

IN THE SENATE

BY SENATOR RIVERS

SENATE BILL NO. 59

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

TWENTY-SECOND SESSION

A BILL

For an Act entitled: "An Act to amend Section 58-2-2 ACLA 1949 and Section 29-1-12 ACLA 1949, relating to the Statute of Frauds ^{and} ~~and establishing an effective date.~~"

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

Section 1. Section 58-2-2 ACLA 1949 is hereby amended to read as follows:

Section 58-2-2. AGREEMENTS VOID WHEN NOT REQUIRED TO BE IN WRITING [, ETC.].

1. IN THE FOLLOWING CASES Except as otherwise provided in this Section, an agreement, promise or undertaking IS VOID shall not be enforceable by action unless THE SAME it or some note or memorandum thereof EXPRESSING THE CONSIDERATION be in writing and subscribed by the party to be charged, or by his LAWFULLY AUTHORIZED lawful agent, if such agreement, promise or undertaking is one of the following:

FIRST (a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) An agreement the performance of which is not to be completed by the end of a lifetime. This provision shall include a contract to bequeath property or make a testamentary disposition of any kind, a contract to assign or an assignment, with or without consideration to the

1 promisor, of a life or health or accident insurance policy,
2 or a promise, with or without consideration to the promisor,
3 to name a beneficiary of any such policy. But this provision
4 shall not include an insurer's promise to issue a policy of
5 insurance, or any promise or assignment with respect to a
6 policy of industrial life or health or accident insurance.

7 SECOND (c) AN AGREEMENT A special promise to
8 answer for the debt DEFAULT, OR MISCARRIAGE of another
9 PERSON;

10 THIRD (d) An agreement by an executor or
11 administrator to pay the debts of his testator or intestate
12 out of his own estate;

13 FOURTH (e) An agreement made upon consideration of
14 marriage OTHER THAN except mutual promises to marry;

15 FIFTH (f) An agreement for leasing for a longer
16 period than one year, or for the sale of real property, or
17 of any interest therein, or to charge or encumber the
18 same ;

19 SIXTH (g) An agreement concerning real property
20 made by an agent of the party sought to be charged, unless
21 the authority of the agent be in writing ;

22 SEVENTH (h) An agreement entered into subsequent
23 to the taking effect of this Act, authorizing or employing
24 an agent or broker to sell or purchase real estate for a
25 compensation or commission; provided, however, that if the
26 note or memorandum of such agreement be in writing and
27 subscribed by the party to be charged, or by his lawfully
28 authorized agent, and contains a description of the property
29 sufficient for identification, and authorizes or employs

1 the agent or broker named therein to sell such property, and
2 expresses with reasonable certainty the amount of the
3 commission or compensation to be paid such agent or broker,
4 such agreement of authorization or employment shall not be
5 VOID unenforceable for failure to state a consideration
6 [] i

7 (i) A contract to establish a trust;

8 (j) A conveyance or assignment of a trust in personal
9 property;

10 (k) A subsequent or new promise to pay a debt
11 discharged in bankruptcy;

12 (l) A contract to pay compensation for services
13 rendered in negotiating a loan, effecting the procurement of
14 a business opportunity, or the purchase and sale of a
15 business, its good will, inventory, fixtures or an interest
16 therein, including a majority of the voting stock interest
17 in a corporation and including the creating of a partnership
18 interest. This provision shall not apply to a contract to
19 pay compensation to an auctioneer, or an attorney at law,

20 2. If goods be sold at public auction, and the
21 auctioneer at the time of the sale, enters in a sale book, a
22 memorandum specifying the nature and price of the property
23 sold, the terms of the sale, the name of the purchaser, and
24 the name of the person on whose account the sale was made,
25 such memorandum is equivalent in effect to a note of the
26 contract or sale, subscribed by the party to be charged
27 therewith.

28 3. A contract or promise which is subject to
29 Subdivision 1 of this Section which does not satisfy the

requirements of that subdivision, but which is otherwise valid, is enforceable if either:

(a) There has been full performance on one side, accepted by the other in accordance with the contract, or

(b) There is a memorandum which would satisfy the requirements of Subdivision 1 of this Section except for error or omission in the recital of past events; or

(c) There is a memorandum which would satisfy the requirements of Subdivision 1 of this Section except for error or omission which would be corrected by reformation if it occurred in a formal contract; or

(d) the party against whom enforcement is sought admits, voluntarily or involuntarily, in his pleading or at any other stage of this or any other action or proceeding, the making of an agreement, or

(e) it is a contract of employment for a period not exceeding one year from the commencement of work thereunder.

4. It shall not be permissible to raise the defense of Statute of Frauds unless the party raising the same denies the existence of an agreement, or a material part thereof, in his verified answer or reply, provided, that if the original party to an agreement be deceased, this requirement shall not apply as against his personal representative.

5. It shall not be permissible to raise the defense of Statute of Frauds by motion to dismiss unless said motion is supported by an affidavit denying an agreement or a material part thereof.

1 Section 2. Section 29-1-12 ACLA 1949 is hereby amended to
2 read as follows:

3 Section 29-1-12. STATUTE OF FRAUDS.

4 (1) Requirement of writing, etc. A contract to sell
5 or a sale of any goods or choses in action of the value of
6 five hundred dollars or upwards shall not be enforceable by
7 action unless the buyer shall accept part of the goods or
8 choses in action so contracted to be sold or sold, and
9 actually receive the same, or give something in earnest to
10 bind the contract, or in part payment, or unless some note
11 or memorandum in writing of the contract or sale be signed
12 by the party to be charged or his agent in that behalf.
13 Provided, however, that it shall not be permissible to
14 raise the defense of Statute of Frauds unless the party
15 raising the same deny the existence of an agreement or a
16 material part thereof in his verified answer or reply,
17 provided that if the original party to an agreement be
18 deceased, this requirement shall not apply as against his
19 personal representative. Provided further, that it shall
20 not be permissible to raise the defense of Statute of
21 Frauds by motion to dismiss unless said motion is supported
22 by an affidavit denying an agreement or a material part
23 thereof.

24 (2) Application of section. The provisions of this
25 section apply to every such contract or sale, notwithstanding
26 that the goods may be intended to be delivered at some future
27 time or may not at the time of such contract or sale be
28 actually made, procured, or provided, or fit or ready for
29 delivery, or some act may be requisite for the making or

1 completing thereof, or rendering the same fit for delivery;
2 but if the goods are to be manufactured by the seller
3 especially for the buyer and are not suitable for sale to
4 others in the ordinary course of the seller's business, the
5 provisions of this section shall not apply.

6 (3) Acceptance of goods defined. There is an
7 acceptance of goods within the meaning of this section when
8 the buyer, either before or after delivery of the goods,
9 expresses by words or conduct his assent to becoming the
10 owner of those specific goods.

11 ~~Section 3. This Act shall become effective June 1, 1955.~~