

**SENATE BILL NO. 66****IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - FIRST SESSION****BY SENATOR DUNCAN****Introduced: 1/25/93  
Referred: L&C, JUD, FIN****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3 \* **Section 1.** AS 32.11.010(a), as enacted by sec. 1, ch. 128, SLA 1992, is repealed and  
4 reenacted to read:

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

- 8 (1) the name of the limited partnership;  
9 (2) the address of the office and the name and address of the agent for  
10 service of process required to be maintained by AS 32.11.830;  
11 (3) the name and business address of each general partner;  
12 (4) the latest date upon which the limited partnership is to dissolve; and  
13 (5) other matters the general partners determine to include.

14 \* **Sec. 2.** AS 32.11.020(b), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

1 (b) Within 30 days after the following events, an amendment to a certificate  
2 of limited partnership reflecting the occurrence of the event or events shall be filed:

3 (1) [A CHANGE IN THE AMOUNT OR CHARACTER OF THE  
4 CONTRIBUTION OF A PARTNER, OR IN A PARTNER'S OBLIGATION TO  
5 MAKE A CONTRIBUTION;

6 (2) the admission of a new general partner;

7 ~~(2)~~ [(3)] the withdrawal of a general partner; or

8 ~~(3)~~ [(4)] the continuation of the business under AS 32.11.370 after an  
9 event of withdrawal of a general partner.

10 \* Sec. 3. AS 32.11.040(a), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

11 (a) Each certificate required by AS 32.11.010 - 32.11.090 to be filed with the  
12 department shall be executed in the following manner:

13 (1) an original certificate of limited partnership shall be signed by all  
14 general partners [NAMED IN THE CERTIFICATE];

15 (2) a certificate of amendment shall be signed by at least one general  
16 partner and by each other general partner designated in the certificate as a new  
17 general partner [OR WHOSE CONTRIBUTION IS DESCRIBED AS HAVING BEEN  
18 INCREASED]; and

19 (3) a certificate of cancellation shall be signed by all general partners.

20 \* Sec. 4. AS 32.11.040(b), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

21 (b) A person may sign a certificate by an attorney-in-fact, but a power of  
22 attorney to sign a certificate relating to the admission [, OR INCREASED  
23 CONTRIBUTION,] of a general partner must specifically describe the admission [OR  
24 INCREASE].

25 \* Sec. 5. AS 32.11.080, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

30 \* Sec. 6. AS 32.11.100, as enacted by sec. 1, ch. 128, SLA 1992, is repealed and reenacted  
31 to read:

1                   **Sec. 32.11.100. ADMISSION OF LIMITED PARTNERS.** (a) A person  
2 becomes a limited partner

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

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

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

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

15 \* Sec. 7. AS 32.11.130(b), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

26 \* Sec. 8. AS 32.11.210, as enacted by sec. 1, ch. 128, SLA 1992, is repealed and reenacted  
27 to read

28                   **Sec. 32.11.210. LIABILITY FOR CONTRIBUTION.** (a) A promise by a  
29 limited partner to contribute to the limited partnership is not enforceable unless set out  
30 in a writing signed by the limited partner.

31                   (b) Except as provided in the partnership agreement, a partner is obligated to

1 the limited partnership to perform an enforceable promise to contribute cash or  
2 property or to perform services even if the partner is unable to perform because of  
3 death, disability, or other reason. If a partner does not make the required contribution  
4 of property or services, the partner is obligated at the option of the limited partnership  
5 to contribute cash equal to that portion of the value, as stated in the partnership records  
6 required to be kept under AS 32.11.840, of the stated contribution that has not been  
7 made.

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

15 \* Sec. 9. AS 32.11.220, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

24 \* Sec. 10. AS 32.11.230, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

1 returned.

2 \* Sec. 11. AS 32.11.240, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

3 Sec. 32.11.240. INTERIM DISTRIBUTIONS. Except as provided in  
4 AS 32.11.240 - 32.11.310, a partner is entitled to receive distributions from a limited  
5 partnership before the partner's withdrawal from the limited partnership and before the  
6 dissolution and winding up of the partnership

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

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

13 \* Sec. 12. AS 32.11.260, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

24 \* Sec. 13. AS 32.11.280, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

1 is equal to the percentage in which the partner shares in distributions from the limited  
2 partnership.

3 \* Sec. 14. AS 32.11.310(c), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

9 \* Sec. 15. AS 32.11.350(a), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

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

14 (2) all other partners consent.

15 \* Sec. 16. AS 32.11.350(b), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

24 \* Sec. 17. AS 32.11.370, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

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

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

30 (3) written consent of all partners;

31 (4) an event of withdrawal of a general partner unless at the time there

1 is at least one other general partner and the written provisions of the [CERTIFICATE  
2 OF LIMITED] partnership agreement permit [PERMITS] the business of the limited  
3 partnership to be carried on by the remaining general partner and that partner does so,  
4 but the limited partnership is not dissolved and is not required to be wound up by  
5 reason of an event of withdrawal if, within 90 days after the withdrawal, all partners  
6 agree in writing to continue the business of the limited partnership and to the  
7 appointment of one or more additional general partners if necessary or desired; or  
8 (5) entry of a decree of judicial dissolution under AS 32.11.380.

9 • Sec. 18. AS 32.11.420, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

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

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

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

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

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

29 (5) [(6)] the address of the office required to be maintained in the state  
30 of its organization by the laws of that state or, if not so required, of the principal office  
31 of the foreign limited partnership; [AND]

1                    ~~(6)~~ [(7) IF THE CERTIFICATE OF LIMITED PARTNERSHIP FILED  
2                    IN THE FOREIGN LIMITED PARTNERSHIP'S STATE OF ORGANIZATION IS  
3                    NOT REQUIRED TO INCLUDE IT, THE FOLLOWING INFORMATION:

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

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

10                    [(B) THE CAPITAL CONTRIBUTION OF EACH LIMITED  
11                    PARTNER].

12                    \* Sec. 19. AS 32.11.810, as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

15                    (1) must contain without abbreviation the words "limited  
16                    partnership";

17                    (2) may not contain the name of a limited partner unless

18                    (A) it is also the name of a general partner or the corporate  
19                    name of a corporate general partner; or

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

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

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

28                    \* Sec. 20. AS 32.11.840(a), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

31                    (1) a current list of the full name and last known business address of

1 each partner, separately identifying the general partners in alphabetical order and  
2 the limited partners in alphabetical order;

3 (2) a copy of the certificate of limited partnership and all certificates  
4 of amendment to it, together with executed copies of a power of attorney under which  
5 a certificate has been executed;

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

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

10 (5) unless contained in a written partnership agreement, a writing  
11 setting out

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

15 (B) the times at which or events on the happening of which  
16 additional contributions agreed to be made by each partner are to be  
17 made;

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

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

23 \* Sec. 21. AS 32.11.900(8), as enacted by sec. 1, ch. 128, SLA 1992, is amended to read:

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

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

31 (b) AS 32.11.350, as amended by secs. 15 and 16 of this Act, does not apply to a

1 limited partnership assignment unless the assignment is made after the effective date of this  
2 Act.

3 (c) Unless otherwise agreed by the partners, the applicable provisions of former  
4 AS 32.10, repealed by sec. 2, ch. 128, SLA 1992, governing the allocation of profits and  
5 losses, distributions to a withdrawing partner, and distributions of assets upon the winding up  
6 of a limited partnership apply to limited partnerships formed before the effective date of this  
7 Act instead of AS 32.11.220, as amended by sec. 9 of this Act.

8 \* Sec. 23. If this Act takes effect after July 1, 1993, this Act is retroactive to July 1, 1993,  
9 to the extent constitutionally permissible.

10 \* Sec. 24. This Act takes effect July 1, 1993.