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Chapter No.

34

AN ACT

Relating to funds transfers under the Uniform Commercial Code; changing Alaska Rule of Civil Procedure 82; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 27, 1993

Actual Effective Date: January 1, 1994

AN ACT

1 Relating to funds transfers under the Uniform Commercial Code; changing Alaska Rule of
2 Civil Procedure 82; and providing for an effective date.

3

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

5 Sec. 45.01.101. SHORT TITLE. AS 45.01 - AS 45.09 and AS 45.14
6 [AS 45.01.101 - AS 45.09.507 SHALL BE KNOWN AND] may be cited as the
7 Uniform Commercial Code.

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

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

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

13 (1) to simplify, clarify, and modernize the law governing commercial
14 transactions; (2) to permit the continued expansion of commercial

Chapter 34

practices through custom, usage, and agreement of the parties;

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

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

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

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

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

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

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

Sec. 45.01.103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of the code [AS 45.01 - AS 45.09], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the provisions of the code [AS 45.01 - AS 45.09].

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

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

Chapter 34

(b) Where one of the following provisions of the code [AS 45.01 - AS 45.09] specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

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

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

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

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

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

(6) AS 45.14, the chapter on funds transfers.

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

Sec. 45.01.106. REMEDIES TO BE LIBERALLY ADMINISTERED. (a)

The remedies provided by the code [AS 45.01 - AS 45.09] shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special nor penal damages may be had except as specifically provided in the code [AS 45.01 - AS 45.09] or by other rule of law.

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

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

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

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

Chapter 34

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

4 * Sec. 8. AS 45.01.201 is amended to read:

5 Sec. 45.01.201. GENERAL DEFINITIONS. Subject to additional definitions
6 contained in the subsequent chapters [ARTICLES] of the code [AS 45.01 - AS 45.09]
7 that are applicable to specific chapters [ARTICLES] or sections, and unless the
8 context otherwise requires, in the code [AS 45.01 - AS 45.09],

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

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

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

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

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

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

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

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

1 (9) "buyer in ordinary course of business" means a person who, in good
2 faith and without knowledge that the sale to that person is in violation of the
3 ownership rights or security interest of a third party in the goods, buys in ordinary
4 course from a person in the business of selling goods of that kind but does not include
5 a pawnbroker; all persons who sell minerals or the like₂ [(I) including oil and gas₂ (I)]
6 at wellhead or minehead are considered to be persons in the business of selling goods
7 of that kind; "buying" may be for cash or by exchange of other property or on secured
8 or unsecured credit and includes receiving goods or documents of title under a
9 pre-existing contract for sale but does not include a transfer in bulk or as security for
10 or in total or partial satisfaction of a money debt;

11 (10) "code" means AS 45.01 - AS 45.09 and AS 45.14 (the Uniform
12 Commercial Code);

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

19 (12) [(11)] "contract" means the total legal obligation that results from
20 the parties' agreement as affected by the code [AS 45.01 - AS 45.09] and any other
21 applicable rules of law (compare "agreement" [COMPARE "AGREEMENT"]);

22 (13) [(12)] "creditor" includes a general creditor, a secured creditor, a
23 lien creditor, and any representative of creditors, including an assignee for the benefit
24 of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or
25 administrator of an insolvent debtor's or assignor's estate;

26 (14) [(13)] "defendant" includes a person in the position of defendant
27 in a cross action or counterclaim;

28 (15) [(14)] "delivery" with respect to instruments, documents of title,
29 chattel paper, or certificated securities means voluntary transfer of possession;

30 (16) [(15)] "document of title" includes bill of lading, dock warrant,
31 dock receipt, warehouse receipt or order for the delivery of goods, and also any other

Chapter 34

1 document which in the regular course of business or financing is treated as adequately
2 evidencing that the person in possession of it is entitled to receive, hold, and dispose
3 of the document and the goods it covers; to be a document of title a document must
4 purport to be issued by or addressed to a bailee and purport to cover goods in the
5 bailee's possession which are either identified or are fungible portions of an identified
6 mass;

7 (17) [(16)] "fault" means wrongful act, omission, or breach;

8 (18) [(17)] "fungible" with respect to goods or securities means goods
9 or securities of which any unit is, by nature or usage of trade, the equivalent of any
10 other like unit; goods that are not fungible shall be deemed fungible for the purposes
11 of the code [AS 45.01 - AS 45.09] to the extent that under a particular agreement or
12 document unlike units are treated as equivalents;

13 (19) [(18)] "genuine" means free of forgery or counterfeiting;

14 (20) [(19)] "good faith" means honesty in fact in the conduct or
15 transaction concerned;

16 (21) [(20)] "holder" means a person who is in possession of a document
17 of title or an instrument or a certificated investment security drawn, issued, or endorsed
18 to the person or to the order of the person or to bearer or in blank;

19 (22) [(21)] to "honor" is to pay or to accept and pay or, where a credit
20 so engages, to purchase or discount a draft complying with the terms of the credit;

21 (23) [(22)] "insolvency proceedings" includes any assignment for the
22 benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate
23 of the person involved;

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

27 (25) [(24)] "money" means a medium of exchange authorized or
28 adopted by a domestic or foreign government as a part of its currency;

29 (26) [(25)] a person has "notice" of a fact when (A) the person has
30 actual knowledge of it; (B) the person has received a notice or notification of it; or (C)
31 from all the facts and circumstances known to the person at the time in question the

Chapter 34

1 person has reason to know that it exists; a person "knows" or has "knowledge" of a
2 fact when the person has actual knowledge of it; "discover" or "learn" or a word or
3 phrase of similar import refers to knowledge rather than to reason to know; the time
4 and circumstances under which a notice or notification may cease to be effective are
5 not determined by the code [AS 45.01 - AS 45.09];

6 (27) [(26)] a person "notifies" or "gives" a notice or notification to
7 another by taking such steps as may be reasonably required to inform the other in
8 ordinary course whether or not such other actually comes to know of it; a person
9 "receives" a notice or notification when

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

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

14 (28) [(27)] notice, knowledge, or a notice or notification received by
15 an organization is effective for a particular transaction from the time when it is brought
16 to the attention of the individual conducting that transaction, and in any event from the
17 time when it would have been brought to that person's attention if the organization had
18 exercised due diligence;

19 (29) [(28)] "organization" includes a corporation, government or
20 governmental subdivision or agency, business trust, estate, trust, partnership or
21 association, two or more persons having a joint or common interest, or any other legal
22 or commercial entity;

23 (30) [(29)] "party," as distinct from "third party," means a person who
24 has engaged in a transaction or made an agreement within this chapter;

25 (31) [(30)] "person" includes an individual or an organization (See
26 AS 45.01.102);

27 (32) [(31)] "presumption" or "presumed" means that the trier of fact
28 must find the existence of the fact presumed unless evidence is introduced which
29 would support a finding of its nonexistence;

30 (33) [(32)] "purchase" includes taking by sale, discount, negotiation,
31 mortgage, pledge, lien, issue or re-issue, gift, or any other voluntary transaction

Chapter 34

1 creating an interest in property;

2 (34) [(33)] "purchaser" means a person who takes by purchase;

3 (35) [(34)] "remedy" means any remedial right to which an aggrieved
4 party is entitled with or without resort to a tribunal;

5 (36) [(35)] "representative" includes an agent, an officer of a
6 corporation or association, and a trustee, executor, or administrator of an estate, or any
7 other person empowered to act for another;

8 (37) [(36)] "rights" includes remedies;

9 (38) [(37)] "security interest" means an interest in personal property or
10 fixtures that [WHICH] secures payment or performance of an obligation; the retention
11 or reservation of title by a seller of goods notwithstanding shipment or delivery to the
12 buyer (AS 45.02.401) is limited in effect to a reservation of a "security interest"; the
13 term also includes an interest of a buyer of accounts or chattel paper that [WHICH]
14 is subject to AS 45.09; the special property interest of a buyer of goods on
15 identification of the goods to a contract for sale under AS 45.02.401 is not a "security
16 interest," but a buyer may also acquire a "security interest" by complying with
17 AS 45.09; unless a lease or consignment is intended as security, reservation of title
18 under the lease or consignment is not a "security interest," but a consignment is in any
19 event subject to the provisions on consignment sales (AS 45.02.326); whether a lease
20 is intended as security is to be determined by the facts of each case; however,

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

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

27 (39) [(38)] "send" in connection with writing or notice means to deposit
28 in the mail, or deliver for transmission by another usual means of communication, with
29 postage or cost of transmission provided for and properly addressed and, in the case
30 of an instrument, to an address specified on it or otherwise agreed, or if there is none
31 to an address reasonable under the circumstances; the receipt of a writing or notice

1 within the time at which it would have arrived if properly sent has the effect of a
2 proper sending;

3 (40) [(39)] "signed" includes a symbol executed or adopted by a party
4 with present intention to authenticate a writing;

5 (41) [(40)] "surety" includes guarantor;

6 (42) [(41)] "telegram" includes a message transmitted by radio, teletype,
7 cable, a mechanical method of transmission, or the like;

8 (43) [(42)] "term" means that portion of an agreement which relates to
9 a particular matter;

10 (44) [(43)] "unauthorized" signature or endorsement means one made
11 without actual, implied, or apparent authority, and includes a forgery;

12 (45) [(44)] "value": except as otherwise provided with respect to
13 negotiable instruments and bank collections (AS 45.03.303, AS 45.04.208, and
14 AS 45.04.209), a person gives "value" for rights if the person acquires them

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

19 (B) as security for or in total or partial satisfaction of a
20 pre-existing claim;

21 (C) by accepting delivery under a pre-existing contract for
22 purchase; or

23 (D) generally, in return for a consideration sufficient to support
24 a simple contract;

25 (46) [(45)] "warehouse receipt" means a receipt issued by a person
26 engaged in the business of storing goods for hire;

27 (47) [(46)] "written" or "writing" includes printing, typewriting, or any
28 other intentional reduction to tangible form.

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

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

Chapter 34

1 by agreement.

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

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

6 * Sec. 11. AS 45.09.408 is amended to read:

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

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

17 CHAPTER 14. FUNDS TRANSFERS.

18 ARTICLE 1. SUBJECT MATTER AND DEFINITIONS.

19 Sec. 45.14.101. SHORT TITLE. This chapter may be cited as Uniform
20 Commercial Code - Funds Transfers.

21 Sec. 45.14.102. SUBJECT MATTER. Except as otherwise provided in
22 AS 45.14.108, this chapter applies to funds transfers defined in AS 45.14.104.

23 Sec. 45.14.103. PAYMENT ORDER; DEFINITIONS. (a) In this chapter,

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

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

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

31 (C) the instruction is transmitted by the sender directly to the

1 receiving bank or to an agent, funds-transfer system, or communication system
2 for transmittal to the receiving bank;

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

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

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

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

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

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

16 Sec. 45.14.104. FUNDS TRANSFER; DEFINITIONS. In this chapter,

17 (1) "funds transfer" means the series of transactions, beginning with the
18 originator's payment order, made for the purpose of making payment to the beneficiary
19 of the order; the term includes any payment order issued by the originator's bank or
20 an intermediary bank intended to carry out the originator's payment order; a funds
21 transfer is completed by acceptance by the beneficiary's bank of a payment order for
22 the benefit of the beneficiary of the originator's payment order;

23 (2) "intermediary bank" means a receiving bank other than the
24 originator's bank or the beneficiary's bank;

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

27 (4) "originator's bank" means

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

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

31 Sec. 45.14.105. OTHER DEFINITIONS. (a) In this chapter,

Chapter 34

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

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

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

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

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

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

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

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

24 (1) "acceptance" in AS 45.14.209;

25 (2) "executed" in AS 45.14.301;

26 (3) "execution date" in AS 45.14.301;

27 (4) "funds-transfer system rule" in AS 45.14.501;

28 (5) "payment by beneficiary's bank to beneficiary" in AS 45.14.405;

29 (6) "payment by originator to beneficiary" in AS 45.14.406;

30 (7) "payment by sender to receiving bank" in AS 45.14.403;

31 (8) "payment date" in AS 45.14.401;

1 (9) "security procedure" in AS 45.14.201.

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

3 (1) "clearinghouse";

4 (2) "item";

5 (3) "suspends payments".

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

8 Sec. 45.14.106. TIME PAYMENT ORDER IS RECEIVED. (a) The time of
9 receipt of a payment order or communication canceling or amending a payment order
10 is determined by the rules applicable to receipt of a notice stated in AS 45.01.201(27).
11 A receiving bank may fix a cut-off time or times on a funds-transfer business day for
12 the receipt and processing of payment orders and communications canceling or
13 amending payment orders. Different cut-off times may apply to payment orders,
14 cancellations, or amendments, or to different categories of payment orders,
15 cancellations, or amendments. A cut-off time may apply to senders generally or
16 different cut-off times may apply to different senders or categories of payment orders.
17 If a payment order or communication canceling or amending a payment order is
18 received after the close of a funds-transfer business day or after the appropriate cut-off
19 time on a funds-transfer business day, the receiving bank may treat the payment order
20 or communication as received at the opening of the next funds-transfer business day.

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

25 Sec. 45.14.107. FEDERAL RESERVE REGULATIONS AND OPERATING
26 CIRCULARS. Regulations of the Board of Governors of the Federal Reserve System
27 and operating circulars of the federal reserve banks supersede an inconsistent provision
28 of this chapter to the extent of the inconsistency.

29 Sec. 45.14.108. EXCLUSION OF CONSUMER TRANSACTIONS
30 GOVERNED BY FEDERAL LAW. This chapter does not apply to a funds transfer
31 if a part of the funds transfer is governed by 15 U.S.C. 1693 - 1693r (Electronic Fund

Chapter 34

1 Transfer Act of 1978) as amended.

2 **ARTICLE 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER.**

3 Sec. 45.14.201. SECURITY PROCEDURE. (a) In this chapter, "security
4 procedure" means a procedure established by agreement of a customer and a receiving
5 bank for the purpose of

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

8 (2) detecting error in the transmission or the content of the payment
9 order or communication.

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

14 Sec. 45.14.202. AUTHORIZED AND VERIFIED PAYMENT ORDERS. (a)
15 A payment order received by the receiving bank is the authorized order of the person
16 identified as sender if that person authorized the order or is otherwise bound by it
17 under the law of agency.

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

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

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

31 (c) Commercial reasonableness of a security procedure is a question of law to

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

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

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

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

15 (e) Except as provided in this section and in AS 45.14.203(a)(1), rights and
16 obligations arising under this section or AS 45.14.203 may not be varied by agreement.

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

20 Sec. 45.14.203. UNENFORCEABILITY OF CERTAIN VERIFIED
21 PAYMENT ORDERS. (a) If an accepted payment order is not, under
22 AS 45.14.202(a), an authorized order of a customer identified as sender, but is
23 effective as an order of the customer under AS 45.14.202(b), the following rules apply:

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

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

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

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

Chapter 34

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

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

8 Sec. 45.14.204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO
9 REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER. (a) If a
10 receiving bank accepts a payment order issued in the name of its customer as sender
11 and if the payment order is not authorized and not effective as the order of the
12 customer under AS 45.14.202, or not enforceable in whole or in part against the
13 customer under AS 45.14.203, the bank shall refund payment of the payment order
14 received from the customer to the extent that the bank is not entitled to enforce
15 payment and shall pay interest on the refundable amount calculated from the date the
16 bank received payment to the date of the refund. However, the customer is not
17 entitled to interest from the bank on the amount to be refunded if the customer fails
18 to exercise ordinary care to determine that the order was not authorized by the
19 customer and to notify the bank of the relevant facts within a reasonable time not
20 exceeding 90 days after the date the customer received notification from the bank that
21 the order was accepted or that the customer's account was debited with respect to the
22 order. The bank is not entitled to recovery from the customer on account of a failure
23 by the customer to give notification as stated in this section.

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

27 Sec. 45.14.205. ERRONEOUS PAYMENT ORDERS. (a) If an accepted
28 payment order was transmitted under a security procedure for the detection of error
29 and the payment order was an erroneous payment order, the following rules apply:

30 (1) if the sender proves that the sender or a person acting on behalf of
31 the sender under AS 45.14.206 complied with the security procedure and that the error

1 would have been detected if the receiving bank had also complied, the sender is not
2 obliged to pay the order to the extent stated in (2) and (3) of this subsection;

3 (2) if the funds transfer is completed on the basis of an erroneous
4 payment order described in (d)(1) or (3) of this section, the sender is not obliged to
5 pay the order and the receiving bank is entitled to recover from the beneficiary any
6 amount paid to the beneficiary to the extent allowed by the law governing mistake and
7 restitution;

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

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

24 (c) This section applies to amendments to payment orders to the same extent
25 it applies to payment orders.

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

27 (1) erroneously instructed payment to a beneficiary not intended by the
28 sender;

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

31 (3) was an erroneously transmitted duplicate of a payment order

Chapter 34

1 previously sent by the sender.

2 Sec. 45.14.206. TRANSMISSION OF PAYMENT ORDER THROUGH
3 FUNDS-TRANSFER OR OTHER COMMUNICATION SYSTEM. (a) If a payment
4 order addressed to a receiving bank is transmitted to a funds-transfer system or other
5 third-party communication system for transmittal to the bank, the system is considered
6 to be an agent of the sender for the purpose of transmitting the payment order to the
7 bank. If there is a discrepancy between the terms of the payment order transmitted to
8 the system and the terms of the payment order transmitted by the system to the bank,
9 the terms of the payment order of the sender are those transmitted by the system. This
10 section does not apply to a funds-transfer system of the federal reserve banks.

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

13 Sec. 45.14.207. MISDESCRIPTION OF BENEFICIARY. (a) Subject to (b)
14 of this section, if, in a payment order received by the beneficiary's bank, the name,
15 bank account number, or other identification of the beneficiary refers to a nonexistent
16 or unidentifiable person or account, no person has rights as a beneficiary of the order,
17 and acceptance of the order cannot occur.

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

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

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

31 (c) If a payment order described in (b) of this section is accepted, if the

1 originator's payment order described the beneficiary inconsistently by name and
2 number, and if the beneficiary's bank pays the person identified by number as
3 permitted by (b)(1) of this section, the following rules apply:

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

5 (2) if the originator is not a bank and proves that the person identified
6 by number was not entitled to receive payment from the originator, the originator is
7 not obliged to pay its order unless the originator's bank proves that the originator,
8 before acceptance of the originator's order, had notice that payment of a payment order
9 issued by the originator might be made by the beneficiary's bank on the basis of an
10 identifying or bank account number even if it identifies a person different from the
11 named beneficiary; proof of notice may be made by any admissible evidence; the
12 originator's bank satisfies the burden of proof if it proves that the originator, before
13 the payment order was accepted, signed a writing stating the information to which the
14 notice relates.

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

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

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

23 Sec. 45.14.208. MISDESCRIPTION OF INTERMEDIARY BANK OR
24 BENEFICIARY'S BANK. (a) The following rules in this subsection apply to a
25 payment order identifying an intermediary bank or the beneficiary's bank only by an
26 identifying number:

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

30 (2) the sender is obliged to compensate the receiving bank for any loss
31 and expenses incurred by the receiving bank as a result of its reliance on the number

Chapter 34

1 in executing or attempting to execute the order.

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

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

13 (2) if the sender is not a bank and the receiving bank proves that the
14 sender, before the payment order was accepted, had notice that the receiving bank
15 might rely on the number as the proper identification of the intermediary or
16 beneficiary's bank even if it identifies a person different from the bank identified by
17 name, the rights and obligations of the sender and the receiving bank are governed by
18 (b)(1) of this section, as though the sender were a bank; proof of notice may be made
19 by any admissible evidence; the receiving bank satisfies the burden of proof if it
20 proves that the sender, before the payment order was accepted, signed a writing stating
21 the information to which the notice relates;

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

27 (4) if the receiving bank knows that the name and number identify
28 different persons, reliance on either the name or the number in executing the sender's
29 payment order is a breach of the obligation stated in AS 45.14.302(a)(1).

30 Sec. 45.14.209. ACCEPTANCE OF PAYMENT ORDER. (a) Subject to (d)
31 of this section, a receiving bank other than the beneficiary's bank accepts a payment

1 order when it executes the order.

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

4 (1) when the bank

5 (A) pays the beneficiary as stated in AS 45.14.405(a) or (b); or

6 (B) notifies the beneficiary of receipt of the order or that the
7 account of the beneficiary has been credited with respect to the order unless the
8 notice indicates that the bank is rejecting the order or that funds with respect
9 to the order may not be withdrawn or used until receipt of payment from the
10 sender of the order;

11 (2) when the bank receives payment of the entire amount of the
12 sender's order under AS 45.14.403(a)(1) or (2); or

13 (3) the opening of the next funds-transfer business day of the bank
14 following the payment date of the order if, at the opening of the next funds-transfer
15 business day, the amount of the sender's order is fully covered by a withdrawable
16 credit balance in an authorized account of the sender, or the bank has otherwise
17 received full payment from the sender, unless the order was rejected before the
18 opening of the next funds-transfer business day, is rejected within one hour after the
19 opening of the next funds-transfer business day, or, if later, is rejected one hour after
20 the opening of the next business day of the sender following the payment date; if
21 notice of rejection is received by the sender after the payment date and the authorized
22 account of the sender does not bear interest, the bank is obliged to pay interest to the
23 sender on the amount of the order for the number of days elapsing after the payment
24 date to the day the sender receives notice or learns that the order was not accepted,
25 counting that day as an elapsed day; if the withdrawable credit balance during that
26 period falls below the amount of the order, the amount of interest payable is reduced
27 accordingly.

28 (c) Acceptance of a payment order may not occur before the order is received
29 by the receiving bank. Acceptance does not occur under (b)(2) or (3) of this section
30 if the beneficiary of the payment order does not have an account with the receiving
31 bank, the account has been closed, or the receiving bank is not permitted by law to

Chapter 34

1 receive credits for the beneficiary's account.

2 (d) A payment order issued to the originator's bank cannot be accepted until
3 the payment date if the bank is the beneficiary's bank, or the execution date if the
4 bank is not the beneficiary's bank. If the originator's bank executes the originator's
5 payment order before the execution date or pays the beneficiary of the originator's
6 payment order before the payment date and the payment order is subsequently canceled
7 under AS 45.14.211(b), the bank may recover from the beneficiary any payment
8 received to the extent allowed by the law governing mistake and restitution.

9 Sec. 45.14.210. REJECTION OF PAYMENT ORDER. (a) A payment order
10 is rejected by the receiving bank by a notice of rejection transmitted to the sender
11 orally, electronically, or in writing. A notice of rejection does not need to use
12 particular words and is sufficient if it indicates that the receiving bank is rejecting the
13 order or will not execute or pay the order. Rejection is effective when the notice is
14 given if transmission is by a means that is reasonable in the circumstances. If notice
15 of rejection is given by a means that is not reasonable, rejection is effective when the
16 notice is received. If an agreement of the sender and receiving bank establishes the
17 means to be used to reject a payment order, means

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

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

22 (b) This subsection applies if a receiving bank other than the beneficiary's
23 bank fails to execute a payment order despite the existence on the execution date of
24 a withdrawable credit balance in an authorized account of the sender sufficient to cover
25 the order. If the sender does not receive notice of rejection of the order on the
26 execution date and the authorized account of the sender does not bear interest, the
27 bank is obliged to pay interest to the sender on the amount of the order for the number
28 of days elapsing after the execution date to the earlier of the day the order is canceled
29 under AS 45.14.211(e) or the day the sender receives notice or learns that the order
30 was not executed, counting the final day of the period as an elapsed day. If the
31 withdrawable credit balance during that period falls below the amount of the order, the

1 amount of interest is reduced accordingly.

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

4 (d) Acceptance of a payment order precludes a later rejection of the order.
5 Rejection of a payment order precludes a later acceptance of the order.

6 Sec. 45.14.211. CANCELLATION AND AMENDMENT OF PAYMENT
7 ORDER. (a) A communication of the sender of a payment order canceling or
8 amending the order may be transmitted to the receiving bank orally, electronically, or
9 in writing. If a security procedure is in effect between the sender and the receiving
10 bank, the communication is not effective to cancel or amend the order unless the
11 communication is verified under the security procedure or the bank agrees to the
12 cancellation or amendment.

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

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

22 (1) with respect to a payment order accepted by a receiving bank other
23 than the beneficiary's bank, cancellation or amendment is not effective unless a
24 conforming cancellation or amendment of the payment order issued by the receiving
25 bank is also made;

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

30 (A) is a duplicate of a payment order previously issued by the
31 sender;

Chapter 34

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

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

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

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

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

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

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

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

29 Sec. 45.14.212. LIABILITY AND DUTY OF RECEIVING BANK
30 REGARDING UNACCEPTED PAYMENT ORDER. If a receiving bank fails to
31 accept a payment order that it is obliged by express agreement to accept, the bank is

1 liable for breach of the agreement to the extent provided in the agreement or in this
2 chapter, but does not otherwise have a duty to accept a payment order or, before
3 acceptance, to take action, or refrain from taking action, with respect to the order
4 except as provided in this chapter or by express agreement. Liability based on
5 acceptance arises only when acceptance occurs as stated in AS 45.14.209, and liability
6 is limited to liability provided in this chapter. A receiving bank is not the agent of the
7 sender or beneficiary of the payment order it accepts, or of another party to the funds
8 transfer, and the bank does not owe a duty to a party to the funds transfer except as
9 provided in this chapter or by express agreement.

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

12 Sec. 45.14.301. EXECUTION AND EXECUTION DATE. (a) A payment
13 order is executed by the receiving bank when it issues a payment order intended to
14 carry out the payment order received by the bank. A payment order received by the
15 beneficiary's bank can be accepted but cannot be executed.

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

23 Sec. 45.14.302. OBLIGATIONS OF RECEIVING BANK IN EXECUTION
24 OF PAYMENT ORDER. (a) Except as provided in (b) - (d) of this section, if the
25 receiving bank accepts a payment order under AS 45.14.209(a), the bank has the
26 following obligations in executing the order:

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

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

Chapter 34

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

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

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

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

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

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

1 or by means as expeditious as the means stated.

2 (d) Unless instructed by the sender,

3 (1) the receiving bank may not obtain payment of its charges for
4 services and expenses in connection with the execution of the sender's order by issuing
5 a payment order in an amount equal to the amount of the sender's order less the
6 amount of the charges; and

7 (2) may not instruct a subsequent receiving bank to obtain payment of
8 its charges in the same manner.

9 Sec. 45.14.303. ERRONEOUS EXECUTION OF PAYMENT ORDER. (a)

10 If a receiving bank executes the payment order of the sender by issuing a payment
11 order in an amount greater than the amount of the sender's order, or if a receiving
12 bank issues a payment order in execution of the sender's order and then issues a
13 duplicate order, the bank is entitled to payment of the amount of the sender's order
14 under AS 45.14.402(c) if that subsection is otherwise satisfied. The bank is entitled
15 to recover from the beneficiary of the erroneous order the excess payment received to
16 the extent allowed by the law governing mistake and restitution.

17 (b) A receiving bank that executes the payment order of the sender by issuing
18 a payment order in an amount less than the amount of the sender's order is entitled to
19 payment of the amount of the sender's order under AS 45.14.402(c) if that subsection
20 is otherwise satisfied and the bank corrects its mistake by issuing an additional
21 payment order for the benefit of the beneficiary of the sender's order. If the error is
22 not corrected, the issuer of the erroneous order is entitled to receive or retain payment
23 from the sender of the order it accepted only to the extent of the amount of the
24 erroneous order. This subsection does not apply if the receiving bank executes the
25 sender's payment order by issuing a payment order in an amount less than the amount
26 of the sender's order for the purpose of obtaining payment of its charges for services
27 and expenses pursuant to instruction of the sender.

28 (c) If a receiving bank executes the payment order of the sender by issuing a
29 payment order to a beneficiary different from the beneficiary of the sender's order and
30 the funds transfer is completed on the basis of that error, the sender of the payment
31 order that was erroneously executed and all previous senders in the funds transfer are

Chapter 34

1 not obliged to pay the payment orders they issued. The issuer of the erroneous order
2 is entitled to recover from the beneficiary of the order the payment received to the
3 extent allowed by the law governing mistake and restitution.

4 Sec. 45.14.304. DUTY OF SENDER TO REPORT ERRONEOUSLY
5 EXECUTED PAYMENT ORDER. If the sender of a payment order that is
6 erroneously executed as stated in AS 45.14.303 receives notification from the receiving
7 bank that the order was executed or that the sender's account was debited with respect
8 to the order, the sender has a duty to exercise ordinary care to determine, on the basis
9 of information available to the sender, that the order was erroneously executed and to
10 notify the bank of the relevant facts within a reasonable time not exceeding 90 days
11 after the notification from the bank was received by the sender. If the sender fails to
12 perform that duty, the bank is not obliged to pay interest on any amount refundable
13 to the sender under AS 45.14.402(d) for the period before the bank learns of the
14 execution error. The bank is not entitled to any recovery from the sender on account
15 of a failure by the sender to perform the duty stated in this section.

16 Sec. 45.14.305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR
17 FAILURE TO EXECUTE PAYMENT ORDER. (a) If a funds transfer is completed
18 but execution of a payment order by the receiving bank in breach of AS 45.14.302
19 results in delay in payment to the beneficiary, the bank is obliged to pay interest to
20 either the originator or the beneficiary of the funds transfer for the period of delay
21 caused by the improper execution. Except as provided in (c) of this section, additional
22 damages are not recoverable.

23 (b) If execution of a payment order by a receiving bank in breach of
24 AS 45.14.302 results in noncompletion of the funds transfer, failure to use an
25 intermediary bank designated by the originator, or issuance of a payment order that
26 does not comply with the terms of the payment order of the originator, the bank is
27 liable to the originator for its expenses in the funds transfer and for incidental expenses
28 and interest losses, to the extent not covered by (a) of this section, resulting from the
29 improper execution. Except as provided in (c) of this section, additional damages are
30 not recoverable.

31 (c) In addition to the amounts payable under (a) and (b) of this section,

1 damages, including consequential damages, are recoverable to the extent provided in
2 an express written agreement of the receiving bank.

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

9 (e) Reasonable attorney fees are recoverable if demand for compensation under
10 (a) or (b) of this section is made and refused before an action is brought on the claim.
11 If a claim is made for breach of an agreement under (d) of this section and the
12 agreement does not provide for damages, reasonable attorney fees are recoverable if
13 demand for compensation under (d) of this section is made and refused before an
14 action is brought on the claim. Recovery of attorney fees under this subsection is an
15 exception to the general provisions of Alaska Rule of Civil Procedure 82.

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

18 ARTICLE 4. PAYMENT.

19 Sec. 45.14.401. PAYMENT DATE. "Payment date" of a payment order means
20 the day on which the amount of the order is payable to the beneficiary by the
21 beneficiary's bank. The payment date may be determined by instruction of the sender
22 but cannot be earlier than the day the order is received by the beneficiary's bank and,
23 unless otherwise determined, is the day the order is received by the beneficiary's bank.

24 Sec. 45.14.402. OBLIGATION OF SENDER TO PAY RECEIVING BANK.

25 (a) This section is subject to AS 45.14.205 and 45.14.207.

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

29 (c) With respect to a payment order issued to a receiving bank other than the
30 beneficiary's bank, acceptance of the order by the receiving bank obliges the sender
31 to pay the bank the amount of the sender's order. Payment by the sender is not due.

Chapter 34

1 until the execution date of the sender's order. The obligation of that sender to pay its
2 payment order is excused if the funds transfer is not completed by acceptance by the
3 beneficiary's bank of a payment order instructing payment to the beneficiary of that
4 sender's payment order. This subsection is subject to (e) of this section and to
5 AS 45.14.303.

6 (d) If the sender of a payment order pays the order and was not obliged to pay
7 all or part of the amount paid, the bank receiving payment is obliged to refund
8 payment to the extent the sender was not obliged to pay. Except as provided in
9 AS 45.14.204 and 45.14.304, interest is payable on the refundable amount from the
10 date of payment.

11 (e) If a funds transfer is not completed as stated in (c) of this section and an
12 intermediary bank is obliged to refund payment as stated in (d) of this section but is
13 unable to do so because not permitted by applicable law or because the bank suspends
14 payments, a sender in the funds transfer that executed a payment order in compliance
15 with an instruction, as stated in AS 45.14.302(a)(1), to route the funds transfer through
16 that intermediary bank is entitled to receive or retain payment from the sender of the
17 payment order that it accepted. The first sender in the funds transfer that issued an
18 instruction requiring routing through that intermediary bank is subrogated to the right
19 of the bank that paid the intermediary bank to refund as stated in (d) of this section.

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

23 Sec. 45.14.403. PAYMENT BY SENDER TO RECEIVING BANK. (a)
24 Payment of the sender's obligation under AS 45.14.402 to pay the receiving bank
25 occurs as follows:

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

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

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

31 or

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

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

8 (b) If the sender and receiving bank are members of a funds-transfer system
9 that nets obligations multilaterally among participants, the receiving bank receives final
10 settlement when settlement is complete in accordance with the rules of the system.
11 The obligation of the sender to pay the amount of a payment order transmitted through
12 the funds-transfer system may be satisfied, to the extent permitted by the rules of the
13 system, by setting off and applying against the sender's obligation the right of the
14 sender to receive payment from the receiving bank of the amount of any other payment
15 order transmitted to the sender by the receiving bank through the funds-transfer
16 system. The aggregate balance of obligations owed by each sender to each receiving
17 bank in the funds-transfer system may be satisfied, to the extent permitted by the rules
18 of the system, by setting off and applying against that balance the aggregate balance
19 of obligations owed to the sender by other members of the system. The aggregate
20 balance is determined after the right of setoff stated in the second sentence of this
21 subsection has been exercised.

22 (c) If two banks transmit payment orders to each other under an agreement that
23 settlement of the obligations of each bank to the other under AS 45.14.402 will be
24 made at the end of the day or other period, the total amount owed with respect to all
25 orders transmitted by one bank shall be set off against the total amount owed with
26 respect to all orders transmitted by the other bank. To the extent of the setoff, each
27 bank has made payment to the other.

28 (d) In a case not covered under (a) of this section, the time when payment of
29 the sender's obligation under AS 45.14.402(b) or (c) occurs is governed by applicable
30 principles of law that determine when an obligation is satisfied.

31 Sec. 45.14.404. OBLIGATION OF BENEFICIARY'S BANK TO PAY AND

Chapter 34

1 GIVE NOTICE TO BENEFICIARY. (a) Subject to AS 45.14.211(f) and 45.14.405(d)
2 and (e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the
3 amount of the order to the beneficiary of the order. Payment is due on the payment
4 date of the order, but if acceptance occurs on the payment date after the close of the
5 funds-transfer business day of the bank, payment is due on the next funds-transfer
6 business day. If the bank refuses to pay after demand by the beneficiary and receipt
7 of notice of particular circumstances that will give rise to consequential damages as
8 a result of nonpayment, the beneficiary may recover damages resulting from the refusal
9 to pay to the extent that the bank had notice of the damages, unless the bank proves
10 that it did not pay because of a reasonable doubt concerning the right of the
11 beneficiary to payment.

12 (b) If a payment order accepted by the beneficiary's bank instructs payment
13 to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt
14 of the order before midnight of the next funds-transfer business day following the
15 payment date. If the payment order does not instruct payment to an account of the
16 beneficiary, the bank is required to notify the beneficiary only if notice is required by
17 the order. Notice may be given by first class mail or other means reasonable in the
18 circumstances. If the bank fails to give the required notice, the bank is obliged to pay
19 interest to the beneficiary on the amount of the payment order from the day notice
20 should have been given until the day the beneficiary learned of receipt of the payment
21 order by the bank. Other damages are not recoverable. Notwithstanding Alaska Rule
22 of Civil Procedure 82, reasonable attorney fees are also recoverable if demand for
23 interest is made and refused before an action is brought on the claim.

24 (c) The right of a beneficiary to receive payment and damages as stated in (a)
25 of this section may not be varied by agreement or a funds-transfer system rule. The
26 right of a beneficiary to be notified as stated in (b) of this section may be varied by
27 agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is
28 notified of the rule before initiation of the funds transfer.

29 Sec. 45.14.405. PAYMENT BY BENEFICIARY'S BANK TO
30 BENEFICIARY. (a) If the beneficiary's bank credits an account of the beneficiary
31 of a payment order, payment of the bank's obligation under AS 45.14.404(a) occurs

1 when and to the extent that

- 2 (1) the beneficiary is notified of the right to withdraw the credit;
3 (2) the bank lawfully applies the credit to a debt of the beneficiary; or
4 (3) funds with respect to the order are otherwise made available to the
5 beneficiary by the bank.

6 (b) If the beneficiary's bank does not credit an account of the beneficiary of
7 a payment order, the time when payment of the bank's obligation under
8 AS 45.14.404(a) occurs is governed by principles of law that determine when an
9 obligation is satisfied.

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

15 (d) A funds-transfer system rule may provide that payments made to
16 beneficiaries of funds transfers made through the system are provisional until receipt
17 of payment by the beneficiary's bank of the payment order it accepted. A
18 beneficiary's bank that makes a payment that is provisional under the rule is entitled
19 to refund from the beneficiary if the rule requires that both the beneficiary and the
20 originator be given notice of the provisional nature of the payment before the funds
21 transfer is initiated, if the beneficiary, the beneficiary's bank, and the originator's bank
22 agreed to be bound by the rule, and if the beneficiary's bank did not receive payment
23 of the payment order that it accepted. If the beneficiary is obliged to refund payment
24 to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank
25 is nullified and a payment by the originator of the funds transfer to the beneficiary
26 does not occur under AS 45.14.406.

27 (e) This subsection applies to a funds transfer that includes a payment order
28 transmitted over a funds-transfer system that nets obligations multilaterally among
29 participants and has in effect a loss-sharing agreement among participants for the
30 purpose of providing funds necessary to complete settlement of the obligations of one
31 or more participants that do not meet their settlement obligations. If the beneficiary's

Chapter 34

1 bank in the funds transfer accepts a payment order and the system fails to complete
2 settlement under its rules with respect to any payment order in the funds transfer,

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

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

7 (3) payment by the originator to the beneficiary does not occur under
8 AS 45.14.406; and

9 (4) subject to AS 45.14.402(e), each sender in the funds transfer is
10 excused from its obligation to pay its payment order under AS 45.14.402(c) because
11 the funds transfer has not been completed.

12 Sec. 45.14.406. PAYMENT BY ORIGINATOR TO BENEFICIARY;
13 DISCHARGE OF UNDERLYING OBLIGATION. (a) Subject to AS 45.14.211(f)
14 and 45.14.405(d) and (e), the originator of a funds transfer pays the beneficiary of the
15 originator's payment order

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

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

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

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

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

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

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

1 (c) If payment by the originator does not result in discharge under this section,
2 the originator is subrogated to the rights of the beneficiary to receive payment from
3 the beneficiary's bank under AS 45.14.404(a).

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

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

12 ARTICLE 5. MISCELLANEOUS PROVISIONS.

13 Sec. 45.14.501. VARIATION BY AGREEMENT AND EFFECT OF FUNDS-
14 TRANSFER SYSTEM RULE. (a) Except as otherwise provided in this chapter, the
15 rights and obligations of a party to a funds transfer may be varied by agreement of the
16 affected party.

17 (b) Except as otherwise provided in this chapter, a funds-transfer system rule
18 governing rights and obligations between participating banks using the system may be
19 effective even if the rule conflicts with this chapter and indirectly affects another party
20 to the funds transfer who does not consent to the rule. A funds-transfer system rule
21 may also govern rights and obligations of parties other than participating banks using
22 the system, to the extent stated in AS 45.14.404(c), 45.14.405(d), and 45.14.507(c) and
23 (d). In this subsection, "funds-transfer system rule" means

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

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

31 Sec. 45.14.502. CREDITOR PROCESS SERVED ON RECEIVING BANK;

Chapter 34

1 SETOFF BY BENEFICIARY'S BANK. (a) This subsection applies to creditor
2 process with respect to an authorized account of the sender of a payment order if the
3 creditor process is served on the receiving bank. For the purpose of determining rights
4 with respect to the creditor process, if the receiving bank accepts the payment order
5 the balance in the authorized account is considered to be reduced by the amount of the
6 payment order to the extent that the bank did not otherwise receive payment of the
7 order, unless the creditor process is served at a time and in a manner affording the
8 bank a reasonable opportunity to act on it before the bank accepts the payment order.

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

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

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

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

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

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

29 Sec. 45.14.503. INJUNCTION OR RESTRAINING ORDER WITH RESPECT
30 TO FUNDS TRANSFER. (a) For proper cause and in compliance with applicable
31 law, a court may restrain

- 1 (1) a person from issuing a payment order to initiate a funds transfer;
2 (2) an originator's bank from executing the payment order of the
3 originator; or
4 (3) the beneficiary's bank from releasing funds to the beneficiary or the
5 beneficiary from withdrawing the funds.

6 (b) Except as provided in (a) of this section, a court may not otherwise restrain
7 a person from issuing a payment order, paying or receiving payment of a payment
8 order, or otherwise acting with respect to a funds transfer.

9 Sec. 45.14.504. ORDER IN WHICH ITEMS AND PAYMENT ORDERS
10 MAY BE CHARGED TO ACCOUNT; ORDER OF WITHDRAWALS FROM
11 ACCOUNT. (a) If a receiving bank has received more than one payment order of the
12 sender or one or more payment orders and other items that are payable from the
13 sender's account, the bank may charge the sender's account with respect to the various
14 orders and items in any sequence.

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

18 Sec. 45.14.505. PRECLUSION OF OBJECTION TO DEBIT OF
19 CUSTOMER'S ACCOUNT. If a receiving bank has received payment from its
20 customer with respect to a payment order issued in the name of the customer as sender
21 and accepted by the bank, and the customer received notification reasonably
22 identifying the order, the customer is precluded from asserting that the bank is not
23 entitled to retain the payment unless the customer notifies the bank of the customer's
24 objection to the payment within one year after the notification was received by the
25 customer.

26 Sec. 45.14.506. RATE OF INTEREST. (a) If, under this chapter, a receiving
27 bank is obliged to pay interest with respect to a payment order issued to the bank, the
28 amount payable may be determined

- 29 (1) by agreement of the sender and receiving bank; or
30 (2) by a funds-transfer system rule if the payment order is transmitted
31 through a funds-transfer system.

Chapter 34

1 (b) If the amount of interest is not determined by an agreement or rule as
2 stated in (a) of this section, the amount is calculated by multiplying the applicable
3 federal funds rate by the amount on which interest is payable, and then multiplying the
4 product by the number of days for which interest is payable. The applicable federal
5 funds rate is the average of the federal funds rates published by the Federal Reserve
6 Bank of New York for each of the days for which interest is payable divided by 360.
7 The federal funds rate for a day on which a published rate is not available is the same
8 as the published rate for the next preceding day for which there is a published rate.
9 If a receiving bank that accepted a payment order is required to refund payment to the
10 sender of the order because the funds transfer was not completed, but the failure to
11 complete was not due to any fault by the bank, the interest payable is reduced by a
12 percentage equal to the reserve requirement on deposits of the receiving bank.

13 Sec. 45.14.507. CHOICE OF LAW. (a) The following rules apply unless the
14 affected parties otherwise agree or (c) - (d) of this section applies:

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

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

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

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

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

31 (1) rights and obligations between participating banks with respect to

1 payment orders transmitted or processed through the system; or

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

4 (d) A choice of law made under (c)(1) of this section is binding on
5 participating banks. A choice of law made under (c)(2) of this section is binding on
6 the originator, other sender, or a receiving bank having notice that the funds-transfer
7 system might be used in the funds transfer and of the choice of law by the system
8 when the originator, other sender, or receiving bank issued or accepted a payment
9 order. The beneficiary of a funds transfer is bound by the choice of law if, when the
10 funds transfer is initiated, the beneficiary has notice that the funds-transfer system
11 might be used in the funds transfer and of the choice of law by the system. The law
12 of a jurisdiction selected under this subsection or (c) of this section may govern,
13 whether or not that law bears a reasonable relation to the matter in issue.

14 (e) In the event of inconsistency between an agreement under (b) of this
15 section and a choice-of-law rule under (c) - (d) of this section, the agreement under
16 (b) of this section prevails.

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

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

24 * **Sec. 14. APPLICABILITY.** (a) AS 45.14, enacted by sec. 12 of this Act, and the other
25 provisions of this Act that apply to a funds transfer do not apply to a funds transfer that is
26 begun before January 1, 1994.

27 (b) A cause of action that accrued under AS 45.01 - AS 45.09 before January 1, 1994,
28 is governed by the law of Alaska existing before January 1, 1994.

29 * **Sec. 15. CHANGE OF COURT RULES.** AS 45.14.305(e) and 45.14.404(b), enacted by
30 sec. 12 of this Act, change Alaska Rule of Civil Procedure 82 by changing the criteria for the
31 award of attorney fees in certain circumstances.

Chapter 34

1 * **Sec. 16.** This Act takes effect January 1, 1994.