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1 IN THE HOUSE

BY KOPONEN

2

HOUSE BILL NO. 617

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to business trusts."

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. BUSINESS TRUSTS.

10

Sec. 10.50.010. PURPOSE OF BUSINESS TRUST. A business trust may be organized under this chapter for a lawful purpose.

12

Sec. 10.50.020. FORMATION OF BUSINESS TRUST. (a) Two or more persons may form a business trust by signing, verifying, and delivering a declaration to the department for filing.

15

(b) The declaration must include the following information:

16

(1) the name of the business trust;

17

(2) the names and addresses of the persons forming the business trust;

19

(3) the owner, value, and terms of each certificate of participation to be issued by the business trust upon receiving the certificate of business trust;

22

(4) the period of duration of the business trust, which may be perpetual;

24

(5) the purpose for which the business trust is organized;

25

(6) the address of the initial registered office of the business trust;

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(7) the names and addresses of the trustees constituting the initial trustees of the business trust;

29

(8) the procedures for the functioning of the trustees of

1 the business trust and for the election of the officers of the busi-
2 ness trust;

3 (9) the time for each regular meeting of the trustees of
4 the business trust, and the method for calling special meetings;

5 (10) the time, quorum, and procedures for meetings of inves-
6 tors;

7 (11) the method for enacting bylaws, the scope of the by-
8 laws, and any limitation on the bylaws;

9 (12) the powers, duties, and disabilities of the trustees in
10 managing the business trust;

11 (13) the procedure for replacing a trustee of the business
12 trust in case of death, resignation, disability, disqualification, or
13 removal;

14 (14) the procedures for transfer of the assets of the busi-
15 ness trust in a reorganization of the business trust, in a transfer of
16 the assets to a successor corporation, or in an assignment to a dif-
17 ferent business trust, existing corporation, partnership, or other
18 person;

19 (15) other provisions consistent with law for the regulation
20 of the internal affairs of the business trust.

21 (c) The persons forming the business trust shall pay the depart-
22 ment a fee of \$100 for filing the declaration.

23 (d) If the declaration meets the requirements of this section,
24 the department shall file the declaration and issue a certificate of
25 business trust to the trustees of the business trust.

26 (e) A person who operates a business trust in the state without
27 having a certificate of business trust is guilty of a class A misde-
28 meanor.

29 Sec. 10.50.030. AMENDMENT OF DECLARATION. The trustees of a

1 business trust may amend the declaration and shall, within 30 days of
2 amending the declaration, file a copy of the amendment with the de-
3 partment.

4 Sec. 10.50.040. NAME OF BUSINESS TRUST. (a) A business trust
5 may not use a name

6 (1) that contains the word "city," "borough," or "village";

7 (2) that otherwise implies that the business trust is a
8 municipality; or

9 (3) that is the same as, or deceptively similar to, the
10 name of another business trust, a domestic corporation or a foreign
11 corporation authorized to transact business in the state, or a name
12 reserved or registered under this title.

13 (b) The department shall refuse to file the written declaration
14 of a business trust if the name of the business trust given in the
15 declaration violates (a) of this section.

16 (c) The superior court has jurisdiction, on the application of
17 the department, to enjoin a business trust from doing business under a
18 name that violates this section.

19 Sec. 10.50.050. GENERAL POWERS. (a) A business trust may

20 (1) have perpetual succession by the name of the business
21 trust unless a limited period of duration is stated in the declara-
22 tion;

23 (2) adopt a seal, alter the seal, and use the seal by
24 having the seal or a facsimile of the seal impressed, affixed, or
25 reproduced.

26 (b) The trustees of a business trust may in their fiduciary
27 capacity

28 (1) receive property for the business trust and issue
29 certificates of participation in the business trust;

- 1 (2) sue and be sued in the business trust name;
- 2 (3) buy, take, receive, lease, or otherwise acquire, own,
3 hold, improve, use and otherwise deal in, real or personal property or
4 an interest in real or personal property, wherever situated;
- 5 (4) sell, convey, mortgage, pledge, lease, exchange, trans-
6 fer, and otherwise dispose of all or a part of the property and assets
7 of the business trust;
- 8 (5) buy, take, receive, subscribe for, or otherwise ac-
9 quire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or
10 otherwise dispose of, and otherwise use and deal in certificates of
11 participation or other interests in, or obligations of, other business
12 trusts, domestic or foreign corporations, associations, partnerships
13 or individuals, or obligations of the United States or of another
14 government, state, territory, governmental districts or municipality
15 or of an instrumentality of one of them;
- 16 (6) make contracts and incur liabilities, borrow money at
17 the rate of interest the trustees determine, issue notes, bonds, and
18 other obligations, and secure obligations for the business trust by
19 mortgage or pledge of property, franchise, or income of the business
20 trust;
- 21 (7) lend money for business trust purposes, invest and
22 reinvest funds of the business trust, and take and hold real and
23 personal property as security for the payment of funds loaned or
24 invested;
- 25 (8) elect or appoint officers and agents for the business
26 trust and determine the duties and compensation of the officers and
27 agents;
- 28 (9) make and alter bylaws consistent with the declaration
29 and with the laws of the state for the administration and regulation

1 of the affairs of the business trust;

2 (10) cease business trust activities and surrender the
3 certificate of business trust.

4 Sec. 10.50.060. SERVICE OF PROCESS ON BUSINESS TRUST. (a) The
5 trustee of a business trust is an agent on whom a person may serve
6 process, notice or demand required or permitted by law to be served on
7 the business trust.

8 (b) If a business trust does not have a trustee in the state, or
9 if a trustee of the business trust cannot, with reasonable diligence,
10 be found at the registered office, the commissioner is an agent of the
11 trustee and of the business trust on whom the process, notice, or
12 demand may be served. Service is made on the commissioner as agent by
13 leaving with the commissioner, or with a clerk having charge of the
14 corporation division of the department, duplicate copies of the
15 process, notice, or demand. Service on the commissioner must be
16 accompanied by a fee of \$10. When process, notice, or demand is
17 served on the commissioner, the commissioner shall immediately forward
18 a copy of it by registered mail to the appropriate trustee or business
19 trust at the registered office of the business trust. Service on the
20 commissioner is returnable in not less than 30 days.

21 (c) The commissioner shall keep a record of processes, notices,
22 and demands served on the commissioner showing the time of service and
23 the commissioner's action with reference to the service.

24 (d) This section does not limit or affect the right to serve
25 process, notice, or demand required or permitted by law to be served
26 on a business trust in another manner permitted by law.

27 Sec. 10.50.070. TRUSTEES. (a) Two or more trustees shall
28 manage each business trust as fiduciaries for the benefit of the
29 investors. When dealing with the assets of the business trust, the

1 trustees have a fiduciary obligation to the investors and shall ob-
2 serve the standard that would be observed by a prudent person dealing
3 with the property of another person.

4 (b) The trustees shall keep the investors in the business trust
5 reasonably informed of the activities of the business trust.

6 (c) Unless the declaration provides otherwise the unanimous
7 concurrence of the trustees is necessary for the trustees to take
8 action on the management of the business trust, unless a trustee has
9 authorized another trustee to act for the authorizing trustee.

10 Sec. 10.50.080. LIABILITY. (a) A trustee of a business trust
11 is not personally liable for a contract properly entered into by the
12 trustees in their fiduciary capacity in the course of the management
13 of the business trust unless the trustee fails to reveal the trustee's
14 representative capacity and identify the business trust in the con-
15 tract.

16 (b) If the trustee was personally negligent, a trustee of a
17 business trust is personally liable to an investor or to a third party
18 injured by the act of the trustee for a liability arising from the
19 negligent ownership or control of the assets of the business trust or
20 for a tort committed in the course of the management of the business
21 trust.

22 (c) A person may assert against the assets of the business trust
23 a claim based on a contract entered into by the trustees of a business
24 trust in a fiduciary capacity, an obligation arising from ownership or
25 control of the business trust assets, or a tort committed in the
26 course of the management of the business trust, by proceeding against
27 the trustee in the trustee's fiduciary capacity, whether or not the
28 trustee is personally liable for the claim.

29 (d) An investor in a business trust is not personally liable for

1 a contract of the trustees of the business trust or for a claim
2 against the assets of the business trust, unless the investor has
3 participated in the management of the business trust.

4 (e) The assets of a business trust are subject to attachment and
5 execution in the same manner as if the business trust were a corpora-
6 tion.

7 Sec. 10.50.090. OWNERSHIP OF ASSETS OF BUSINESS TRUST. The
8 business trust does not own the assets of the business trust. The
9 trustees have legal title to the assets of the business trust.

10 Sec. 10.50.100. INVESTMENT IN BUSINESS TRUST. (a) A person may
11 invest in a business trust by transferring personal or real property
12 of the person to the business trust.

13 (b) An investor in a business trust may not participate in the
14 management of the business trust.

15 (c) The business trust shall deliver to each investor a certifi-
16 cate of participation indicating the beneficial interest of the inves-
17 tor in the assets of the business trust.

18 (d) An investor may transfer or pledge the investor's certifi-
19 cate of participation. Transfer of a certificate transfers the
20 beneficial interest of the investor in the assets of the business
21 trust.

22 (e) The trustees of a business trust may pay a dividend to a
23 holder of a certificate of participation.

24 Sec. 10.50.110. ANNUAL REPORT. (a) The trustees of a business
25 trust shall sign, verify and file an annual report with the department
26 on or before June 1 of each year.

27 (b) The annual report must state

28 (1) the name of the business trust;

29 (2) the address of the registered office of the business

1 trust in the state;

2 (3) the names and addresses of the trustees and officers of
3 the business trust; and

4 (4) the number of the issued and outstanding certificates
5 of participation in the business trust.

6 (c) If the department finds that the annual report meets the
7 requirements of this section, the department shall endorse the annual
8 report and file the endorsed annual report in a manner that permits
9 convenient reference and inspection by the public.

10 (d) The trustees of the business trust shall pay to the depart-
11 ment a fee of \$25 for filing the annual report.

12 Sec. 10.50.120. FAILURE TO FILE ANNUAL REPORT. (a) The depart-
13 ment shall notify by mail, postage prepaid, the trustees of each
14 business trust that fails to file an annual report by June 1 of each
15 year that if the trustees of the business trust fail to file the
16 annual report within 30 days after the date of the notice of default,
17 the assets of the business trust will be subject to a penalty of \$10
18 for each day after June 1 that the default continues.

19 (b) The department may recover the penalty imposed under (a) of
20 this section in an action against the assets of the trust in the name
21 of the department.

22 (c) In an action brought under (b) of this section, the court
23 may issue an injunction restraining the trustees of the defaulting
24 business trust from doing business in the state until the trustees of
25 the business trust have filed the annual report and paid the penalty,
26 with interest, and the costs of the action, including reasonable
27 attorney fees.

28 Sec. 10.50.250. DEFINITIONS. In this chapter,

29 (1) "business trust" means an unincorporated business

1 organization that holds property that is managed by trustees for the
2 benefit and profit of the investors;

3 (2) "commissioner" means the commissioner of the Department
4 of Commerce and Economic Development;

5 (3) "certificate of participation" means the written evi-
6 dence of a beneficial interest in the assets of a business trust
7 issued by the business trust to an investor;

8 (4) "declaration" means the written agreement that contains
9 the terms of a business trust;

10 (5) "department" means the Department of Commerce and
11 Economic Development;

12 (6) "investor" means a person who transfers personal or
13 real property of the person to the trustees of a business trust in
14 exchange for a certificate of participation in the business trust.

15 * Sec. 2. AS 10.05.126(c) is amended to read:

16 (c) Except as provided in AS 10.50.080, an [AN] executor,
17 administrator, conservator, guardian, trustee, assignee for the
18 benefit of creditors, or receiver is not personally liable to the
19 corporation as a holder of or subscriber to shares of a corporation
20 but the estate and funds held by that person [AND] are liable.

21 * Sec. 3. AS 10.20.021 is amended to read:

22 Sec. 10.20.021. CORPORATE NAME. The corporate name may not

23 (1) contain a word or phrase that [WHICH] indicates or
24 implies that it is organized for a purpose other than one or more of
25 the purposes contained in its articles of incorporation;

26 (2) be the same as, or deceptively similar to, the name of
27 a corporation, whether for profit or not for profit, existing under
28 the law of the state, or a foreign corporation, whether for a profit
29 or not for profit, authorized to transact business in the state, the

1 name of a business trust formed under AS 10.50, or a corporate or
2 business name reserved or registered as permitted by the laws of the
3 state.

4 * Sec. 4. AS 10.35.020 is amended to read:

5 Sec. 10.35.020. APPLICATION TO RESERVE NAME. Reservation of a
6 business name is made by filing an application with the commissioner.
7 Upon finding that the name is available for business use, the commis-
8 sioner shall reserve it for the exclusive use of the applicant for a
9 period of 120 days. A name is not available that [WHICH] is the same
10 as, or deceptively similar to, the name of a domestic corporation or a
11 foreign corporation authorized to transact business in the state, the
12 name of a business trust formed under AS 10.50, or a name reserved or
13 registered under this title or gives the impression that the business
14 is incorporated.

15 * Sec. 5. AS 10.35.040 is amended to read:

16 Sec. 10.35.040. REGISTRATION OF NAME. A person conducting a
17 business may register its name if the name is not the same as, or
18 deceptively similar to, the name of a domestic corporation or a
19 foreign corporation authorized to transact business in the state, the
20 name of a business trust formed under AS 10.50, or a name reserved or
21 registered under this title. Registration of the name gives the
22 exclusive right to the use of the name and the person who has
23 registered the name may enjoin the use of the same name or a de-
24 ceptively similar name and has a cause of action for damages against
25 anyone who uses the same name or a deceptively similar name.

26 * Sec. 6. AS 13.36 is amended by adding a new section to read:

27 Sec. 13.36.310. BUSINESS TRUSTS. The provisions of this chapter
28 do not apply to a business trust formed under AS 10.50.

29 * Sec. 7. AS 13.38.140 is amended by adding a new subsection to read:

1 (b) The provisions of this chapter do not apply to a business
2 trust formed under AS 10.50.