

SENATE BILL NO. 186

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 5/16/95

Referred: L&C, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to partnerships; amending Alaska Rules of Civil Procedure 20
2 and 24; and providing for an effective date."

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

4 * **Section 1.** AS 32.05.010(a) is amended to read:

5 (a) A partnership is an association of two or more persons to carry on as
6 co-owners a business for profit, and includes a registered limited liability
7 partnership.

8 * **Sec. 2.** AS 32.05.030 is amended by adding a new subsection to read:

9 (e) A registered limited liability partnership shall hold title to all partnership
10 property in the name of the registered limited liability partnership.

11 * **Sec. 3.** AS 32.05.100 is amended to read:

12 Sec. 32.05.100. JOINT AND SEVERAL LIABILITY OF PARTNERS.

13 Except as provided in (b) of this section, all [ALL] partners are liable

14 (1) jointly and severally for everything chargeable to the partnership

1 under AS 32.05.080 and 32.05.090;

2 (2) jointly for all other debts and obligations of the partnership; but any
3 partner may enter into a separate obligation to perform a partnership contract.

4 * **Sec. 4.** AS 32.05.100 is amended by adding new subsections to read:

5 (b) A partner in a registered limited liability partnership that is in substantial
6 compliance with AS 32.05.416 and 32.05.500 - 32.05.600 is not liable, directly or
7 indirectly, including through indemnification, contribution, assessment, or other
8 manner, for the debts, obligations, and liabilities of, or chargeable to, the partnership,
9 whether in tort, in contract, or under another theory, that arise from negligence,
10 wrongful acts, wrongful omissions, malpractice, or misconduct committed by another
11 partner or by an employee or agent of the partnership

12 (1) while the partnership is a registered limited liability partnership; and

13 (2) in the course of the partnership business.

14 (c) The liability limitation in (b) of this section does not affect the liability of
15 a partner in a registered limited liability partnership for the

16 (1) partner's own negligence, wrongful acts, wrongful omissions,
17 malpractice, or misconduct;

18 (2) negligence, wrongful acts, wrongful omissions, malpractice, or
19 misconduct in the course of the partnership business of a person under the partner's
20 direct supervision and control; or

21 (3) loans, leases, and other ordinary commercial debts and obligations
22 entered into by the partnership or by a partner with apparent authority to bind the
23 partnership, even if the partner lacked actual authority or acted in breach of the
24 partnership agreement or of a duty owed to the partnership or other partners, unless
25 the creditor knew, or in the exercise of reasonable diligence should have known, that
26 the partner was acting without actual authority or in breach of the partnership
27 agreement or of a duty owed to the partnership or other partners.

28 (d) The liability limitation in (b) of this section may be waived by a registered
29 limited liability partnership. The waiver may not be made unless made by the
30 agreement of at least a majority in interest of the partners, or in a manner otherwise
31 provided in a written partnership agreement. The waiver is valid and binding upon all

1 partners, and may be relied upon by a person dealing with the partnership under
2 AS 32.05.040(a). The waiver may be modified or revoked by the agreement of at least
3 a majority in interest of the partners, or in a manner otherwise provided in a written
4 partnership agreement, except that the modification or revocation does not affect the
5 liability of a partner for the debts, obligations, or liabilities incurred, created, or
6 assumed by the partnership before the modification or revocation.

7 * **Sec. 5.** AS 32.05.130 is amended to read:

8 Sec. 32.05.130. RULES DETERMINING RIGHTS AND DUTIES OF
9 PARTNERS. The rights and duties of the partners in relation to the partnership shall
10 be determined, subject to any agreement between them, by the following rules:

11 (1) each partner shall be repaid the partner's contributions, whether by
12 way of capital or advances to the partnership property, and shares [SHARE] equally
13 in the profits and surplus remaining after all liabilities, including those to partners, are
14 satisfied; and, **except as provided in AS 32.05.100(b)**, shall contribute towards the
15 losses, whether of capital or otherwise, sustained by the partnership according to the
16 partner's share in the profits;

17 (2) the partnership shall indemnify every partner in respect of payments
18 made and personal liabilities reasonably incurred by the partner in the ordinary and
19 proper conduct of its business, or for the preservation of its business or property;

20 (3) a partner who in aid of the partnership makes a payment or advance
21 beyond the amount of capital that the partner agreed to contribute shall be paid interest
22 from the date of the payment or advance;

23 (4) a partner shall receive interest on the capital contributed by the
24 partner only from the date when repayment should be made;

25 (5) all partners have equal rights in the management and conduct of the
26 partnership business;

27 (6) a partner is not entitled to remuneration for acting in the partnership
28 business, except that a surviving partner is entitled to reasonable compensation for
29 services in winding up the partnership affairs;

30 (7) a person may not become a member of a partnership without the
31 consent of all the partners;

1 (8) any difference arising as to ordinary matters connected with the
2 partnership business may be decided by a majority of the partners; but an act in
3 contravention of an agreement between the partners may not be done rightfully without
4 the consent of all the partners.

5 * **Sec. 6.** AS 32.05.290 is amended to read:

6 Sec. 32.05.290. PARTNER'S RIGHT TO CONTRIBUTION FROM
7 COPARTNERS AFTER DISSOLUTION. Where the dissolution is caused by the act,
8 death, or bankruptcy of a partner, each partner is liable to the copartners for the
9 partner's share of any liability created by a partner acting for the partnership as if the
10 partnership had not been dissolved unless

11 (1) the dissolution being by act of a partner, the partner acting for the
12 partnership had knowledge of the dissolution; [OR]

13 (2) the dissolution being by the death or bankruptcy of a partner, the
14 partner acting for the partnership had knowledge or notice of the death or bankruptcy;
15 or

16 (3) the liability is for a debt, obligation, or liability for which the
17 partner is not liable under AS 32.05.100(b).

18 * **Sec. 7.** AS 32.05.310(d) is amended to read:

19 (d) The individual property of a deceased partner is liable for **the** [ALL]
20 obligations of the partnership incurred while the decedent was a partner **and for which**
21 **the partner is liable under AS 32.05.100** but subject to the prior payment of the
22 decedent's separate debts.

23 * **Sec. 8.** AS 32.05.350 is amended to read:

24 Sec. 32.05.350. RULES FOR SETTLING ACCOUNTS FOLLOWING
25 DISTRIBUTION. In settling accounts between the partners after dissolution, the
26 following rules shall be observed, subject to any agreement to the contrary:

27 (1) the assets of the partnership are

28 (A) the partnership property;

29 (B) the contributions of the partners **as** [NECESSARY FOR
30 THE PAYMENT OF ALL THE LIABILITIES] specified in **(4)** [(2)] of this
31 section;

1 (2) the liabilities of the partnership [SHALL] rank in order of payment
2 as follows:

3 (A) those owing to creditors other than partners;

4 (B) those owing to partners other than for capital and profits;

5 (C) those owing to partners in respect of capital;

6 (D) those owing to partners in respect of profits;

7 (3) the assets shall be applied in the order of their declaration in (1) of
8 this section to the satisfaction of the liabilities;

9 (4) **except to the extent the liability of a partner is limited under**
10 **AS 32.05.100(b),**

11 (A) the partners shall contribute, as provided by
12 AS 32.05.130(1), the amount necessary to satisfy the liabilities;

13 (B) [, BUT] if any, but not all, of the partners **is** [ARE]
14 insolvent, or not being subject to process, **refuses** [REFUSE] to contribute, the
15 other partners shall contribute their share of the liabilities, and, in the relative
16 proportions in which they share the profits the additional amount necessary to
17 pay the liabilities;

18 (5) an assignee for the benefit of creditors or any person appointed by
19 the court may enforce the contributions specified in (4) of this section;

20 (6) a partner or the legal representative of a partner may enforce the
21 contributions specified in (4) of this section, to the extent of the amount that the
22 partner has paid in excess of the partner's share of the liability;

23 (7) the individual property of a deceased partner is liable for the
24 contributions specified in (4) of this section;

25 (8) when partnership property and the individual properties of the
26 partners are in the possession of a court for distribution, partnership creditors shall
27 have priority on partnership property and separate creditors on individual property,
28 saving the rights of lien or secured creditors as heretofore;

29 (9) where a partner has become bankrupt or the estate of a partner is
30 insolvent the claims against the partner's separate property [SHALL] rank in the
31 following order:

- 1 (A) those owing to separate creditors;
- 2 (B) those owing to partnership creditors;
- 3 (C) those owing to partners by way of contribution.

4 * **Sec. 9.** AS 32.05 is amended by adding a new section to read:

5 Sec. 32.05.405. COMMERCE OUTSIDE THE STATE. (a) A partnership that
6 is formed and operates under an agreement governed by this chapter may conduct its
7 business, carry on its operations, and has and may exercise the powers granted by this
8 chapter in a state, territory, district, or possession of the United States or in a foreign
9 country.

10 (b) It is the intent of this chapter that the legal existence of a partnership be
11 recognized outside the boundaries of the state and that a partnership transacting
12 business outside the state be granted the protection of art. IV, sec. 1, Constitution of
13 the United States, subject to a reasonable requirement of registration.

14 (c) The liability of the partners in a partnership for the debts, obligations, and
15 liabilities of the partnership shall at all times be determined solely and exclusively by
16 the laws of this state.

17 (d) In this section, "partnership" means a partnership that is formed and
18 operates under an agreement governed by this chapter.

19 * **Sec. 10.** AS 32.05 is amended by adding new sections to read:

20 Sec. 32.05.414. PARTNERS AS PARTIES TO ACTIONS. A partner in a
21 registered limited liability partnership or foreign limited liability partnership is not a
22 proper party to a proceeding by or against the partnership if the object of the
23 proceeding is to enforce or to recover damages for debts, obligations, or liabilities that
24 are of the type that the partner is not liable for under AS 32.05.100(b) or 32.05.600(e),
25 unless the debts, obligations, and liabilities are of the type for which the partner may
26 be held liable under AS 32.05.100(c) or 32.05.600(e).

27 Sec. 32.05.416. FINANCIAL RESPONSIBILITY. (a) A registered limited
28 liability partnership shall at all times have and maintain liability insurance or
29 qualifying assets in an amount of value not less than \$1,000,000 to satisfy liabilities
30 described in AS 32.05.100(b). To the extent the partnership maintains insurance that
31 is subject to a deductible, it shall maintain qualifying assets in the deductible amount.

1 (b) A foreign limited liability partnership may conduct business in this state
2 under AS 32.05.600 if during the period it is conducting business in this state it has
3 and maintains liability insurance or qualifying assets in an amount of value not less
4 than \$1,000,000 to satisfy liabilities that arise from

5 (1) acts or omissions in this state of the type described in
6 AS 32.05.100(b); or

7 (2) other conduct for which the liability of partners is limited under the
8 law of the jurisdiction in which the foreign limited liability partnership is organized.

9 (c) To the extent that a registered limited liability partnership or a foreign
10 limited liability partnership maintains liability insurance or qualifying assets under the
11 laws of another jurisdiction, the liability insurance or qualifying assets maintained
12 under those laws satisfy (a) - (b) of this section if the amount of the insurance or
13 assets is equal to or greater than the amount required by (a) - (b) of this section.

14 (d) In a court action against a registered limited liability partnership or foreign
15 limited liability partnership in the courts of this state, upon request of a party to the
16 court action and subject to an order of the court, the partnership shall provide a
17 certification stating that the partnership is in compliance with this section, describing
18 the method by which the partnership has complied with (a) - (c) of this section, and
19 identifying the depository institution holding the qualifying assets or insurance carrier
20 issuing the liability insurance specified in (a) - (c) of this section.

21 (e) If a registered limited liability partnership or foreign limited liability
22 partnership fails to maintain the insurance or qualifying assets required by (a) - (c) of
23 this section, the partners are jointly liable for the debts, obligations, and liabilities of
24 the partnership, except that the aggregate amount for which the partners are jointly
25 liable is limited to the amount of insurance or qualifying assets that would have been
26 required to satisfy the requirements of (a) - (c) of this section.

27 (f) In this section, "qualifying assets" means

28 (1) cash, federally insured deposits of a bank or other financial
29 institution, and obligations of the United States or one of its instrumentalities having
30 a maturity of not more than one year, if the partnership segregates the cash, deposits,
31 or obligations from other partnership property and specifically designates the cash,

1 deposits, or obligations for the exclusive purpose of satisfying liabilities described in
2 AS 32.05.100(b); or

3 (2) a letter of credit issued by a federally insured depository institution
4 for the benefit of persons in whose favor a judgment has been entered against the
5 partnership arising from liabilities described in AS 32.05.100(b).

6 * **Sec. 11.** AS 32.05.420 is amended to read:

7 Sec. 32.05.420. DEFINITIONS. In this chapter,

8 (1) "bankrupt" includes bankrupt under the Federal Bankruptcy Act or
9 insolvent under any state insolvent act;

10 (2) "business" includes every trade, occupation, or profession;

11 (3) "conveyance" includes every assignment, lease, mortgage, or
12 encumbrance;

13 (4) "court" includes every court and judge having jurisdiction in the
14 case;

15 (5) **"department" means the Department of Commerce and**
16 **Economic Development;**

17 (6) **"foreign limited liability partnership" means a partnership that**
18 **is formed and operates under an agreement governed by the laws of another**
19 **jurisdiction and that is registered as a limited liability partnership in that**
20 **jurisdiction;**

21 (7) **"partnership" includes a registered limited liability partnership**
22 **unless the context indicates otherwise;**

23 (8) ["PERSON" INCLUDES INDIVIDUALS, PARTNERSHIPS,
24 CORPORATIONS, AND OTHER ASSOCIATIONS;

25 (6)] "real property" includes land and any interest or estate in land;

26 (9) **"registered limited liability partnership" means a partnership**
27 **that is registered in this state under AS 32.05.500 - 32.05.600 and that is formed**
28 **and operates under an agreement governed by this chapter.**

29 * **Sec. 12.** AS 32.05 is amended by adding new sections to read:

30 ARTICLE 7. LIMITED LIABILITY PARTNERSHIPS.

31 Sec. 32.05.500. REGISTRATION REQUIRED. A partnership that is formed

1 and operates under an agreement governed by this chapter may register as a registered
2 limited liability partnership by filing a registration document with the Department of
3 Commerce and Economic Development.

4 Sec. 32.05.510. CONTENTS OF REGISTRATION DOCUMENT. (a) A
5 registration document under AS 32.05.500 must provide

- 6 (1) the name of the partnership;
- 7 (2) the address of the partnership's principal office, if the partnership's
8 principal office is not located in this state;
- 9 (3) the address of the partnership's registered office in this state;
- 10 (4) the name and address of the partnership's registered agent in the
11 state for the service of process;
- 12 (5) a brief description of the partnership's business; and
- 13 (6) a statement that the partnership is applying for registration.

14 (b) A registered limited liability partnership may include other information in
15 the registration document.

16 Sec. 32.05.520. EFFECTIVE DATE AND DURATION OF REGISTRATION.
17 Registration under AS 32.05.500 is effective immediately when the registration
18 document is filed under AS 32.05.500. The registration remains effective until the
19 earlier of the date when the partnership

- 20 (1) voluntarily withdraws its registration under AS 32.05.570; or
- 21 (2) fails to file the report required under AS 32.05.530(a) within 30
22 days after the partnership receives a notice from the department under
23 AS 32.05.530(b).

24 Sec. 32.05.530. ANNUAL REPORT REQUIRED. (a) A registered limited
25 liability partnership or foreign limited liability partnership shall file an annual report
26 with the department that indicates any material changes from the information contained
27 in the partnership's registration document filed under AS 32.05.500 or notice of foreign
28 limited liability partnership filed under AS 32.05.600. The partnership shall file the
29 report during the last 60 days of each calendar year that follows the calendar year
30 when the registration document is filed under AS 32.05.500 or the notice of foreign
31 limited liability partnership is filed under AS 32.05.600.

1 (b) If the department does not receive a report required by (a) of this section
2 within the filing period, the department shall notify the partnership by certified mail,
3 return receipt requested, that the department has not received the report.

4 Sec. 32.05.540. EXECUTION OF REGISTRATION DOCUMENT. A
5 registration document filed under AS 32.05.500 or an annual report filed under
6 AS 32.05.530 shall be executed by a partner authorized to execute the registration
7 document or annual report.

8 Sec. 32.05.550. REGISTERED AGENT AND OFFICE. A registered limited
9 liability partnership and a foreign limited liability partnership shall maintain in the
10 state a registered office and an agent for the service of process.

11 Sec. 32.05.560. NAME. The name of a registered limited liability partnership
12 must contain the words "Limited Liability Partnership," the abbreviation "L.L.P.," or
13 the abbreviation "LLP," as the last words or letters of its name.

14 Sec. 32.05.570. VOLUNTARY WITHDRAWAL OF REGISTRATION. A
15 registered limited liability partnership may withdraw its registration by filing with the
16 department a written withdrawal notice that is signed by a partner authorized to
17 execute the withdrawal notice.

18 Sec. 32.05.580. STATUS UNAFFECTED BY ERRORS OR SUBSEQUENT
19 CHANGES. The registration status of a registered limited liability partnership is not
20 affected by errors in the information provided in a registration application or by
21 changes that occur in the information provided in the registration application after the
22 application is filed.

23 Sec. 32.05.590. DEPARTMENT FORMS. The department may provide forms
24 for registration under AS 32.05.500, for filing a report under AS 32.05.530, or for
25 filing a notice of a foreign limited liability partnership under AS 32.05.600.

26 Sec. 32.05.600. FOREIGN LIMITED LIABILITY PARTNERSHIPS. (a)
27 Subject to another statute that applies to or regulates the partnership and to
28 AS 32.05.416, a foreign limited liability partnership may conduct business in this state.
29 The partnership shall file with the department a notice of foreign limited liability
30 partnership. The notice must state the information specified in AS 32.05.510(a)(1) -
31 (5), the jurisdiction where it is formed and registered as a limited liability partnership,

1 and a statement that the partnership is filing the notice. The notice shall be executed
2 by a partner authorized to execute it.

3 (b) The name of a foreign limited liability partnership must contain the words
4 "Limited Liability Partnership," the abbreviation "L.L.P.," or the abbreviation "LLP,"
5 as the last words or letters of its name, or other similar words or abbreviations that are
6 required or permitted by the laws of the jurisdiction where it is formed and registered
7 as a limited liability partnership.

8 (c) A foreign limited liability partnership may voluntarily withdraw its notice
9 of foreign limited liability partnership by filing with the department a written
10 withdrawal notice that is executed by a partner authorized to execute the withdrawal
11 notice.

12 (d) A notice of foreign limited liability partnership is effective immediately
13 when filed and remains effective until the earlier of the date when the partnership

14 (1) voluntarily withdraws the notice under (c) of this section; or

15 (2) fails to file the report required under AS 32.05.530(a) within 30
16 days after the partnership receives a notice from the department under
17 AS 32.05.530(b).

18 (e) The internal affairs of foreign limited liability partnerships, and the liability
19 of partners for the debts, obligations, and liabilities of, or chargeable to, the
20 partnership, are subject to and governed by the laws of the state where the partnership
21 is formed as a limited liability partnership. This subsection is not intended to affect
22 the choice of law applicable to the liability of the partnership or to the liability of
23 partners for their own acts or omissions.

24 * **Sec. 13.** AMENDMENT OF COURT RULES. AS 32.05.414, enacted by sec. 10 of this
25 Act, amends

26 (1) Alaska Rule of Civil Procedure 20 because it effectively prohibits the
27 joinder of a partner in a registered limited liability partnership as a party in certain civil
28 actions; and

29 (2) Alaska Rule of Civil Procedure 24 because it effectively prohibits the
30 intervention of a partner in a registered limited liability partnership as a party in certain civil
31 actions.

1 * **Sec. 14.** This Act takes effect July 1, 1995.