



February 14, 2011

VIA EXPRESS COURIER

The Honorable Dennis Egan
Chair
Senate Labor & Commerce Committee
State Capitol, Room 150
Juneau, Alaska 99801

Re: Letter of Support for SB 78

Dear Senator Egan:

Alyeska Resort supports passage of Senate Bill 78, which would treat members of limited liability companies in the same manner as shareholders of corporations for liability purposes under Alaska liquor laws by eliminating the pass through exposure that members of limited liability companies now have under AS 04.21.035.

Summary of AS 04.21.035

Alaska Statute 04.21.035 provides that a member of a limited liability company ("LLC") or a partner of a limited liability partnership that holds a license under Title 4, which governs alcoholic beverages, is not relieved of the liability imposed upon a liquor license holder solely because the license is held by an LLC or a limited liability partnership.

Why AS 04.21.035 Is Unworkable

AS 04.21.035 does not recognize the realities of doing business today in the LLC format, unfairly penalizes those who choose to do business as an LLC rather than a corporation in the alcohol business, and causes unnecessary expense. AS 04.21.035 frustrates business development because it does not reflect the fact that LLC's are more similar to and used in the business world as alternatives to corporations, which do not pass general liability to their owners, than similar to and used as alternatives to sole proprietorships or general partnerships, which do pass general liability to their owners. Owners of businesses elect to use the simplified entity form of an LLC over a corporation while retaining the limited liability protection for the LLC's members. The owners of these businesses, however, cannot realize the benefits of using an LLC instead of a corporation without subjecting themselves to liability under AS 04.21.035.

LLC members typically have limited liability protection from LLC creditors, just like shareholders of corporations do from corporation creditors. Under AS 10.50.265 in the Alaska Revised Limited Liability Company Act, a member of an LLC "is not liable, solely by reason of being a member...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.” AS 04.21.035 takes away that limited liability protection with respect to the holding of a liquor license and in liquor related businesses. To avoid that result under the current statutes, the owner of a liquor business holding a liquor license seeking limited liability protection must do business through a corporate entity.

Businesses consciously choose LLC’s to have greater management and efficiency without sacrificing the limited liability protection from business creditors afforded to owners of corporations. LLC’s are routinely used in Alaska (as well as the rest of the United States) as limited liability protection entities in place of corporations. There is no reason to treat LLC’s differently in the liquor liability context than they are treated in the business world generally.

Why AS 04.21.035 Should Be Changed

At the time that AS 04.21.035 was enacted in 1999, the LLC statute in Alaska was relatively new (enacted in 1994) and LLC’s were not as well understood and as commonly used by the general business community as they are now. Apparently, in 1999, someone thought in the licensed liquor business LLC’s should be treated more like sole proprietorships or general partnerships with unlimited liability for their owners. However, now that LLC’s are better understood and more commonly used in place of corporations as limited liability vehicles for doing business, the time has come to place LLC’s on equal footing with corporations in the liquor business context. When we met with the Executive Director and staff of the Alaska Alcoholic Beverage Control Board (“ABC”) and explained the reasons for changing the statute, the ABC Executive Director and staff understood the reason for the requested change and voiced no opposition to the amendment.

Additionally, we are aware of other corporations that hold liquor licenses and would prefer to hold the liquor licenses as LLC’s but will not do so until AS 04.21.035 is amended.

Please feel free to contact me if you have any questions.

Very truly yours,


J. Randall Call, Esq.
General Counsel