

**SB**

**165**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/13/99

FURTHER: 80 2/100

DATE TURNED IN TO OFFICE: Feb 1, 2000

Finance Committee considered

SENATE BILL NO. 165

"An Act relating to the remedies available to judgment creditors against limited liability company members and their assignees and against limited partnership general and limited partners and their assignees; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>W. Adams</i>	X	<i>W. Adams</i>	✓		
<i>David D. Simon</i>	✓	<i>David D. Simon</i>	✓		
		<i>Greg Weber</i>	✓		
Co-Chair: <i>David D. Simon</i>	✓	Co-Chair:			
Co-Chair: <i>Sean Powell</i>	✓	Co-Chair:			

**NEW FISCAL NOTE(S):**

Department      Date      Zero      Fiscal

forthcoming law			

**PREVIOUS FISCAL NOTE(S):\***

Department      Date      Zero      Fiscal

law	2/1/99		✓

FISCAL NOTE

STATE OF ALASKA  
1999 Legislative Session

BILL NO. SB 165

8-2/100

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the remedies available to judgement  
 creditors against limited liability company members..."  
 Sponsor: Senate Judiciary Committee by Request  
 Requester: (S)RLS

Dept. Affected Law  
 BRU Civil Division  
 Component Commercial  
 Component Serial No. 2211

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY01	FY02	FY03	FY04	FY05	FY06
Personal Services	0.0					
Travel	0.0					
Contractual	0.0					
Supplies	0.0					
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES [ ]						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) costs: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

No fiscal impact on the Department of Law

Prepared By: SENATE FINANCE COMMITTEE

  
 SENATOR SEAN PARNELL, CO-CHAIR

Date: 2-1-00  
 Phone: 465-2995

  
 SENATOR JOHN TORGERSON, CO-CHAIR

Date: 2-1-00  
 Phone: 465-2828

# Alaska State Legislature

Chairman,  
Judiciary Committee  
Administrative Regulations  
Revenue Committee

Vice Chairman,  
Resources Committee



State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3873  
Fax: (907) 465-3922

50 Front Street  
Suite 203  
Ketchikan, Alaska 99901  
(907) 225-8088  
Fax: (907) 225-0713

*Senator Robin L. Taylor*

## REQUESTOR STATEMENT

### SB 165

**"An Act relating to the remedies available to judgment creditors against limited liability company members and their assignees and against limited partnership general and limited partners and their assignees; and providing for an effective date."**

SB 165 amends the Alaska Limited Partnership Act and the Alaska Limited Liability Act. The proposed amendments make it clear that a judgement creditor of an Alaska limited partnership or limited liability company has only the remedy of a charging order. Thus, the creditor will receive all distributions made to the debtor partner or member. However, the right to receive such distribution is the judgement creditor's only remedy. No other remedies are available to the judgement creditor or to a court implementing a creditor's collection request.

Limited partnerships and limited liability companies are often used for closely held businesses or investment activities. Families frequently use them. One of the key advantages of these business entities is that the partners or members can choose who will be their business associates, and can be secure that the venture will continue until an agreed time or event.

If a creditor obtains a judgement against a partner or member, the statutes provide that the creditor can obtain a "charging order" against the debtor's partnership or limited liability company interest. This allows the creditor to receive the distributions to which the partner or member would be entitled.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Requestor Statement

Pg. 2

On its face, these statutes do not expressly allow for any other creditor remedies. This is consistent with the concept that the other partners of a partnership or members of a limited liability company should not have their business or investment actively disrupted, nor should they be forced to take in a substitute partner or member (e.g., the judgement creditor). This was the generally understood position taken by the Uniform Limited Partnership Act and many limited liability acts.

However, recently a Connecticut court held that a judgement creditor of a limited partnership could foreclose on the partnership interest. This holding was in conflict with a prior Florida court decision which held that foreclosure was not an available remedy for a judgement creditor of a limited partner. Such foreclosure would allow the judgement creditor to become a partner of the limited partnership, or a member of the limited liability company. Depending on the provisions of the partnership agreement or operating agreement, this could result in a forced dissolution of the entity and sale of its assets. Such a result could be very harmful to the other partners or members.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

September 27, 1999

**SUBJECT:** Sectional Summary of SB 165(Work order 21-LS0919A)

**TO:** Senator Robin Taylor  
Attn: Sue

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Adds provisions relating to the rights of judgment creditors of a member (or a member's assignee) of a limited liability company.

Sec. 10.50.380(c) states that AS 10.50.380 provides the exclusive remedy that the judgment creditor may use to satisfy a judgment out of the judgment debtor's interest in the limited liability company. Identifies some of the remedies that are not available to the judgment creditor.

Sec. 10.50.380(d) states that AS 10.50.380 does not deprive a member of a limited liability company of the benefit of an exemption that applies to the member's membership interest in the limited liability company.

**Section 2.** Provides that the rights of a creditor with regard to the interest of a general partner in a limited partnership are subject to the new provision proposed by sec. 3 of the bill.

**Section 3.** Adds a provision relating to the rights of judgment creditors of a general or limited partner (or of the partner's assignee) of a limited partnership. States that AS 32.11.340 provides the exclusive remedy that the judgment creditor may use to satisfy a judgment out of the judgment debtor's interest in the partnership. Identifies some of the remedies that are not available to the judgment creditor.

**Section 4.** States that the Act does not apply to a judgment creditor's remedies for collecting a judgment entered by a court before the Act takes effect.

Senator Robin Taylor  
September 27, 1999  
Page 2

**Section 5.** Gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:pl  
99-152.plm