is verified by an independent firm unaffiliated with any long distance carrier.<sup>15</sup>

The Settlement Proposal acknowledges that customers have the right, of course, to initiate changes in their long distance service by calling their local exchange carrier or long distance carrier directly.<sup>16</sup>

19. The Settlement Proposal also contains a sample script for third party confirmation and describes a "Quality Assurance Program" (QAP). This program would be managed under the direction and authority of an independent auditor selected by each IXC obligated to maintain a QAP, subject to review by this Commission. The full text of the Settlement Proposal, including the confirmation procedures, sample script, and Quality Assurance Program, is provided at Appendix A.

20. Under this proposal, a customer's order for service would be verified in any one of three ways. (Customer-initiated calls would not require verification). This proposal offers greater flexibility to the ICs than would a mandatory LOA requirement and allows competitors to select a verification procedure which best meets their needs and those of their customers.

21. Therefore, we have tentatively concluded that the letter of agency procedures set forth in Appendix B of the Commission's *Allocation Order*, as modified by the *Waiver Order*, should be revised to require IXCs which seek to submit orders to LECs on behalf of customers to certify to the LEC that they have instituted the procedures set forth at Appendix A. Unlike our current procedures, these proposals specify three specific methods to be used in verifying non customer-initiated orders for changed service. We seek comment on our tentative conclusion that these procedures will serve to reduce to a minimal level the number of unauthorized switches in customers' long distance service.

22. We seek comment regarding whether these procedures will be adequate to protect consumers from unauthorized switches in their long distance service. We invite comment regarding whether this Commission should adopt all of the procedures described in the AT&T and MCI proposal, or whether we should adopt only certain portions of the proposal. We also request comment regarding the effect of revised verification procedures on our current requirement that the IXC pay all change charges associated with changes which the customer disputes if the IXC cannot produce a letter of agency. Further, we seek comment on whether the procedures set forth in Appendix A, or alternative procedures, should apply to customer-owned payphones.

23. We also invite comment regarding whether the various alternatives proposed by NARUC and other parties who have presented their comments in this Rule Making, or any other alternatives, would be preferable to the Settlement Proposal. In particular, we seek comment on the following alternative:

- 1) Within three business days of the customer's request for a change, the IXC sends each new customer an information package containing at least the following information concerning the requested change: a) the name of the customer's current primary long distance carrier; b) the name of the newly requested long distance carrier; c) a description of any terms, conditions, or charges that will be incurred; d) the name of the person ordering the change; e) the name, address, and telephone number of both the customer and the newly requested

long distance carrier: f) a postpaid postcard which the customer can use to deny, cancel, or confirm a service order.

2) The IXC should not submit an order to the LEC for that customer until 14 days after the form is mailed to the customer.

24. Finally, we invite comment on the cost of implementation of the Settlement Proposal procedures and whether these procedures would impose undue burdens on interexchange carriers. In evaluating alternative approaches, we must weigh the need to prevent abusive sales practices against the possibility that some remedies suggested by the parties would unnecessarily impede the competitive process and thereby deny consumers its benefits. We are particularly concerned lest smaller carriers find the proposed procedures burdensome. We therefore ask for comment on whether the procedures we adopt should apply only to carriers of a particular size. We also request comment regarding whether any of the alternative approaches noted above would be more appropriate for small carriers.

#### IV. PAPERWORK REDUCTION ACT

25. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection requirements on the public.

#### V. REGULATORY FLEXIBILITY ACT INITIAL ANALYSIS

26. *Reason for action.* The Commission is issuing this Notice of Proposed Rule Making to protect consumers from unauthorized switching of their long distance carriers and to ensure that consumers are fully informed of the costs associated with changes in long distance service.

27. *Objectives.* The objective of this Notice of Proposed Rule Making is to initiate a proceeding to revise the procedures interexchange carriers must follow prior to entering a change order on behalf of a consumer.

28. *Legal basis.* Sections 1, 4(i), 4(j), 201-205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 303(r).

29. *Description, potential impact and number of small entities affected.* The proposed rules will require that interexchange carriers adopt one of three methods for verifying customer orders to change long distance carriers. The rules will also require that customers be provided information about charges and services to allow them to make informed choices. Small entities may feel some economic impact due to the proposed verification requirements.

30. *Reporting, recordkeeping, and other compliance requirements.* The proposed rules impose no reporting requirements and no new recordkeeping requirements. Carriers currently are required to obtain and retain records of customer orders.

31. *Federal rules which overlap, duplicate, or conflict with the Commission's proposal.* None.

32. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* The Notice of Proposed Rule Making solicits comments on whether the verification requirements should be adapted to the size of the carrier.

33. *Comments are solicited.* We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, *et seq.*

#### VI. EX PARTE REQUIREMENTS

34. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. See generally Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of the public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f) of the Commission's Rules, 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203.

35. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.202(h) of the Commission's Rules, 47 C.F.R. § 1.1202(h). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

36. Any person who is making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face

the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

37. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

#### VII. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

39. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 U.S.C. §§ 1.415, 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before May 1, 1991. Reply comments should be filed no later than May 31, 1991. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, Downtown Copy Center, room 246, 1919 M Street, N.W., Washington, D.C. 20554.

40. IT IS FURTHER ORDERED that the Secretary shall mail a copy of this Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration.

#### FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

#### APPENDIX A

#### AT&T AND MCI SETTLEMENT AGREEMENT PROPOSAL

#### CONFIRMATION PROCEDURES

*PIC Changes.* No interexchange carrier may submit orders to change a customer's primary interexchange carrier (PIC) except in accordance with the provisions of this section.

#### A. Definitions

- "customer means a person with two or fewer residential telephone lines;
- "customer-initiated PIC change" means an order to change a customer's PIC that is generated as a result of a communication to an IC or LEC originated by a customer;
- "independent third party" means an appropriately qualified (*i.e.*, capable of performing large scale verification processes as specified herein) person retained by an IXC to perform verification or auditing functions described in this section and in which the IXC has no ownership interest and which performs no telemarketing, direct mail, or other sales solicitation functions for the IXC;
- "IXC" means an interexchange carrier or a person (other than an independent third party) acting on behalf of an interexchange carrier;

*B. Mandatory Disclosures.* Any IXC telemarketing solicitations seeking to change a customer's PIC must include the following disclosures:

- 1) identification of the IXC placing the call;
- 2) the purpose of the call is to solicit a change of the customer's PIC;
- 3) the customer's PIC may not be changed unless and until the sale is confirmed, together with a description of the confirmation process to be used;
- 4) a description of any charge for processing the PIC change that may be imposed by the customer's LEC; and
- 5) the IXC will send the customer a form that meets the requirements of subsection (c)(1) that authorizes the carrier to submit the PIC change, with a request that the customer sign and return the form to the IXC.

*C. Confirmation.* No IXC shall submit a PIC change order (other than a customer-initiated PIC change) to a LEC unless and until the order has first been confirmed in accordance with the following procedures:

- 1) the IXC has obtained the customer's written authorization to submit the order that explains what occurs when a PIC is changed and confirms:
  - a) the customer's billing name and address and each telephone number to be covered by the PIC change order;
  - b) the decision to change the PIC to the IXC, and
  - c) the customer's understanding of the existence of the PIC change fee; or
- 2) the IXC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in subsection (1) above to confirm the authorization.

IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

3) an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party will use a script substantially similar to the form attached. The IXC must retain the independent third party's services pursuant to a written contract that will be available for inspection by the FCC and that does not provide compensation based upon the percentage of sales confirmed.

4) Regardless of which of the above confirmation procedures is used, the IXC must retain all records and data pertaining to the customer's authorization for a period of 12 months after submission of the PIC change order.

**D. Auditing Requirements.** IXCs shall implement auditing procedures to ensure that the disclosure and confirmation provisions of this section are followed. Such audits will include an analysis to confirm that the IXC is submitting only PICs (other than customer-initiated PIC changes) that have been confirmed in one of the ways specified above. Audits must be performed by a qualified third party at least once every month. If any such audit reveals (1) non-compliance in any material respect with the confirmation requirements of Section C, or (2) a rate of non-compliance in excess of two percent (at a 98 percent level of confidence plus or minus 1 percent) plus the upper bound of the confidence interval, the IXC shall immediately implement corrective measures specified by the auditor, and submit the auditor's report to the FCC.

#### QUALITY ASSURANCE PRINCIPLES

**A. Quality Assurance Program.** The Quality Assurance Program ("QAP") to be adopted by the FCC is intended to ensure that interexchange carriers ("IXCs") which make more than outbound telemarketing calls per year are not making blatantly false and misleading claims (as defined in Section D below) in their telemarketing sales practices. The QAP is to be managed under the direction and authority of an independent auditor ("QAP Director") selected by each IXC obligated to maintain a QAP, subject to review by the FCC. The QAP Director shall have full and complete access to all items subject to review.

**B. QAP Director's Responsibilities.** The QAP Director shall conduct a quality assurance audit quarterly (1) to determine whether an IXC is making blatantly false and misleading claims ("blatant falsehoods") in its telemarketing practices, and (2) where such blatant falsehoods have been found to occur, to certify when the problem that caused the blatant falsehoods has been corrected. The QAP Director is only to evaluate and report

on cases of blatant falsehoods and is expressly prohibited from disclosing to any IXC the marketing claims being made by any other IXC.

**C. Items Subject To Review.** Any IXC subject to the QAP shall provide the QAP Director with any and all information, reports, methods and practices, guidelines, training materials and cooperative assistance requested by the QAP Director for the purpose of making an independent evaluation of (1) scripts and (2) the conduct of telemarketing by the IXC. The QAP Director may examine all management controls, including, but not limited to the following:

1. remote monitoring with random selection of monitored representatives;
2. on-site monitoring; and
3. recordkeeping and retention.

**D. Blatant Falsehoods.** Blatant falsehoods are representations that seriously and substantially misstate the nature, characteristics, qualities and geographic boundaries of a competing IXC. Examples include:

1. "[IXC] is going out of business."
2. "[IXC #1] is, by its own choice, no longer providing your services and [IXC #2] has instead been designated as your new long distance carrier."
3. "[IXC #1] and [IXC #2] are part of the same company and/or [IXC #1] has merged with [IXC #2] (or any other similar misrepresentation of a corporate relationship)."
4. "You have no choice about your long distance service" and must change to [IXC]."
5. "Your long distance company or your LEC have authorized the switch to [IXC]."
6. "[IXC] and your local phone company are one and the same."

**E. Corrective Measures.** On a quarterly basis, the QAP Director will monitor a sufficient number of telephone calls in progress to achieve a 98 percent (plus or minus 1 percent) level of confidence that the percentage of calls in which blatant falsehoods are occurring does not exceed 2 percent. If that level is exceeded, the IXC must implement corrective measures immediately. The QAP Director shall then commence monitoring of the IXC on a monthly basis until the IXC reduces the percentage of blatant falsehoods below 2 percent. A report on the non-compliance shall be submitted to the FCC until the corrective measures are effective.

**F. Costs.** Costs of each IXC's QAP will be borne by the IXC subject to the QAP.

#### SAMPLE SCRIPT FOR THIRD PARTY CONFIRMATION

Hello, my name is \_\_\_\_\_ from \_\_\_\_\_, an independent verification company. I'm calling to confirm your order for [IXC] long distance service.

Q1. I'd like to confirm your name, address and telephone number(s). IF AVAILABLE ON SCREEN, READ BACK. Is that correct? TAKE ANY CORRECTIONS. IF NOT ON SCREEN, ASK FOR EACH ITEM AND RECORD.

Q1A. Did you or another person in your household recently receive a call asking you to select [IXC] as your long distance company?

Q2. I'd like to confirm that you have decided to select [IXC] to carry long distance calls from this (these) telephone(s). Is that correct?

Q3. I'd like to confirm that you are an adult resident of this household. Is that correct? IF QUESTIONED BY CUSTOMER, MAY STATE THAT PURPOSE IS TO DETERMINE IF YOU ARE A DECISION MAKER FOR LONG DISTANCE SERVICE FOR THE HOUSEHOLD.

Q4. I'd like to confirm that you were advised that the local telephone company may charge a fee for switching to [IC]. Is that correct? IF CUSTOMER ASKS HOW MUCH, VERIFIER MAY STATE AMOUNT FROM LEC TARIFFS.

Q5. Finally, to show that I've spoken to you, please give me the last four digits of your Social Security Number. RECORD INFORMATION; IF CUSTOMER REFUSES, TRY DATE OF BIRTH OR MOTHER'S MAIDEN NAME.

I will now process the order. Thank you and goodbye.

IF RESPONSE IS NEGATIVE ON ANY ITEM, INFORM CUSTOMER THAT YOU CANNOT PROCESS THE ORDER AND THAT THE CUSTOMER MAY SPEAK DIRECTLY WITH IXC OR MAY CALL THE LOCAL PHONE COMPANY TO ORDER THE SWITCH IN SERVICE TO THE IXC. ANY QUESTIONS (EXCEPT THOSE IN THE Q AND A) ABOUT THE LONG DISTANCE SERVICES OR RATES ARE TO BE REFERRED BACK TO THE IXC.

Would you like me to return you to an IXC representative? IF YES, THE CALL CAN GO BACK TO THE IXC REPRESENTATIVE.

#### APPENDIX B

Pleadings Filed in Rule Making No. 7245

Petition for Rule Making, filed January 10, 1991 by American Telephone and Telegraph Company

Comments, filed March 2, 1990

Ameritech Operating Companies (Ameritech)  
Competitive Telecommunications Association (CompTel)

General Communications, Inc. (GCI)  
MCI Telecommunications Corporation (MCI)  
Pennsylvania Office of Consumer Advocacy and the National Association of State Utility Consumer Advocates (PAOCA/NASUCA)  
Southwestern Bell Telephone Company (Southwestern Bell)  
US Sprint Communications Company Limited Partnership (Sprint)

Replies, filed March 19, 1990

AT&T

America's Carriers Telecommunications Association (ACTA)

MCI

National Association of Regulatory Utility Commissioners (NARUC)

Nebraska Public Service Commission (Nebraska PSC)

Operator Service Providers of America (OSPA)

Southwestern Bell

Sprint

United States Telephone Association (USTA)

Letters

California Public Utilities Commission  
CFW Telephone Company  
Citizens Telephone Cooperative  
City of Charleston, West Virginia  
Consumer Action  
State of Colorado  
Conference of Consumer Organizations  
Dubois Telephone Exchange, Inc.  
Illinois Commerce Commission  
Iowa Network Services, Inc.  
Iowa State Utilities Board  
Lincoln Telephone Co.  
Louisiana Consumers League  
Maryland Public Service Commission  
Minnesota Department of Public Service  
Minnesota Public Utilities Commission  
Office of Minnesota Attorney General  
Montana Public Service Commission  
Nebraska Public Service Commission  
Ohio Public Service Commission  
Oklahoma Corporation Commission  
Roosevelt County Rural Telephone Cooperative, Inc.  
South Carolina Public Service Commission  
United Refining Co. of Pennsylvania

Virginia State Corporation Commission  
 West Virginia Public Service Commission  
 Western New Mexico Telephone Co., Inc.  
 Wisconsin Public Service Commission (Wisconsin  
 PSC)

#### FOOTNOTES

<sup>1</sup> See *United States v. American Tel. & Tel.*, 552 F. Supp. 131 (D.D.C. 1982) *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>2</sup> Equal access is that which is equal in type, quality, and price to access to local exchange facilities provided to AT&T and its affiliates. *Id.* at 227.

<sup>3</sup> Default traffic refers to the interexchange telephone calls of any customer who failed to make a selection of an interexchange carrier.

<sup>4</sup> A letter of agency is a document, signed by the customer, which states that a particular carrier has been selected as that customer's long distance carrier. In its petition, AT&T seeks a requirement that an IXC have a customer's LOA on file before submitting an order to the local exchange carrier to switch that customer to the IXC's service.

<sup>5</sup> AT&T describes the unauthorized switching of customers as "slamming." MCI describes such switches as SWOPs (switched without permission).

<sup>6</sup> See Letter from James L. Lewis, MCI Telecommunications Corporation, to Secretary, Federal Communications Commission, Dec. 12, 1990 (MCI Letter).

<sup>7</sup> Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*). See also *Illinois Citizens Utility Board Petition for Rule Making*, 2 FCC Rcd 1726 (1987) (*Illinois CUB Order*).

<sup>8</sup> Customers may also order service directly from the LEC.

<sup>9</sup> AT&T later refined this figure, alleging that 13.9 percent of the end users switched away from AT&T are unauthorized PIC changes. AT&T Reply at App. I.

<sup>10</sup> A list of parties filing pleadings in this matter appears at Appendix B.

<sup>11</sup> Alternative approaches to the problem of unauthorized switching were also suggested by MCI, Sprint, Ameritech, Bell Atlantic, and Comptel.

<sup>12</sup> See MCI Letter, n.4. *supra*.

<sup>13</sup> On February 12, 1991, MCI and AT&T formally filed a joint request that the Commission adopt the proposal contained in Attachment A of this NPRM.

<sup>14</sup> In recognition of the problems consumers have encountered, the Commission issued a Public Notice on November 2, 1990, informing consumers of their rights and describing steps they might take to protect themselves against unauthorized switches.

<sup>15</sup> At the present time, AT&T's own supervisors verify telemarketing orders for long distance service; MCI reports that it has initiated a system of third party verification, which is not yet complete.

<sup>16</sup> See Settlement Proposal, Confirmation Procedures, at Section C.

# at GCI switchers

By DAVID POSTMAN  
Daily News reporter

JUNEAU — After an uneasy, yearlong truce, Alaska's phone war has erupted again.

Alascom says it has had to go to the legislature to protect its customers from being tricked into switching to GCI. GCI is set this fall to break Alascom's monopoly on in-state, long-distance service.

Alascom says it is worried about its customers being the target of fraudulent and deceptive marketing practices.

GCI says Alascom is trying to stymie competition.

The bill that Alascom has gotten introduced is "a sham," GCI said.

In a briefing paper, GCI says the bill, called the Interexchange Consumer Protection Act of 1991, would be better named, "The Telephone Consumer Harassment Act of 1991."

The bill would set out standards a company would have to follow before switching a customer from one telephone company to another.

A recent Alaska Public Utilities Commission ruling

Please see Back Page,  
**ALASCOM**

## ALASCOM: Bill would hinder changing companies

Continued from Page A-1

says that before a customer can be switched from one company to another, the customer must be given written notice and then send a written confirmation back to the company.

The Alascom bill would require a second round of confirmation. After the company received the customer's acceptance, it would have to wait 72 hours to give the customer a cooling-off period and then either send out another letter — which would also have to be returned — or hire an independent third party to confirm the customer's choice.

Since Alascom now has all the long-distance customers and GCI wants them, GCI says, it would be hurt by the proposed deadlines and requirements for written or third-party confirmations before a customer could be switched.

Sen. Pat Pourchot, D-Anchorage, who forged a compromise between the two telephone companies last year, said Alascom's moves may violate the spirit of an agreement between the two companies and lawmakers to

*'You would have to be an extremely motivated consumer to change carriers. This bill clearly is biased in their favor.'*

— Dana Tindall,  
GCI's vice president  
for regulatory affairs

leave the rules of competition up to the Alaska Public Utilities Commission.

Alascom lobbyist Ashley Reed said the company asked Sen. Pat Rodey, D-Anchorage, and Rep. Gene Kubina, D-Valdez, to introduce identical measures in the House and Senate earlier this month.

Rodey said Monday he agreed to introduce the bill so it could get a hearing, and he told Alascom lobbyists that he did not necessarily support it. Kubina could not be reached for comment.

Rodey said it is unlikely the bill will come up for a vote in the three weeks left in this legislative session.

The problem, Alascom

says it is trying to head off is known in the Lower 48 as "slamming." That's when a local phone utility switches customers from one long-distance carrier to another without telling the consumer, or at least without telling all the details.

"Because slamming is fostered by loose regulations and the fierce competition among long distance carriers, it is necessary to protect long distance consumers by adopting appropriate rules," Alascom wrote in a position paper.

The law would require a long list of procedures that a company soliciting customers would have to follow.

"I think the (public utilities) commission has discussed this already by regulation," said Ray Wiperman, acting executive director of the APUC. Wiperman said the commission has adopted regulations requiring written confirmation before a customer can be swapped to a new phone company.

Wiperman said the Federal Communications Commission is also considering new rules to restrict slamming. Wiperman said the

practice is a problem in the Lower 48, but not in Alaska. He said there have been no recent complaints of slamming in interstate service by either GCI or Alascom where the two companies have been competing for years.

But Alascom says the activity on the state and federal level is evidence that slamming is a real problem that needs to be addressed in state law.

GCI's vice president for regulatory affairs, Dana Tindall, said the proposal is more of an Alascom protection bill than a consumer protection bill.

"You would have to be an extremely motivated consumer to change carriers. This bill clearly is biased in their favor," Tindall said.

"It would be easier to buy a handgun than it would be to switch telephone companies."

GCI's position paper says the bill is "unnecessary, anti-competitive and anti-consumer."

"This bill is not designed to protect consumers, it is purely designed to frustrate and delay robust competition," the statement said.

HB

292

(7) [REDACTED] HOUSE COMMITTEE REPORT [REDACTED]

Date Referred: April 19, 1991

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 5-11-91

The LABOR AND COMMERCE Committee considered:

HB 292

HOUSE BILL NO. 292

MULTIPLE PERMITEE GAMING; PRIZE AMOUNTS

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

RECOMMENDATIONS:

be replaced with CS HB 292 (L+C)

the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	

*[Signature]*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 292

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
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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 *[Signature]* 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).

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.

SECTIONAL ANALYSIS - Representative Jacko  
HB 292 Relating To Multiple Beneficiary Charitable Gaming Permits

- SECTION 1) Adds new language specifying that each member of a multiple beneficiary "group" will have the same limit on bingo activity as an individual permit holder.
- SECTION 2) Adds a new subsection authorizing the issuance of a multiple beneficiary permit (MBP) for up to 6 qualified entities who apply jointly. Imposes the same gaming activity restrictions in current law on MBP holders.
- SECTION 3) Requires a MBP group to designate one member in charge for reporting purposes and the transmittal of records.
- SECTION 4) Clarifies that the member in charge of a multiple beneficiary permit must be a member of or on the board of directors of one of the qualified organizations or an employee of a municipality that may be a holder of a MBP.
- SECTION 5) Requires the MBP group to designate alternate members in charge to fulfill the responsibilities of this chapter in the absence of the member in charge.
- SECTION 6) Adds a new section in AS 05.15 (Games of Chance & Contests of Skill) that establishes Multiple Beneficiary Permits. Delineates that 2 to 6 qualified organizations or municipalities may join together for a multi-beneficiary permit. This section also requires applicants for MBP's to comply with the same requirements as individual applicants for gaming permits. The section also clarifies that holders of MBP's may not hold any other gaming permits under AS 05.15. The section also delineates the procedure for an entity that is a joint holder of a MBP to withdraw from the permit and clarifies that the entity that has withdrawn may apply for an individual permit, but its share of prizes awarded while holding the MBP apply toward awards under its individual permit. This section also requires the holders of MBP's to file reports that comply with the same requirements as the reports of operators.
- SECTION 7) Adds language that restricts door prizes for a multi-beneficiary permit to \$20,000 per month or \$240,000 per year (same as other permittees).
- SECTION 8) Deletes language relating to permittees working in conjunction with each other since that category of group activity is replaced by the MBP's in this bill.
- SECTION 9) Increases the annual maximum prize award from \$1 million to \$1.5 million and clarifies that each member of a MBP group may award the new maximum.
- SECTION 10) This section adds language that clarifies that holders of multi-beneficiary permits must keep records for two years of each prize of \$50 or more; the first and last day each series of pull tabs was distributed, the serial number of each series of pull tabs, and the distributor who sold the series of pull tabs.
- SECTION 11) Provides for an immediate effective date of this bill.

Amendments to HB 292

1. Add the following section:

AS 05.15.020(a) is amended to read:

(a) A municipality or qualified organization may conduct an activity permitted under this chapter [,] if the municipality or qualified organization pays the appropriate permit fee and receives an annual permit issued by the department. The annual permit fee is:

(1) \$20 for an applicant that did not hold a permit during the preceding year;

(2) \$20 for an applicant that had gross receipts of less than \$20,000 from activities conducted under this chapter during the preceding year;

(3) \$50 for an applicant that had gross receipts of \$20,000 or more but not exceeding \$100,000 from activities conducted under this chapter during the preceding year;

(4) \$100 for an applicant that had gross receipts exceeding \$100,000 from activities conducted under this chapter during the preceding year.

~~AS 05.15.020(b) is amended to read:~~  
(5) \$100 per applicant for a multi-beneficiary permit under AS 5.15.10

2. Page 2, line 21, after "organizations" and before "may"

Insert "in a calendar year"

3. Page 3, line 21, after "maximum of", delete "\$1,500,000"

Insert "\$1,000,000"

Page 3, line 26, after "each year of", delete "\$1,500,000"

Insert "\$1,000,000"

# POSITION PAPER

Department of Commerce  
& Economic Development

**HB 292:** "An Act relating to multiple-beneficiary gaming permits, maximum prize awards, and door prizes for charitable gaming; and providing for an effective date."

Under this bill, no restriction exists 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.

This bill relaxes the requirements currently set in regulation 12 AAC 34.200(c) on permittees who join together to conduct gaming at a single facility with the use of an operator.

This bill also increases the maximum payout of prize awards from \$1,000,000.00 to \$1,500,000.00 for both permittees who conduct their own gaming activities as well as the permittees issued a multiple-beneficiary permit.

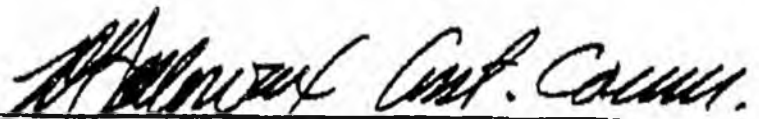
The department recommends the following amendments:

- 1) 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.
- 2) Restrict the maximum number of permittees that may use a single facility in a calendar year to six (6) by statute.
- 3) Require each permittee to individually account for its income, prizes, expenses, and net proceeds, as do all other permittees who either conduct their own gaming activities or contract with an operator.

As we stated in our position paper for SB 207 (limiting an operator to conducting gaming activities for ten (10) permittees only), operator-conducted gaming activities are already limited in the number of bingo games that may be played (no more than 11 sessions per calendar month as opposed to 14 sessions per calendar month for permittees who conduct their own games), as well as the total amount of prizes that may be awarded (\$660,000.00 for bingo and \$500,000.00 for all other authorized games, including pull-tabs, if an operator conducts the activity). A permittee that conducts its own gaming activities may award prizes totaling \$840,000.00 for bingo and \$1,000,000.00 for all other authorized games which includes pull-tabs).

POSITION PAPER - HB 292  
Page 2

The department does not support increasing the prize awards payout from \$1,000,000.00 to \$1,500,000.00. If gaming activities remain constant, then fewer charitable organizations will benefit from these gaming activities which we believe was the intent in setting prize limitations. The prize limitation was \$200,000.00 per year until HB 299 increased it to \$1,000,000.00 in 1988.

  
\_\_\_\_\_  
Glenn A. Olds, Commissioner

Date: 4-29-91

GAO/JNH/KP/dg19484D  
042991a

# 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:

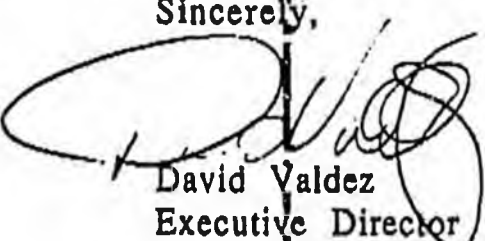
- 1) Allowing six permittees to work together reduces expenses through sharing a common facility with a centralized administrative staff. As expenses decrease a greater portion of gaming revenues are returned to the non-profits.

Representative Jacko  
Page 2

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



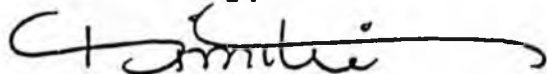
APR 24 '91 11:37

ADM-130/91  
Page 2

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**



402 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.

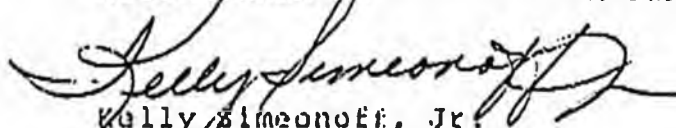
Lucky Strike Bingo is a self directed consortium of 4 nonprofits, managed by a board of directors composed of one member from each of the participating organizations. The membership includes the following nonprofits: Kodiak Area Native Association; Aleutian/Pribilof Islands Association; Alaska Native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

Serving the communities of: Akhiok • Karluk • Kodiak • Larsen Bay • Old Harbor • Ouzinkie • Port Lions

CHAPTER 34  
GAMES OF CHANCE AND SKILL

## Article

1. Operators (12 AAC 34.200)
2. Pull-tab Manufacturing and Distribution (12 AAC 34.300 — 12 AAC 34.390)
3. Pull-tab Games (12 AAC 34.400)
4. Bingo Games (12 AAC 34.500)
5. General Provisions (12 AAC 34.900 — 12 AAC 34.990)

ARTICLE 1.  
OPERATORS.

## Section

## 200. Operator license required

12 AAC 34.200. OPERATOR LICENSE REQUIRED. (a) Except as provided in (c) of this section, the department will consider a person to be independently conducting gaming activities and, therefore, required to hold an operator's license under AS 05.15.122, if any one of the following conditions is present:

(1) the person conducting the gaming activity

(A) is not an employee of the permittee, as defined in (b) of this section;

(B) directly supervises a person who is not an employee of the permittee, as defined in (b) of this section, or who is paid out of money over which the permittee does not have sole control;

(C) has made an investment of any kind, including property or equipment used on behalf of the permittee's gaming activity;

(D) is responsible for the tendering of receipts from gaming activity that are first deposited into a bank account over which the permittee does not have sole control;

(E) is responsible for accounting for game-related expenses;

or

(F) authorizes and pays game-related expenses from money that is not under the control of the permittee; or

(2) the permittee

(A) has minimal or no control over when or where gaming activity is conducted on its behalf; or

(B) does not have a member present at all times when gaming activity is being conducted under its permit.

(b) In this section, a person is considered an employee of a permittee, and not required to hold an operator's license, if

(1) that person's wages are paid, taxes are withheld, or contributions are made by the permittee for the purposes of FICA, federal income tax, state unemployment insurance, or workers' compensation;

(2) the wages, salary, or any indirect compensation or gift received by that person has no direct relationship to the income or profit of a specific gaming activity; and

(3) except as described in (2) of this subsection, that person has no other financial interest, including ownership, of any property sold, leased, or rented to the permittee, involved in the operation of the gaming activity being conducted.

(c) A group of not more than four permittees may join together to conduct gaming activities at a single facility on their own behalf without the use of an operator only if

(1) each permittee is actively involved in the day to day gaming activities being conducted, including management oversight, policy setting, and authorization of expenditures;

(2) the person managing or supervising the gaming activity is the primary member in charge or is an employee of the permittee, as defined in (b) of this section, on those days that gaming activities are being conducted for the benefit of that permittee;

(3) each permittee individually accounts for its own expenses and receipts associated with gaming activity conducted under its own permit;

(4) the door prize limitations of AS 05.15.180(e) are not exceeded by that single facility; and

(5) each permittee reports an adjusted gross income of at least 15 percent of gross income for two consecutive quarters based on the total operation of the permittee.

(d) The department will, in its discretion, review the conduct and management of gaming activities on an individual basis and make a determination, in accordance with this section, as to whether a person is required to be licensed as an operator under AS 05.15.

ARTICLE 2.  
PULL-TAB MANUFACTURING AND DISTRIBUTION.

## Section

300. Standards for construction of pull-tabs
310. Pull-tab series assembly and packaging
320. State identification stamps
330. Manufacturer distribution
340. Manufacturer's monthly report
350. Pull-tab distributor license application requirements

HB

294

(7)

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  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Licp/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note D.C.E.D.

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>William L. Taylor</i>	<input checked="" type="checkbox"/>				
<i>Bob Bryer</i> (Bryer)	<input type="checkbox"/>	<i>See Memo (Ivan)</i>		<input checked="" type="checkbox"/>	
<i>David H. Finkelstein</i> (Finkelstein)	<input checked="" type="checkbox"/>				

*[Signature]*  
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.

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.

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

Sponsor: Rules Committee

Component: \_\_\_\_\_

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 *Glenn*  
 Agency: Department of Commerce & Economic Development / *Dept. Comm* Date: 4.9.92

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

Page 1 of 1

KP/dgl 91 710/040992c

(Rev. 12/91)

A M E N D M E N T

TO: CSHB 294 (L&C)  
(Work Draft 7-GH0001\G 3/18/92)

OFFERED IN THE HOUSE  
LABOR AND COMMERCE COMMITTEE

Page 27, line 1, following "on the claim.":

Insert "Attorney fees provided in this section are additional to the provisions of Rule 82 of the rules of civil procedure."

Page 29, line 29, following "on the claim.":

Insert "Attorney fees provided in this section are additional to the provisions of Rule 82 of the rules of civil procedure."

CS FOR HOUSE BILL NO. 294 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to funds transfers under the Uniform Commercial Code; amending Alaska  
2 Rule of Civil Procedure 82; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 45.01.101 is amended to read:

5 Sec. 45.01.101. SHORT TITLE. AS 45.01 - AS 45.09 and AS 45.12  
6 [AS 45.01.101 - AS 45.09.507 SHALL BE KNOWN AND] may be cited as the Uniform  
7 Commercial Code.

8 \* Sec. 2. AS 45.01.102 is amended to read:

9 Sec. 45.01.102. PURPOSES; RULES OF CONSTRUCTION; VARIATION BY  
10 AGREEMENT. (a) The code [AS 45.01 - AS 45.09] shall be liberally construed and applied  
11 to promote the underlying purposes and policies.

12 (b) Underlying purposes and policies of the code [AS 45.01 - AS 45.09] are:

13 (1) to simplify, clarify, and modernize the law governing commercial transactions;

14 (2) to permit the continued expansion of commercial practices through

1 custom, usage, and agreement of the parties;

2 (3) to make uniform the law among the various jurisdictions.

3 (c) The effect of provisions of the code [AS 45.01 - AS 45.09] may be varied by  
4 agreement, except as otherwise provided in the code [AS 45.01 - AS 45.09] and except that  
5 the obligations of good faith, diligence, reasonableness, and care prescribed by the code [AS  
6 45.01 - AS 45.09] may not be disclaimed by agreement, but the parties may by agreement  
7 determine the standards by which the performance of the obligations is to be measured if such  
8 standards are not manifestly unreasonable.

9 (d) The presence in certain provisions of the code [AS 45.01 - AS 45.09] of the words  
10 "unless otherwise agreed" or words of similar import does not imply that the effect of other  
11 provisions may not be varied by agreement under (c) of this section.

12 (e) In the code [AS 45.01 - AS 45.09], unless the context otherwise requires,

13 (1) words in the singular number include the plural, and in the plural include the  
14 singular;

15 (2) words of the masculine gender include the feminine and the neuter, and when  
16 the sense so indicates words of the neuter gender may refer to any gender.

17 \* Sec. 3. AS 45.01.103 is amended to read:

18 Sec. 45.01.103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.

19 Unless displaced by the particular provisions of the code [AS 45.01 - AS 45.09], the principles  
20 of law and equity, including the law merchant and the law relative to capacity to contract,  
21 principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or  
22 other validating or invalidating cause, supplement the provisions of the code [AS 45.01 -  
23 AS 45.09].

24 \* Sec. 4. AS 45.01.105 is amended to read:

25 Sec. 45.01.105. TERRITORIAL APPLICATION OF THE ACT; PARTIES' POWER TO  
26 CHOOSE APPLICABLE LAW. (a) Except as provided in this section, when a transaction bears  
27 a reasonable relation to this state and also to another state or nation, the parties may agree that  
28 the law either of this state or of the other state or nation shall govern their rights and duties.  
29 Failing this agreement, the code applies [AS 45.01 - AS 45.09 APPLY] to transactions  
30 bearing an appropriate relation to this state.

31 (b) Where one of the following provisions of the code [AS 45.01 - AS 45.09] specifies

1 the applicable law, that provision governs and a contrary agreement is effective only to the extent  
2 permitted by the law, including the conflict of laws rules, so specified:

3 (1) rights [RIGHTS] of creditors against sold goods (AS 45.02.402);

4 (2) applicability [APPLICABILITY] of the chapter [ARTICLE] on bank  
5 deposits and collections (AS 45.04.102);

6 (3) bulk transfers subject to the chapter [ARTICLE] on bulk transfers;

7 (4) applicability [(AS 45.06.102) APPLICABILITY] of the chapter  
8 [ARTICLE] on investment securities (AS 45.08.106);

9 (5) perfection [PERFECTION] provisions of the chapter [ARTICLE] on  
10 secured transactions (AS 45.09.103);

11 (6) AS 45.12, the chapter on funds transfers.

12 \* Sec. 5. AS 45.01.106 is amended to read:

13 Sec. 45.01.106. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The remedies  
14 provided by the code [AS 45.01 - AS 45.09] shall be liberally administered to the end that the  
15 aggrieved party may be put in as good a position as if the other party had fully performed, but  
16 neither consequential or special nor penal damages may be had except as specifically provided  
17 in the code [AS 45.01 - AS 45.09] or by other rule of law.

18 (b) A right or obligation declared by the code [AS 45.01 - AS 45.09] is enforceable  
19 by action unless the provision declaring it specifies a different and limited effect.

20 \* Sec. 6. AS 45.01.108 is amended to read:

21 Sec. 45.01.108. SEVERABILITY. If a provision or clause of the code [AS 45.01 -  
22 AS 45.09] or application of the clause or provision to a person or circumstances is held invalid,  
23 the invalidity does not affect other provisions or applications of the code [AS 45.01 - AS  
24 45.09] that can be given effect without the invalid provision or application, and to this end the  
25 provisions of the code [AS 45.01 - AS 45.09] are severable.

26 \* Sec. 7. AS 45.01.109 is amended to read:

27 Sec. 45.01.109. SECTION CAPTIONS. Notwithstanding AS 01.05.006,  
28 section headings [SECTION CAPTIONS] are parts of the code [AS 45.01 - AS 45.09].

29 \* Sec. 8. AS 45.01.201 is amended to read:

30 Sec. 45.01.201. GENERAL DEFINITIONS. Subject to additional definitions contained  
31 in the subsequent chapters [ARTICLES] of the code [AS 45.01 - AS 45.09] that are

1 applicable to specific chapters [ARTICLES] or sections, and unless the context otherwise  
2 requires, in the code [AS 45.01 - AS 45.09],

3 (1) "action" in the sense of a judicial proceeding includes recoupment,  
4 counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined;

5 (2) "aggrieved party" means a party entitled to resort to a remedy;

6 (3) "agreement" means the bargain of the parties in fact as found in their language  
7 or by implication from other circumstances including course of dealing or usage of trade or  
8 course of performance as provided in the code [AS 45.01 - AS 45.09] (AS 45.01.205 and  
9 AS 45.02.208); whether or not an agreement has legal consequences is determined by the  
10 provisions of the code [AS 45.01 - AS 45.09], if applicable; otherwise by the law of contracts  
11 (AS 45.01.103) (compare "contract" [COMPARE "CONTRACT"]);

12 (4) "bank" means a person engaged in the business of banking;

13 (5) "bearer" means the person in possession of an instrument, document of title,  
14 or certificated security payable to bearer or endorsed in blank;

15 (6) "bill of lading" means a document evidencing the receipt of goods for  
16 shipment issued by a person engaged in the business of transporting or forwarding goods, and  
17 includes an airbill; "airbill" means a document serving for air transportation as a bill of lading  
18 does for marine or rail transportation, and includes an air consignment note or air waybill;

19 (7) "branch" includes a separately incorporated foreign branch of a bank;

20 (8) "burden of establishing" a fact means the burden of persuading the triers of  
21 fact that the existence of the fact is more probable than its nonexistence;

22 (9) "buyer in ordinary course of business" means a person who, in good faith and  
23 without knowledge that the sale to that person is in violation of the ownership rights or security  
24 interest of a third party in the goods, buys in ordinary course from a person in the business of  
25 selling goods of that kind but does not include a pawnbroker; all persons who sell minerals or  
26 the like<sub>1</sub> [( ) including oil and gas<sub>1</sub> ( )] at wellhead or minehead are considered to be persons in  
27 the business of selling goods of that kind; "buying" may be for cash or by exchange of other  
28 property or on secured or unsecured credit and includes receiving goods or documents of title  
29 under a pre-existing contract for sale but does not include a transfer in bulk or as security for or  
30 in total or partial satisfaction of a money debt;

31 (10) "code" means AS 45.01 - AS 45.09 and AS 45.12 (the Uniform

1        Commercial Code);

2                (11) "conspicuous": a term or clause is conspicuous when it is so written that  
3 a reasonable person against whom it is to operate ought to have noticed it; a printed heading in  
4 capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous; language in the body of  
5 a form is "conspicuous" if it is in larger or other contrasting type or color; but in a telegram any  
6 stated term is "conspicuous"; whether a term or clause is "conspicuous" or not is for decision by  
7 the court;

8                (12) [(11)] "contract" means the total legal obligation that results from the  
9 parties' agreement as affected by the code [AS 45.01 - AS 45.09] and any other applicable  
10 rules of law (compare "agreement" [COMPARE "AGREEMENT"]);

11                (13) [(12)] "creditor" includes a general creditor, a secured creditor, a lien  
12 creditor, and any representative of creditors, including an assignee for the benefit of creditors,  
13 a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent  
14 debtor's or assignor's estate;

15                (14) [(13)] "defendant" includes a person in the position of defendant in a cross  
16 action or counterclaim;

17                (15) [(14)] "delivery" with respect to instruments, documents of title, chattel  
18 paper, or certificated securities means voluntary transfer of possession;

19                (16) [(15)] "document of title" includes bill of lading, dock warrant, dock  
20 receipt, warehouse receipt or order for the delivery of goods, and also any other document which  
21 in the regular course of business or financing is treated as adequately evidencing that the person  
22 in possession of it is entitled to receive, hold, and dispose of the document and the goods it  
23 covers; to be a document of title a document must purport to be issued by or addressed to a  
24 bailee and purport to cover goods in the bailee's possession which are either identified or are  
25 fungible portions of an identified mass;

26                (17) [(16)] "fault" means wrongful act, omission, or breach;

27                (18) [(17)] "fungible" with respect to goods or securities means goods or  
28 securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;  
29 goods that are not fungible shall be deemed fungible for the purposes of the code [AS 45.01  
30 - AS 45.09] to the extent that under a particular agreement or document unlike units are treated  
31 as equivalents;

1                    (19) [(18)] "genuine" means free of forgery or counterfeiting;

2                    (20) [(19)] "good faith" means honesty in fact in the conduct or transaction  
3 concerned;

4                    (21) [(20)] "holder" means a person who is in possession of a document of title  
5 or an instrument or a certificated investment security drawn, issued, or endorsed to the person  
6 or to the order of the person or to bearer or in blank;

7                    (22) [(21)] to "honor" is to pay or to accept and pay or, where a credit so  
8 engages, to purchase or discount a draft complying with the terms of the credit;

9                    (23) [(22)] "insolvency proceedings" includes any assignment for the benefit of  
10 creditors or other proceedings intended to liquidate or rehabilitate the estate of the person  
11 involved;

12                    (24) [(23)] a person is "insolvent" who either has ceased to pay the person's  
13 debts in the ordinary course of business or cannot pay the person's debts as they become due or  
14 is insolvent within the meaning of the federal bankruptcy law;

15                    (25) [(24)] "money" means a medium of exchange authorized or adopted by a  
16 domestic or foreign government as a part of its currency;

17                    (26) [(25)] a person has "notice" of a fact when (A) the person has actual  
18 knowledge of it; (B) the person has received a notice or notification of it; or (C) from all the  
19 facts and circumstances known to the person at the time in question the person has reason to  
20 know that it exists; a person "knows" or has "knowledge" of a fact when the person has actual  
21 knowledge of it; "discover" or "learn" or a word or phrase of similar import refers to knowledge  
22 rather than to reason to know; the time and circumstances under which a notice or notification  
23 may cease to be effective are not determined by the code [AS 45.01 - AS 45.09];

24                    (27) [(26)] a person "notifies" or "gives" a notice or notification to another by  
25 taking such steps as may be reasonably required to inform the other in ordinary course whether  
26 or not such other actually comes to know of it; a person "receives" a notice or notification when

27                    (A) it comes to the person's attention; or

28                    (B) it is duly delivered at the place of business through which the contract  
29 was made or at any other place held out by the person as the place for receipt of the  
30 communications;

31                    (28) [(27)] notice, knowledge, or a notice or notification received by an

1 organization is effective for a particular transaction from the time when it is brought to the  
2 attention of the individual conducting that transaction, and in any event from the time when it  
3 would have been brought to that person's attention if the organization had exercised due  
4 diligence;

5 (29) [(28)] "organization" includes a corporation, government or governmental  
6 subdivision or agency, business trust, estate, trust, partnership or association, two or more persons  
7 having a joint or common interest, or any other legal or commercial entity;

8 (30) [(29)] "party," as distinct from "third party," means a person who has  
9 engaged in a transaction or made an agreement within this chapter;

10 (31) [(30)] "person" includes an individual or an organization (See  
11 AS 45.01.102);

12 (32) [(31)] "presumption" or "presumed" means that the trier of fact must find  
13 the existence of the fact presumed unless evidence is introduced which would support a finding  
14 of its nonexistence;

15 (33) [(32)] "purchase" includes taking by sale, discount, negotiation, mortgage,  
16 pledge, lien, issue or re-issue, gift, or any other voluntary transaction creating an interest in  
17 property;

18 (34) [(33)] "purchaser" means a person who takes by purchase;

19 (35) [(34)] "remedy" means any remedial right to which an aggrieved party is  
20 entitled with or without resort to a tribunal;

21 (36) [(35)] "representative" includes an agent, an officer of a corporation or  
22 association, and a trustee, executor, or administrator of an estate, or any other person empowered  
23 to act for another;

24 (37) [(36)] "rights" includes remedies;

25 (38) [(37)] "security interest" means an interest in personal property or fixtures  
26 that [WHICH] secures payment or performance of an obligation; the retention or reservation  
27 of title by a seller of goods notwithstanding shipment or delivery to the buyer (AS 45.02.401)  
28 is limited in effect to a reservation of a "security interest"; the term also includes an interest of  
29 a buyer of accounts or chattel paper that [WHICH] is subject to AS 45.09; the special property  
30 interest of a buyer of goods on identification of the goods to a contract for sale under  
31 AS 45.02.401 is not a "security interest," but a buyer may also acquire a "security interest" by

1 complying with AS 45.09; unless a lease or consignment is intended as security, reservation of  
2 title under the lease or consignment is not a "security interest," but a consignment is in any event  
3 subject to the provisions on consignment sales (AS 45.02.326); whether a lease is intended as  
4 security is to be determined by the facts of each case; however,

5 (A) the inclusion of an option to purchase does not of itself make the lease  
6 one intended for security, and

7 (B) an agreement that upon compliance with the terms of the lease the  
8 lessee shall become or has the option to become the owner of the property for no  
9 additional consideration or for a nominal consideration does make the lease one intended  
10 for security;

11 (39) [(38)] "send" in connection with writing or notice means to deposit in the  
12 mail, or deliver for transmission by another usual means of communication, with postage or cost  
13 of transmission provided for and properly addressed and, in the case of an instrument, to an  
14 address specified on it or otherwise agreed, or if there is none to an address reasonable under the  
15 circumstances; the receipt of a writing or notice within the time at which it would have arrived  
16 if properly sent has the effect of a proper sending;

17 (40) [(39)] "signed" includes a symbol executed or adopted by a party with  
18 present intention to authenticate a writing;

19 (41) [(40)] "surety" includes guarantor;

20 (42) [(41)] "telegram" includes a message transmitted by radio, teletype, cable,  
21 a mechanical method of transmission, or the like;

22 (43) [(42)] "term" means that portion of an agreement which relates to a  
23 particular matter;

24 (44) [(43)] "unauthorized" signature or endorsement means one made without  
25 actual, implied, or apparent authority, and includes a forgery;

26 (45) [(44)] "value": except as otherwise provided with respect to negotiable  
27 instruments and bank collections (AS 45.03.303, AS 45.04.208, and AS 45.04.209), a person  
28 gives "value" for rights if the person acquires them

29 (A) in return for a binding commitment to extend credit or for the  
30 extension of immediately available credit whether or not drawn upon and whether or not  
31 a charge-back is provided for in the event of difficulties in collection;

1 (B) as security for or in total or partial satisfaction of a pre-existing claim;  
2 (C) by accepting delivery under a pre-existing contract for purchase; or  
3 (D) generally, in return for a consideration sufficient to support a simple  
4 contract;

5 (46) [(45)] "warehouse receipt" means a receipt issued by a person engaged in  
6 the business of storing goods for hire;

7 (47) [(46)] "written" or "writing" includes printing, typewriting, or any other  
8 intentional reduction to tangible form.

9 \* Sec. 9. AS 45.01.204(a) is amended to read:

10 (a) Where the code [AS 45.01 - AS 45.09] requires an action to be taken within a  
11 reasonable time, a time which is not manifestly unreasonable may be fixed by agreement.

12 \* Sec. 10. AS 45.02.511(c) is amended to read:

13 (c) Subject to the provisions of the code [AS 45.01 - AS 45.09] on the effect of an  
14 instrument on an obligation (AS 45.03.802), payment by check is conditional and is defeated as  
15 between the parties by dishonor of the check on due presentment.

16 \* Sec. 11. AS 45.09.408 is amended to read:

17 Sec. 45.09.408. FINANCING STATEMENTS COVERING CONSIGNED OR LEASED  
18 GOODS. A consignor or lessor of goods may file a financing statement using the terms  
19 "consignor", "consignee", "lessor", "lessee", or the like instead of the terms specified in  
20 AS 45.09.402. The provisions of AS 45.09.401 - 45.09.408 apply as appropriate to the financing  
21 statement, but its filing may not of itself be a factor in determining whether or not the  
22 consignment or lease is intended as security as defined in AS 45.01.201  
23 [(AS 45.01.201(37))]. However, if it is determined for other reasons that the consignment or  
24 lease is so intended, a security interest of the consignor or lessor which attaches to the consigned  
25 or leased goods is perfected by the filing.

26 \* Sec. 12. AS 45 is amended by adding a new chapter to read:

27 CHAPTER 12. FUNDS TRANSFERS.

28 ARTICLE 1. SUBJECT MATTER AND DEFINITIONS.

29 Sec. 45.12.101. SHORT TITLE. This chapter may be cited as Uniform Commercial  
30 Code - Funds Transfers.

31 Sec. 45.12.102. SUBJECT MATTER. Except as otherwise provided in AS 45.12.108,

1 this chapter applies to funds transfers defined in AS 45.12.104.

2 Sec. 45.12.103. PAYMENT ORDER; DEFINITIONS. (a) In this chapter,

3 (1) "payment order" means an instruction of a sender to a receiving bank,  
4 transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed  
5 or determinable amount of money to a beneficiary if

6 (A) the instruction does not state a condition to payment to the beneficiary  
7 other than time of payment;

8 (B) the receiving bank is to be reimbursed by debiting an account of, or  
9 otherwise receiving payment from, the sender; and

10 (C) the instruction is transmitted by the sender directly to the receiving  
11 bank or to an agent, funds-transfer system, or communication system for transmittal to  
12 the receiving bank;

13 (2) "beneficiary" means the person to be paid by the beneficiary's bank;

14 (3) "beneficiary's bank" means the bank that is identified in a payment order in  
15 which an account of the beneficiary is to be credited under an order, or that otherwise is to make  
16 payment to the beneficiary if the order does not provide for payment to an account;

17 (4) "receiving bank" means the bank to which the sender's instruction is  
18 addressed;

19 (5) "sender" means the person giving the instruction to the receiving bank.

20 (b) If an instruction complying with (a)(1) of this section is to make more than one  
21 payment to a beneficiary, the instruction is a separate payment order with respect to each  
22 payment.

23 (c) A payment order is issued when it is sent to the receiving bank.

24 Sec. 45.12.104. FUNDS TRANSFER; DEFINITIONS. In this chapter,

25 (1) "funds transfer" means the series of transactions, beginning with the  
26 originator's payment order, made for the purpose of making payment to the beneficiary of the  
27 order; the term includes any payment order issued by the originator's bank or an intermediary  
28 bank intended to carry out the originator's payment order; a funds transfer is completed by  
29 acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the  
30 originator's payment order;

31 (2) "intermediary bank" means a receiving bank other than the originator's bank

1 or the beneficiary's bank;

2 (3) "originator" means the sender of the first payment order in a funds transfer;

3 (4) "originator's bank" means

4 (A) the receiving bank to which the payment order of the originator is  
5 issued if the originator is not a bank; or

6 (B) the originator if the originator is a bank.

7 Sec. 45.12.105. OTHER DEFINITIONS. (a) In this chapter,

8 (1) "authorized account" means a deposit account of a customer in a bank  
9 designated by the customer as a source of payment of payment orders issued by the customer to  
10 the bank; if a customer does not so designate an account, any account of the customer is an  
11 authorized account if payment of a payment order from that account is not inconsistent with a  
12 restriction on the use of that account;

13 (2) "bank" means a person engaged in the business of banking and includes a  
14 savings bank, savings and loan association, credit union, and trust company; a branch or separate  
15 office of a bank is a separate bank for purposes of this chapter;

16 (3) "customer" means a person, including a bank, having an account with a bank  
17 or from whom a bank has agreed to receive payment orders;

18 (4) "funds-transfer business day" of a receiving bank means the part of a day  
19 during which the receiving bank is open for the receipt, processing, and transmittal of payment  
20 orders and cancellations and amendments of payment orders;

21 (5) "funds-transfer system" means a wire transfer network, automated  
22 clearinghouse, or other communication system of a clearinghouse or other association of banks  
23 through which a payment order by a bank may be transmitted to the bank to which the order is  
24 addressed;

25 (6) "good faith" means honesty in fact and the observance of reasonable  
26 commercial standards of fair dealing;

27 (7) "prove" with respect to a fact means to meet the burden of establishing the  
28 fact; "burden of establishing" has the meaning given in AS 45.01.201.

29 (b) Other definitions applying to this chapter and the sections in which they appear are

30 (1) "acceptance" in AS 45.12.209;

31 (2) "executed" in AS 45.12.301;

- 1 (3) "execution date" in AS 45.12.301;
- 2 (4) "funds-transfer system rule" in AS 45.12.501;
- 3 (5) "payment by beneficiary's bank to beneficiary" in AS 45.12.405;
- 4 (6) "payment by originator to beneficiary" in AS 45.12.406;
- 5 (7) "payment by sender to receiving bank" in AS 45.12.403;
- 6 (8) "payment date" in AS 45.12.401;
- 7 (9) "security procedure" in AS 45.12.201.

8 (c) The following definitions in AS 45.04.104 apply to this chapter:

- 9 (1) "clearinghouse";
- 10 (2) "item";
- 11 (3) "suspends payments".

12 (d) In addition, AS 45.01 contains general definitions and principles of construction and  
13 interpretation applicable throughout this chapter.

14 Sec. 45.12.106. TIME PAYMENT ORDER IS RECEIVED. (a) The time of receipt of  
15 a payment order or communication canceling or amending a payment order is determined by the  
16 rules applicable to receipt of a notice stated in AS 45.01.201(28). A receiving bank may fix a  
17 cut-off time or times on a funds-transfer business day for the receipt and processing of payment  
18 orders and communications canceling or amending payment orders. Different cut-off times may  
19 apply to payment orders, cancellations, or amendments, or to different categories of payment  
20 orders, cancellations, or amendments. A cut-off time may apply to senders generally or different  
21 cut-off times may apply to different senders or categories of payment orders. If a payment order  
22 or communication canceling or amending a payment order is received after the close of a funds-  
23 transfer business day or after the appropriate cut-off time on a funds-transfer business day, the  
24 receiving bank may treat the payment order or communication as received at the opening of the  
25 next funds-transfer business day.

26 (b) If this chapter refers to an execution date or payment date or states a day on which  
27 a receiving bank is required to take action, and the date or day does not fall on a funds-transfer  
28 business day, the next day that is a funds-transfer business day is treated as the date or day  
29 stated, unless the contrary is stated in this chapter.

30 Sec. 45.12.107. FEDERAL RESERVE REGULATIONS AND OPERATING  
31 CIRCULARS. Regulations of the Board of Governors of the Federal Reserve System and

1 operating circulars of the federal reserve banks supersede an inconsistent provision of this chapter  
2 to the extent of the inconsistency.

3 Sec. 45.12.108. EXCLUSION OF CONSUMER TRANSACTIONS GOVERNED BY  
4 FEDERAL LAW. This chapter does not apply to a funds transfer if a part of the funds transfer  
5 is governed by 15 U.S.C. 1693 - 1693r (Electronic Fund Transfer Act of 1978) as amended.

6 ARTICLE 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.

7 Sec. 45.12.201. SECURITY PROCEDURE. (a) In this chapter, "security procedure"  
8 means a procedure established by agreement of a customer and a receiving bank for the purpose  
9 of

10 (1) verifying that a payment order or communication amending or canceling a  
11 payment order is that of the customer; or

12 (2) detecting error in the transmission or the content of the payment order or  
13 communication.

14 (b) A security procedure may require the use of algorithms or other codes, identifying  
15 words or numbers, encryption, call-back procedures, or similar security devices. Comparison of  
16 a signature on a payment order or communication with an authorized specimen signature of the  
17 customer is not by itself a security procedure.

18 Sec. 45.12.202. AUTHORIZED AND VERIFIED PAYMENT ORDERS. (a) A payment  
19 order received by the receiving bank is the authorized order of the person identified as sender  
20 if that person authorized the order or is otherwise bound by it under the law of agency.

21 (b) If a bank and its customer have agreed that the authenticity of payment orders issued  
22 to the bank in the name of the customer as sender will be verified under a security procedure,  
23 a payment order received by the receiving bank is effective as the order of the customer, whether  
24 or not authorized, if

25 (1) the security procedure is a commercially reasonable method of providing  
26 security against unauthorized payment orders; and

27 (2) the bank proves that it accepted the payment order in good faith and in  
28 compliance with the security procedure and any written agreement or instruction of the customer  
29 restricting acceptance of payment orders issued in the name of the customer; the bank is not  
30 required to follow an instruction that violates a written agreement with the customer or notice  
31 of which is not received at a time and in a manner affording the bank a reasonable opportunity

1 to act on it before the payment order is accepted.

2 (c) Commercial reasonableness of a security procedure is a question of law to be  
3 determined by considering the wishes of the customer expressed to the bank, the circumstances  
4 of the customer known to the bank, including the size, type, and frequency of payment orders  
5 normally issued by the customer to the bank, alternative security procedures offered to the  
6 customer, and security procedures in general use by customers and receiving banks similarly  
7 situated. A security procedure is considered to be commercially reasonable if

8 (1) the security procedure was chosen by the customer after the bank offered, and  
9 the customer refused, a security procedure that was commercially reasonable for that customer;  
10 and

11 (2) the customer expressly agreed in writing to be bound by a payment order,  
12 whether or not authorized, issued in its name and accepted by the bank in compliance with the  
13 security procedure chosen by the customer.

14 (d) This section applies to amendments and cancellations of payment orders to the same  
15 extent that it applies to payment orders.

16 (e) Except as provided in this section and in AS 45.12.203(a)(1), rights and obligations  
17 arising under this section or AS 45.12.203 may not be varied by agreement.

18 (f) In this chapter, "sender" includes the customer in whose name a payment order is  
19 issued if the order is the authorized order of the customer under (a) of this section, or it is  
20 effective as the order of the customer under (b) of this section.

21 Sec. 45.12.203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT  
22 ORDERS. (a) If an accepted payment order is not, under AS 45.12.202(a), an authorized order  
23 of a customer identified as sender, but is effective as an order of the customer under  
24 AS 45.12.202(b), the following rules apply:

25 (1) by express written agreement, the receiving bank may limit the extent to  
26 which it is entitled to enforce or retain payment of the payment order;

27 (2) the receiving bank is not entitled to enforce or retain payment of the payment  
28 order if the customer proves that the order was not caused, directly or indirectly, by a person

29 (A) entrusted at any time with duties to act for the customer with respect  
30 to payment orders or the security procedure; or

31 (B) who obtained access to transmitting facilities of the customer or who

1 obtained, from a source controlled by the customer and without authority of the receiving  
2 bank, information facilitating breach of the security procedure, regardless of how the  
3 information was obtained or whether the customer was at fault; in this subparagraph,  
4 "information" includes any access device, computer software, or the like.

5 (b) This section applies to amendments of payment orders to the same extent that it  
6 applies to payment orders.

7 Sec. 45.12.204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT  
8 WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER. (a) If a receiving bank accepts  
9 a payment order issued in the name of its customer as sender and if the payment order is not  
10 authorized and not effective as the order of the customer under AS 45.12.202, or not enforceable  
11 in whole or in part against the customer under AS 45.12.203, the bank shall refund payment of  
12 the payment order received from the customer to the extent that the bank is not entitled to  
13 enforce payment and shall pay interest on the refundable amount calculated from the date the  
14 bank received payment to the date of the refund. However, the customer is not entitled to  
15 interest from the bank on the amount to be refunded if the customer fails to exercise ordinary  
16 care to determine that the order was not authorized by the customer and to notify the bank of the  
17 relevant facts within a reasonable time not exceeding 90 days after the date the customer received  
18 notification from the bank that the order was accepted or that the customer's account was debited  
19 with respect to the order. The bank is not entitled to recovery from the customer on account of  
20 a failure by the customer to give notification as stated in this section.

21 (b) Reasonable time under (a) of this section may be fixed by agreement as stated in  
22 AS 45.01.204(a), but the obligation of a receiving bank to refund payment as stated in (a) of this  
23 section may not otherwise be varied by agreement.

24 Sec. 45.12.205. ERRONEOUS PAYMENT ORDERS. (a) If an accepted payment order  
25 was transmitted under a security procedure for the detection of error and the payment order was  
26 an erroneous payment order, the following rules apply:

27 (1) if the sender proves that the sender or a person acting on behalf of the sender  
28 under AS 45.12.206 complied with the security procedure and that the error would have been  
29 detected if the receiving bank had also complied, the sender is not obliged to pay the order to  
30 the extent stated in (2) and (3) of this subsection;

31 (2) if the funds transfer is completed on the basis of an erroneous payment order

1 described in (d)(1) or (3) of this section, the sender is not obliged to pay the order and the  
2 receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to  
3 the extent allowed by the law governing mistake and restitution;

4 (3) if the funds transfer is completed on the basis of an erroneous payment order  
5 described in (d)(2) of this section, the sender is not obliged to pay the order to the extent the  
6 amount received by the beneficiary is greater than the amount intended by the sender; in that  
7 case, the receiving bank is entitled to recover from the beneficiary the excess amount received  
8 to the extent allowed by the law governing mistake and restitution.

9 (b) If the sender of an erroneous payment order is not obliged to pay all or part of the  
10 order, and if the sender receives notification from the receiving bank that the order was accepted  
11 by the bank or that the sender's account was debited with respect to the order, the sender has a  
12 duty to exercise ordinary care, on the basis of information available to the sender, to discover the  
13 error with respect to the order and to advise the bank of the relevant facts within a reasonable  
14 time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank  
15 proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the  
16 bank proves it incurred as a result of the failure, but the liability of the sender may not exceed  
17 the amount of the sender's order.

18 (c) This section applies to amendments to payment orders to the same extent it applies  
19 to payment orders.

20 (d) In this section, "erroneous payment order" means a payment order that

21 (1) erroneously instructed payment to a beneficiary not intended by the sender,

22 (2) erroneously instructed payment in an amount greater than the amount intended  
23 by the sender; or

24 (3) was an erroneously transmitted duplicate of a payment order previously sent  
25 by the sender.

26 Sec. 45.12.206. TRANSMISSION OF PAYMENT ORDER THROUGH FUNDS-  
27 TRANSFER OR OTHER COMMUNICATION SYSTEM. (a) If a payment order addressed to  
28 a receiving bank is transmitted to a funds-transfer system or other third-party communication  
29 system for transmittal to the bank, the system is considered to be an agent of the sender for the  
30 purpose of transmitting the payment order to the bank. If there is a discrepancy between the  
31 terms of the payment order transmitted to the system and the terms of the payment order

1 transmitted by the system to the bank, the terms of the payment order of the sender are those  
2 transmitted by the system. This section does not apply to a funds-transfer system of the federal  
3 reserve banks.

4 (b) This section applies to cancellations and amendments of payment orders to the same  
5 extent that it applies to payment orders.

6 Sec. 45.12.207. MISDESCRIPTION OF BENEFICIARY. (a) Subject to (b) of this  
7 section, if, in a payment order received by the beneficiary's bank, the name, bank account  
8 number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person  
9 or account, no person has rights as a beneficiary of the order, and acceptance of the order cannot  
10 occur.

11 (b) If a payment order received by the beneficiary's bank identifies the beneficiary both  
12 by name and by an identifying or bank account number and the name and number identify  
13 different persons, the following rules apply:

14 (1) except as otherwise provided in (c) of this section, if the beneficiary's bank  
15 does not know that the name and number refer to different persons, it may rely on the number  
16 as the proper identification of the beneficiary of the order; the beneficiary's bank does not need  
17 to determine whether the name and number refer to the same person;

18 (2) if the beneficiary's bank pays the person identified by name or knows that the  
19 name and number identify different persons, no person has rights as beneficiary except the person  
20 paid by the beneficiary's bank if that person was entitled to receive payment from the originator  
21 of the funds transfer; if no person has rights as beneficiary, acceptance of the order cannot occur.

22 (c) If a payment order described in (b) of this section is accepted, if the originator's  
23 payment order described the beneficiary inconsistently by name and number, and if the  
24 beneficiary's bank pays the person identified by number as permitted by (b)(1) of this section,  
25 the following rules apply:

26 (1) if the originator is a bank, the originator is obliged to pay its order;

27 (2) if the originator is not a bank and proves that the person identified by number  
28 was not entitled to receive payment from the originator, the originator is not obliged to pay its  
29 order unless the originator's bank proves that the originator, before acceptance of the originator's  
30 order, had notice that payment of a payment order issued by the originator might be made by the  
31 beneficiary's bank on the basis of an identifying or bank account number even if it identifies a

1 person different from the named beneficiary; proof of notice may be made by any admissible  
2 evidence; the originator's bank satisfies the burden of proof if it proves that the originator, before  
3 the payment order was accepted, signed a writing stating the information to which the notice  
4 relates.

5 (d) In a case governed by (b)(1) of this section, if the beneficiary's bank rightfully pays  
6 the person identified by number and that person was not entitled to receive payment from the  
7 originator, the amount paid may be recovered from that person to the extent allowed by the law  
8 governing mistake and restitution as follows:

9 (1) if the originator is obliged to pay its payment order as stated in (c) of this  
10 section, the originator has the right to recover;

11 (2) if the originator is not a bank and is not obliged to pay its payment order, the  
12 originator's bank has the right to recover.

13 Sec. 45.12.208. MISDESCRIPTION OF INTERMEDIARY BANK OR BENEFICIARY'S  
14 BANK. (a) The following rules in this subsection apply to a payment order identifying an  
15 intermediary bank or the beneficiary's bank only by an identifying number:

16 (1) the receiving bank may rely on the number as the proper identification of the  
17 intermediary or beneficiary's bank and need not determine whether the number identifies a bank;

18 (2) the sender is obliged to compensate the receiving bank for any loss and  
19 expenses incurred by the receiving bank as a result of its reliance on the number in executing or  
20 attempting to execute the order.

21 (b) The following rules in this subsection apply to a payment order identifying an  
22 intermediary bank or the beneficiary's bank both by name and an identifying number if the name  
23 and number identify different persons:

24 (1) if the sender is a bank, the receiving bank may rely on the number as the  
25 proper identification of the intermediary or beneficiary's bank if the receiving bank, when it  
26 executes the sender's order, does not know that the name and number identify different persons;  
27 the receiving bank does not need to determine whether the name and number refer to the same  
28 person or whether the number refers to a bank; the sender is obliged to compensate the receiving  
29 bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the  
30 number in executing or attempting to execute the order;

31 (2) if the sender is not a bank and the receiving bank proves that the sender,

1 before the payment order was accepted, had notice that the receiving bank might rely on the  
2 number as the proper identification of the intermediary or beneficiary's bank even if it identifies  
3 a person different from the bank identified by name, the rights and obligations of the sender and  
4 the receiving bank are governed by (b)(1) of this section, as though the sender were a bank;  
5 proof of notice may be made by any admissible evidence; the receiving bank satisfies the burden  
6 of proof if it proves that the sender, before the payment order was accepted, signed a writing  
7 stating the information to which the notice relates;

8 (3) regardless of whether the sender is a bank, the receiving bank may rely on the  
9 name as the proper identification of the intermediary or beneficiary's bank if the receiving bank,  
10 at the time it executes the sender's order, does not know that the name and number identify  
11 different persons; the receiving bank does not need to determine whether the name and number  
12 refer to the same person;

13 (4) if the receiving bank knows that the name and number identify different  
14 persons, reliance on either the name or the number in executing the sender's payment order is  
15 a breach of the obligation stated in AS 45.12.302(a)(1).

16 Sec. 45.12.209. ACCEPTANCE OF PAYMENT ORDER. (a) Subject to (d) of this  
17 section, a receiving bank other than the beneficiary's bank accepts a payment order when it  
18 executes the order.

19 (b) Subject to (c) and (d) of this section, a beneficiary's bank accepts a payment order  
20 at the earliest of the following times:

21 (1) when the bank

22 (A) pays the beneficiary as stated in AS 45.12.405(a) or (b); or

23 (B) notifies the beneficiary of receipt of the order or that the account of  
24 the beneficiary has been credited with respect to the order unless the notice indicates that  
25 the bank is rejecting the order or that funds with respect to the order may not be  
26 withdrawn or used until receipt of payment from the sender of the order;

27 (2) when the bank receives payment of the entire amount of the sender's order  
28 under AS 45.12.403(a)(1) or (2); or

29 (3) the opening of the next funds-transfer business day of the bank following the  
30 payment date of the order if, at the opening of the next funds-transfer business day, the amount  
31 of the sender's order is fully covered by a withdrawable credit balance in an authorized account

1 of the sender, or the bank has otherwise received full payment from the sender, unless the order  
2 was rejected before the opening of the next funds-transfer business day, is rejected within one  
3 hour after the opening of the next funds-transfer business day, or, if later, is rejected one hour  
4 after the opening of the next business day of the sender following the payment date; if notice of  
5 rejection is received by the sender after the payment date and the authorized account of the  
6 sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of  
7 the order for the number of days elapsing after the payment date to the day the sender receives  
8 notice or learns that the order was not accepted, counting that day as an elapsed day; if the  
9 withdrawable credit balance during that period falls below the amount of the order, the amount  
10 of interest payable is reduced accordingly.

11 (c) Acceptance of a payment order may not occur before the order is received by the  
12 receiving bank. Acceptance does not occur under (b)(2) or (3) of this section if the beneficiary  
13 of the payment order does not have an account with the receiving bank, the account has been  
14 closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's  
15 account.

16 (d) A payment order issued to the originator's bank cannot be accepted until the payment  
17 date if the bank is the beneficiary's bank, or the execution date if the bank is not the  
18 beneficiary's bank. If the originator's bank executes the originator's payment order before the  
19 execution date or pays the beneficiary of the originator's payment order before the payment date  
20 and the payment order is subsequently canceled under AS 45.12.211(b), the bank may recover  
21 from the beneficiary any payment received to the extent allowed by the law governing mistake  
22 and restitution.

23 Sec. 45.12.210. REJECTION OF PAYMENT ORDER. (a) A payment order is rejected  
24 by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or  
25 in writing. A notice of rejection does not need to use particular words and is sufficient if it  
26 indicates that the receiving bank is rejecting the order or will not execute or pay the order.  
27 Rejection is effective when the notice is given if transmission is by a means that is reasonable  
28 in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection  
29 is effective when the notice is received. If an agreement of the sender and receiving bank  
30 establishes the means to be used to reject a payment order, means

31 (1) complying with the agreement are reasonable; and

1 (2) not complying with the agreement are not reasonable unless significant delay  
2 in receipt of the notice did not result from the use of the noncomplying means.

3 (b) This subsection applies if a receiving bank other than the beneficiary's bank fails to  
4 execute a payment order despite the existence on the execution date of a withdrawable credit  
5 balance in an authorized account of the sender sufficient to cover the order. If the sender does  
6 not receive notice of rejection of the order on the execution date and the authorized account of  
7 the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount  
8 of the order for the number of days elapsing after the execution date to the earlier of the day the  
9 order is canceled under AS 45.12.211(e) or the day the sender receives notice or learns that the  
10 order was not executed, counting the final day of the period as an elapsed day. If the  
11 withdrawable credit balance during that period falls below the amount of the order, the amount  
12 of interest is reduced accordingly.

13 (c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are  
14 considered rejected at the time the bank suspends payments.

15 (d) Acceptance of a payment order precludes a later rejection of the order. Rejection of  
16 a payment order precludes a later acceptance of the order.

17 Sec. 45.12.211. CANCELLATION AND AMENDMENT OF PAYMENT ORDER. (a)  
18 A communication of the sender of a payment order canceling or amending the order may be  
19 transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is  
20 in effect between the sender and the receiving bank, the communication is not effective to cancel  
21 or amend the order unless the communication is verified under the security procedure or the bank  
22 agrees to the cancellation or amendment.

23 (b) Subject to (a) of this section, a communication by the sender canceling or amending  
24 a payment order is effective to cancel or amend the order if notice of the communication is  
25 received at a time and in a manner affording the receiving bank a reasonable opportunity to act  
26 on the communication before the bank accepts the payment order.

27 (c) After a payment order has been accepted, cancellation or amendment of the order is  
28 not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation  
29 or amendment without agreement of the bank. The following rules also apply:

30 (1) with respect to a payment order accepted by a receiving bank other than the  
31 beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation

1 or amendment of the payment order issued by the receiving bank is also made;

2 (2) with respect to a payment order accepted by the beneficiary's bank,  
3 cancellation or amendment is not effective unless the order was issued in execution of an  
4 unauthorized payment order, or because of a mistake by a sender in the funds transfer, if the  
5 mistake resulted in the issuance of a payment order that

6 (A) is a duplicate of a payment order previously issued by the sender,

7 (B) orders payment to a beneficiary not entitled to receive payment from  
8 the originator; or

9 (C) orders payment in an amount greater than the amount the beneficiary  
10 was entitled to receive from the originator.

11 (d) Under (c)(2) of this section, if the payment order is canceled or amended, the  
12 beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary  
13 to the extent allowed by the law governing mistake and restitution.

14 (e) An unaccepted payment order is canceled by operation of law at the close of the fifth  
15 funds-transfer business day of the receiving bank after the execution date or payment date of the  
16 order.

17 (f) A canceled payment order cannot be accepted. If an accepted payment order is  
18 canceled, the acceptance is nullified and no person has a right or obligation based on the  
19 acceptance. Amendment of a payment order is considered to be cancellation of the original  
20 order at the time of amendment and issue of a new payment order in the amended form at the  
21 same time.

22 (g) Unless otherwise provided in an agreement of the parties or in a funds-transfer system  
23 rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment  
24 of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or  
25 amendment without the banks' agreement, the sender, whether or not cancellation or amendment  
26 is effective, is liable to the bank for any loss and expenses, including reasonable attorney fees,  
27 incurred by the bank as a result of the cancellation or amendment or attempted cancellation or  
28 amendment.

29 (h) A payment order is not revoked by the death or legal incapacity of the sender unless  
30 the receiving bank knows of the death or of an adjudication of incapacity by a court of competent  
31 jurisdiction and has reasonable opportunity to act before acceptance of the order.

1 (i) A funds-transfer system rule is not effective to the extent that it conflicts with (c)(2)  
2 or (d) of this section.

3 Sec. 45.12.212. LIABILITY AND DUTY OF RECEIVING BANK REGARDING  
4 UNACCEPTED PAYMENT ORDER. If a receiving bank fails to accept a payment order that  
5 it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the  
6 extent provided in the agreement or in this chapter, but does not otherwise have a duty to accept  
7 a payment order or, before acceptance, to take action, or refrain from taking action, with respect  
8 to the order except as provided in this chapter or by express agreement. Liability based on  
9 acceptance arises only when acceptance occurs as stated in AS 45.12.209, and liability is limited  
10 to liability provided in this chapter. A receiving bank is not the agent of the sender or  
11 beneficiary of the payment order it accepts, or of another party to the funds transfer, and the bank  
12 does not owe a duty to a party to the funds transfer except as provided in this chapter or by  
13 express agreement.

14 ARTICLE 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK.

15 Sec. 45.12.301. EXECUTION AND EXECUTION DATE. (a) A payment order is  
16 executed by the receiving bank when it issues a payment order intended to carry out the payment  
17 order received by the bank. A payment order received by the beneficiary's bank can be accepted  
18 but cannot be executed.

19 (b) "Execution date" of a payment order means the day on which the receiving bank may  
20 properly issue a payment order in execution of the sender's order. The execution date may be  
21 determined by instruction of the sender but cannot be earlier than the day the order is received  
22 and, unless otherwise determined, is the day the order is received. If the sender's instruction  
23 states a payment date, the execution date is the payment date or an earlier date on which  
24 execution is reasonably necessary to allow payment to the beneficiary on the payment date.

25 Sec. 45.12.302. OBLIGATIONS OF RECEIVING BANK IN EXECUTION OF  
26 PAYMENT ORDER. (a) Except as provided in (b) - (d) of this section, if the receiving bank  
27 accepts a payment order under AS 45.12.209(a), the bank has the following obligations in  
28 executing the order:

29 (1) the receiving bank is obliged to issue, on the execution date, a payment order  
30 complying with the sender's order and to follow the sender's instructions concerning

31 (A) an intermediary bank or funds-transfer system to be used in carrying

1 out the funds transfer; or

2 (B) the means by which payment orders are to be transmitted in the funds  
3 transfer; if the originator's bank issues a payment order to an intermediary bank, the  
4 originator's bank is obliged to instruct the intermediary bank according to the instruction  
5 of the originator; an intermediary bank in the funds transfer is similarly bound by an  
6 instruction given to it by the sender of the payment order it accepts;

7 (2) if the sender's instruction states that the funds transfer is to be carried out  
8 telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried  
9 out by the most expeditious means, the receiving bank is obliged to transmit its payment order  
10 by the most expeditious available means, and to instruct an intermediary bank accordingly; if a  
11 sender's instruction states a payment date, the receiving bank is obliged to transmit its payment  
12 order at a time and by means reasonably necessary to allow payment to the beneficiary on the  
13 payment date or as soon after that date as is feasible.

14 (b) Unless otherwise instructed, a receiving bank executing a payment order may

15 (1) use any funds-transfer system if use of that system is reasonable in the  
16 circumstances; and

17 (2) issue a payment order to the beneficiary's bank or to an intermediary bank  
18 through which a payment order conforming to the sender's order can expeditiously be issued to  
19 the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the  
20 intermediary bank; a receiving bank is not required to follow an instruction of the sender  
21 designating a funds-transfer system to be used in carrying out the funds transfer if the receiving  
22 bank, in good faith, determines that it is not feasible to follow the instruction or that following  
23 the instruction would unduly delay completion of the funds transfer.

24 (c) Unless (a)(2) of this section applies or the receiving bank is otherwise instructed, the  
25 bank may execute a payment order by transmitting its payment order by first class mail or by any  
26 means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's  
27 order by transmitting its payment order by a particular means, the receiving bank may issue its  
28 payment order by the means stated or by means as expeditious as the means stated.

29 (d) Unless instructed by the sender,

30 (1) the receiving bank may not obtain payment of its charges for services and  
31 expenses in connection with the execution of the sender's order by issuing a payment order in

1 an amount equal to the amount of the sender's order less the amount of the charges; and  
2 (2) may not instruct a subsequent receiving bank to obtain payment of its charges  
3 in the same manner.

4 Sec. 45.12.303. ERRONEOUS EXECUTION OF PAYMENT ORDER. (a) If a  
5 receiving bank executes the payment order of the sender by issuing a payment order in an  
6 amount greater than the amount of the sender's order, or if a receiving bank issues a payment  
7 order in execution of the sender's order and then issues a duplicate order, the bank is entitled to  
8 payment of the amount of the sender's order under AS 45.12.402(c) if that subsection is  
9 otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order  
10 the excess payment received to the extent allowed by the law governing mistake and restitution.

11 (b) A receiving bank that executes the payment order of the sender by issuing a payment  
12 order in an amount less than the amount of the sender's order is entitled to payment of the  
13 amount of the sender's order under AS 45.12.402(c) if that subsection is otherwise satisfied and  
14 the bank corrects its mistake by issuing an additional payment order for the benefit of the  
15 beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order  
16 is entitled to receive or retain payment from the sender of the order it accepted only to the extent  
17 of the amount of the erroneous order. This subsection does not apply if the receiving bank  
18 executes the sender's payment order by issuing a payment order in an amount less than the  
19 amount of the sender's order for the purpose of obtaining payment of its charges for services and  
20 expenses pursuant to instruction of the sender.

21 (c) If a receiving bank executes the payment order of the sender by issuing a payment  
22 order to a beneficiary different from the beneficiary of the sender's order and the funds transfer  
23 is completed on the basis of that error, the sender of the payment order that was erroneously  
24 executed and all previous senders in the funds transfer are not obliged to pay the payment orders  
25 they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the  
26 order the payment received to the extent allowed by the law governing mistake and restitution.

27 Sec. 45.12.304. DUTY OF SENDER TO REPORT ERRONEOUSLY EXECUTED  
28 PAYMENT ORDER. If the sender of a payment order that is erroneously executed as stated in  
29 AS 45.12.303 receives notification from the receiving bank that the order was executed or that  
30 the sender's account was debited with respect to the order, the sender has a duty to exercise  
31 ordinary care to determine, on the basis of information available to the sender, that the order was

1 erroneously executed and to notify the bank of the relevant facts within a reasonable time not  
2 exceeding 90 days after the notification from the bank was received by the sender. If the sender  
3 fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to  
4 the sender under AS 45.12.402(d) for the period before the bank learns of the execution error.  
5 The bank is not entitled to any recovery from the sender on account of a failure by the sender  
6 to perform the duty stated in this section.

7 Sec. 45.12.305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR FAILURE  
8 TO EXECUTE PAYMENT ORDER. (a) If a funds transfer is completed but execution of a  
9 payment order by the receiving bank in breach of AS 45.12.302 results in delay in payment to  
10 the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of  
11 the funds transfer for the period of delay caused by the improper execution. Except as provided  
12 in (c) of this section, additional damages are not recoverable.

13 (b) If execution of a payment order by a receiving bank in breach of AS 45.12.302  
14 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by  
15 the originator, or issuance of a payment order that does not comply with the terms of the  
16 payment order of the originator, the bank is liable to the originator for its expenses in the funds  
17 transfer and for incidental expenses and interest losses, to the extent not covered by (a) of this  
18 section, resulting from the improper execution. Except as provided in (c) of this section,  
19 additional damages are not recoverable.

20 (c) In addition to the amounts payable under (a) and (b) of this section, damages,  
21 including consequential damages, are recoverable to the extent provided in an express written  
22 agreement of the receiving bank.

23 (d) If a receiving bank fails to execute a payment order it was obliged by express  
24 agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction  
25 and for incidental expenses and interest losses resulting from the failure to execute. Additional  
26 damages, including consequential damages, are recoverable to the extent provided in an express  
27 written agreement of the receiving bank, but are not otherwise recoverable.

28 (e) Reasonable attorney fees are recoverable if demand for compensation under (a) or (b)  
29 of this section is made and refused before an action is brought on the claim. If a claim is made  
30 for breach of an agreement under (d) of this section and the agreement does not provide for  
31 damages, reasonable attorney fees are recoverable if demand for compensation under (d) of this

1 section is made and refused before an action is brought on the claim.

2 (f) Except as stated in this section, the liability of a receiving bank under (a) and (b) of  
3 this section may not be varied by agreement.

4 ARTICLE 4. PAYMENT.

5 Sec. 45.12.401. PAYMENT DATE. "Payment date" of a payment order means the day  
6 on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The  
7 payment date may be determined by instruction of the sender but cannot be earlier than the day  
8 the order is received by the beneficiary's bank and, unless otherwise determined, is the day the  
9 order is received by the beneficiary's bank.

10 Sec. 45.12.402. OBLIGATION OF SENDER TO PAY RECEIVING BANK. (a) This  
11 section is subject to AS 45.12.205 and 45.12.207.

12 (b) With respect to a payment order issued to the beneficiary's bank, acceptance of the  
13 order by the bank obliges the sender to pay the bank the amount of the order, but payment is not  
14 due until the payment date of the order.

15 (c) With respect to a payment order issued to a receiving bank other than the  
16 beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the  
17 bank the amount of the sender's order. Payment by the sender is not due until the execution date  
18 of the sender's order. The obligation of that sender to pay its payment order is excused if the  
19 funds transfer is not completed by acceptance by the beneficiary's bank of a payment order  
20 instructing payment to the beneficiary of that sender's payment order. This subsection is subject  
21 to (e) of this section and to AS 45.12.303.

22 (d) If the sender of a payment order pays the order and was not obliged to pay all or part  
23 of the amount paid, the bank receiving payment is obliged to refund payment to the extent the  
24 sender was not obliged to pay. Except as provided in AS 45.12.204 and 45.12.304, interest is  
25 payable on the refundable amount from the date of payment.

26 (e) If a funds transfer is not completed as stated in (c) of this section and an intermediary  
27 bank is obliged to refund payment as stated in (d) of this section but is unable to do so because  
28 not permitted by applicable law or because the bank suspends payments, a sender in the funds  
29 transfer that executed a payment order in compliance with an instruction, as stated in  
30 AS 45.12.302(a)(1), to route the funds transfer through that intermediary bank is entitled to  
31 receive or retain payment from the sender of the payment order that it accepted. The first sender

1 in the funds transfer that issued an instruction requiring routing through that intermediary bank  
2 is subrogated to the right of the bank that paid the intermediary bank to refund as stated in (d)  
3 of this section.

4 (f) The right of the sender of a payment order to be excused from the obligation to pay  
5 the order as stated in (c) of this section or to receive refund under (d) of this section may not be  
6 varied by agreement.

7 Sec. 45.12.403. PAYMENT BY SENDER TO RECEIVING BANK. (a) Payment of the  
8 sender's obligation under AS 45.12.402 to pay the receiving bank occurs as follows:

9 (1) if the sender is a bank, payment occurs when the receiving bank receives final  
10 settlement of the obligation through a federal reserve bank or through a funds-transfer system;

11 (2) if the sender is a bank and the sender

12 (A) credited an account of the receiving bank with the sender; or

13 (B) caused an account of the receiving bank in another bank to be  
14 credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight  
15 of the day on which the credit is withdrawable and the receiving bank learns of that fact;

16 (3) if the receiving bank debits an account of the sender with the receiving bank,  
17 payment occurs when the debit is made to the extent that the debit is covered by a withdrawable  
18 credit balance in the account.

19 (b) If the sender and receiving bank are members of a funds-transfer system that nets  
20 obligations multilaterally among participants, the receiving bank receives final settlement when  
21 settlement is complete in accordance with the rules of the system. The obligation of the sender  
22 to pay the amount of a payment order transmitted through the funds-transfer system may be  
23 satisfied, to the extent permitted by the rules of the system, by setting off and applying against  
24 the sender's obligation the right of the sender to receive payment from the receiving bank of the  
25 amount of any other payment order transmitted to the sender by the receiving bank through the  
26 funds-transfer system. The aggregate balance of obligations owed by each sender to each  
27 receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules  
28 of the system, by setting off and applying against that balance the aggregate balance of  
29 obligations owed to the sender by other members of the system. The aggregate balance is  
30 determined after the right of setoff stated in the second sentence of this subsection has been  
31 exercised.

1 (c) If two banks transmit payment orders to each other under an agreement that  
2 settlement of the obligations of each bank to the other under AS 45.12.402 will be made at the  
3 end of the day or other period, the total amount owed with respect to all orders transmitted by  
4 one bank shall be set off against the total amount owed with respect to all orders transmitted by  
5 the other bank. To the extent of the setoff, each bank has made payment to the other.

6 (d) In a case not covered under (a) of this section, the time when payment of the sender's  
7 obligation under AS 45.12.402(b) or (c) occurs is governed by applicable principles of law that  
8 determine when an obligation is satisfied.

9 Sec. 45.12.404. OBLIGATION OF BENEFICIARY'S BANK TO PAY AND GIVE  
10 NOTICE TO BENEFICIARY. (a) Subject to AS 45.12.211(f) and 45.12.405(d) and (e), if a  
11 beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order  
12 to the beneficiary of the order. Payment is due on the payment date of the order, but if  
13 acceptance occurs on the payment date after the close of the funds-transfer business day of the  
14 bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after  
15 demand by the beneficiary and receipt of notice of particular circumstances that will give rise to  
16 consequential damages as a result of nonpayment, the beneficiary may recover damages resulting  
17 from the refusal to pay to the extent that the bank had notice of the damages, unless the bank  
18 proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary  
19 to payment.

20 (b) If a payment order accepted by the beneficiary's bank instructs payment to an account  
21 of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before  
22 midnight of the next funds-transfer business day following the payment date. If the payment  
23 order does not instruct payment to an account of the beneficiary, the bank is required to notify  
24 the beneficiary only if notice is required by the order. Notice may be given by first class mail  
25 or other means reasonable in the circumstances. If the bank fails to give the required notice, the  
26 bank is obliged to pay interest to the beneficiary on the amount of the payment order from the  
27 day notice should have been given until the day the beneficiary learned of receipt of the payment  
28 order by the bank. Other damages are not recoverable. Reasonable attorney fees are also  
29 recoverable if demand for interest is made and refused before an action is brought on the claim.

30 (c) The right of a beneficiary to receive payment and damages as stated in (a) of this  
31 section may not be varied by agreement or a funds-transfer system rule. The right of a

1 beneficiary to be notified as stated in (b) of this section may be varied by agreement of the  
2 beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before  
3 initiation of the funds transfer.

4 Sec. 45.12.405. PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY. (a) If  
5 the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the  
6 bank's obligation under AS 45.12.404(a) occurs when and to the extent that

7 (1) the beneficiary is notified of the right to withdraw the credit;

8 (2) the bank lawfully applies the credit to a debt of the beneficiary; or

9 (3) funds with respect to the order are otherwise made available to the beneficiary  
10 by the bank.

11 (b) If the beneficiary's bank does not credit an account of the beneficiary of a payment  
12 order, the time when payment of the bank's obligation under AS 45.12.404(a) occurs is governed  
13 by principles of law that determine when an obligation is satisfied.

14 (c) Except as stated in (d) and (e) of this section, if the beneficiary's bank pays the  
15 beneficiary of a payment order under a condition to payment or agreement of the beneficiary  
16 giving the bank the right to recover payment from the beneficiary if the bank does not receive  
17 payment of the order, the condition to payment or agreement is not enforceable.

18 (d) A funds-transfer system rule may provide that payments made to beneficiaries of  
19 funds transfers made through the system are provisional until receipt of payment by the  
20 beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment  
21 that is provisional under the rule is entitled to refund from the beneficiary if the rule requires that  
22 both the beneficiary and the originator be given notice of the provisional nature of the payment  
23 before the funds transfer is initiated, if the beneficiary, the beneficiary's bank, and the  
24 originator's bank agreed to be bound by the rule, and if the beneficiary's bank did not receive  
25 payment of the payment order that it accepted. If the beneficiary is obliged to refund payment  
26 to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified  
27 and a payment by the originator of the funds transfer to the beneficiary does not occur under  
28 AS 45.12.406.

29 (e) This subsection applies to a funds transfer that includes a payment order transmitted  
30 over a funds-transfer system that nets obligations multilaterally among participants and has in  
31 effect a loss-sharing agreement among participants for the purpose of providing funds necessary

1 to complete settlement of the obligations of one or more participants that do not meet their  
2 settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order  
3 and the system fails to complete settlement under its rules with respect to any payment order in  
4 the funds transfer,

5 (1) the acceptance by the beneficiary's bank is nullified and no person has a right  
6 or obligation based on the acceptance;

7 (2) the beneficiary's bank is entitled to recover payment from the beneficiary;

8 (3) payment by the originator to the beneficiary does not occur under  
9 AS 45.12.406; and

10 (4) subject to AS 45.12.402(e), each sender in the funds transfer is excused from  
11 its obligation to pay its payment order under AS 45.12.402(c) because the funds transfer has not  
12 been completed.

13 Sec. 45.12.406. PAYMENT BY ORIGINATOR TO BENEFICIARY; DISCHARGE OF  
14 UNDERLYING OBLIGATION. (a) Subject to AS 45.12.211(f) and 45.12.405(d) and (e), the  
15 originator of a funds transfer pays the beneficiary of the originator's payment order

16 (1) at the time a payment order for the benefit of the beneficiary is accepted by  
17 the beneficiary's bank in the funds transfer; and

18 (2) in an amount equal to the amount of the order accepted by the beneficiary's  
19 bank, but not more than the amount of the originator's order.

20 (b) If payment under (a) of this section is made to satisfy an obligation, the obligation  
21 is discharged to the same extent discharge would result from payment to the beneficiary of the  
22 same amount in money, unless

23 (1) the payment under (a) of this section was made by a means prohibited by the  
24 contract of the beneficiary with respect to the obligation;

25 (2) the beneficiary, within a reasonable time after receiving notice of receipt of  
26 the order by the beneficiary's bank, notifies the originator of the beneficiary's refusal of the  
27 payment;

28 (3) funds with respect to the order were not withdrawn by the beneficiary or  
29 applied to a debt of the beneficiary; and

30 (4) the beneficiary would suffer a loss that could reasonably have been avoided  
31 if payment had been made by a means complying with the contract.

1 (c) If payment by the originator does not result in discharge under this section, the  
2 originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's  
3 bank under AS 45.12.404(a).

4 (d) For the purpose of determining whether discharge of an obligation occurs under (b)  
5 of this section, if the beneficiary's bank accepts a payment order in an amount equal to the  
6 amount of the originator's payment order less charges of one or more receiving banks in the  
7 funds transfer, payment to the beneficiary is considered to be in the amount of the originator's  
8 order unless upon demand by the beneficiary the originator does not pay the beneficiary the  
9 amount of the deducted charges.

10 (e) Rights of the originator or of the beneficiary of a funds transfer under this section  
11 may be varied only by agreement of the originator and the beneficiary.

## 12 ARTICLE 5. MISCELLANEOUS PROVISIONS.

13 Sec. 45.12.501. VARIATION BY AGREEMENT AND EFFECT OF FUNDS-  
14 TRANSFER SYSTEM RULE. (a) Except as otherwise provided in this chapter, the rights and  
15 obligations of a party to a funds transfer may be varied by agreement of the affected party.

16 (b) Except as otherwise provided in this chapter, a funds-transfer system rule governing  
17 rights and obligations between participating banks using the system may be effective even if the  
18 rule conflicts with this chapter and indirectly affects another party to the funds transfer who does  
19 not consent to the rule. A funds-transfer system rule may also govern rights and obligations of  
20 parties other than participating banks using the system, to the extent stated in AS 45.12.404(c),  
21 45.12.405(d), and 45.12.507(c) - (d). In this subsection, "funds-transfer system rule" means

22 (1) a rule of an association of banks governing transmission of payment orders  
23 by means of a funds-transfer system of the association or rights and obligations with respect to  
24 those orders; or

25 (2) a rule of an association of banks, to the extent the rule governs rights and  
26 obligations between banks that are parties to a funds transfer in which a federal reserve bank,  
27 acting as an intermediary bank, sends a payment order to the beneficiary's bank.

28 Sec. 45.12.502. CREDITOR PROCESS SERVED ON RECEIVING BANK; SETOFF  
29 BY BENEFICIARY'S BANK. (a) This subsection applies to creditor process with respect to  
30 an authorized account of the sender of a payment order if the creditor process is served on the  
31 receiving bank. For the purpose of determining rights with respect to the creditor process, if the

1 receiving bank accepts the payment order the balance in the authorized account is considered to  
2 be reduced by the amount of the payment order to the extent that the bank did not otherwise  
3 receive payment of the order, unless the creditor process is served at a time and in a manner  
4 affording the bank a reasonable opportunity to act on it before the bank accepts the payment  
5 order.

6 (b) If a beneficiary's bank has received a payment order for payment to the beneficiary's  
7 account in the bank, the following rules apply:

8 (1) the bank may credit the beneficiary's account; the amount credited may be  
9 set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy  
10 creditor process served on the bank with respect to the account;

11 (2) the bank may credit the beneficiary's account and allow withdrawal of the  
12 amount credited unless creditor process with respect to the account is served at a time and in a  
13 manner affording the bank a reasonable opportunity to act to prevent withdrawal;

14 (3) if creditor process with respect to the beneficiary's account has been served  
15 and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment  
16 order except for a reason unrelated to the service of process.

17 (c) Creditor process with respect to a payment by the originator to the beneficiary in  
18 accordance with a funds transfer may be served only on the beneficiary's bank with respect to  
19 the debt owed by that bank to the beneficiary. Another bank served with the creditor process is  
20 not obliged to act with respect to the process.

21 (d) In this section, "creditor process" means levy, attachment, garnishment, notice of lien,  
22 sequestration, or similar process issued by or on behalf of a creditor or other claimant with  
23 respect to an account.

24 Sec. 45.12.503. INJUNCTION OR RESTRAINING ORDER WITH RESPECT TO  
25 FUNDS TRANSFER. (a) For proper cause and in compliance with applicable law, a court may  
26 restrain

27 (1) a person from issuing a payment order to initiate a funds transfer;

28 (2) an originator's bank from executing the payment order of the originator; or

29 (3) the beneficiary's bank from releasing funds to the beneficiary or the  
30 beneficiary from withdrawing the funds.

31 (b) Except as provided in (a) of this section, a court may not otherwise restrain a person

1 from issuing a payment order, paying or receiving payment of a payment order, or otherwise  
2 acting with respect to a funds transfer.

3 Sec. 45.12.504. ORDER IN WHICH ITEMS AND PAYMENT ORDERS MAY BE  
4 CHARGED TO ACCOUNT; ORDER OF WITHDRAWALS FROM ACCOUNT. (a) If a  
5 receiving bank has received more than one payment order of the sender or one or more payment  
6 orders and other items that are payable from the sender's account, the bank may charge the  
7 sender's account with respect to the various orders and items in any sequence.

8 (b) In determining whether a credit to an account has been withdrawn by the holder of  
9 the account or applied to a debt of the holder of the account, credits first made to the account  
10 are first withdrawn or applied.

11 Sec. 45.12.505. PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S  
12 ACCOUNT. If a receiving bank has received payment from its customer with respect to a  
13 payment order issued in the name of the customer as sender and accepted by the bank, and the  
14 customer received notification reasonably identifying the order, the customer is precluded from  
15 asserting that the bank is not entitled to retain the payment unless the customer notifies the bank  
16 of the customer's objection to the payment within one year after the notification was received  
17 by the customer.

18 Sec. 45.12.506. RATE OF INTEREST. (a) If, under this chapter, a receiving bank is  
19 obliged to pay interest with respect to a payment order issued to the bank, the amount payable  
20 may be determined

21 (1) by agreement of the sender and receiving bank; or

22 (2) by a funds-transfer system rule if the payment order is transmitted through a  
23 funds-transfer system.

24 (b) If the amount of interest is not determined by an agreement or rule as stated in (a)  
25 of this section, the amount is calculated by multiplying the applicable federal funds rate by the  
26 amount on which interest is payable, and then multiplying the product by the number of days for  
27 which interest is payable. The applicable federal funds rate is the average of the federal funds  
28 rates published by the Federal Reserve Bank of New York for each of the days for which interest  
29 is payable divided by 360. The federal funds rate for a day on which a published rate is not  
30 available is the same as the published rate for the next preceding day for which there is a  
31 published rate. If a receiving bank that accepted a payment order is required to refund payment

1 to the sender of the order because the funds transfer was not completed, but the failure to  
2 complete was not due to any fault by the bank, the interest payable is reduced by a percentage  
3 equal to the reserve requirement on deposits of the receiving bank.

4 Sec. 45.12.507. CHOICE OF LAW. (a) The following rules apply unless the affected  
5 parties otherwise agree or (c) - (d) of this section applies:

6 (1) the rights and obligations between the sender of a payment order and the  
7 receiving bank are governed by the law of the jurisdiction in which the receiving bank is located;

8 (2) the rights and obligations between the beneficiary's bank and the beneficiary  
9 are governed by the law of the jurisdiction in which the beneficiary's bank is located;

10 (3) the issue of when payment is made under a funds transfer by the originator  
11 to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is  
12 located.

13 (b) If the parties described in each paragraph of (a) of this section have made an  
14 agreement selecting the law of a particular jurisdiction to govern rights and obligations between  
15 each other, the law of that jurisdiction governs those rights and obligations, whether or not the  
16 payment order or the funds transfer bears a reasonable relation to that jurisdiction.

17 (c) A funds-transfer system rule may select the law of a particular jurisdiction to govern

18 (1) rights and obligations between participating banks with respect to payment  
19 orders transmitted or processed through the system; or

20 (2) the rights and obligations of some or all parties to a funds transfer if a part  
21 of the funds transfer is carried out by means of the system.

22 (d) A choice of law made under (c)(1) of this section is binding on participating banks.  
23 A choice of law made under (c)(2) of this section is binding on the originator, other sender, or  
24 a receiving bank having notice that the funds-transfer system might be used in the funds transfer  
25 and of the choice of law by the system when the originator, other sender, or receiving bank  
26 issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice  
27 of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer  
28 system might be used in the funds transfer and of the choice of law by the system. The law of  
29 a jurisdiction selected under this subsection or (c) of this section may govern, whether or not that  
30 law bears a reasonable relation to the matter in issue.

31 (e) In the event of inconsistency between an agreement under (b) of this section and a

1 choice-of-law rule under (c) - (d) of this section, the agreement under (b) of this section prevails.

2 (f) If a funds transfer is made by use of more than one funds-transfer system and there  
3 is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by  
4 the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

5 \* Sec. 13. REVISOR CHANGES. The revisor of statutes shall update the citations to the state's  
6 Uniform Commercial Code throughout the state statutes to reflect the changes made by this Act.

7 \* Sec. 14. APPLICABILITY. (a) AS 45.12, enacted by sec. 12 of this Act, and the other  
8 provisions of this Act that apply to a funds transfer do not apply to a funds transfer that is begun before  
9 January 1, 1993.

10 (b) A cause of action that accrued under AS 45.01 - AS 45.09 before January 1, 1993, is  
11 governed by AS 45.01 - AS 45.09 as those chapters existed before January 1, 1993.

12 \* Sec. 15. AMENDMENT OF COURT RULES. (a) AS 45.12.305(e), enacted by sec. 12 of this  
13 Act, amends Alaska Rule of Civil Procedure 82 by changing the criteria for the award of attorney fees  
14 in certain circumstances.

15 (b) AS 45.12.404(b), enacted by sec. 12 of this Act, amends Alaska Rule of Civil Procedure 82  
16 by changing the criteria for the award of attorney fees in certain circumstances.

17 \* Sec. 16. This Act takes effect January 1, 1993.

# DIVISION OF LEGAL SERVICES

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### 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

# DIVISION OF LEGAL SERVICES

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### 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 <sup>JB</sup>  
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.

Representative David Finkelstein

March 23, 1992

Page 2

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

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April 8, 1992

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Hon. David Finkelstein, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: House Bill 294 (UCC, art. 2A, etc.)

Dear Rep. Finkelstein:

Attached is a copy of the commercial and tax attorneys' April 2, 1992 letter to me regarding UCC amendments, to which I referred at yesterday's hearing on this bill.

Yours truly,



Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

HELLER, EHRMAN, WHITE & MCAULIFFE  
ATTORNEYS

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John H. Tindall  
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April 2, 1992

VIA FACSIMILE & EXPRESS MAIL

Arthur H. Peterson  
Uniform Law Commissioner for  
the State of Alaska  
Dillon & Findley  
One Sealaska Plaza, Suite 202  
Juneau, Alaska 99801

Re: HB 294 (UCC Article 2A) & Proposed  
Revisions to UCC Article 6

Dear Mr. Peterson:

On March 11, 1992, the undersigned business and tax law practitioners met in Anchorage to discuss pending legislation. The group discussed, among other things, proposed HB 294 UCC Article 2A (Leasing) and the possibility of either revision or repeal of UCC Article 6 (Bulk Sales).

Article 2A (Leasing).

We strongly believe that uniformity among the several states is a laudatory goal of any commercial legislation. We believe uniformity increases certainty in business transactions, allowing our clients to better structure their affairs at less cost. To the extent adoption of additional uniform laws keeps the commercial law of Alaska up to date and in step with the rest of the country, that too creates certainty and cost effectiveness, particularly in multi-state transactions.

Article 2A is especially needed. Currently, the leasing relationship is subject to the vagaries of judicial interpretation, lacking an appropriate set of definitive rules and legal presumptions. Article 2A represents a balanced and sensible definition of the commercial lease relationship.

For these reasons, it is our belief that Article 2A should be adopted in the form proposed by the Uniform Law Commissioners

Arthur H. Peterson  
April 2, 1992  
Page 2

("ULC"). We therefore strongly urge that HB 294 be enacted into law in its present form.

Article 6 (Bulk Sales).

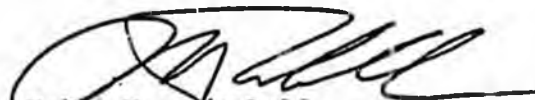
Our group discussed the possibility that certain revisions to Article 6 proposed by the ULC may be introduced shortly. We also discussed the ULC's stated preference that Article 6 be repealed rather than amended. After some debate, it was the unanimous consensus of the group that repeal was preferable to the proposed amendments for the following reasons:

1. Article 6 provides a trap for the unwary or unrepresented buyer by shifting credit risk from the extender of credit to the buyer.
2. Extenders of credit, be it secured or unsecured, are in the best position to evaluate credit risk and protect their interests through UCC filings in the case of secured credit, and through credit bureau reporting and other means for unsecured credit.
3. A buyer acting in good faith, with no reason to suspect that a bulk sale may be fraudulent, is essentially strictly liable if the technical requirements of Article 6 are not met. That simply is not fair.
4. A truly fraudulent conveyance would be sufficiently actionable under other Alaska case and statutory law.

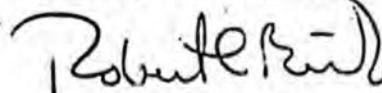
We therefore strongly urge that Article 6 of the UCC be repealed.

Our group would be happy to provide additional input on any of the foregoing.

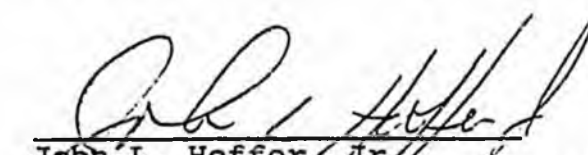
Very truly yours,

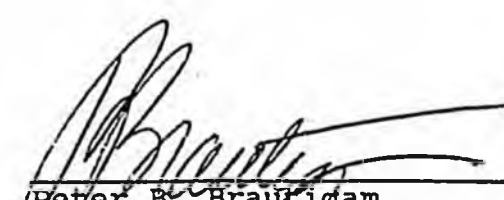


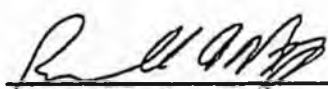
John H. Tindall  
Heller Ehrman White & McAuliffe

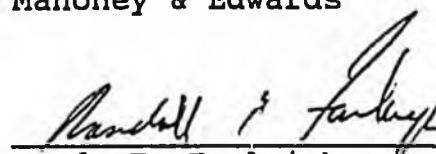


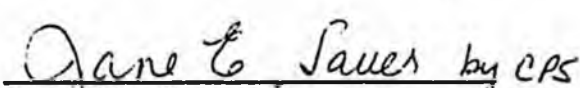
Robert C. Brink  
Law Offices of Robert C. Brink

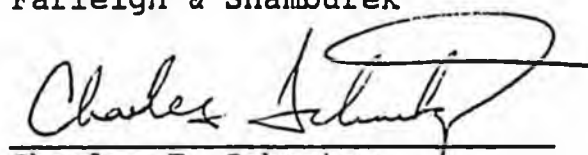
  
John L. Hoffer, Jr.  
Law Offices of John L. Hoffer,  
Jr.

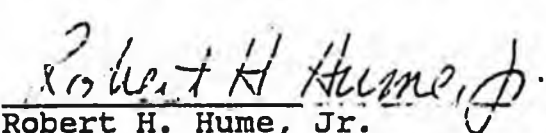
  
Peter B. Brautigam  
Hartig, Rhodes, Norman,  
Mahoney & Edwards

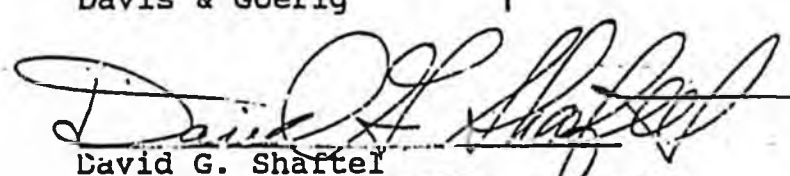
  
Russell A. Nogg  
Law Offices of Russell A. Nogg


  
Randy E. Farleigh  
Farleigh & Shamburek

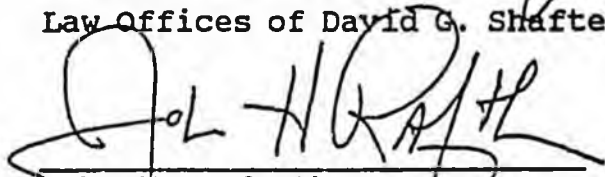
  
Jane E. Sauer by CPS  
Jamin, Ebell, Bolger & Gentry

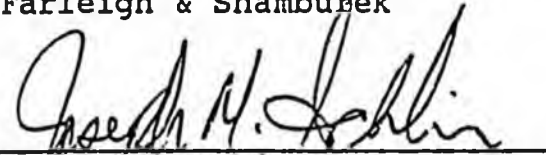
  
Charles F. Schuetze  
Davis & Goerig

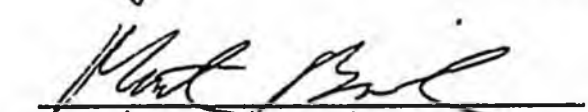
  
Robert H. Hume, Jr.  
Copeland, Landye, Bennett & Wolf

  
David G. Shaftel  
Law Offices of David G. Shaftel


  
Steven J. Shamburek  
Farleigh & Shamburek

  
John H. Raforth  
Heller Ehrman White & McAuliffe

  
Joseph M. Schierhorn  
Northrim Bank, Vice President

  
Martin J. Barrack  
Heller Ehrman White & McAuliffe

  
Steven T. O'Hara  
Bankston & McCollum

  
Dan K. Coffey  
Law Offices of Dan Coffey

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Carlisle C. Ring, Jr.  
Vice President and General Counsel

→ Co-chair of MCCUSL  
Drafting Committee  
for UCC articles 3+4,  
and 4A.

**SEQUA**

November 10, 1991

Arthur H. Peterson  
P.O.Box 20444  
Juneau, Alaska 99802

Dear Arthur:

A major goal this year is to have every state enact Article 4A. Thirty-two states, within just two years of its availability, have adopted Article 4A. Your state is one of 19 that has not. Michigan, Pennsylvania and Georgia may still enact 4A this year.

The Conference must demonstrate that uniform laws needed now can be enacted universally by the states promptly. Some academics and federalizers are writing and speaking out to achieve uniformity by federal preemption. Right now, the SEC is considering whether to promulgate preempting federal regulations on securities transactions. If we can demonstrate that state uniform laws can be universally adopted promptly, the SEC may permit our Article 8 Drafting Committee to update and modernize the law for new needs and technologies. But, we must have a demonstrated track record to convince them.

Thus, my strong appeal that Article 4A be at the top of your list for 1992 enactments.

A compelling case can be made for swift enactment by your state:

- \* 32 states have already enacted verbatim
- \* Fedwire has incorporated Article 4A verbatim (Reg J of Federal Reserve Board)
- \* CHIPS has incorporated Article 4A verbatim into its Rules
- \* On those parts of a funds transfer not covered by Fedwire or CHIPS, the banks and businesses are handicapped in national and international trade

**Atlantic Research Corporation**

Arthur H. Peterson  
November 18, 1991  
Page 2

- \* Article 4A has been endorsed by the ABA, ALI, American Bankers Association, and by significant users of funds transfers
- \* We have encountered no opposition in any legislature to date

Please complete the enclosed questionnaire so we will know the status of 4A in your state, and return it to me in the stamped and self-addressed envelope enclosed.

Sincerely,

Carlyle C. Ring, Jr.  
Chairman, Drafting Committee  
Act Manager

**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*

## Why states should adopt Article 4A of the UCC

**N**ew 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.

## 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

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**