

HOUSE BILL NO. 394

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE MOSES

Introduced: 1/21/94

Referred: Labor & Commerce, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to limited partnerships; and providing for an effective date."**

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

3 *** Section 1. AS 32.11.010(a) is repealed and reenacted to read:**

4 **(a) In order to form a limited partnership, a certificate of limited partnership**
5 **shall be executed and filed with the Department of Commerce and Economic**
6 **Development. The certificate must set out**

7 **(1) the name of the limited partnership;**

8 **(2) the address of the office and the name and address of the agent for**
9 **service of process required to be maintained by AS 32.11.830;**

10 **(3) the name and business address of each general partner;**

11 **(4) the latest date upon which the limited partnership is to dissolve; and**

12 **(5) other matters the general partners determine to include.**

13 *** Sec. 2. AS 32.11.020(b) is amended to read:**

14 **(b) Within 30 days after the following events, an amendment to a certificate**

1 of limited partnership reflecting the occurrence of the event or events shall be filed:
2 (1) [A CHANGE IN THE AMOUNT OR CHARACTER OF THE
3 CONTRIBUTION OF A PARTNER, OR IN A PARTNER'S OBLIGATION TO
4 MAKE A CONTRIBUTION;
5 (2)] the admission of a new general partner;
6 (2) [(3)] the withdrawal of a general partner; or
7 (3) [(4)] the continuation of the business under AS 32.11.370 after an
8 event of withdrawal of a general partner.

9 * Sec. 3. AS 32.11.040(a) is amended to read:
10 (a) Each certificate required by AS 32.11.010 - 32.11.090 to be filed with the
11 department shall be executed in the following manner:

- 12 (1) an original certificate of limited partnership shall be signed by all
13 general partners [NAMED IN THE CERTIFICATE];
- 14 (2) a certificate of amendment shall be signed by at least one general
15 partner and by each other general partner designated in the certificate as a new
16 general partner [OR WHOSE CONTRIBUTION IS DESCRIBED AS HAVING BEEN
17 INCREASED]; and
- 18 (3) a certificate of cancellation shall be signed by all general partners.

19 * Sec. 4. AS 32.11.040(b) is amended to read:
20 (b) A person may sign a certificate by an attorney-in-fact, but a power of
21 attorney to sign a certificate relating to the admission [, OR INCREASED
22 CONTRIBUTION,] of a general partner must specifically describe the admission [OR
23 INCREASE].

24 * Sec. 5. AS 32.11.080 is amended to read:
25 Sec. 32.11.080. SCOPE OF NOTICE. The fact that a certificate of limited
26 partnership is on file with the department is notice that the partnership is a limited
27 partnership and the persons designated in the certificate as general [LIMITED]
28 partners are general [LIMITED] partners, but it is not notice of any other fact.

29 * Sec. 6. AS 32.11.100 is repealed and reenacted to read:
30 Sec. 32.11.100. ADMISSION OF LIMITED PARTNERS. (a) A person
31 becomes a limited partner

1 (1) at the time the limited partnership is formed; or
2 (2) at a later time specified in the records of the limited partnership for
3 becoming a limited partner.

4 (b) After the filing of a limited partnership's original certificate of limited
5 partnership, a person may be admitted as an additional limited partner

6 (1) in the case of a person acquiring a partnership interest directly from
7 the limited partnership, upon compliance with the partnership agreement or, if the
8 partnership agreement does not provide, upon the written consent of all partners; and

9 (2) in the case of an assignee of a partnership interest of a partner who
10 has the power under AS 32.11.350 to grant the assignee the right to become a limited
11 partner, upon the exercise of that power and compliance with conditions limiting the
12 grant or exercise of the power.

13 * Sec. 7. AS 32.11.130(b) is amended to read:

14 (b) A person who makes a contribution of the kind described in (a) of this
15 section is liable as a general partner to a third party who transacts business with the
16 enterprise before (1) the person withdraws and an appropriate certificate is filed to
17 show withdrawal, or (2) an appropriate certificate is filed to show that the person is
18 not a general partner [THE PERSON'S STATUS AS A LIMITED PARTNER AND,
19 IN THE CASE OF AN AMENDMENT, AFTER EXPIRATION OF THE 30-DAY
20 PERIOD FOR FILING AN AMENDMENT RELATING TO THE PERSON AS A
21 LIMITED PARTNER UNDER AS 32.11.020], but in either case under (1) or (2) only
22 if the third party actually believed in good faith that the person was a general partner
23 at the time of the transaction.

24 * Sec. 8. AS 32.11.210 is repealed and reenacted to read:

25 Sec. 32.11.210. LIABILITY FOR CONTRIBUTION. (a) A promise by a
26 limited partner to contribute to the limited partnership is not enforceable unless set out
27 in a writing signed by the limited partner.

28 (b) Except as provided in the partnership agreement, a partner is obligated to
29 the limited partnership to perform an enforceable promise to contribute cash or
30 property or to perform services even if the partner is unable to perform because of
31 death, disability, or other reason. If a partner does not make the required contribution

1 of property or services, the partner is obligated at the option of the limited partnership
2 to contribute cash equal to that portion of the value, as stated in the partnership records
3 required to be kept under AS 32.11.840, of the stated contribution that has not been
4 made.

5 (c) Unless otherwise provided in the partnership agreement, the obligation of
6 a partner to make a contribution or return money or other property paid or distributed
7 in violation of this chapter may be compromised only by consent of all partners.
8 Notwithstanding the compromise, a creditor of a limited partnership who extends credit
9 or otherwise acts in reliance on that obligation after the partner signs a writing that
10 reflects the obligation, and before the amendment or cancellation to reflect the
11 compromise, may enforce the original obligation.

12 * Sec. 9. AS 32.11.220 is amended to read:

13 Sec. 32.11.220. SHARING OF PROFITS AND LOSSES. The profits and
14 losses of a limited partnership shall be allocated among the partners, and among
15 classes of partners, in the manner provided in writing in the partnership agreement. If
16 the partnership agreement does not specify in writing, profits and losses shall be
17 allocated on the basis of the value, as stated in the [CERTIFICATE OF LIMITED]
18 partnership records required to be kept under AS 32.11.840, of the contributions
19 made by each partner to the extent they have been received by the partnership and
20 have not been returned.

21 * Sec. 10. AS 32.11.230 is amended to read:

22 Sec. 32.11.230. SHARING OF DISTRIBUTIONS. Distributions of cash or
23 other assets of a limited partnership shall be allocated among the partners and among
24 classes of partners in the manner provided in writing in the partnership agreement. If
25 the partnership agreement does not specify in writing, distributions shall be made on
26 the basis of the value, as stated in the [CERTIFICATE OF LIMITED] partnership
27 records required to be kept under AS 32.11.840, of the contributions made by each
28 partner to the extent they have been received by the partnership and have not been
29 returned.

30 * Sec. 11. AS 32.11.240 is amended to read:

31 Sec. 32.11.240. INTERIM DISTRIBUTIONS. Except as provided in

1 AS 32.11.240 - 32.11.310, a partner is entitled to receive distributions from a limited
2 partnership before the partner's withdrawal from the limited partnership and before the
3 dissolution and winding up of the partnership

4 [(1)] to the extent and at the times or upon the happening of the events
5 specified in the partnership agreement [; AND

6 (2) IF A DISTRIBUTION CONSTITUTES A RETURN OF A PART
7 OF THE PARTNER'S CONTRIBUTION UNDER AS 32.11.310(c), TO THE
8 EXTENT AND AT THE TIMES OR UPON THE HAPPENING OF THE EVENTS
9 SPECIFIED IN THE CERTIFICATE OF LIMITED PARTNERSHIP].

10 * Sec. 12. AS 32.11.260 is amended to read:

11 Sec. 32.11.260. WITHDRAWAL OF LIMITED PARTNER. A limited partner
12 may withdraw from a limited partnership at the time or upon the happening of events
13 specified in writing in the [CERTIFICATE OF LIMITED PARTNERSHIP AND IN
14 ACCORDANCE WITH THE] partnership agreement. If the agreement
15 [CERTIFICATE] does not specify in writing the time or the events upon the
16 happening of which a limited partner may withdraw or a definite time for the
17 dissolution and winding up of the limited partnership, a limited partner may withdraw
18 upon not less than six months' prior written notice to each general partner at the
19 general partner's address on the books of the limited partnership at its office in this
20 state.

21 * Sec. 13. AS 32.11.280 is amended to read:

22 Sec. 32.11.280. DISTRIBUTION IN KIND. Except as provided in writing
23 in the [CERTIFICATE OF LIMITED] partnership agreement, a partner, regardless of
24 the nature of the partner's contribution, does not have the right to demand and receive
25 a distribution from a limited partnership in a form other than cash. Except as provided
26 in writing in the partnership agreement, a partner may not be compelled to accept a
27 distribution of an asset in kind from a limited partnership to the extent that the
28 percentage of the asset distributed to the partner exceeds a percentage of that asset that
29 is equal to the percentage in which the partner shares in distributions from the limited
30 partnership.

31 * Sec. 14. AS 32.11.310(c) is amended to read:

1 (c) A partner receives a return of the partner's contribution to the extent that
2 a distribution to the partner reduces the partner's share of the fair value of the net
3 assets of the limited partnership below the value, as set out in the [CERTIFICATE OF
4 LIMITED] partnership records required to be kept under AS 32.11.840, of the
5 partner's contribution that has not been distributed to the partner.

6 * Sec. 15. AS 32.11.350(a) is amended to read:

7 (a) An assignee of a partnership interest, including an assignee of a general
8 partner, may become a limited partner if and to the extent that

9 (1) the assignor gives the assignee that right in accordance with
10 authority described in the [CERTIFICATE OF LIMITED] partnership agreement; or

11 (2) all other partners consent.

12 * Sec. 16. AS 32.11.350(b) is amended to read:

13 (b) An assignee who has become a limited partner has, to the extent assigned,
14 the rights and powers, and is subject to the restrictions and liabilities, of a limited
15 partner under the partnership agreement and this chapter. An assignee who becomes
16 a limited partner also is liable for the obligations of the assignee's assignor to make
17 and return contributions as provided in AS 32.11.200 - 32.11.310. However, the
18 assignee is not obligated for liabilities unknown to the assignee at the time the assignee
19 became a limited partner [AND THAT COULD NOT BE ASCERTAINED FROM
20 THE CERTIFICATE OF LIMITED PARTNERSHIP].

21 * Sec. 17. AS 32.11.370 is amended to read:

22 Sec. 32.11.370. DISSOLUTION. A limited partnership is dissolved and its
23 affairs shall be wound up upon the happening of the first to occur of the following:

24 (1) at the time specified in the certificate of limited partnership;

25 (2) upon the happening of events specified in writing in the
26 [CERTIFICATE OF LIMITED] partnership agreement;

27 (3) written consent of all partners;

28 (4) an event of withdrawal of a general partner unless at the time there
29 is at least one other general partner and the written provisions of the [CERTIFICATE
30 OF LIMITED] partnership agreement permit [PERMITS] the business of the limited
31 partnership to be carried on by the remaining general partner and that partner does so,

1 but the limited partnership is not dissolved and is not required to be wound up by
2 reason of an event of withdrawal if, within 90 days after the withdrawal, all partners
3 agree in writing to continue the business of the limited partnership and to the
4 appointment of one or more additional general partners if necessary or desired; or

5 (5) entry of a decree of judicial dissolution under AS 32.11.380.

6 * Sec. 18. AS 32.11.420 is amended to read:

7 Sec. 32.11.420. REGISTRATION. Before transacting business in this state,
8 a foreign limited partnership shall register with the department. In order to register, a
9 foreign limited partnership shall submit to the department an original and an exact
10 copy of an application for registration as a foreign limited partnership, signed and
11 sworn to by a general partner and setting out

12 (1) the name of the foreign limited partnership and, if different, the
13 name under which it proposes to register and transact business in this state;

14 (2) the state and date of its formation;

15 (3) [THE GENERAL CHARACTER OF THE BUSINESS IT
16 PROPOSES TO TRANSACT IN THIS STATE;

17 (4)] the name and address of an agent for service of process on the
18 foreign limited partnership whom the foreign limited partnership elects to appoint; the
19 agent must be an individual resident of this state, a domestic corporation, or a foreign
20 corporation having a place of business in, and authorized to do business in, this state;

21 (4) [(5)] a statement that the commissioner is appointed the agent of
22 the foreign limited partnership for service of process if an agent has not been
23 appointed under (3) [(4)] of this section or, if appointed, the agent's authority has been
24 revoked or if the agent cannot be found or served with the exercise of reasonable
25 diligence;

26 (5) [(6)] the address of the office required to be maintained in the state
27 of its organization by the laws of that state or, if not so required, of the principal office
28 of the foreign limited partnership; [AND]

29 (6) [(7) IF THE CERTIFICATE OF LIMITED PARTNERSHIP FILED
30 IN THE FOREIGN LIMITED PARTNERSHIP'S STATE OF ORGANIZATION IS
31 NOT REQUIRED TO INCLUDE IT, THE FOLLOWING INFORMATION:

1 (A) the name [NAMES] and business address [ADDRESSES]
2 of each general partner; and

3 (7) the address of the office at which is kept a list of the names and
4 addresses of the limited partners and their capital contributions, together with an
5 undertaking by the foreign limited partnership to keep those records until the
6 foreign limited partnership's registration in this state is cancelled or withdrawn

7 [(B) THE CAPITAL CONTRIBUTION OF EACH LIMITED
8 PARTNER].

9 * Sec. 19. AS 32.11.810 is amended to read:

10 Sec. 32.11.810. NAME. The name of a limited partnership as set out in its
11 certificate of limited partnership

12 (1) must contain without abbreviation the words "limited
13 partnership";

14 (2) may not contain the name of a limited partner unless
15 (A) it is also the name of a general partner or the corporate
16 name of a corporate general partner; or

17 (B) the business of the limited partnership had been carried on
18 under that name before the admission of that limited partner; and

19 (3) [MAY NOT CONTAIN A WORD OR PHRASE INDICATING OR
20 IMPLYING THAT IT IS ORGANIZED OTHER THAN FOR A PURPOSE STATED
21 IN ITS CERTIFICATE OF LIMITED PARTNERSHIP; AND

22 (4)] may not be the same as, or deceptively similar to, the name of a
23 corporation or limited partnership organized under the laws of this state or licensed or
24 registered as a foreign corporation or limited partnership in this state.

25 * Sec. 20. AS 32.11.840(a) is amended to read:

26 (a) A limited partnership shall keep at the office referred to in
27 AS 32.11.830(a)(1) the following:

28 (1) a current list of the full name and last known business address of
29 each partner, separately identifying the general partners in alphabetical order and
30 the limited partners in alphabetical order;

31 (2) a copy of the certificate of limited partnership and all certificates

1 of amendment to it, together with executed copies of a power of attorney under which
2 a certificate has been executed;

3 (3) copies of the limited partnership's federal, state, and local income
4 tax returns and reports, if any, for the three most recent years; [AND]

5 (4) copies of a then effective written partnership agreement and of a
6 financial statement of the limited partnership for the three most recent years; and

7 (5) unless contained in a written partnership agreement, a writing
8 setting out

9 (A) the amount of cash and a description and statement of
10 the agreed value of the other property or services contributed by each
11 partner and that each partner has agreed to contribute;

12 (B) the times at which or events on the happening of which
13 additional contributions agreed to be made by each partner are to be
14 made;

15 (C) the right of a partner to receive, or of a general partner
16 to make, distributions to a partner that include a return of all or a part
17 of the partner's contribution; and

18 (D) events upon the happening of which the limited
19 partnership is to be dissolved and its affairs wound up.

20 * Sec. 21. AS 32.11.900(8) is amended to read:

21 (8) "limited partner" means a person who has been admitted to a
22 limited partnership as a limited partner in accordance with the partnership agreement
23 [AND NAMED IN THE CERTIFICATE OF LIMITED PARTNERSHIP AS A
24 LIMITED PARTNER];

25 * Sec. 22. APPLICABILITY PROVISIONS. (a) AS 32.11.210 and 32.11.310, as amended
26 by secs. 8 and 14 of this Act, do not apply to a limited partnership contribution or distribution,
27 unless the contribution or distribution is made after the effective date of this Act.

28 (b) AS 32.11.350, as amended by secs. 15 and 16 of this Act, does not apply to a
29 limited partnership assignment unless the assignment is made after the effective date of this
30 Act.

31 (c) Unless otherwise agreed by the partners, the allocation of profits and losses of a

1 limited partnership that is formed before the effective date of this Act, but after July 1, 1993,
2 is governed by AS 32.11.220, as that section exists before the effective date of this Act,
3 instead of AS 32.11.220, as amended by sec. 9 of this Act.

4 * Sec. 23. This Act is retroactive to July 1, 1993, to the extent constitutionally permissible.

5 * Sec. 24. This Act takes effect immediately under AS 01.10.070(c).