

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9302 HOUSE LABOR & COMMERCE

3/21/97 AFFIDAVIT by Commissioner Sam Cotten

3/28/97 ORDER NO. 5 - ORDER REQUIRING FILING (241-134)

APRIL 9,, 1997, U-95-71
LS



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

Chair of House State Affairs Committee

Chair of Joint Admin. Regulation Review Committee

Capitol Building

(907) 465-3743 ph

Juneau, AK 99801

(907) 465-2381 fax

SPONSOR STATEMENT

HB 161 Deregulation of garbage utilities

By Rep. Jeannette James

March 7, 1997

HB 161 deletes the authority of the ALASKA PUBLIC UTILITIES COMMISSION to regulate the furnishing of collection and disposal service of garbage.

Alaska appears to be one of the few states that has this type of utility regulated on a partial state wide basis, some cities currently set their own rates i.e., Haines. Perhaps garbage rates should be under local control if they are to be monopolies at all. Competition is healthy, and should be encouraged whenever possible.

I have been, as a State Representative, involved in two attempts at regulation of garbage monopolies by the APUC, wherein the APUC were/are unable to deal with garbage utilities in a timely manner due to problems such as APUC personnel or commissioner turnover, federal mandates related to telecommunications issues, and other excuses. Perhaps the APUC simply does not have the time, interest, or money to properly regulate this class of utility.

I offer House Bill 161 as a point of beginning, an opportunity to encourage open discussion on this issue, to hopefully provide solutions to resolve what appears to be an ongoing concern. The question is: should the State or any other governmental agency regulate the furnishing of collection and disposal service of garbage?

There will be a House Labor and Commerce Committee meeting Friday March 7th. at 3:15. P.M. Please call me 3743 or Walt Wilcox 6819 if you have any questions on HB 161.

STATE OF ALASKA
HOUSE OF REPRESENTATIVES
Representative Jeannette James
Joint Administrative Regulation Review Committee



Rep. James, Chair
Sen. Mackie, Vice Chair
Rep. Rusterman
Sen. Wilken
Rep. Croft
Sen. Lincoln

State Capitol Building
Juneau, AK 99801
(907) 465-3743, FAX 465-2381
1-800-565-374
Direct 465-6819
Walter_Wilcox@legis.state.ak.us

*3/6/97
No APUC written
response. JJJ*

MEMO

e-mailed February 13, 1997
Faxed February 14, 1997
snail mail February 21, 1997

TO: Alaska Public Utilities Commission
ATTN: Robert Lohr, Executive Director
FROM: Rep. Jeannette James, Chair, Admin. Reg. Rev. Committee
RE: APUC Docket # U-95-71,

Attached is a scanned in letter, from a constituent, referred to our office by Rep. Kelly delineating a specific problem with the Alaska Public Utilities Commission.

Please review the complaint and respond in writing or via e mail.

Thank you for your prompt response regarding the resolution of this matter.

cc: Rep. Kelly
Commissioner Hensley

I scanned the signed letter in and it is represented electronically as follows:

**Hite Construction, Inc.
P O Box 80708
Fairbanks AK. 99708
(907) 474-4755
(907) 479-5011 fax**

2-13-97

Re: APUC Docket # U-95-71

Dear Mr. Wilcox:

Thanks you very much for your attention in this matter. Here are the basic facts:

On 8/15/95 the APUC received our application for the certificate of convenience and necessity.

On 9/21/95 a protest was filed by Star Sanitation.

On 11/22/95 the APUC granted an order of intervention.

On 4/23/96 the APUC furnished an Order establishing a hearing

On 7/31/96 the hearing was held in Fairbanks. Attending were APUC staff: Dawn Bishop, Nancy Martin, and Ron Zobel as staff attorney. The Commissioners present were: Don Schroer, Alyce Hanley, and G. Nanette Thompson. The hearing officer was Patricia Clark.

I believe the staff gave their written recommendations to the Commissioners on 8/12/96. This recommendation was to award the certificate to Hite. We called dozens of times. They cannot give the information out over the phone, it has to be in writing. The docket writer is out of town this week, and on and on.

Apparently the decision has been made, but nobody has time to write it up yet. On 9/6/96 we were told the docket manager was on vacation until 9/22. On 9/27 she would be going to Juneau for about a week or two. If she didn't get this written up the week before going to Juneau, we might have to wait until as late as mid-October. We have been told "in a couple of weeks" so many

times, we'd really like a definition of the term. The APUC staff is forbidden to discuss this with us. We are forbidden to talk to the Commissioners. The only contact we have is Patricia Clark, the hearing officer. We call every week or two and check in with her. She's polite, considerate, and trying to help. The problem is that she is not the one holding this up, and can only push others to take care of this. Her number is 276-6222.

I know the APUC is very busy. I know their agency is an important one. I also know that the State of Alaska would not knowingly put this kind of a time burden on any of it's citizens. It truly does, need to be taken care of. It's been 18 months now,

Thank you for taking the time to look into this. You can speak to either myself or my husband Loren,

Bari Hite

Signed original available for inspection Walt Wilcox



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

Chair of House State Affairs Committee

Chair of Joint Admin. Regulation Review Committee

Capitol Building

Juneau, AK 99801

(907) 465-3743 ph

(907) 465-2381 fax

MEMO

February 27, 1997

To: Labor and Commerce Committee

Attn: Norm

From: Jeannette

Re: Scheduling HB 161 for Labor and Commerce Committee

HB 161 takes away the authority of the ALASKA PUBLIC UTILITIES COMMISSION to regulate the furnishing of collection and disposal service of garbage.

Alaska is one of the few states that has this type of utility mostly regulated on a state wide basis. Garbage rates should be under local control if they are to be monopolies at all.

I have been personally involved in two attempts at regulation of garbage monopolies by the APUC, wherein the APUC were/are unable to deal with garbage utilities due to things like APUC personnel turnover and, the APUC being too busy to regulate this class of utility.

Please schedule HB 161 for a hearing as soon as possible. Please contact me 3743, or Walt Wilcox 6819 if there are any questions.

Thank you

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE MEMBERS:

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REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
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716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee

MEMORANDUM

TO: Representative Norman Rokeberg, Chairman
Representative John Cowdery, Vice Chairman
Representative Bill Hudson
Representative Joe Ryan
Representative Jerry Sanders
Representative Tom Brice
Representative Gene Kubina

FROM: Shirley Armstrong, Staff
House Labor & Commerce Committee

DATE: April 29, 1998

SUBJECT: Additional Backup For Committee Bill Packet - **HB 347**

Attached is information that has come to the House Labor and Commerce Committee since our committee hearing.

Please insert in your HL&C, HB 347 committee packet.

Attachment

STATE OF ALASKA

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

Received 11:30 AM
3/31/98 SL

TONY KNOWLES, GOVERNOR

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700
FAX: (907) 465-2784

March 27, 1998

The Honorable Norman Rokeberg
Chair, House Labor & Commerce Committee
Alaska State Legislature
State Capitol Room 24
Juneau, AK 99801-1182

Dear Representative Rokeberg:

Re: House Bill 347, Mechanics Bill

The Department of Labor is grateful to you and the sponsor for giving us time to work with the interested parties to address our concerns regarding HB 347. Unfortunately, after numerous meetings and several revisions and clarifications to address industry concerns, it appears that we are unable to reach a consensus. The department thought we had worked out language that addressed the primary concern of the car dealers, as had been related to us over the past two years, regarding the requirement to recalculate the technician's hourly wage rate upward when hours billed exceeds hours worked. It appears that the industry wants to have it both ways, as it were, being immune from the upward adjustment on the high end, but still able to pay minimum wage (or perhaps 50% of the flat hourly rate) when hours worked exceeds hours billed. This is not acceptable to the department.

The attached language is provided to you as our best effort at coming up with a statutory remedy to the recalculation issue. As you know, we are generally opposed to any potential diminution of worker protections under the Alaska Wage and Hour Act. However, in this case, we believe the attached language removes the disincentive for the employer to allow high production technicians to work on a flat rate due to the weekly recalculation of the hourly wage under current law, while at the same time ensuring that all work performed by a flat-rate mechanic is compensated at no less than the flat hourly rate, with an overtime premium of half of the flat rate for all hours in excess of eight per day or forty per week.

In order to ensure that there is no misunderstanding in how this language - should you find it acceptable - is interpreted in the future, I would submit the following hypothetical situations and discussion.

A mechanic and an employer agree to a flat rate arrangement. They sign a written agreement that specifies the flat rate - in this example, \$20 per hour - and the manuals from which the "book hours" for each job will be determined. The mechanic will be paid for all time worked, meaning all time on the clock, in the workweek. The minimum that the mechanic must be paid for that week is \$20 per hour for straight time hours and \$30 for all hours in excess of eight hours per day or forty hours per week. This minimum amount of pay for that week is not affected by hours billed, whether more or less than actual hours worked.

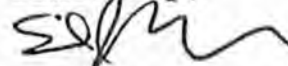
It is important to note that the minimum compensation owed to the employee is "figured on a weekly basis." There could be a situation where an employee works eight hours per day and bills eight hours per day Monday through Wednesday, then works nine hours and bills eleven on Thursday, and then works nine hours and bills seven on Friday. In this case, the minimum pay due to the employee for the week would be \$860 (forty hours @\$20, two hours @\$30). The compensation due under the flat-rate arrangement would be \$840 (42 book hours x \$20), so in this example the mechanic is paid \$860. The minimum due the employee under proposed 17 (B) is not figured on a daily basis (i.e., \$160 + \$160 + \$160 + \$240 + \$180 = \$900). This allows the employer to "recoup" as it were, for a day where the employee bills less hours than he works from one where he bills more hours than he works. However, the principle of daily and weekly overtime over eight hours and forty hours is still protected under this example.

One other change requested by labor and reportedly acceptable to the requestors of the bill is a limitation of the exemption to the servicing of automobiles and light duty trucks.

An amendment to HB 347 such as that attached would obviate the department's concerns and we would remove our objections to the bill. Our primary concern has been a legitimization of the existing practice in some cases of mechanics working under a flat rate with no protection other than minimum wage, if that. We can not support a bill which removes the employer liability for recalculating hourly wage without guaranteeing at least the now immutable flat rate for all hours worked to the employee.

If you have any questions, don't hesitate to contact me at 465-2700.

Sincerely,



Ed Flanagan
Deputy Commissioner

Attachment

cc: Representative John Cowdery
Al Dwyer, Director, LS&S
Randy Carr, Chief, Labor Standards, LS&S

DRAFT

AS 23.10.060(d) is amended by adding a new paragraph to read:

(17) work performed by a mechanic primarily engaged in the servicing of automobiles and light trucks if the mechanic is employed as a flat-rate mechanic by a nonmanufacturing establishment primarily engaged in the business of selling or servicing motor vehicles, provided that

(A) the mechanic has signed a written agreement with the employer which specifies the automotive manual or manuals on which the flat rate is to be based and the mechanic's flat hourly rate of pay; and

(B) the mechanic is compensated for all hours worked in any capacity for that employer up to eight hours per day and forty hours per week at the flat hourly rate, and for all hours worked in excess of eight hours per day or forty hours per week at one-and-one-half times the flat hourly rate, figured on a weekly basis. For purposes of this subsection, the flat hourly rate is the mechanic's regular rate of pay.

Amendment #1
to CS for HB 347 version "F"

Page 2, Line 7

After "paragraph" replace ";" with "."

Delete the remainder of lines 7, 8 & 9.

Insert new subsection to read:

"(E) The minimum amount due the employee under (C) and (D) of this section shall be figured on a weekly basis."

0-LS1390F
Cramer
4/24/98

CS FOR HOUSE BILL NO. 347()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE COWDERY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an exemption from overtime wage requirements for certain
2 motor vehicle mechanics."

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

4 * Section 1. AS 23.10.060(d) is amended by adding a new paragraph to read:

5 (17) work performed by a mechanic primarily engaged in the servicing
6 of automobiles, light trucks, and motor homes if the mechanic

7 (A) is employed as a flat-rate mechanic by a nonmanufacturing
8 establishment primarily engaged in the business of selling or servicing motor
9 vehicles;

10 (B) has signed a written agreement with the employer that
11 specifies the mechanic's flat hourly rate of pay and the automotive manual or
12 manuals on which the flat rate is to be based;

13 (C) is compensated for all hours worked in any capacity for that
14 employer up to and including eight hours a day and 40 hours a week at an

1 hourly rate that is not less than the greater of
2 (i) 75 percent of the flat hourly rate of pay agreed upon
3 by the employer and employee under (B) of this paragraph; or
4 (ii) twice the state minimum wage; and
5 (D) is compensated for all hours worked in any capacity for that
6 employer in excess of eight hours day or 40 hours week at one and one-half
7 times the rate described in (C) of this paragraph; in figuring the number of
8 hours that an employee worked in a day, the employee's hours shall be figured
9 on a weekly basis.

10 * Sec. 2. The amendment to AS 23.10.060(d) made by sec. 1 of this Act applies to work
11 first performed on or after the effective date of this Act.



00-42-5541173-5570

FAX TRANSMITTAL

TO: Shirley Armstrong

FROM: TIM ARNESEN

DATE: 4-30-98

NUMBER OF PAGES (INCLUDING FAX COVER SHEET): 3

MESSAGE: My comments re: CS HB 161

Please pass on to L+C committee. Thanks

Jim

Original is being sent by mail: Yes No

Commercial Refuse

INCORPORATED

750 E. International Airport Rd.
Anchorage, AK 99518

PHONE (907) 562-3700
FAX (907) 562-3750



*5/14/98
collected
notified
negotiating
with council*

April 30, 1998

Rep. Norman Rokeberg
House of Representatives
Labor & Commerce Committee
State Capitol
Juneau, AK 99801-1182

RE: CSHB 161 Deregulation of refuse utilities

Dear Rep. Rokeberg and L&C Committee members,

With regards to the above mentioned proposed legislation, I have some concerns and comments to make. In the last few years, we have seen a number of changes in the regulated utility industry. Specifically the deregulation of all or part of many utilities. Most of the deregulation has occurred in telecommunications and electric utilities. However, this deregulation is not total. Some regulation still exists at the federal and state levels. The reasoning behind this trend is to allow competition to lower prices and bring options to the public.

The proposed legislation would take the state completely out of the picture and pass the need for any regulatory powers to municipalities or local governments without regard to their capacity or ability to regulate or control refuse. In Anchorage, I do not believe the city wants to be involved in the regulation of refuse. This legislation reminds me of a classic case of "passing the buck", in other words, removing expense from the state level to the local level.

To support CSHB 161, one would have to be completely ignorant of what is happening in the Alaska refuse industry. For the first time ever, one giant national entity, USA Waste, is buying up refuse companies around the state in order to enjoy a statewide monopoly for commercial and residential refuse services. Pending before the Alaska Public Utilities Commission (APUC) are applications for transfer to USA Waste, the Certificates of Public Convenience and Necessity of the major refuse providers in Juneau (Docket U-98-31), and in the Matanuska-Susitna Valley (Docket U-98-32), and in Fairbanks (Docket U-98-33). The transfer of Anchorage Refuse and Eagle River Refuse Certificates to USA Waste has already been approved by the APUC (Order U-97-221), issued April 21, 1998. The "word on the street" is that there are other major acquisitions occurring by USA Waste in Alaska that have not yet been noticed to the APUC and the public.

One must consider the promoter of this legislation, USA Waste who is attempting to purchase every major private refuse utility in the state. USA Waste's vested interest lies in developing a near monopoly and to operate without any regulation or controls imposed upon them. A large company such as this would have the means if it chose to do so, to be able to influence the marketplace, local politicians and governments. In some respect local regulatory controls are more desirable than state control, however, some consideration must be given to the influences of local "good old boy" networks. The one most ominous factor in this particular

Commercial Refuse

INCORPORATED

750 E. International Airport Rd.
Anchorage, AK 99518

PHONE (907) 562-3700
FAX (907) 562-3750

Rep. Norm Rokeberg
Labor & Commerce Committee
CSHB 161
April 30, 1998
Page two

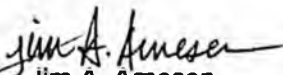
situation relates to the domination of the marketplace by one large entity, USA Waste. I believe deregulation would be ill-advised at this time.

When USA Waste completes its pending and future acquisitions, one enormous outside corporation will control refuse collection and disposal in every major population center in Alaska. There are simply no competitors in existence with the physical or financial size to challenge USA Waste's total dominance of the Alaska market. *This is a major distinguishing factor compared to other deregulatory actions in other utility markets and in other parts of the country.* Therefore, the only entity that can and will protect Alaska citizens and businesses from the complete monopoly power of USA Waste is the APUC.

These comments are not meant to be critical of USA Waste. There is no indication that USA Waste will not provide good service with reasonable rates in a non-discriminatory manner. **However, no student of American history or economics can pretend ignorance of the dangers of a monopoly, both to the consumer, and to the state's economy as a whole. We are about to become host to the largest refuse monopoly the state has ever seen, and abolishment of all statewide regulatory oversight of that monopoly would be a gross error.**

The proposition that deregulation at this time would promote healthy competition, lower prices and benefit the public are not supported by the facts at this time. Where there will be only one enormous large entity, and the only other competitors are of the "mom & pop" variety or size, there cannot be a true meaningful benefit to the public. For these reasons I do not support this proposed legislation and strongly believe that regulatory measures need to be continued, and for some time into the future.

Sincerely,


Jim A. Amesen
President

HB

167

Rainbow Glacier Seafood, Inc.

PO Box 1749
Haines, AK 99827

Phone 907 766 3521
Fax 907 766 3677

January 26, 1998

Dear Rep. Norman Rokeberg, Chairman:
House Labor and Commerce Committee

I am writing to express my support for HB 177 and to give you a grass roots perspective of the potential impact this bill will have on the industry and those communities dependent on the fisheries resources.

Our small fisherman owned seafood processing plant in Haines would be a beneficiary of this bill and a working example of how government support can have a positive economic impact on the rural economics of coastal Alaska.

Fishermen have watched the grounds value of many fisheries drop drastically in recent years. This has prompted some to leave traditional processors adding value aboard their vessels and to search for new markets using broker facilitated trades or in some cases, direct marketing.

Depressed fish prices have played a major role in the way we now do business. Both fishermen and processors are scrambling to find new ways to drive profitability from a resource that now faces international competition from the aquaculture industry and developing fisheries worldwide.

From first hand experience, the challenges are great and the mistakes many when a fisherman enters the free marketplace with a catch to sell. Many fail, yet for those that succeed, the benefits warrant the effort and investment.

Many of Alaska's most successful processing companies have been started by groups of fishermen: Trident, The All Alaskan, Icicle, and Norquest to name a few.

A revolving loan fund to help fishermen transition into the processing and marketing aspect of the seafood industry would encourage the creation of small seafood processing enterprises much like our own.

We plan to hire forty people to process approximately two million pounds of salmon in 1998. We have struggled to put our small Alaskan owned value added processing plant together. Undercapitalized from the beginning, the commercial banking system has not responded to loan requests from a start up company in a risky business on the downside. We have had to do it out of pocket and risk losing our investment due to a lack of financial support.

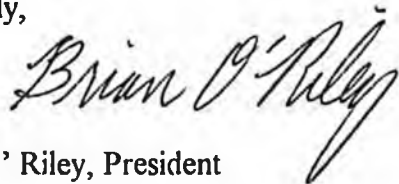
HB 177 would lend that support to projects such as ours perhaps attracting other funding sources with much needed seed money. The creation of small regional seafood plants with a focus on

value added production will help generate local rural economies. The trickle down effect of a higher dollar value per pound of resource will certainly have a positive impact on grounds price.

Encouraging investment by Alaskan fishermen into the processing sector will help to maintain a balanced control of the resource by residents, bring more employment to rural economies and stimulate new growth in the industry.

Fishermen working together as investors within their communities to develop the local fisheries resource can become a reality with a bill such as HB 177.

Sincerely,

A handwritten signature in cursive script that reads "Brian O' Riley". The signature is written in dark ink and is positioned above the typed name.

Brian O' Riley, President

03/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
15:14:03 PARTICIPANT LIST (ALL PARTICIPANTS) BY:KOD
TCN:70415 SCHEDULED FOR:03/10/97 15:15 TO 17:15 FOR:KOD
PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION: KODIAK

HB 167

MR.

BRUCE

SCHAUTLER

TESTIFY

He has a time constraint

03/10/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
15:32:53 PARTICIPANT LIST (ALL PARTICIPANTS) BY:KTN
TCN:70415 SCHEDULED FOR:03/10/97 15:15 TO 17:15 FOR:KTN
PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION: KETCHIKAN

ALL ITEMS

MS.

KAY

ANDREW

TESTIFY

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 5, 1997

FURTHER REFERRALS:

Date of Committee Action: 3/10/97

The LABOR AND COMMERCE Committee considered:

HB 167

HOUSE BILL NO. 167

DISCLOSURE OF SALMON PRICES

“An Act repealing certain requirements relating to posting and reporting of prices paid for salmon.”

recommends it be replaced [] the same title
 with the following committee substitute _____ [] a new title

[] additional referral to _____ Committee
 [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 [] fiscal note(s) _____ [] fiscal note(s) _____

[X] zero fiscal note(s) FIG _____ [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Pat Caudrey</i>	✓			
<i>John Sanderson</i>	✓			
<i>Mark Bruce</i>			✓	
<i>Joe Kavan</i>	✓			
<i>Norman Pateley</i>	✓			
<i>Bill Hudson</i>	✓			
<i>Gene Kuberson</i>	✓			

CHAIR'S SIGNATURE

Norman Pateley

3/10/97

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 157

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Disclosure of Salmon Prices BRU: CFMD
 Component: Fisheries Management
 Sponsor: Rep. Ivan
 Requester: House Labor and Commerce COMPONENT SERIAL NO. 1941

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Geron Bruce *GB*
 Division: Commissioner's Office
 Approved by Commissioner: Frank Rue *Frank Rue*
 Agency: Department of Fish and Game

Phone: 465-6143
 Date: 3/10/97
 Date: 3/10/97

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Official Business

COMMITTEE:

HOUSE LABOR AND COMMERCE COMMITTEE

DATE: March 10, 1997

SIGN-IN

Subject of meeting:

HB 167 -- DISCLOSURE OF SALMON PRICES

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Jerry McCune United Fishermen of Alaska	211 4th St suite 112 Juneau Ak.	586-2820	UFA	Yes
Dean Paddock	POB 21951, Juneau 99902	463-4970	Bristol Bay Driftnetters Assn	Yes
Rick Laurson	321 Highland Dr. Juneau	586-6366	Kodiak Seafood Processors Assn	YES

TO



UNITED FISHERMEN OF ALASKA

February 26, 1997

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

The Honorable Ivan Ivan
Alaska State House of Representatives
State Capitol Building, Room 418
Juneau, Alaska 99801-1182

Dear Representative Ivan:

United Fishermen of Alaska is asking that the Legislature repeal the statutes mandating that fish tickets for salmon reflect the current price for the salmon. UFA has received many requests from around Alaska to have this law repealed.

These provisions are contained in the Alaska Statutes:

AS 16.05.690 (c) A fish ticket recording the purchase of salmon must include the current price paid per pound for each species of salmon purchased.

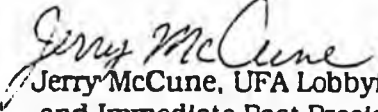
AS 16.10.277 Posting of Current Salmon Price. A fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15, shall prominently post the current price being paid for salmon at each location where salmon are purchased.

Having the price of the salmon on the fish ticket seems like a good idea but, in today's fisheries, the price on the fishing grounds is always changing. A fish ticket is a binding contract between the processor and harvester. However, the price on the tickets do not necessarily reflect the final price. This leaves the possibility that a dishonest buyer could claim a preliminary price as the "final" price because once a fisherman signs the ticket, it is a binding contract.

Many processors do not know the final price before or during the season. Therefore, the law is unenforceable and, frankly, not practical. For example, forcing the processors to post a price at five cents per pound for Bristol Bay sockeye before they know the wholesale price. Fishermen feel that forcing the processor to post prices puts both the processor and the harvester in a non-competitive situation.

The UFA Board of Directors voted unanimously to ask for the repeal of this law. Therefore, we would greatly appreciate your help in sponsoring a bill to repeal this law and to resolve what is now a confusing and unworkable situation.

Sincerely,


Jerry McCune, UFA Lobbyist
and Immediate Past President

MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association
Cordova District Fishermen United • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association • Northwest Seiners Association • Peninsula Marketing Association • Petersburg Vessel Owners Association
Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative • Southeast Alaska Seiners Association
Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gillnetters

Alaska State House of Representatives
House District 39




Session
Alaska State Capitol
Juneau, Alaska 99801-1182
Phone: (907) 465-4942
1-800-323-4942
Fax: (907) 465-4589
www.akrepublicans.org/Ivan.htm

Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

MEMORANDUM

TO: Representative Norm Rokeburg, Chair
House Labor and Commerce Committee

FROM: Representative Ivan M. Ivan 

DATE: March 5, 1997

RE: Request for Hearing

Please consider this request to hear House Bill 167: Repealing Requirements to Post and Report Salmon Prices before the House Labor and Commerce Committee at your earliest possible convenience,

This legislation repeals two provisions of Alaska statute that mandate fish tickets for salmon reflect the current salmon price and that a processor will post the current salmon price at each location where salmon is purchased.

I appreciate your consideration of my request. Please do not hesitate to contact my office if I can provide further information or answer any questions.

IMI:tw

Alaska State House of Representatives House District 39



Session

Alaska State Capitol
Juneau, Alaska 99801-1182
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Interim

P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

SPONSOR STATEMENT - HOUSE BILL 167

House Bill 167 repeals two provisions of Alaska statute that mandate fish tickets for salmon reflect the current salmon price and that a processor will post the current salmon price at each location where salmon is purchased.

With salmon prices changing throughout a fishing season, the posted price on a salmon ticket does not necessarily reflect the final price. This leaves the possibility that a dishonest buyer could claim a preliminary price as the "final" price because once the fish ticket is signed by the fisherman, it conceivably becomes a binding contract.

Processors usually do not know the final price before or during the season. The current law is unenforceable and impractical. For example, some processors, before the start of the fishing season, are posting a 5 cents per pound price since they do not know what the wholesale price will be. Posting prices before the start of the season puts both the harvesters and the processors in a non-competitive situation.

Sec. 16.05.690. Record of purchases.

(a) Each buyer of fish shall keep a record of each purchase showing the name or number of the vessel from which the catch involved is taken, the date of landing, vessel license number, pounds purchased of each species, number of each species, and where possible, statistical area in which the fish were taken, and other information the department requires. Records may be kept on forms provided by the department. Each person charged with keeping the records shall report them to the department in accordance with regulations adopted by it.

(b) A person may not knowingly enter false information on a fish ticket or supply false information to a person who is recording information on a fish ticket.

(c) A fish ticket recording the purchase of salmon must include the current price paid per pound for each species of salmon purchased.

History -

(sec. 10 art III ch 94 SLA 1959; am sec. 1 ch 84 SLA 1987; am sec. 1 ch 78 SLA 1992)

Amendment Notes -

The 1992 amendment, effective September 14, 1992, added subsection (c).

Sec. 16.10.277. Posting of current salmon price.

A fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15 shall prominently post the current price being paid for salmon at each location where salmon are purchased.

History -

(sec. 2 ch 78 SLA 1992)

HEB

178

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE MEMBERS:

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SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee

MEMORANDUM

TO: Representative John Cowdery
Representative Bill Hudson
Representative Joe Ryan
Representative Jerry Sanders
Representative Tom Brice
Representative Gene Kubina

FROM: Representative Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: April 25, 1997

**Additional Materials Provided
To Committee After Bill Packets
Delivered To Committee Members**

HB 178

FISCAL NOTE

APR 22 1997

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 178

Revision Date: _____
Title: UCC - Letters of Credit

Department: Commerce and Economic Development
BRU: Banking, Securities & Corporations
Component: Banking, Securities & Corporations

Sponsor: House Labor & Commerce
Requestor: _____

COMPONENT SERIAL NO. _____ 1233

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ _____

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development

Phone: 465-2521
Date: _____
Date: 4-21-97

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MAR 13 1997

FISCAL NOTE

received 5:20pm

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 178

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to letters of credit under the BRU: Civil Division
Uniform Commercial Code; and providing for an effective date." Component: General Legal Services
 Sponsor: House Labor and Commerce Committee
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Adoption of these revisions relating to letters of credit under the Uniform Commercial Code will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 3/12/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce Botelho* Date: 3/12/97
 Agency: Department of Law

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ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE MEMBERS:

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Labor and Commerce Committee

No Fiscal Note
Distributed to Labor and Commerce Committee

FISCAL NOTE

BILL NO. HB 178 |

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) 1/13/98 Dept. Affected Law
 Title "An Act relating to letters of credit under the BRU Civil Division
Uniform Commercial Code; and providing for an effective date." Component Commercial
 Sponsor House Labor and Commerce Committee
 Requester House Labor and Commerce Committee Component Serial No. 2211

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Adoption of these revisions relating to letters of credit under the Uniform Commercial Code will have no fiscal impact on the Department of Law.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 1/13/98
 Date 1/13/98

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SENATE COMMITTEE REPORT

DATE: 2/9/98

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: 3-31-98

Labor and Commerce Committee considered HOUSE BILL NO. 178

"An Act relating to letters of credit under the Uniform Commercial Code; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

- same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	✓				
<i>Mike Miller</i>	✓	<i>[Signature]</i>	x		
CHAIR: <i>Drew D. Hudson</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>Commerce</i>	<i>1/10/98</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

COMMITTEE TAPE LOG

COMMITTEE: House Labor & Commerce DATE: 20 Oct 1997 TIME: 1:00 p.m.

SUBJECT: HB178 - Letters of Credit Under the UCC
HB142 - Business Practice Regulations

MEMBERS: Robelberg, Ryan, Courtney,
Staff: Shirley Armstrong, HLC;

SPEAKER	TAPE#	SIGNIFICANT INFORMATION
Robelberg	Tape 1 000	1:09 pm call to order [micro not deemed on to 1:11pm - introductory remarks only]
Pederson	HB178 019	Art Peterson in Juneau
Weaver	023	Jerry Weaver, Sr VP + Comm. Loan Manager, NBA + Asst. Treasurer of Alaska Banking Association. Re: HB178. Letters of credit legislation first on technical steps. Comments in favor of legislation and request proposed amendments.
Robelberg	043	Elementary explanation of letters in credit & float issue - request for
Weaver	048	float issue not discussed. Explain letters of credit.
Robelberg	083	question re wire transfer of funds
Weaver	087	Explanation of wire transfer.
Robelberg	094	Actual transfer of funds?
Weaver	097	documents & payment procedure
Robelberg	114	banks float time question. What about problems
Weaver	118	legislation discusses arbitration of disputes.
Robelberg	123	level of commerce in Alaska
Weaver	126	answer above. NBA has \$16 million outstanding in new
Courtney	130	clarify figure

HLC HB 178: Letters of credit / U.C.C.

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Woodruff	133	back to procedures.
Ryan	142	statements re concerns. Assignment of letters of credit.
Little	153	Melody Little , Letters of Credit Officer, WBA
Ryan	155	assurances wanted re sitting on money, etc.
Little	168	discussion re assignment
Ryan		delay in payment
Ryan	187	revisits condition of letters of credit
Little	203	7-day period expiration
Ryan	212	what happens when shipment declined?
Little	216	bill of lading is made negotiable
Ryan	221	once goods out there, payment not made
Little	225	nuance on issuing bank
Ryan	229	Em on side of caution
Little	234	timeline
Ryan	238	AG letter re reasonable time
		[Receiving letter - no sound]
Weaver	253	Comments re shipment + documents
Cowden	266	7-day period - how does it compare
Weaver	270	Uniform standard would be best
Robkeberg	273	thanks to Weaver
Kurtz	279	"Jimmy" Kurtz, Esq. ^{Uniform Law Commission} _{Legal witness list} explaining seven days - "reasonable time" ^{Thursday} is end.
Robkeberg	310	
Kurtz	311	identified himself to record.
Robkeberg	323	comments
Kurtz	329	response
Pederson	330	Act Pederson, General, Uniform Law Commission

H+C

HB178: Letters of Credit / UCC

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Posterson (Continued)		Comments on amendments & their
		damage to bill. Discusses standards
		& problems with "unique" provisions
		in Rep Ryan's proposed amendments.
		Understands Dep of Law Dept of Commerce
		has not clipped amendment in his
		impressions
Robbery	382	Checking on participants
Ryan	390	Trustee amendments
Posterson	410	Problem with network. Response to
		what he understands is question
		"reasonable time" & "maximum time"
Ryan	431	
Robbery	444	1:51 pm - hb178 public hearing closed
		comments re procedure.
HB HB	142	Business Practice Regulations HB
Jimm to Duke B		1:53 pm - Fast forwarded to 641 Before turning
Text forwarded to 641		waiting to resume
Robbery Robbery	654	introduction
Rep Gary Davis	658	Sponsor comment on hb142 - debate
		centered around sale of new and used
		vehicles. First 5 pages. Rest of bill little
		debate & deal w/ some loose ends requested
		by Dept of Law consumer section.
Robbery	686	Advises Schwartz in audience
		status of legislation.
		possible spin out of separate legislation
Coody	702	wasn't at previous hearing - question
		he'd like looked up. Car in mid-term
		of FM inspection & doesn't own car not
		Bauer! Why dealer have to take vehicles

AHC

DB HD: Business Practice Reex

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Cowdery (continued)		in fact could then purchase to determine if unethical
Robelberg	733	
Morrison	742	Richard Morrison, Board member, Alaska Auto Dealers Assoc; owned Euro Volkswagen. Auto portions complex. Other issues separate. Fm issues. Sale of used vehicle, states - dealers vs private individuals. Mid-term testing.
Cowdery	820	Clarification of wholesale, auction sales, rep sales
Morrison	828	Will sell to wholesaler or sell at auction when cars below standards.
Ryan	847	Discs of conduct practices. Impact of telephone sales & disimp. Consumer protection laws + buyer's due diligence
Morrison	860	Buyer right of return. People taking of them
Ryan	876	Buyer needs thousand eyes, sell only one.
Morrison	883	Issue re leverage from merged disclosure. Current Alaska law is other states procedure. [% of value or \$ amt]
Robelberg	909	Written recommendations derived from association
Morrison	918	Difficulty of \$ amount. No possibility
Cowdery	925	#s that don't match & impact
Morrison	934	Specialty vehicles, collectors items. National title branding policy push. DMV working with dealers on "remanufactured" or title. Current law cap insurance to notify state.

HB 1412 Business Practice Regulation 20 Oct 1997

HHC

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Morrison (continued)		Lies not repaired properly there is no reason law disclosure?
	1003	Because known defects. Legislation being built around one case with one dealer
Rohberg	1006	Damaged vehicle problem not related
Morrison	1025	Should be statewide
Ryan	1028	"as is where is" agreement
Morrison	1037	Charlie Cole study - cases locally + national trends. Several contract removes from "as is where is". Morrison tells only 11 cases. "as is where is" really doesn't exist any more.
Ryan	1069	inasmuch business practice
Rohberg	1072	reference hb 222 - wrecked vehicle law
Ryan	1088	salvage item - making deep pockets
Rohberg Morrison Lohrey		discussion
Morrison	10111	FIM window sticker idea
Rohberg	10116	FIM text
Morrison	10121	Working on recommendations & will submit. Working w/ David Schwartz on addressing the issue for all concerned. North State in nation has used an disclosure law ~ nationwide problem.
Morrison	10148	comes sale by people who are usually dealer. Not being used currently. This legislation will not correct

20 Oct 1997

AHC

442 142: Business Practices

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Robelberg	10163	} Member license & bond discussion
Morison	10167	
	Tape 2 Side A	Tape 2 Side A
Reyan	000	for sale lots
Robelberg		pipeline comment
Reyan	008	licensed + bonded vs not
Morison	012	dealers support minimizing adverb corner vendors. Would like to get separate but focusing on this item
Robelberg	030	55 & 45 percentages
Morison	032	National figures - very inconsistent
Rep Davis	038	Classification & comments
Schwartz	068	Out of room & didn't hear what appears to be David Schwartz, AG's office, Consumer ^{protection} Section. FIM compliance. History of FIM & reverse FIM status. Agreement with Better Business Bureau
Robelberg	126	Intent appears to be to clarify original intent of law
Schwartz	133	Section 2 discussion
Robelberg	146	
Schwartz	149	Goal of Section 2.
Robelberg	152	Certificate of non-compliance
Schwartz	155	Letter only waived. With no signature available until FIM standards met
Courtesy	166	Consumers facing pile of paper: how can legislators "make" consumers read
Schwartz	192	Maybe rule FIM disclosure required prior to sale. Right now doesn't have to begin under title transfer.

HW

HR 142: Business Practices Reformation

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Cowley/Schwartz		discussion on modification.
Ryan	230	dealer due diligence
Schwartz	248	Buyer must always discover defects before sale.
Ryan	266	personal experience, recidivism.
Schwartz	284	Section 2 discussion - Accident damage disclosure Supreme Court decision this year. Looked at other state laws + came up with this section. Present enough information re Material Damages.
Ryan	350	Confidentiality section
Schwartz	365	discusses incidents when close investigatory files.
Ryan	392	response
Schwartz	407	no requests from business re complaints against that business.
Ryan	419	News from business community
Schwartz	421	Sealed since many case litigation + states allow to withhold those records
G. DAVIS	436	other business to take care of. Majority of concerns addressed Motor Vehicle Section. Chairman's choices re wording - pulled in other sections as well.
Rohberg	463	annual meeting + subsequent decision as how to pursue.
"	475	News article
Schwartz	479	AK Supreme Court confirmation of Johnson Nelson ruling - 18 of 22 counts of civil found - 8 vehicles sold

HLC

HB 142: Business Practices Regulation

20 Oct 1997

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Schwartz	(continued)	Johnson witness matters.
		Commission conducting them (A6) re this matter.
Robbery	522	the notification system & problem
Schwartz		
		Slide B. ^{Topic} 2
Robbery	574	condense discussion w/ Schwartz re
		case law: unfair practice, mislead,
		mislead
Ryan	599	insurance as setting losses impacts
		costs & value of vehicle.
Schwartz	615	Reasonable inspection case law
Ryan		
Cowdery	636	Question p. 3
Schwartz	650	intimid charges disallowed
Robbery		
Schwartz	664	Telemarketing impacts
Ryan	673	Concerns about telemarketing practices
Robbery	681	Net witness
Stapp	684	Michael Stapp, Stapp Brothers Lincoln Mercury
		Board Alaska Auto Dealers Assoc.
		Dealer Sales v private sales
		I/M 1992 legislation v provisions in
		HB 142.
		Vehicle classification
Ryan	832	I/M question
Stapp	838	I/M vehicles sold to consumers
Ryan	847	who bears cost
Stapp		
Ryan	852	proposal from industry: gyno? how to deal with
Stapp	854	operator requirements re dealer license

SPEAKER	TAPE #	SIGNIFICANT INFORMATION
Robbery	874	Nissan case effect
Sdepp	877	problems with In-car brush effect
Robbery	903	regulatory damage to new car. Manager/Dealer relationship or damage
Sdepp	908	dealer's damage instructions
Robbery	945	difficulty w/ DMV re. child's etc.
Sdepp	950	Working w/ DMV. Good job w/ respect to business Remove auto shop a deal on separate based news used car expansion, FM provisions, market sample.
Robbery	973	Hensley question
Hensley	977	Pratt's Hensley, Discussing Note Vehicle, good working relationship with dealer, radio program on issuing titles.
Robbery	991	Insurance industry information re wrecked vehicles
Hensley	1000	Insurance coo to calling out on economic value repair. Met & worked out problem. Insurance co report to DMV + DMV note on title, as recommended vehicle
Robbery	1018]	Student v regulator
Hensley	1019]	regulatory business ^{business} matter
Cowdery	1039	new program - used dealers on the program?
Hensley	1047	next step looking at
Cowdery	1061	discussion/comments - possible step
Robe	1068	
Robe		
		Tape 3 Slide 4
Manson	000	DMV/dealer relationship & relationship of car

03/14/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:19:22

PARTICIPANT LIST (TESTIFIERS ONLY)

BY:JNU

TCN:70416

SCHEDULED FOR:03/14/97 15:15 TO 17:15

FOR:ALL

PUBLIC HEARING

HOUSE LABOR & COMMERCE

LOCATION:ANCHORAGE

HB 178

DOUGLAS

LOTTRIDGE

DEFT OF LAW

TESTIFY

HB 178

JERRY

KURTZ

TESTIFY



Official Business

COMMITTEE:

HOUSE LABOR AND COMMERCE COMMITTEE

DATE: April 25, 1997

SIGN-IN

Subject of meeting:

HB 178 - UNIFORM COMMERCIAL CODE: LETTERS OF CREDIT

PLEASE PRINT!

NAME

ADDRESS (MAILING) & (ZIP)

PHONE

REPRESENTING

DO YOU WANT TO TESTIFY?

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Art Peterson	350 N. Franklin St. Juneau, Ak. 99801	586-4000	NCCUSL	If the committee wishes,
Willis Kirkpatrick	COMMISSIONER			Available for QW

2040 P.01
TO
FRUIT 50/14822267

MAY 27 1997

P.O. Box 100600

Alaska Bankers Association
Anchorage, Alaska 99510-0600

(907) 265-2936

May 15, 1997

Representative Norman Rokeberg
Vice Chairman Labor & Commerce Committee
State of Alaska House of Representatives
Anchorage Legislative Office
716 West 4th Avenue, Suite 640

Re: HB 178 An Act Relating to Letters of Credit
under the Uniform Commercial Code

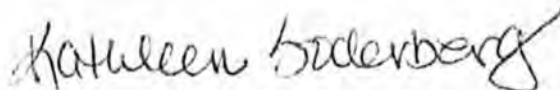
Dear Vice Chairman Rokeberg:

Please consider this letter support by the Alaska Bankers Association for House Bill 178, an Act to revise the Uniform Commercial Code relating to Letters of Credit. Our Lending Officers and International Banking Officers have reviewed this bill and discussed it with representatives of the NCCUSL and we believe the proposed changes contained in HB178 are satisfactory. The UCC governing Letters of Credit has worked well for many years, however, we believe these uniform changes will clarify and improve existing law.

Conversely, we are opposed to the proposed Amendments to HB178 that were made April 25, 1997. We do not believe these proposed changes from the NCCUSL recommended uniform draft would improve Letter of Credit transactions.

The Alaska Bankers Association represents all of the commercial, savings and mutual banks of Alaska. Please feel free to call Jerry Weaver, Secretary on (907) 265-2920 if you have any questions.

Sincerely,



Kathleen Soderberg
President

smb

*Withdrawn
by Rep*

0-LS0644A.1
Bannister
4/25/97

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 178

1 Page 5, line 2:

2 Delete "45.05.106(d)"

3 insert "45.05.106(c)"

4 Page 5, line 14:

5 Following "Formal":

6 Insert "and other"

7 Following "requirements.":

8 Insert "(a)"

9 Page 5, line 16, following "authenticated":

10 Insert "by the signature of the issuer, the signature of the beneficiary, the signatures
11 of two bank officers of the issuer if the issuer is a bank, and the signature of the issuer if the
12 issuer is not a bank."

13 Page 5, lines 17 - 19:

14 Delete all material and insert:

15 "(b) A letter of credit must contain a provision that if an issuer does not honor
16 a letter of credit within the time established under AS 45.05.108(b), even if a notice
17 of discrepancy is given, an impartial third party shall determine the amount of any
18 interest and damages that are owed to the beneficiary. The provision must also
19 establish procedures for carrying out the provision, including how the third party is
20 selected."

21 Page 5, line 29, through page 6, line 2:

1 Delete all material.

2 Reletter the following subsections accordingly.

3 Page 7, lines 7 - 14:

4 Delete all material and insert:

5 "(b) Unless the letter of credit provides for a different time, after receipt of
6 documents, an issuer shall honor the presentation, or give notice to the presenter of
7 discrepancies in the presentation, when demand is made for honor if the issuer is
8 located in the United States, or within three days after receipt of the documents if the
9 issuer is not located in the United States."

10 Page 11, line 10, following "transferable":

11 Insert "or assignable, which may include assignment of proceeds under AS 45.05.114,"

12 Page 11, line 12, following "transferred":

13 Insert "or assigned"

14 Page 11, line 13 following "transferable":

15 Insert "or assignable"

16 Page 11, line 14:

17 Following "transfer":

18 Insert "or an assignment"

19 Following "if":

20 Insert "the transfer or assignment would violate applicable law."

21 Page 11, lines 15 - 20:

22 Delete all material.

23 Page 11, line 22, following "(a)":

24 Delete "A"

- 1 Insert "If allowed by the letter of credit under AS 45.05.112, a"

- 2 Page 12, line 3, following "issuer":

- 3 Insert "and the beneficiary"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 178

1 Page 1, line 1, following "credit":

2 Insert "and to pawnbroker loans"

3 Page 16, following line 21:

4 Insert a new bill section to read:

5 "* Sec. 21. AS 45.09.104(13) is amended to read:

6 (13) to loans by pawnbrokers that [WHICH] do not exceed \$500
7 [\$200]."

8 Renumber the following bill sections accordingly.

9 Page 18, line 16:

10 Delete "This Act applies"

11 Insert "Sections 1 - 20 and 22 - 26 of this Act apply"

12 Page 18, line 17:

13 Delete "This Act does"

14 Insert "Sections 1 - 20 and 22 - 26 of this Act do"

15 Page 18, line 22, following "repealed by":

16 Insert "secs. 1 - 20 and 22 - 26 of"

National Conference of Commissioners on Uniform State Laws
676 North St. Clair Street, Suite 1700, Chicago, IL 60611 • 312/915-0105 • FAX 312/915-0187

John M. McCabe
Legislative Director/
Legal Counsel

MEMO

To: Arthur H. Peterson
Deborah E. Behr
From: John M. McCabe *J.M.C.*
Subject: Amendments to R.B. 178, UCC Article 5
Date: April 29, 1997

Jim Barnes, the letter of credit expert at Baker and MacKenzie, agrees with me that the proposed amendments are a serious problem. If adopted, he asserts that nobody would use Alaska law for letters of credit. Let me amplify concerns a little bit in this memo:

1. Amendment to Page 5, line 2. The effect of this amendment is to bring so-called perpetual letters of credit back. There is universal abhorrence of perpetual letters of credit. The rule of five year termination, no variance by agreement is the sensible rule. The substituted section, 45.05.106(c) makes no sense, either.
2. Section 5, line 14. These are unnecessary title changes.
3. Page 5, line 16. This amendment throws out the possibility of non-document letters of credit, which defeats one of the principal grounds for revised Article 5. In addition, the amended requirements make no sense. Why the signature of a beneficiary, since the letter is issued by an issuer? Why the signature of the issuer, and then two signatures if the issuer is a bank? Jim Barnes comment was that this provision is an invitation to forgery, but its real problem is that it makes no sense whatsoever.
4. Page 5, line 16. It is unclear what this provision intends? Enforced arbitration? What is the relationship to 5-111 on remedies? There is no reasonable answer to any reasonable question about this amendment.
5. Page 5, line 29 through page 6, line 2. This amendment deletes rather core principles of letter of credit law that are not controversial in-as-far as can be ascertained. They outline those things that can be addressed by agreement. In addition, striking page 6, lines 3 through 6 contradicts the first proposed amendment on Page 5, line 2.
6. Page 7, lines 7 through 14. This amendment substantially changes the rules for honor of a presentation under a letter of credit. The deleted language is the international standard under the

Arthur H. Peterson
Page 2
April 29, 1997

Uniform Customs and Practices (UCP) 500. The standard proposed in the amendment would mean nobody would issue a letter of credit under Alaska law.

7. Page 11, all amendments from line 10 through 20. This set of amendments totally scrambles the concept of transfer of a letter of credit. In addition, it conflicts with Section 45.05.114, which deals with assignment of proceeds. Transfer and assignment are totally different concepts, and scrambling them simply scrambles the accepted law. Again, nobody will do letters of credit in Alaska if these amendments are adopted.

8. Page 11, line 22 following "(a)". This amendment makes no sense. It puts apples together with oranges, and has no rational meaning.

9. Page 12, line 3. Again the confusion about a transfer of a letter of credit. A transfer jeopardizes the issuer, not the beneficiary. It is inappropriate to list the beneficiary in the provision.

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130 Seward Street, Suite 409
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MEMORANDUM

August 1, 1996

SUBJECT: Amendment of pawnbroker exemption

TO: Senator Tim Kelly
Attn: Josh Fink

FROM: Theresa Bannister
Legislative Counsel

The purpose of this memo is to explain an amendment that you may wish to consider for the next session. I am suggesting this amendment because it appears to be an amendment that should have accompanied a legislative change that was made in 1993 in a bill sponsored by the Senate Labor and Commerce Committee. You have asked me to explain this suggestion in a memo.

AS 45.09.104(13) exempts certain pawnbroker loans from AS 45.09, the chapter of the Uniform Commercial Code that establishes the requirements for secured transactions. AS 45.09.104(13) exempts "loans by pawnbrokers which do not exceed \$200." This exemption was enacted in 1981 in response to a superior court decision that held that pawnbroker transactions were subject to the procedural requirements of secured transactions. At that time, pawnbrokers argued that compliance with these requirements would be oppressive.

At the same time (and in the same bill), the exemption from the small loans act (AS 06.20) for pawnbroker loans was increased in AS 06.20.330 from \$100 to \$200. It appears that the amendments to AS 06.20 and to AS 45.09.104 were enacted together to cover the same loans.

However, when the AS 06.20.330 exemption was increased in 1993 to \$500 (sec. 88, ch. 26, SLA 1993), the AS 45.09.104 exemption was not raised accordingly, and it remains at \$200. This may have been intentional, but I suspect that the AS 45.09.104 exemption was just overlooked. Therefore you may want to consider amending AS 45.09.104(13) to raise the amount to \$500.

If you decide to do so, please advise so that it can be prepared for introduction at the next legislative session.

TLB:lmb
96-125.lmb

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May 8, 1997

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*Admitted in Washington only

Honorable Norman Rokeberg, Chair
House Labor & Commerce Committee
Alaska State Legislature
Room 24, M/S 3100
Juneau, Alaska 99801-1182

Re: House Bill 178 (Uniform Commercial Code, art. 5 [letters of credit])

Dear Representative Rokeberg:

Thank you for introducing and considering this bill. Naturally, I was disappointed that you had to pull it from the committee hearing agenda on Monday, May 5th. We uniform law commissioners and many others had hoped that it would at least pass the House this year, but we do appreciate your work on it.

Thanks, also, for promising to move it "first thing next session." When you hold the hearing on it during the legislative interim, as you mentioned, don't forget to contact Attorney Jerry Kurtz, in Anchorage. As I have mentioned before, he is Alaska's uniform law commissioner most familiar with this area of the law.

You also mentioned hoping that some agreement could be reached regarding Representative Joe Ryan's proposed April 25, 1997 amendments to the bill. As indicated in ULC Legislative Director and Legal Counsel John McCabe's April 29, 1997 memorandum to me and Deborah Behr (copy furnished to your committee), those amendments are very troublesome. This is a very important area of the law, and it is essential that Alaska be part of the mainstream in order to assure that Alaska receives its share of the multibillion dollar letter-of-credit industry.

Thanks again, and we look forward to working with you to achieve enactment of this bill early next session.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

Honorable Norman Rokeberg, Chair
May 8, 1997
Page 2 of 2

cc: Willis F. Kirkpatrick, Director
Division of Banking, Securities & Corporations
Department of Commerce & Economic Development

Wes Coyner
Alaska Bankers Association

Rest of Alaska's Uniform Laws Delegation:

Jay A. Rabinowitz
W. Grant Callow II
L.S. (Jerry) Kurtz, Jr.
Tamara B. Cook
Deborah E. Behr

National Bank of Alaska



Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 276-1132

October 17, 1997

Representative Norman Rokeberg
Vice Chairman Labor & Commerce Committee
STATE OF ALASKA HOUSE OF REPRESENTATIVES
Anchorage Legislative Office
716 West Fourth Avenue, Suite 640
Anchorage, Alaska

Re: House Bill 178 An Act Relating to Letters of Credits and its Proposed Amendments under the Uniform Commercial Code

Dear Vice Chairman Rokeberg:

Please consider this letter support by National Bank of Alaska for House Bill 178 an Act to revise the Uniform Commercial Code relating to Letters of Credits. We believe that the current UCC's governing Letters of Credits has worked well for many years and that these changes will clarify and improve the existing law.

WE OPPOSE the Proposed Amendments to HB178 dated April 25, 1997 and May 02, 1997. HB178 revision to UCC does coincide with the UCP 500, International Chamber of Commerce Uniform Customs and Practice for Letters of Credit operations. However, the proposed amendments deviates from the Uniform Customs and Practice and would cause confusion.

We do not believe that the Proposed Amendments will improve Letter of Credit transactions for banks, but would rather cause more concern. One of our concerns is that not enough time is given to the Issuers to review documents; authenticating the issuance of Letters of Credits; Letters of Credits should only be assigned outside of the Letter of Credit transactions (for the sake of uniformity, we use "transferable" rather than other words such as "assignable"); if there are discrepancies, how is an impartial third party defined; and it is confusing that the proposed amendment mingles Letters of Credits with Pawnbroker Loans.

To conclude, we recommend that House Bill 178 as presented by the Uniform Commercial Code Commission be approved and the Proposed Amendments be rejected.

Should you have any questions or need further clarification, please contact Ms. Melody Little at (907) 265-2938, or myself at (907) 265-2788.

Sincerely,

Seung H. Choi
Vice President & Manager
International Banking Dept.

mll

ALASKA STATE LEGISLATURE

House of Representatives

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SESSION:
STATE CAPITOL, ROOM 24
JUNEAU, AK 99801-1182
PHONE: (907) 465-4954
FAX: (907) 465-2040

Labor and Commerce Committee

MEMORANDUM

TO: Senator Loren Leman, Chairman
Senate Labor & Commerce Committee

FROM: Representative Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: February 17, 1998

SUBJECT: Hearing Request for HB 178 – Uniform Commercial Code: Letters of Credit

*3/26/98 -
art Peterson
testified -
Jerry Weaver
testified*

Norm Rokeberg

I would like to request a Senate Labor & Commerce hearing for HB 178, Uniform Commercial Code: Letters of Credit. The bill was introduced by the committee at the request of Alaska's Model Law Commissioners.

This bill makes changes to our law incorporating revisions that the National Conference of Commissioners identified as necessary to avoid litigation. HB 178 proposes to revise and bring up-to-date our statutes to reflect the changes in technology, language and commercial practices that have occurred since the original Uniform Commercial Code was enacted years ago. The proposed changes have been adopted by 49 other states and the District of Columbia.

Mr. Art Peterson of Juneau and Mr. Jerry Weaver, President of the Alaska Bankers Association have made themselves available to testify on this bill. Mr. Weaver can be reached at the National Bank of Alaska in Anchorage at 265-2960 and Mr. Peterson at 586-4000.

HB 178 had three hearings in House Labor & Commerce Committee and received no testimony opposing the changes. The Alaska Bankers Association is on record as supporting this legislation.

Attached is the backup information that was provided to our committee.

Thank you for your consideration.

LAW OFFICES

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February 10, 1998

The Honorable Loren Leman, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
Room 113, State Capitol
Juneau, Alaska 99801-1182

Re: HB 178, Uniform Commercial Code, Revision of
Article 5 (Letters of Credit)

Dear Senator Leman:

I understand that HB 178 has been referred to your committee, and I urge you to schedule an early hearing on it.

This bill presents the revision of Article 5 of the Uniform Commercial Code (UCC) promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the same body that produced the entire UCC a few decades ago.

The basic purpose of this revision is to update the law governing the \$200 billion U.S. letter-of-credit industry. All 50 states and Puerto Rico, Guam, and the District of Columbia have adopted the UCC, including Article 5. It is now necessary for Article 5 to be revised, to recognize changes in technology and in commercial practices, so as to avoid litigation over the increasing number of issues that are no longer adequately dealt with in the decades-old current law. One of the main features of this revision is the simplification of Article 5. Another is its express recognition of the Uniform Customs and Practices for Documentary Credits, a body of material that is used in connection with most international letters of credit. The revised article continues to provide rules that can be waived or modified by agreement between the parties.

As the NCCUSL points out, since the 1950's, when this article was originally promulgated, "the practices and technologies employed with letters of credit have changed substantially, including the use of electronic and computer technology. Litigation has increased as the volume of credits and the uncertainties of the law have stimulated controversies."

Senator Loren Leman
February 10, 1998

Page 2

It is anticipated that all jurisdictions will soon enact this revision of Article 5. Alaska will be at a severe disadvantage if its law does not keep pace with this development.

I would be happy to provide any additional information that you may need. However, in Alaska's uniform laws delegation, Commissioner Jerry Kurtz is the one with the most expertise in this area. He can be reached in Anchorage at 276-6100.

Thank you for considering this bill. I strongly urge a "Do Pass" recommendation from your committee.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner for Alaska

cc: ✓ Representative Norman Rokeberg, Chair
House Labor & Commerce Committee

Rest of Alaska's ULC Delegation:

Deborah E. Behr
W. Grant Callow
Tamara Brandt Cook
L.S. (Jerry) Kurtz, Jr.
Jay A. Rabinowitz

AHP:ph

WHY STATES SHOULD ADOPT UCC ARTICLE 5 – LETTERS OF CREDIT

The revision to Article 5 of the Uniform Commercial Code – Letters of Credit – updates the law governing the \$200 billion U.S. letter of credit industry. Banks, and occasionally other persons, issue letters of credit to better assure payment to a third party by a customer up to a stated amount, for a stated period of time. Half of all exports outside the U.S. are financed by letters of credit.

Since the 1950s when this article was originally promulgated, the practices and technologies employed with letters of credit have changed substantially, including the use of electronic and computer technology. Litigation has increased as the volume of credits and the uncertainties of the law have stimulated controversies. Thus revision to UCC5 is both appropriate and timely.

There are a number of reasons why every state should adopt revised UCC Article 5:

- ▶ **LETTERS OF CREDIT ARE IMPORTANT** – Letters of credit are very important in international trade. It has become a common method of guaranteeing and obtaining payment. The use of letters of credit has increased in recent years as foreign trade has expanded and increased. The law which regulates letters of credit – UCC Article 5 – is obviously an important component to expansion of foreign trade.
- ▶ **UCC5 RECOGNIZES THE UCP 500** – UCC5 recognizes the Uniform Customs and Practices for Documentary Credits (UCP 500), which is used in most international letters of credit. The UCP 500 was promulgated by the International Chamber of Commerce and provides operational rules and standards that have international acceptance.
- ▶ **STANDARDS OF PRACTICE ARE RECOGNIZED** – Revised UCC5 specifically includes the most commonly used standards of practice. The revision coordinates with current standards of practice by including: deferred payment obligations, reasonable time to examine documents, preclusion, and the return of documents.

UCC ARTICLE 5 – LETTERS OF CREDIT

WHAT: Modernizes and clarifies our country's principal law dealing with letters of credit.

WHY: Our present law was drafted almost 40 years ago. It is outmoded and no longer reflects commercial practice.

New legal issues have developed which are resolved by the new law.

Revised Article 5 also conforms our law with international law and practice, which facilitates international trade.

Finally, the use of letters of credit has expanded enormously in the past decade or two. They are now used in many large domestic commercial transactions.

WHEN: Now.

Revised Article 5 has been approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

American Bar Association approval is anticipated in due course.

The final text of revised Article 5 is available now.

HOW: Introduction is anticipated this year or next year in about 20 states, including major money center states such as New York, California and Illinois.

States which do not adopt revised Article 5 will find themselves behind the rest of the country and the rest of the world.

WHO: Drafted with the active participation of advisors from national and international businesses, banks, bar associations and government agencies.

Professor James J. White, co-author of the White & Summers treatise on the Uniform Commercial Code, was the reporter.

CORRECTION

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- ▶ **STANDARDS OF PRACTICE ARE RECOGNIZED** – Revised UCC5 specifically includes the most commonly used standards of practice. The revision coordinates with current standards of practice by including: deferred payment obligations, reasonable time to examine documents, preclusion, and the return of documents.

- ▶ **UCC5 IS MODERNIZED** – Original UCC5 in many ways is out of touch with current practice and major gaps cause unnecessary litigation. The revised UCC5 authorizes the use of electronic technology; expressly permits deferred payment letters of credit and two-party letters of credit; provides rules for unstated expiration dates and "perpetual" letters of credit; and conforms to existing practice for assignment of proceeds.
- ▶ **UNIFORMITY** – It is important that U.S. law regarding letters of credit be in accord with international rules and practices, but since letters of credit are a major instrument in domestic transactions as well, both international and domestic trade requires uniformity of law. These rules should be consistent within the United States.
- ▶ **CONCLUSION** – The revised UCC Article 5 is a significant improvement over current provisions, and will lessen litigation, clarify matters which had been disputed, and encourage sound practices, promoting international trade. For all of these reasons, UCC5 should be adopted by all states as soon as possible.

UCC ARTICLE 5 – LETTERS OF CREDIT

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Professor James J. White, co-author of the White & Summers treatise on the Uniform Commercial Code, was the reporter.

National Conference of Commissioners on **U** Uniform State Laws

676 North St. Clair Street, Suite 1700
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C

**UNIFORM COMMERCIAL CODE
REVISED ARTICLE 5. LETTERS OF CREDIT**

- A SUMMARY -

A "letter of credit" is an instrument that participates in the payment system along with drafts, checks, electronic fund transfers, and money. But it expresses a unique creditor-debtor relationship that distinguishes it from the other methods of payment that are codified under the Uniform Commercial Code, and has distinct uses in the extension of credit not shared with other kinds of payment. It is specifically defined in Revised Article 5 as an undertaking by an "issuer" of the credit to a "beneficiary," the individual who gets paid, on behalf of an "applicant," the individual to whom credit is extended by the "issuer." As defined, payment requires the presentation of a document, usually a draft on behalf of the beneficiary to the issuer.

Commonly, the issuer is (but not necessarily) a bank or similar financial institution. Commonly, the applicant is a customer of that bank, and the beneficiary is somebody with whom the applicant is doing business and who wants assurance that he or she will be paid.

A typical example of a letter of credit involves an American company intending to buy goods from a European manufacturer. The European manufacturer is willing to do business providing that it has assurances of payment for the goods that are to be purchased. The American company applies to its bank, with which it has accounts and lines of credit, for a letter of credit. The bank issues a document that is in actual letter form. In that letter it guarantees to the manufacturer that it will pay money up to a certain amount, upon receipt of an appropriate document, usually a draft, on behalf of the manufacturer. The letter contains any other documentary conditions agreed upon.

The applicant then takes the letter to the manufacturer while negotiating the purchase of the goods. The letter provides guarantee of payment, facilitating the transaction. At the appropriate time in the transaction, the manufacturer is paid upon presentation of the draft to the bank. Then the bank debits the appropriate account of the American company or establishes whatever creditor-debtor relationship is contemplated between it and the American company. Ultimately the bank is paid.

But Revised Article 5 leaves larger room for the evolution of business practices. Revised Article 5 does not change this basic orientation of the original drafters, except it considerably simplifies the rules.

For example, original Article 5 has rules for "notation credits" which are defined as credits that are payable only upon a notation of the amount of the payment on the actual letter. Honor of the draft or demand for payment requires the notation. This concept is not continued in Revised Article 5. It is one of those formal requirements with legal effect that results in dishonor of otherwise perfectly presented drafts or documents, impeding legitimate transactions.

Original Article 5 permits beneficiaries to use portions of a credit unless otherwise specified. Revised Article 5 simply leaves the issue to existing standards of practice. This is another example of simplification in the Revised Article 5

The primary reason for such simplifications is the specific inclusion of standards of practice in Revised Article 5. It provides that "An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of that standard practice is a matter of interpretation for the court." The original Article 5 assumes that standards of practice are assumable as a matter of contract between the parties to a letter of credit. In Revised Article 5, the standards apply unless the contract otherwise specifies.

Standards of practice for letters of credit are very well formalized. First and foremost are the Uniform Customs and Practices for Documentary Credits (UCP), I.C.C. Publication No. 500, which are promulgated by the International Chamber of Commerce. The UCP is updated on a decadal basis, and is much relied upon in international trade as a common language of letter of credit transactions. The simplification in revised Article 5 suggests a clear recognition of the UCP as the source for many of the formal requirements and details of letters of credit. This permits business practices to govern the evolution of letters of credit within the aforementioned basic framework that Article 5 intends to provide.

Since almost the entirety of Article 5 in revised or original form is variable by agreement, specific provisions of the UCP may also become part of the agreement between the parties, or its provisions may be waived by agreement as well. Between the expanded reliance upon existing standards of business practices as a default rule in Revised Article 5 and the ordinary ability to vary the default rules in Revised Article 5, people and institutions are given maximum flexibility in the tailoring of their relationships under letters of credit.

The standard of practice provision in Revised Article 5 is undoubtedly the most significant part of these revisions. There are some other significant changes, however.

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**UNIFORM COMMERCIAL CODE
REVISED ARTICLE 5. LETTERS OF CREDIT**

- A S U M M A R Y -

A "letter of credit" is an instrument that participates in the payment system along with drafts, checks, electronic fund transfers, and money. But it expresses a unique creditor-debtor relationship that distinguishes it from the other methods of payment that are codified under the Uniform Commercial Code, and has distinct uses in the extension of credit not shared with other kinds of payment. It is specifically defined in Revised Article 5 as an undertaking by an "issuer" of the credit to a "beneficiary," the individual who gets paid, on behalf of an "applicant," the individual to whom credit is extended by the "issuer." As defined, payment requires the presentation of a document, usually a draft on behalf of the beneficiary to the issuer.

Commonly, the issuer is (but not necessarily) a bank or similar financial institution. Commonly, the applicant is a customer of that bank, and the beneficiary is somebody with whom the applicant is doing business and who wants assurance that he or she will be paid.

A typical example of a letter of credit involves an American company intending to buy goods from a European manufacturer. The European manufacturer is willing to do business providing that it has assurances of payment for the goods that are to be purchased. The American company applies to its bank, with which it has accounts and lines of credit, for a letter of credit. The bank issues a document that is in actual letter form. In that letter it guarantees to the manufacturer that it will pay money up to a certain amount, upon receipt of an appropriate document, usually a draft, on behalf of the manufacturer. The letter contains any other documentary conditions agreed upon.

The applicant then takes the letter to the manufacturer while negotiating the purchase of the goods. The letter provides guarantee of payment, facilitating the transaction. At the appropriate time in the transaction, the manufacturer is paid upon presentation of the draft to the bank. Then the bank debits the appropriate account of the American company or establishes whatever creditor-debtor relationship is contemplated between it and the American company. Ultimately the bank is paid.

It is possible that there will be other parties to the transaction recognized by law. There may be a "confirmer" on the letter. The confirmer may be another institution or individual obligated to pay on the letter when the appropriate document is presented by the beneficiary. In the example, to facilitate payment, the American bank engages a European bank as a confirmer so the foreign manufacturer will actually present the required draft for payment to the foreign bank. A confirmer is always liable on a letter of credit.

There may also be an "advisor" on a letter of credit. The advisor is a third party who facilitates the transaction by advising the beneficiary either directly or through another advisor that the letter of credit has been issued, confirmed, or amended. Institutions or individuals acting as advisors give beneficiaries an added assurance that a letter of credit is valid. In the example, the American bank can employ the services of another foreign bank to notify the foreign manufacturer that the letter of credit has been issued in the name of the manufacturer. An advisor does not have direct liability on the letter of credit.

The letter of credit is of particular importance in international trade. With different payment systems in different countries, different laws governing fundamental transactions, business deals that must be transacted between strangers who are domiciled in different countries and who speak different languages, the letter of credit has become a common and accepted method of guaranteeing and obtaining payment. The foreign company has the comfort of the credit of the large, well-known financial institution when doing business with the domestic company.

The expansion of foreign trade is partly responsible for the large increase in the use of letters of credit in the United States. But there are other factors that have increased the use. Letters of credit generally are either ordinary commercial credits or standby letters of credit. The transaction used to illustrate typical use above involves an ordinary commercial credit. Standby letters of credit are used to back-up other primary creditor-debtor relationships, and in that sense are widely used in financing real estate development. What kind of large increase in use has occurred in the United States? In 1950 there were an estimated one-half billion dollars in outstanding credits. In 1989, the figure was \$200 billion. Thus the need to revise Uniform Commercial Code Article 5 - Letters of Credit. That job is now complete.

The basic scheme of Article 5 does not change in the revision. The drafters' original intent was to provide a theoretical framework which would accommodate business practices however they would evolve. Original Article 5 defines the letter of credit and key terms, sets rules for establishing a letter of credit, provides some very basic rules prescribing the obligations of parties to a letter, including the obligations of confirmers and advisors, and establishes basic remedies for breach of these obligations. Revised Article 5 continues these objectives.

But Revised Article 5 leaves larger room for the evolution of business practices. Revised Article 5 does not change this basic orientation of the original drafters, except it considerably simplifies the rules.

For example, original Article 5 has rules for "notation credits" which are defined as credits that are payable only upon a notation of the amount of the payment on the actual letter. Honor of the draft or demand for payment requires the notation. This concept is not continued in Revised Article 5. It is one of those formal requirements with legal effect that results in dishonor of otherwise perfectly presented drafts or documents, impeding legitimate transactions.

Original Article 5 permits beneficiaries to use portions of a credit unless otherwise specified. Revised Article 5 simply leaves the issue to existing standards of practice. This is another example of simplification in the Revised Article 5

The primary reason for such simplifications is the specific inclusion of standards of practice in Revised Article 5. It provides that "An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of that standard practice is a matter of interpretation for the court." The original Article 5 assumes that standards of practice are assumable as a matter of contract between the parties to a letter of credit. In Revised Article 5, the standards apply unless the contract otherwise specifies.

Standards of practice for letters of credit are very well formalized. First and foremost are the Uniform Customs and Practices for Documentary Credits (UCP), I.C.C. Publication No. 500, which are promulgated by the International Chamber of Commerce. The UCP is updated on a decadal basis, and is much relied upon in international trade as a common language of letter of credit transactions. The simplification in revised Article 5 suggests a clear recognition of the UCP as the source for many of the formal requirements and details of letters of credit. This permits business practices to govern the evolution of letters of credit within the aforementioned basic framework that Article 5 intends to provide.

Since almost the entirety of Article 5 in revised or original form is variable by agreement, specific provisions of the UCP may also become part of the agreement between the parties, or its provisions may be waived by agreement as well. Between the expanded reliance upon existing standards of business practices as a default rule in Revised Article 5 and the ordinary ability to vary the default rules in Revised Article 5, people and institutions are given maximum flexibility in the tailoring of their relationships under letters of credit.

The standard of practice provision in Revised Article 5 is undoubtedly the most significant part of these revisions. There are some other significant changes, however.

One of the stated purposes for these revisions is to update Article 5 for the age of electronic communications. (This is an important objective with almost all the revisions and amendments to the Uniform Commercial Code in the decades of the 1980s and 1990s.) Original Article 5's statute of fraud requirements - calling for writings for enforcement - are abolished. Under Revised Article 5, "A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice . . ."

The way to interpret this language is, simply, to say that a written document is no longer absolutely necessary to establish the existence of a valid letter of credit or of any other associated obligation. All that is required is an authenticated "record." A properly preserved computer record will suffice.

Another of the important changes concerns fraud and forgery in presentation for payment. As noted above, a letter of credit requires the presentation of a document, commonly a draft, for payment. What if the draft is fraudulent in some aspect or is forged? What is the issuer required to do? In certain instances under original Article 5, the issuer is required to honor such a draft, and in other cases may honor the draft. The issuer is not required under original Article 5 to police the process by which payment is obtained. However, in those situations in which the issuer has the discretion to honor the draft, the customer may petition the appropriate court to enjoin honoring the draft.

Original Article 5 uses the terminology of fraud in the transaction, and provides no guidelines with respect to which a court may consider the level of fraud that triggers the issuance of an injunction. In Revised Article 5, the terminology of fraud in the transaction is eliminated. A fraud that affects an injunction must be a "material" fraud. Further, Revised Article 5 establishes standards that the court must apply in determining whether to enjoin the issuer from honoring the draft. Included are factors of prohibition of injunction by other law, adverse effect upon the beneficiary, and availability of a remedy for fraud or forgery against the responsible individual or institution.

The remedies against an issuer for wrongful repudiation or dishonor of a letter of credit become more consistent under Revised Article 5 for letter of credit transactions. An issuer is bound to honor a proper documentary presentation. Repudiation occurs when the issuer communicates that a presentation will not be honored. A dishonor occurs when the issuer does not pay when the appropriate document is presented. Like any other legal obligation, the issuer is liable for wrongful repudiation or dishonor.

In original Article 5, the injured party can obtain the amount of the dishonored document plus incidental damages less the amount realized on the underlying transaction. If goods or documents of value as a result of the transaction are not sold to cover the losses, the issuer is entitled to them upon payment of judgment.

In Revised Article 5, the beneficiary or appropriate nominee is entitled to "the amount that is the subject of the dishonor or repudiation." If the obligation is not for payment of money, the injured party may have specific performance in lieu of damages, at the option of the injured person. Incidental damages are allowed, but not consequential damages. There is no obligation to cover the losses. If there is cover, the savings must be deducted from the recovered damages.

The applicant has a remedy for damages "resulting from breach," including incidental but not consequential damages. A breach by a confirmer or advisor gives rise to actual damages plus incidentals. Interest is due for any damages from the date of breach or dishonor. The prevailing party has a right to attorney's fees. There is a specific authority for prior agreement to liquidate damages. These provisions vastly improve and make more specific, the remedies available under Article 5.

A subject not specifically addressed in original Article 5 is the subject of subrogation of one party to another party to a letter of credit, upon payment of the other party's obligations. Subrogation rights are available by contract under original Article 5. The courts have not agreed upon their availability, otherwise, giving rise to confusion in the law.

Revised Article 5 provides specific rules. For example, if the issuer pays the beneficiary, the issuer is subrogated to the rights of the beneficiary and the applicant to the same extent as if the issuer were a secondary obligor of the underlying obligation. Subrogation rights do not arise until there has been an actual payment to the party whose rights are subrogated.

Subrogation puts the person with the subrogation right in the shoes of the person who benefitted by the payment that triggers the subrogation right. Subrogation rights balance equities between parties in complex transactions like letters of credit. Revised Article 5 solves the judicial quandary under original Article 5 as to whether automatic rights of subrogation exist.

It is not possible to list entirely in a short summary all of the problems under original Article 5 that are solved in Revised Article 5. For example, it was not clear under original Article 5 whether a letter of credit had to be a documentary letter of credit. It is not entirely clear under original Article 5 that a letter of credit is different from a guarantee. Revised Article 5 erases these ambiguities.

Letters of credit are an important part of the credit granting and payment system, and the commercial law. Revised Article 5 should carry letters of credit into the 21st Century with the clarity and flexibility necessary for successful governance of letter of credit transactions. All states should act to adopt these important revisions as soon as possible.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership comprises 300 practicing lawyers, judges, and law professors who are appointed by each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands to draft uniform and model state laws and work toward their enactment.

A Few Facts About
UCC ARTICLE 5 – LETTERS OF CREDIT

PURPOSE: Letters of Credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits can govern many of the particulars of letters of credit. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the document plus incidental damages. Consequential damages are not permitted. Cover is not required to obtain damages. There are clear subrogation rights for any party who pays on a letter on behalf of another. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1995.

**STATE
ADOPTIONS:**

1996		
INTRODUCTIONS:	Indiana	Nebraska
	Massachusetts	West Virginia
	Missouri	

For any further information about UCC Article 5, Letters of Credit, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/96)

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MAR 13 1997

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MEMORANDUM

March 13, 1997

SUBJECT: Sectional summary of HB 178 relating to letters of credit (Work Order 20-LS0644\A)

TO: Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
Attn: Shirley Armstrong

FROM: *TB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The introductory remarks and the other descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

Basic description: definitions used in summary. In general, a letter of credit is an agreement by a bank or other person made at the request of a customer that the bank or other person will honor demands for payment (or a demand for delivery of an item of value) when the conditions in the letter of credit are met. As an example, a letter of credit may be used when a bank customer wants to buy some merchandise, but the manufacturer won't ship without assurance of payment. The bank issues a letter of credit and is the "issuer." The customer requesting the letter of credit is the "applicant." The manufacturer (or other person who will be paid) is the "beneficiary."

To obtain the payment or delivery, the beneficiary must present the required documents. This is referred to as a "presentation" of the documents or "presenting" the documents. When the bank pays or delivers the item to the manufacturer, the bank "honors" the letter of credit. If the bank doesn't pay or deliver upon presentation of the documents, the bank "dishonors" the letter of credit.

If the bank authorizes another person to make the payment or deliver under a letter of credit, that person is a "nominated person." If the nominated person also undertakes to honor a letter of credit, that person is a "confirmer."