

HOUSE BILL NO. 266

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES RYAN, Therriault, Vezey, Rokeberg

Introduced: 4/30/97

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limited liability companies and limited partnerships; and
2 providing for an effective date."

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

4 * **Section 1.** AS 10.50.070 is amended to read:

5 **Sec. 10.50.070. Organizers.** One [TWO] or more persons may organize a
6 limited liability company by signing articles of organization and delivering the signed
7 articles to the department for filing. A person who organizes a limited liability
8 company may be a person who is not a member of the company when the company
9 is organized or after the company is organized.

10 * **Sec. 2.** AS 10.50.125(b) is repealed and reenacted to read:

11 (b) A manager may not resign as manager of a limited liability company
12 except at the time or upon the happening of events specified in the operating
13 agreement of the company. An operating agreement may provide that a manager does
14 not have the right to resign as a manager of a limited liability company.

Notwithstanding that an operating agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving notice to the members and any other managers. If the resignation of a manager violates the operating agreement of the company, in addition to any remedy otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and may offset the damages against the amount otherwise distributable to the resigning manager. If the manager was the sole manager and if, within 90 days after the resignation, the members fail to agree on the appointment of a new manager, then each member shall have a say in the management of the company that is equal to the proportion of the member's capital account in the company.

* **Sec. 3.** AS 10.50.150(c) is amended to read:

(c) Notwithstanding (a) and (b) of this section, and unless another level of member consent is required in an operating agreement of the company, the written consent of all [TWO-THIRDS] of the members of a limited liability company is required to

(1) amend the articles of organization;

(2) amend an operating agreement of the company; or

(3) authorize a manager or member to perform an act on behalf of the company that contravenes an operating agreement of the company, including an act that contravenes a provision of the operating agreement that expressly limits the purposes, affairs, or conduct of the affairs of the company.

* **Sec. 4.** AS 10.50.155 is amended by adding a new subsection to read:

(b) A limited liability company must have one or more members.

* **Sec. 5.** AS 10.50.185 is repealed and reenacted to read:

Sec. 10.50.185. Resignation of member. (a) A member may not resign from a limited liability company except at the time or upon the happening of events specified in the operating agreement of the company and in accordance with the operating agreement of the company.

(b) Notwithstanding anything to the contrary under applicable law, unless an

operating agreement of the company provides otherwise, a member may not resign from a limited liability company before the dissolution and winding up of the limited liability company.

(c) If the resignation of a member violates an operating agreement of the company, in addition to any remedy otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and may offset the damages against the amount otherwise distributable to the resigning member.

(d) Unless otherwise provided in an operating agreement of the company and except for termination under AS 10.50.205, after a member resigns from a limited liability company, the rights of the former member are those of an assignee.

* **Sec. 6.** AS 10.50.265 is amended to read:

Sec. 10.50.265. Liability of members to third parties. A person who is a member of a limited liability company or a foreign limited liability company is not liable, solely by reason of being a member, under a judgment, decree, or order of a court, or in another manner, for a liability of the company to a third party, whether the liability arises in contract, tort, or another form, or for the acts or omissions of another member, manager, agent, or employee of the company to a third party.

* **Sec. 7.** AS 10.50.400 is amended to read:

Sec. 10.50.400. Dissolution. A limited liability company is dissolved and its affairs shall be wound up when the first of the following occurs: [IF]

(1) at the time or on the happening of events specified for dissolution in an operating agreement of the company [AN EVENT OCCURS THAT IS IDENTIFIED IN THE ARTICLES OF ORGANIZATION OR AN OPERATING AGREEMENT AS CAUSING DISSOLUTION; IF AN ELECTION UNDER AS 10.50.085(a) IS IN EFFECT, THE EVENT DOES NOT CAUSE DISSOLUTION UNLESS THE EVENT IS IDENTIFIED IN THE ARTICLES OR OPERATING AGREEMENT BEFORE OR AT THE SAME TIME THE ELECTION IS STATED IN THE ARTICLES];

(2) all of the members of the company consent in writing [UNLESS AN ELECTION UNDER AS 10.50.085(a) IS IN EFFECT]; or

(3) [A PERSON'S MEMBERSHIP IN THE COMPANY
TERMINATES, UNLESS

(A) THE AFFAIRS OF THE COMPANY ARE CONTINUED
BY THE CONSENT OF ALL OF THE REMAINING MEMBERS ON OR
BEFORE THE 90TH DAY FOLLOWING THE TERMINATION OF THE
MEMBERSHIP;

(B) AN OPERATING AGREEMENT PROVIDES
OTHERWISE; OR

(C) AN ELECTION UNDER AS 10.50.085(a) IS IN EFFECT
AND

(i) THE ELECTION PROVIDES THAT THE
TERMINATION DOES NOT CAUSE THE COMPANY TO
DISSOLVE; OR

(ii) THE PERSON WHOSE MEMBERSHIP
TERMINATES IS NOT A MANAGER OF THE COMPANY; OR

(4)] the superior court enters a decree for judicial dissolution of the
company under AS 10.50.405.

* **Sec. 8.** AS 10.50.405 is amended to read:

Sec. 10.50.405. Dissolution by court. On application by or for a member of
a limited liability company, the superior court may order the company dissolved if the
court determines that it is impossible [NOT REASONABLY PRACTICABLE] for the
company to carry on the purposes [CONDUCT ITS AFFAIRS IN CONFORMITY
WITH AN OPERATING AGREEMENT] of the company.

* **Sec. 9.** AS 10.50.425 is amended to read:

Sec. 10.50.425. Distribution of assets. Upon the winding up of a limited
liability company, the assets of the company shall be distributed in the following
manner and order of priority:

(1) payment, or adequate provision for payment, to creditors, including,
to the extent permitted by law, members who are creditors and not covered by (2) of
this section, in satisfaction of the liabilities of the company;

(2) unless otherwise provided in an operating agreement of the

company, payment to members or former members in satisfaction of the company's liabilities for distributions under AS 10.50.295 - 10.50.330 [AS 10.50.295 - 10.50.335];

(3) unless otherwise provided in an operating agreement of the company, to members and former members in the following order of priority:

(A) for the return of their contributions; and

(B) in proportion to the members' respective rights to share in distributions from the company before dissolution.

* **Sec. 10.** AS 10.50 is amended by adding a new section to read:

Sec. 10.50.570. Conversion to limited liability company. (a) Any other

entity may convert to a limited liability company by filing with the department

(1) a certificate of conversion to a limited liability company that has been executed under (b) of this section by one or more persons organizing the conversion; and

(2) articles of organization that comply with AS 10.50.075 and that have been signed by one or more persons organizing the conversion.

(b) The certificate of conversion to a limited liability company must state

(1) the date on which and the jurisdiction where the other entity was first created, formed, or incorporated, or otherwise came into being, and, if the other entity has changed its jurisdiction, its jurisdiction immediately before its conversion to a limited liability company;

(2) the name of the other entity immediately before the filing of the certificate of conversion to a limited liability company;

(3) the name of the limited liability company as stated in its articles of organization filed under (a) of this section; and

(4) the future effective date or time, which must be a certain date or a certain time, of the conversion to a limited liability company if the conversion is not to be effective on the filing of the certificate of conversion to a limited liability company and the articles of organization.

(c) On the filing with the department of the certificate of conversion to a limited liability company and the articles of organization, or upon the future effective date or time of the certificate of conversion to a limited liability company and the

1 articles of organization, the other entity is converted to a limited liability company and,
2 after the conversion, is subject to all of the provisions of this chapter, except that,
3 notwithstanding AS 10.50.080, the existence of the limited liability company is
4 considered to have commenced on the date the other entity commenced its existence
5 in the jurisdiction in which the other entity was first created, formed, or incorporated,
6 or otherwise came into being.

7 (d) The conversion of any other entity to a limited liability company does not
8 affect any obligation or liability of the other entity incurred before the conversion, or
9 the personal liability of any person that is incurred before the conversion.

10 (e) When a conversion of any other entity to a limited liability company
11 becomes effective under this section, for all purposes of the laws of this state,

12 (1) all rights, privileges, and powers of the other entity, all real,
13 personal, and mixed property, all debts due to the other entity, and all other things and
14 causes of action belonging to the other entity, are vested in the limited liability
15 company and are after the conversion, the property of the limited liability company as
16 they were of the other entity;

17 (2) the title to any real property vested by deed, or otherwise vested,
18 in the other entity does not revert and is not in any way impaired by reason of this
19 chapter;

20 (3) all rights of creditors and all liens on property of the other entity
21 attach to the limited liability company; and

22 (4) all debts, liabilities, and duties of the other entity attach to the
23 limited liability company, and may be enforced against it to the same extent as if the
24 debts, liabilities, and duties had been incurred or contracted by the limited liability
25 company.

26 (f) Unless otherwise agreed, or as required under the applicable law of another
27 state, any other entity that converts to a limited liability company under this section
28 is not required to wind up its affairs or to pay its liabilities and distribute its assets,
29 and the conversion does not constitute a dissolution of the other entity.

30 (g) Before filing a certificate of conversion to a limited liability company with
31 the department, a limited liability company agreement must be approved in the manner

provided for by the document, instrument, agreement, or other writing governing the internal affairs of the other entity and the conduct of its business, or by applicable law, as appropriate.

(h) The provisions of this section may not be construed to limit the accomplishment of a change in the law governing, or of the domicile of, any other entity to this state by any other means provided for in a limited liability company agreement or other agreement, or, as otherwise permitted by law, including by the amendment of a limited liability company agreement or other agreement.

(i) In this section, "other entity" means a business trust, an association, a real estate investment trust, a common law trust, or any other unincorporated business, including a general partnership, a registered limited liability partnership, a limited partnership, a limited liability limited partnership, and a foreign limited liability company.

* **Sec. 11.** AS 10.50.990(1) is amended to read:

(1) "articles of organization" means the articles of organization filed under AS 10.50.070 or 10.50.570 and the articles as amended or restated;

* **Sec. 12.** AS 10.50.990(7) is amended to read:

(7) "interim distribution" means a distribution of the assets of a limited liability company to the company's members, except as provided under AS 10.50.425 [AS 10.50.335 AND 10.50.425];

* **Sec. 13.** AS 10.50.990(14) is amended to read:

(14) "member" means a person who has been admitted to membership in a limited liability company under AS 10.50.155 - 10.50.160 and whose membership has not ended [TERMINATED] under AS 10.50.180 - 10.50.185 or 10.50.205 - 10.50.225;

* **Sec. 14.** AS 10.50.995 is amended to read:

Sec. 10.50.995. Short title. This chapter may be cited as the Alaska Revised Limited Liability Act.

* **Sec. 15.** AS 32.11.010(a) is amended to read:

(a) In order to form a limited partnership, a certificate of limited partnership shall be executed and filed with the Department of Commerce and Economic

1 Development. The certificate must set out

2 (1) the name of the limited partnership;

3 (2) the address of the office and the name and address of the agent for
4 service of process required to be maintained by AS 32.11.830;

5 (3) the name and business address of each general partner; **and**

6 (4) [THE LATEST DATE UPON WHICH THE LIMITED
7 PARTNERSHIP IS TO DISSOLVE; AND

8 (5)] other matters the general partners determine to include.

9 * **Sec. 16.** AS 32.11 is amended by adding a new section to article 1 to read:

10 **Sec. 32.11.095. Conversion of certain entities to a limited partnership.** (a)

11 Any other entity may convert to a limited partnership by filing with the department

12 (1) a certificate of conversion to a limited partnership that has been
13 executed under (b) of this section by one or more persons organizing the conversion;
14 and

15 (2) a certificate of limited partnership that complies with AS 32.11.010
16 and that has been signed by one or more persons organizing the conversion.

17 (b) The certificate of conversion to a limited partnership must state

18 (1) the date on which and jurisdiction where the other entity was first
19 created, formed, or incorporated, or otherwise came into being and, if the other entity
20 has changed its jurisdiction, its jurisdiction immediately before its conversion to a
21 limited partnership;

22 (2) the name of the other entity immediately before the filing of the
23 certificate of conversion to a limited partnership;

24 (3) the name of the limited partnership as stated in its certificate of
25 limited partnership filed under (a) of this section; and

26 (4) the future effective date or time, which must be a certain date or
27 certain time, of the conversion to a limited partnership if the conversion is not to be
28 effective upon the filing of the certificate of conversion to a limited partnership and
29 the certificate of limited partnership.

30 (c) On the filing with the department of the certificate of conversion to a
31 limited partnership and the certificate of limited partnership, or on the future effective

1 date or time of the certificate of conversion to a limited partnership and the certificate
2 of limited partnership, the other entity is converted to a limited partnership, and, after
3 the conversion, is subject to all of the provisions of this chapter, except that,
4 notwithstanding AS 32.11.060(b), the existence of the limited partnership is considered
5 to have commenced on the date the other entity commenced its existence in the
6 jurisdiction in which the other entity was first created, formed, or incorporated, or
7 otherwise came into being.

8 (d) The conversion of any other entity to a limited partnership does not affect
9 any obligation or liability of the other entity incurred before the conversion to a limited
10 partnership, or the personal liability of any person that is incurred before the
11 conversion.

12 (e) When a conversion of any other entity to a limited liability partnership
13 becomes effective under this section, for all purposes of the laws of this state

14 (1) all of the rights, privileges, and powers of the other entity, all real,
15 personal, and mixed property, all debts due to the other entity, and all other things and
16 causes of action belonging to the other entity are vested in the limited partnership and
17 are, after the conversion, the property of the limited partnership as they were of the
18 other entity;

19 (2) the title to any real property vested by deed, or otherwise vested,
20 in the other entity does not revert and is not in any way impaired by reason of this
21 chapter;

22 (3) all rights of creditors and all liens on any property of the other
23 entity attach to the limited partnership; and

24 (4) all debts, liabilities, and duties of the other entity attach to the
25 limited partnership, and may be enforced against it to the same extent as if the debts,
26 liabilities, and duties had been incurred or contracted by it.

27 (f) Unless otherwise agreed, or as required under the applicable law of another
28 state, any other entity that converts to a limited partnership under this section is not
29 required to wind up its affairs or to pay its liabilities and distribute its assets, and the
30 conversion does not constitute a dissolution of the other entity.

31 (g) Before filing a certificate of conversion to a limited partnership with the

department, a partnership agreement must be approved in the manner provided for by the document, instrument, agreement, or other writing governing the internal affairs of the other entity and the conduct of its business, or by applicable law, as appropriate, except that, in any event, the approval must include the approval of any person who, on the effective date or time of the conversion, will be a general partner of the limited partnership.

(h) The provisions of this section may not be construed to limit the accomplishment of a change in the law governing, or of the domicile of, any other entity, to this state by any other means provided for in a partnership agreement or other agreement, or as otherwise permitted by law, including by the amendment of a partnership agreement or other agreement.

(i) In this section, "other entity" means a business trust, an association, a real estate investment trust, a common law trust, or any other unincorporated business, including a general partnership, a limited liability partnership, a foreign limited partnership, a foreign limited liability partnership, and a limited liability company.

* **Sec. 17.** AS 32.11.260 is amended to read:

Sec. 32.11.260. Withdrawal of limited partner. A limited partner may not withdraw from a limited partnership except at the time or upon the happening of events specified in [WRITING IN] the partnership agreement. Notwithstanding anything to the contrary under applicable law, unless the partnership agreement provides otherwise, a limited partner may not withdraw from a limited partnership before the dissolution and winding up of the limited partnership [IF THE AGREEMENT DOES NOT SPECIFY IN WRITING THE TIME OR THE EVENTS UPON THE HAPPENING OF WHICH A LIMITED PARTNER MAY WITHDRAW OR A DEFINITE TIME FOR THE DISSOLUTION AND WINDING UP OF THE LIMITED PARTNERSHIP, A LIMITED PARTNER MAY WITHDRAW UPON NOT LESS THAN SIX MONTHS' PRIOR WRITTEN NOTICE TO EACH GENERAL PARTNER AT THE GENERAL PARTNER'S ADDRESS ON THE BOOKS OF THE LIMITED PARTNERSHIP AT ITS OFFICE IN THIS STATE].

* **Sec. 18.** AS 32.11.370 is amended to read:

Sec. 32.11.370. Dissolution. A limited partnership is dissolved and its affairs

shall be wound up upon the happening of the first to occur of the following:

(1) at the time or [SPECIFIED IN THE CERTIFICATE OF LIMITED PARTNERSHIP];

(2)] upon the happening of events specified in writing in the partnership agreement;

(2) [(3)] written consent of all partners;

(3) [(4)] an event of withdrawal of a general partner **if there is no other general partner, and a majority in interest of the remaining** [UNLESS AT THE TIME THERE IS AT LEAST ONE OTHER GENERAL PARTNER AND THE WRITTEN PROVISIONS OF THE PARTNERSHIP AGREEMENT PERMIT THE BUSINESS OF THE LIMITED PARTNERSHIP TO BE CARRIED ON BY THE REMAINING GENERAL PARTNER AND THAT PARTNER DOES SO, BUT THE LIMITED PARTNERSHIP IS NOT DISSOLVED AND IS NOT REQUIRED TO BE WOUND UP BY REASON OF AN EVENT OF WITHDRAWAL IF, WITHIN 90 DAYS AFTER THE WITHDRAWAL, ALL] partners **fail to** agree in writing **within 90 days after the withdrawal** to continue the business of the limited partnership and to the appointment, **effective as of the date of withdrawal,** of one or more additional general partners [IF NECESSARY OR DESIRED]; or

(4) [(5)] entry of a decree of judicial dissolution under AS 32.11.380.

* **Sec. 19.** AS 32.11.380 is amended to read:

Sec. 32.11.380. Judicial dissolution. On application by or for a partner, the superior court may decree dissolution of a limited partnership whenever it is **impossible** [NOT REASONABLY PRACTICABLE] to carry on the business in conformity with the partnership agreement.

* **Sec. 20.** AS 32.11.800 is amended to read:

Sec. 32.11.800. Construction and application. This chapter shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it, **except to the extent that certain provisions of this chapter have been revised and are not identical to the Uniform Limited Partnership Act.**

* **Sec. 21.** AS 32.11 is amended by adding a new section to read:

1 **Sec. 32.11.835. Amendment of partnership agreement.** Unless the
 2 partnership agreement provides otherwise, a partnership agreement may not be
 3 amended except with the unanimous consent of all partners.

4 * **Sec. 22.** AS 32.11.990 is amended to read:

5 **Sec. 32.11.990. Short title.** This chapter may be cited as the **Alaska Revised**
 6 [UNIFORM] Limited Partnership Act.

7 * **Sec. 23.** AS 10.50.075(4), 10.50.085, 10.50.190, 10.50.195, 10.50.240, 10.50.335; and
 8 AS 32.11.010(a)(4) are repealed.

9 * **Sec. 24. APPLICABILITY.** (a) A limited liability company whose original articles of
 10 organization were filed with the department on or after July 1, 1997, is governed by AS 10.50,
 11 as amended by this Act. A limited liability company whose original articles of organization
 12 were filed with the department before July 1, 1997, is governed by AS 10.50, as amended by
 13 of this Act, if its articles of organization are amended on or after July 1, 1997, to state that
 14 the company is to be governed by AS 10.50, as amended by this Act.

15 (b) A limited partnership whose original certificate of limited partnership was filed
 16 with the department on or after July 1, 1997, is governed by AS 32.11, as amended by this
 17 Act. A limited partnership whose original certificate of limited partnership was filed with the
 18 department before July 1, 1997, is governed by AS 32.11, as amended by this Act, if its
 19 certificate of limited partnership is amended on or after July 1, 1997, and states that the
 20 limited partnership is governed by AS 32.11, as amended by this Act.

21 (c) In this section,

- 22 (1) "articles of organization" has the meaning given in AS 10.50.990;
 23 (2) "certificate of limited partnership" has the meaning given in AS 32.11.900;
 24 (3) "department" means the Department of Commerce and Economic
 25 Development;
 26 (4) "limited liability company" has the meaning given in AS 10.50.990;
 27 (5) "limited partnership" has the meaning given in AS 32.11.900.

28 * **Sec. 25.** This Act takes effect July 1, 1997.