

SENATE BILL NO. 348

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 3/9/94
Referred: L&C, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to partnerships; amending Alaska Rules of Civil Procedure 20
2 and 24; and providing for an effective date."

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

4 * Section 1. AS 32.05.010(a) is amended to read:

5 (a) A partnership is an association of two or more persons to carry on as
6 co-owners a business for profit, and includes a registered limited liability
7 partnership.

8 * Sec. 2. AS 32.05.100 is amended to read:

9 Sec. 32.05.100. JOINT AND SEVERAL LIABILITY OF PARTNERS.

10 Except as provided in (b) of this section, all [ALL] partners are liable

11 (1) jointly and severally for everything chargeable to the partnership
12 under AS 32.05.080 and 32.05.090;

13 (2) jointly for all other debts and obligations of the partnership; but any
14 partner may enter into a separate obligation to perform a partnership contract.

1 * Sec. 3. AS 32.05.100 is amended by adding new subsections to read:

2 (b) A partner in a registered limited liability partnership is not liable, directly
3 or indirectly, including through indemnification, contribution, assessment, or other
4 manner, for the debts, obligations, and liabilities of, or chargeable to, the partnership,
5 whether in tort, in contract, or under another theory that arise from negligence,
6 wrongful acts, wrongful omissions, malpractice, or misconduct committed by another
7 partner or by an employee or agent of the partnership

8 (1) while the partnership is a registered limited liability partnership; and

9 (2) in the course of the partnership business.

10 (c) The liability limitation in (b) of this section does not affect the liability of
11 a partner in a registered limited liability partnership for the partner's own negligence,
12 wrongful acts, wrongful omissions, malpractice, or misconduct, or the negligence,
13 wrongful acts, wrongful omissions, malpractice, or misconduct of a person under the
14 partner's direct supervision and control.

15 * Sec. 4. AS 32.05.130 is amended to read:

16 Sec. 32.05.130. RULES DETERMINING RIGHTS AND DUTIES OF
17 PARTNERS. The rights and duties of the partners in relation to the partnership shall
18 be determined, subject to any agreement between them, by the following rules:

19 (1) each partner shall be repaid the partner's contributions, whether by
20 way of capital or advances to the partnership property, and shares [SHARE] equally
21 in the profits and surplus remaining after all liabilities, including those to partners, are
22 satisfied; and, except as provided in AS 32.05.100(b), shall contribute towards the
23 losses, whether of capital or otherwise, sustained by the partnership according to the
24 partner's share in the profits;

25 (2) the partnership shall indemnify every partner in respect of payments
26 made and personal liabilities reasonably incurred by the partner in the ordinary and
27 proper conduct of its business, or for the preservation of its business or property;

28 (3) a partner who in aid of the partnership makes a payment or advance
29 beyond the amount of capital that the partner agreed to contribute shall be paid interest
30 from the date of the payment or advance;

31 (4) a partner shall receive interest on the capital contributed by the

- 1 partner only from the date when repayment should be made;
- 2 (5) all partners have equal rights in the management and conduct of the
3 partnership business;
- 4 (6) a partner is not entitled to remuneration for acting in the partnership
5 business, except that a surviving partner is entitled to reasonable compensation for
6 services in winding up the partnership affairs;
- 7 (7) a person may not become a member of a partnership without the
8 consent of all the partners;
- 9 (8) any difference arising as to ordinary matters connected with the
10 partnership business may be decided by a majority of the partners; but an act in
11 contravention of an agreement between the partners may not be done rightfully without
12 the consent of all the partners.

13 * Sec. 5. AS 32.05.290 is amended to read:

14 Sec. 32.05.290. PARTNER'S RIGHT TO CONTRIBUTION FROM
15 COPARTNERS AFTER DISSOLUTION. Where the dissolution is caused by the act,
16 death, or bankruptcy of a partner, each partner is liable to the copartners for the
17 partner's share of any liability created by a partner acting for the partnership as if the
18 partnership had not been dissolved unless

19 (1) the dissolution being by act of a partner, the partner acting for the
20 partnership had knowledge of the dissolution; [OR]

21 (2) the dissolution being by the death or bankruptcy of a partner, the
22 partner acting for the partnership had knowledge or notice of the death or bankruptcy;
23 or

24 (3) the liability is for a debt, obligation, or liability for which the
25 partner is not liable under AS 32.05.100(b).

26 * Sec. 6. AS 32.05.310(d) is amended to read:

27 (d) The individual property of a deceased partner is liable for the [ALL]
28 obligations of the partnership incurred while the decedent was a partner and for which
29 the partner is liable under AS 32.05.100 but subject to the prior payment of the
30 decedent's separate debts.

31 * Sec. 7. AS 32.05.350 is amended to read:

1 Sec. 32.05.350. RULES FOR SETTLING ACCOUNTS FOLLOWING
2 DISTRIBUTION. In settling accounts between the partners after dissolution, the
3 following rules shall be observed, subject to any agreement to the contrary:

4 (1) the assets of the partnership are

5 (A) the partnership property;

6 (B) the contributions of the partners as [NECESSARY FOR
7 THE PAYMENT OF ALL THE LIABILITIES] specified in ~~(4)~~ [(2)] of this
8 section;

9 (2) the liabilities of the partnership [SHALL] rank in order of payment
10 as follows:

11 (A) those owing to creditors other than partners;

12 (B) those owing to partners other than for capital and profits;

13 (C) those owing to partners in respect of capital;

14 (D) those owing to partners in respect of profits;

15 (3) the assets shall be applied in the order of their declaration in (1) of
16 this section to the satisfaction of the liabilities;

17 (4) except to the extent the liability of a partner is limited under
18 AS 32.05.100(b),

19 (A) the partners shall contribute, as provided by
20 AS 32.05.130(1), the amount necessary to satisfy the liabilities;

21 (B) [, BUT] if any, but not all, of the partners is [ARE]
22 insolvent, or not being subject to process, refuses [REFUSE] to contribute, the
23 other partners shall contribute their share of the liabilities, and, in the relative
24 proportions in which they share the profits the additional amount necessary to
25 pay the liabilities;

26 (5) an assignee for the benefit of creditors or any person appointed by
27 the court may enforce the contributions specified in (4) of this section;

28 (6) a partner or the legal representative of a partner may enforce the
29 contributions specified in (4) of this section, to the extent of the amount that the
30 partner has paid in excess of the partner's share of the liability;

31 (7) the individual property of a deceased partner is liable for the

1 contributions specified in (4) of this section;

2 (8) when partnership property and the individual properties of the
3 partners are in the possession of a court for distribution, partnership creditors shall
4 have priority on partnership property and separate creditors on individual property,
5 saving the rights of lien or secured creditors as heretofore;

6 (9) where a partner has become bankrupt or the estate of a partner is
7 insolvent the claims against the partner's separate property [SHALL] rank in the
8 following order:

9 (A) those owing to separate creditors;

10 (B) those owing to partnership creditors;

11 (C) those owing to partners by way of contribution.

12 * Sec. 8. AS 32.05 is amended by adding a new section to read:

13 Sec. 32.05.405. COMMERCE OUTSIDE THE STATE. (a) A partnership that
14 is formed and operates under an agreement governed by this chapter may conduct its
15 business, carry on its operations, and has and may exercise the powers granted by this
16 chapter in a state, territory, district, or possession of the United States or in a foreign
17 country.

18 (b) It is the intent of this chapter that the legal existence of a partnership be
19 recognized outside the boundaries of the state and that a partnership transacting
20 business outside the state be granted the protection of art. IV, sec. 1, Constitution of
21 the United States, subject to a reasonable requirement of registration.

22 (c) The liability of the partners in a partnership for the debts, obligations, and
23 liabilities of the partnership shall at all times be determined solely and exclusively by
24 the laws of this state.

25 (d) In this section, "partnership" means a partnership that is formed and
26 operates under an agreement governed by this chapter.

27 * Sec. 9. AS 32.05.420 is amended by adding new paragraphs to read:

28 (7) "partnership" includes a registered limited liability partnership;

29 (8) "registered limited liability partnership" means a partnership that is
30 registered under AS 32.05.500 - 32.05.600 and that is formed and operates under an
31 agreement governed by this chapter.

1 * Sec. 10. AS 32.05 is amended by adding new sections to read:

2 ARTICLE 7. LIMITED LIABILITY PARTNERSHIPS.

3 Sec. 32.05.500. REGISTRATION REQUIRED. A partnership that is formed
4 and operates under an agreement governed by this chapter may register as a registered
5 limited liability partnership by filing a registration document with the Department of
6 Commerce and Economic Development.

7 Sec. 32.05.510. CONTENTS OF REGISTRATION DOCUMENT. (a) A
8 registration document under AS 32.05.500 must provide

9 (1) the name of the partnership;

10 (2) the address of the partnership's principal office, if the partnership's
11 principal office is not located in this state;

12 (3) the address of the partnership's registered office;

13 (4) the name and address of the partnership's registered agent in the
14 state for the service of process;

15 (5) a brief description of the partnership's business; and

16 (6) a statement that the partnership is applying for the registration.

17 (b) A registered limited liability partnership may include other information in
18 the registration document.

19 Sec. 32.05.520. EFFECTIVE DATE AND DURATION OF REGISTRATION.

20 Registration under AS 32.05.500 is effective immediately when the registration
21 document is filed under AS 32.05.500. The registration remains effective until the
22 earlier of the date when the partnership

23 (1) voluntarily withdraws its registration under AS 32.05.570; or

24 (2) fails to file the report required under AS 32.05.530(a) within 30
25 days after the partnership receives a notice from the department under
26 AS 32.05.530(b).

27 Sec. 32.05.530. ANNUAL REPORT REQUIRED. (a) A registered limited
28 liability partnership shall file an annual report with the department that indicates any
29 material changes from the information contained in the partnership's registration
30 document filed under AS 32.05.500. The partnership shall file the report during the
31 last 60 days of each calendar year that follows the calendar year when the registration

1 document is filed under AS 32.05.500.

2 (b) If the department does not receive a report required by (a) of this section
3 within the filing period, the department shall notify the partnership by certified mail,
4 return receipt requested, that the department has not received the report.

5 Sec. 32.05.540. EXECUTION OF REGISTRATION DOCUMENT. A
6 registration document filed under AS 32.05.500 or 32.05.530 shall be executed by a
7 partner authorized to execute the application.

8 Sec. 32.05.550. REGISTERED AGENT AND OFFICE. A registered limited
9 liability partnership shall maintain in the state a registered office and an agent for the
10 service of process.

11 Sec. 32.05.560. NAME. The name of a registered limited liability partnership
12 must contain the words "Limited Liability Partnership," the abbreviation "L.L.P.," or
13 the abbreviation "LLP," as the last words or letters of its name.

14 Sec. 32.05.570. VOLUNTARY WITHDRAWAL OF REGISTRATION. A
15 registered limited liability partnership may withdraw its registration by filing with the
16 department a written withdrawal notice that is signed by a partner authorized to
17 execute the withdrawal notice.

18 Sec. 32.05.580. STATUS UNAFFECTED BY ERRORS OR SUBSEQUENT
19 CHANGES. The registration status of a registered limited liability partnership is not
20 affected by errors in the information provided in a registration application or by
21 changes that occur in the information provided in the registration application after the
22 application is filed.

23 Sec. 32.05.590. DEPARTMENT FORMS. The department may provide forms
24 for registration under AS 32.05.500 or for filing of a report under AS 32.05.530.

25 Sec. 32.05.600. FOREIGN LIMITED LIABILITY PARTNERSHIPS. (a)
26 Subject to another statute that applies to or regulates the partnership, a foreign limited
27 liability partnership may conduct business in this state. The partnership is not required
28 to register with the department under this chapter.

29 (b) The name of a foreign limited liability partnership must contain the words
30 "Limited Liability Partnership," the abbreviation "L.L.P.," or the abbreviation "LLP,"
31 as the last words or letters of its name.

1 (c) The internal affairs of foreign limited liability partnerships, including the
2 liability of partners for the debts, obligations, and liabilities of, or chargeable to, the
3 partnership, are subject to and governed by the laws of the state where the partnership
4 is formed as a limited liability partnership.

5 (d) In this section, "foreign limited liability partnership" means a limited
6 liability partnership formed under an agreement governed by the laws of another
7 jurisdiction and conducting business in this state.

8 Sec. 32.05.610. PARTNERS AS PARTIES TO ACTIONS. A partner in a
9 registered limited liability partnership is not a proper party to a proceeding by or
10 against the partnership if the object of the proceeding is to enforce or to recover
11 damages for debts, obligations, or liabilities that are of the type that the partner is not
12 liable for under AS 32.05.100(b), unless the debts, obligations, and liabilities are of the
13 type for which the partner may be held liable under AS 32.05.100(c).

14 * Sec. 11. AMENDMENT OF COURT RULES. AS 32.05.610, enacted by sec. 10 of this
15 Act, amends

16 (1) Alaska Rule of Civil Procedure 20 because it effectively prohibits the
17 joinder of a partner in a registered limited liability partnership as a party in certain civil
18 actions; and

19 (2) Alaska Rule of Civil Procedure 24 because it effectively prohibits the
20 intervention of a partner in a registered limited liability partnership as a party in certain civil
21 actions.

22 * Sec. 12. This Act takes effect July 1, 1994.