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Referred: Commerce and
Judiciary

1 IN THE SENATE

BY COLLETTA

2 *HCS CS* SENATE BILL NO. 354 *am (Jud.)*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to limited liability companies."

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

8 * Section 1. AS 10 is amended by adding a new chapter to read:

9 CHAPTER 50. LIMITED LIABILITY COMPANY ACT.

10 Sec. 10.50.010. DECLARATION OF PURPOSE. Limited liability
11 companies may be organized under this chapter for any lawful purpose,
12 except for the purpose of banking or insurance.

13 Sec. 10.50.020. POWERS. Each limited liability company organized
14 and existing under this chapter may:

- 15 (1) sue and be sued, complain and defend, in its name;
- 16 (2) purchase, take, receive, lease or otherwise acquire, own,
17 hold, improve, use and otherwise deal in and with, real or personal
18 property, or an interest in it, wherever situated;
- 19 (3) sell, convey, mortgage, pledge, lease, exchange, transfer
20 and otherwise dispose of all or any part of its property and assets;
- 21 (4) lend money to and otherwise assist its members;
- 22 (5) purchase, take, receive, subscribe for or otherwise
23 acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or
24 otherwise dispose of, and otherwise use and deal in and with, shares or
25 other interests in or obligations of, other limited liability companies,
26 domestic or foreign corporations, associations, general or limited
27 partnerships or individuals, or direct or indirect obligations of the
28 United States or of any government, state, territory, governmental
29 district or municipality or of any instrumentality of it;

1 (6) make contracts and guarantees and incur liabilities,
2 borrow money at such rates of interest as the limited liability company
3 may determine, issue its notes, bonds and other obligations, and secure
4 any of its obligations by mortgage or pledge of all or any part of its
5 property, franchises and income;

6 (7) lend money for its proper purposes, invest and reinvest
7 its funds, and take and hold real property and personal property for the
8 payment of funds so loaned or invested;

9 (8) conduct its business, carry on its operations, and have
10 and exercise the powers granted by this chapter in any state, territory,
11 district or possession of the United States, or in any foreign country;

12 (9) elect or appoint managers and agents of the limited
13 liability company, and define their duties and fix their compensation;

14 (10) make and alter the operating agreement, not inconsistent
15 with its certificate of organization or with the laws of this state, for
16 the administration and regulation of the affairs of the limited liability
17 company;

18 (11) indemnify a member or manager or former member or manager
19 of the limited liability company against expenses actually and reasonably
20 incurred by him or it in connection with the defense of an action, suit
21 or proceeding, civil or criminal, in which he or it is made a party by
22 reason of being or having been such member or manager, except in relation
23 to matters as to which he or it shall be adjudged in the action, suit or
24 proceeding to be liable for negligence or misconduct in the performance
25 of duty; and to make any other indemnification that is authorized by the
26 certificate of organization or by an article of the operating agreement
27 or resolution adopted by the members after notice;

28 (12) cease its activities and surrender its certificate of
29 existence.

1 (13) have and exercise all powers necessary or convenient to
2 effect any or all of the purposes for which the limited liability
3 company is organized;

4 (14) become a member of a general partnership, limited partner-
5 ship, joint venture or similar association, or any other limited liabil-
6 ity company.

7 Sec. 10.50.030. LIMITED LIABILITY COMPANY NAME. (a) The word
8 "limited" or as abbreviated "Ltd." shall be the last word of the name of
9 every limited liability company formed under the provisions of this
10 chapter and, in addition, the limited liability company name may not

11 (1) contain a word or phrase which indicates or implies that
12 it is organized for a purpose other than one or more of the purposes con-
13 tained in its certificate of organization;

14 (2) be the same as, or deceptively similar^{to}, the name of a
15 limited liability company or corporation existing under the laws of this
16 state or a foreign corporation authorized to transact business in this
17 state, or a name the exclusive right to which is, at the time, reserved
18 in the manner provided under the laws of this state.

19 (b) Omission of the word "limited" in the use of the name of the
20 limited liability company shall render any person who participates in the
21 omission, or knowingly acquiesces in it, liable for indebtedness, damage
22 or liability occasioned by the omission.

23 (c) The identification "a limited liability company" shall appear
24 after the name of the limited liability company on all correspondence,
25 stationery, checks, invoices and any and all documents and papers
26 executed by the limited liability company.

27 Sec. 10.50.040. FORMATION. Two or more persons may form a limited
28 liability company by signing, verifying and delivering in duplicate to
29 the commissioner a certificate of organization for such limited liability

1 company.

2 Sec. 10.50.050. CERTIFICATE OF ORGANIZATION. (a) The certificate
3 of organization shall set out

4 (1) the name of the limited liability company;

5 (2) the period of its duration, which may not exceed 30 years
6 from the date of filing with the commissioner;

7 (3) the purpose for which the limited liability company is
8 organized;

9 (4) the address of its principal place of business in the
10 state and the name and address of its registered agent in the state;

11 (5) the total amount of cash and a description and agreed
12 value or property other than cash contributed;

13 (6) the total additional contributions, if any, agreed to be
14 made by all members and the times at which or events upon the happening
15 of which they shall be made;

16 (7) the right, if given, of the members to admit additional
17 members, and the terms and conditions of the admission;

18 (8) the right, if given, of the remaining members of the
19 limited liability company to continue the business on the death, retire-
20 ment, resignation, expulsion, bankruptcy or dissolution of a member or
21 occurrence of any other event which terminates the continued membership
22 of a member in the limited liability company;

23 (9) if the limited liability company is to be managed by a
24 manager or managers, the certificate of organization shall so state and
25 shall set out the names and addresses of such manager or managers who
26 are to serve as managers until the first annual meeting of members or
27 until their successors are elected and qualify; if the management of a
28 limited liability company is reserved to the members, the names and
29 addresses of the members shall be set out in the certificate of

1 organization;

2 (10) any other provision, not inconsistent with law, which the
3 members elect to set out in the certificate of organization for the regu-
4 lation of the internal affairs of the limited liability company, includ-
5 ing any provisions which under this chapter are required or permitted to
6 be set out in the operating agreement of the limited liability company.

7 (b) It shall not be necessary to set out in the certificate of
8 organization any of the powers enumerated in this chapter.

9 Sec. 10.50.060. FILING OF CERTIFICATE OF ORGANIZATION. (a) Dupli-
10 cate originals of the certificate of organization shall be delivered to
11 the commissioner. If the commissioner finds that the certificate of
12 organization conforms to law, he shall, when all fees have been paid, as
13 in this chapter prescribed

14 (1) endorse on each of the duplicate originals the word
15 "Filed" and the month, day and year of the filing thereof;

16 (2) file one of the duplicate originals in his office;

17 (3) issue a certificate of existence to which he shall affix
18 the other duplicate original;

19 (b) The certificate of existence, together with a duplicate origi-
20 nal of the certificate of organization affixed to it by the commissioner,
21 shall be returned to the principal office of the limited liability
22 company.

23 Sec. 10.50.070. EFFECT OF ISSUANCE OF CERTIFICATE OF EXISTENCE.

24 (a) Upon the issuance of the certificate of existence, the limited
25 liability company shall be considered organized, and such certificate of
26 existence shall be conclusive evidence that all conditions precedent
27 required to be performed by the members have been complied with and that
28 the limited liability company has been legally organized under this
29 chapter, except as against this state in a proceeding to cancel or revoke

1 the certificate of existence or for involuntary dissolution of the
2 limited liability company.

3 (b) A limited liability company shall not transact business or
4 incur indebtedness, except that which is incidental to its organization
5 or to obtaining subscriptions for or payment of contributions, until the
6 commissioner has issued a certificate of existence.

7 Sec. 10.50.080. CONTRIBUTIONS TO CAPITAL. The contributions to
8 capital of a member to the limited liability company may consist of
9 cash or other property, but not services.

10 Sec. 10.50.090. MANAGEMENT OF LIMITED LIABILITY COMPANY. Manage-
11 ment of the limited liability company shall be vested in its members in
12 proportion to their contribution to the capital of the limited liability
13 company, as adjusted from time to time to properly reflect any additional
14 contributions or withdrawals by the members; however, if provision is
15 made for it in the certificate of organization, management of the
16 limited liability company may be vested in a manager or managers who
17 shall be elected by the members in the manner prescribed by the operating
18 agreement of the limited liability company. If the certificate of organ-
19 ization provides for the management of the limited liability company by
20 a manager or managers, they shall be elected annually by the members in
21 a manner provided in the operating agreement. The manager or managers
22 shall also hold the offices and have the responsibilities accorded to
23 them by the members and set out in the operating agreement of the limited
24 liability company.

25 Sec. 10.50.100. CONTRACTING DEBTS. Except as otherwise provided in
26 this chapter, no debt shall be contracted or liability incurred by or on
27 behalf of a limited liability company, except by one or more of its
28 managers if management of the limited liability company has been vested
29 by the members in a manager or managers, or, if management of the limited

1 liability company is retained by the members, then by any member.

2 Sec. 10.50.110. LIMITED LIABILITY COMPANY PROPERTY. Real and
3 personal property owned or purchased by a limited liability company shall
4 be held and owned, and conveyance made, in the limited liability company
5 name, or in the name of any member or manager. Instruments and documents
6 providing for the acquisition, mortgage or disposition of property of
7 the limited liability company shall be valid and binding upon the limited
8 liability company if executed by one or more managers of a limited
9 liability company having a manager or managers or one or more members of
10 a limited liability company in which management has been retained in the
11 members.

12 Sec. 10.50.120. ACTIONS BY AND AGAINST LIMITED LIABILITY COMPANY;
13 SERVICE OF PROCESS. A limited liability company shall sue and be sued,
14 complain and defend, in its limited liability company name, and when an
15 action is brought against a limited liability company, service may be
16 made upon a manager of a limited liability company managed by a manager
17 or managers or upon a member of a limited liability company in which
18 management has been retained by the members or upon the registered
19 agent.

20 Sec. 10.50.130. LIABILITY OF MEMBERS AND MANAGERS. Neither the
21 members of a limited liability company nor the managers of a limited
22 liability company managed by a manager or managers are liable under a
23 judgment, decree or order of a court, or in any other manner, for a
24 debt, obligation or liability of the limited liability company.

25 Sec. 10.50.140. DIVISION OF PROFITS; IMPAIRMENT OF CAPITAL. The
26 limited liability company may, from time to time, divide the profits of
27 its business and distribute the same to the members of the limited
28 liability company upon the basis stipulated in the operating agreement;
29 however, after distribution is made, the assets of the limited liability

1 company are in excess of all liabilities of the limited liability company
2 except liabilities to members on account of their contributions.

3 Sec. 10.50.150. WITHDRAWAL OR REDUCTION OF MEMBERS' CONTRIBUTIONS
4 TO CAPITAL. (a) A member shall not receive out of limited liability
5 company property any part of his or its contribution to capital until

6 (1) all liabilities of the limited liability company, except
7 liabilities to members on account of their contributions to capital,
8 have been paid or there remains property of the limited liability company
9 sufficient to pay them;

10 (2) the consent of all members is had, unless the return of
11 the contribution to capital may be rightfully demanded as provided in
12 this chapter;

13 (3) the certificate of organization is cancelled or so amended
14 as to set out the withdrawal or reduction;

15 (b) subject to the provisions of (a) of this section, a member may
16 rightfully demand the return of his or its contribution:

17 (1) on the dissolution of the limited liability company, or

18 (2) after the member has given all other members of the
19 limited liability company six months prior notice in writing, if no time
20 is specified in the certificate of organization for the dissolution of
21 the limited liability company.

22 (c) In the absence of a statement in the certificate of organiza-
23 tion to the contrary or the consent of all members of the limited liabil-
24 ity company, a member, irrespective of the nature of his or its contribu-
25 tion, has only the right to demand and receive cash in return for his or
26 its contribution to capital.

27 (d) A member of a limited liability company may have the limited
28 liability company dissolved and its affairs wound up when

29 (1) the member rightfully but unseccessfully has demanded the

1 return of his or its contribution, or

2 (2) the other liabilities of the limited liability company
3 have not been paid, or the limited liability company property is in-
4 sufficient for their payment and the member would otherwise be entitled
5 to the return of his or its contribution.

6 Sec. 10.50.160. LIABILITY OF MEMBER TO LIMITED LIABILITY COMPANY.

7 (a) A member is liable to the limited liability company

8 (1) for the difference between his or its contributions to
9 capital as actually made and that stated in the certificate of organiza-
10 tion as having been made, and

11 (2) for any unpaid contribution to capital which he or it
12 agreed in the certificate of organization to make in the future at the
13 time and on the conditions stated in the certificate of organization.

14 (b) A member holds as trustee for the limited liability company

15 (1) specific property stated in the certificate of organiza-
16 tion as contributed by such member, but which was not contributed or
17 which has been wrongfully returned, and

18 (2) money or other property wrongfully paid or conveyed to
19 such member on account of his or its contribution.

20 (c) The liabilities of a member as set out in this section can be
21 waived or compromised only by the consent of all members; but a waiver
22 or compromise shall not affect the right of a creditor of the limited
23 liability company who extended credit or whose claim arose after the
24 filing and before a cancellation or amendment of the certificate of
25 organization, to enforce the liabilities.

26 (d) When a contributor has rightfully received the return in whole
27 or in part of the capital of his or its contribution, the contributor is
28 nevertheless liable to the limited liability company for any sum, not in
29 excess of the return with interest, necessary to discharge its liability

1 to all creditors of the limited liability company who extended credit or
2 whose claims arose before the return.

3 Sec. 10.50.170. INTEREST IN LIMITED LIABILITY COMPANY; TRANSFER-
4 ABILITY OF INTEREST. (a) The interest of all members in a limited lia-
5 bility company constitutes the personal estate of the member, and may be
6 transferred or assigned as provided in the operating agreement; however,
7 if all of the other members of the limited liability company other than
8 the member proposing to dispose of his or its interest do not approve of
9 the proposed transfer or assignment by unanimous written consent, the
10 transfer of the member's interest shall have no right to participate in
11 the management of the business and affairs of the limited liability
12 company, or to become a member, but shall only be entitled to receive
13 the share of profits or other compensation by way of income, and the
14 return of contributions, to which that member would otherwise be
15 entitled.

16 Sec. 10.50.180. DISSOLUTION. (a) A limited liability company
17 organized under this chapter shall be dissolved upon the occurrence of
18 any of the following events

- 19 (1) when the period fixed for the duration of the limited
20 liability company shall expire;
- 21 (2) by the unanimous written agreement of all members; or
- 22 (3) upon the death, retirement, resignation, expulsion, bank-
23 ruptcy, dissolution of a member or occurrence of any other event which
24 terminates the continued membership of a member in the limited liability
25 company, unless the business of the limited liability company is con-
26 tinued by the consent of all the remaining members under a right to do so
27 stated in the certificate of organization of the limited liability
28 company.

29 (b) As soon as possible following the occurrence of any of the

1 events specified in this section effecting the dissolution of the limited
2 liability company, the limited liability company shall execute a state-
3 ment of intent to dissolve in such form as shall be prescribed by the
4 commissioner, which statement shall be executed in duplicate by the
5 limited liability company and filed in the office of the commissioner.
6 Upon the filing by the commissioner of a statement to dissolve, the
7 limited liability company shall cease to carry on its business, except
8 insofar as may be necessary for the winding up of its business, but its
9 separate existence shall continue until a certificate of dissolution has
10 been issued by the commissioner or until a decree dissolving the limited
11 liability company has been entered by a court of competent jurisdiction.

12 Sec. 10.50.190. DISTRIBUTION OF ASSETS UPON DISSOLUTION. (a) In
13 settling accounts after dissolution, the liabilities of the limited
14 liability company shall be entitled to payment in the following order

15 (1) those to creditors, in the order of priority as provided
16 by law, except those to members of the limited liability company on
17 account of their contributions;

18 (2) those to members of the limited liability company in
19 respect of their share of the profits and other compensation by way of
20 income on their contributions, and

21 (3) those to members of the limited liability company in
22 respect of their contributions to capital.

23 (b) Subject to any statement in the operating agreement, members
24 share in the limited liability company assets in respect to their claims
25 for capital, and in respect to their claims for profits or for compensa-
26 tion by way of income on their contributions, respectively, in proportion
27 to the respective amounts of the claims.

28 Sec. 10.50.200. CANCELLATION OR AMENDMENT OF CERTIFICATE OF ORGAN-
29 IZATION. (a) The certificate of organization shall be cancelled by the

1 commissioner when the limited liability company is dissolved.

2 (b) The certificate of organization shall be amended when

3 (1) there is a change in the name of the limited liability
4 company or in the amount or the character of the contributions to
5 capital;

6 (2) there is a change in the character of the business of the
7 limited liability company;

8 (3) there is a false or erroneous statement in the certificate
9 of organization;

10 (4) there is a change in the time as stated in the certifi-
11 cate of organization for the dissolution of the limited liability
12 company;

13 (5) a time is fixed for the dissolution of the limited
14 liability company if no time is specified in the certificate of organiza-
15 tion, or

16 (6) the members desire to make a change in any other state-
17 ment in the certificate of organization in order that it shall accurately
18 represent the agreement between them.

19 (c) The form for evidencing an amendment to the certificate of
20 organization of a limited liability company shall be promulgated by the
21 commissioner and shall contain terms and provisions, consistent with
22 this chapter, which the commissioner determines. The amendment shall be
23 signed and sworn to by all members, and an amendment adding a new member
24 shall be signed also by the member to be added, and thereafter, dupli-
25 cate originals of the amendment shall be forwarded to the commissioner
26 for filing, accompanied by the requisite filing fee.

27 Sec. 10.50.210. PARTIES TO ACTIONS. A member of a limited liabil-
28 ity company is not a proper party to proceedings by or against a limited
29 liability company, except where the object is to enforce a member's

1 right against or liability to the limited liability company.

2 Sec. 10.50.220. WAIVER OF NOTICE. When, under the provisions of
3 this chapter or under the provisions of the certificate of organization
4 or operating agreement of a limited liability company, notice is required
5 to be given to a member or to a manager of a limited liability company
6 having a manager or managers, a waiver in writing signed by the person
7 or persons entitled to the notice, whether before or after the time
8 stated in it, is equivalent to the giving of notice.

9 Sec. 10.50.230. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES.
10 The commissioner shall charge and collect for:

11 (1) filing the original certificate of organization, if the
12 capital of the limited liability company is:

<u>Capital</u>	<u>Filing Fee</u>
Not in excess of \$100,000	\$ 100
\$100,000 and not exceeding \$250,000	\$ 250
Exceeding \$250,000 but not in excess 17 of \$500,000	\$ 500
18 \$500,000 to \$1,000,000	\$ 750
19 In excess of \$1,000,000	\$1,000;

20 (2) for amending the certificate of organization, a filing
21 fee of \$25, together with the appropriate fee set out in (1) of this
22 section if the amendment is to increase the amount of capital;

23 (3) for dissolution, \$25;

24 (4) an annual tax of \$100, due and payable January 2 of each
25 year; this tax is delinquent if not paid by February 1 and an addition
26 to the tax shall then be due of \$50.

27 Sec. 10.50.240. UNAUTHORIZED ASSUMPTION OF POWERS. All persons
28 who assume to act as a limited liability company without authority to do
29 so shall be jointly and severally liable for all debts and liabilities

1 incurred or arising as a result of that action.

2 Sec. 10.50.250. APPLICATION TO FOREIGN AND INTERSTATE COMMERCE.
3 The provisions of this chapter shall apply to commerce with foreign
4 nations and among the several states only as permitted by law.

5 Sec. 10.50.260. APPLICABILITY OF THIS CHAPTER. This chapter takes
6 precedence in the event of a conflict with the provisions of the Alaska
7 Business Corporation Act or other laws. This chapter does not affect
8 a right accrued or established, or any liability or penalty incurred,
9 prior to the effective date of this Act.

10 Sec. 10.50.270. DEFINITIONS. In this chapter, unless the context
11 otherwise requires

12 (1) "bankrupt" means bankrupt under the Federal Bankruptcy
13 Act;

14 (2) "commissioner" means the commissioner of commerce;

15 (3) "court" includes every court and judge having jurisdic-
16 tion in the case;

17 (4) "limited liability company" means a limited liability
18 company organized and existing under this chapter;

19 (5) "person" includes individuals, general partnerships,
20 limited partnerships, limited liability companies, corporations, trusts,
21 business trusts, real estate investment trusts, estates and other
22 associations;

23 (6) "real property" includes land, any interest, leasehold
24 or estate in land and any improvements on it.

25 Sec. 10.50.280. SHORT TITLE. This Act shall be known and may be
26 cited as the Alaska Limited Liability Company Act.

27 Sec. 10.50.290. REGISTERED AGENT. A limited liability company
28 is required at all times to have a registered agent whose residence is
29 in the state. The commissioner shall be notified upon any change in the

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name or address of the registered agent.

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