

SB

78

<TARGET><BILL>SB 78</BILL><SUBJECT>SB
78</SUBJECT><COMM>SJUD27</COMM></TARGET>

CS FOR SENATE BILL NO. 78(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR MCGUIRE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to liability of certain limited liability organizations holding liquor
2 licenses; and relating to accidents involving the vehicle of a person under the influence
3 of alcoholic beverages."

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

5 * **Section 1.** AS 04.21.035 is amended to read:

6 **Sec. 04.21.035. Responsibility of partners of a limited liability partnership**
7 **or foreign limited liability partnership [ORGANIZATION MEMBERS].**
8 Notwithstanding any other provision of [AS 10.50 OR] AS 32.06, a **partner**
9 **[MEMBER] of a limited liability partnership or a foreign limited liability**
10 **partnership [ORGANIZATION] holding a license under this title is not relieved of**
11 **the obligation or the liability otherwise imposed upon a holder of a liquor license**
12 **under this title solely because the license is held by a limited liability partnership or**
13 **a foreign limited liability partnership [ORGANIZATION].**

14 * **Sec. 2.** AS 09.65 is amended by adding a new section to read:

1 **Sec. 09.65.315. Damages resulting from driving the vehicle of a person**
 2 **under the influence of an alcoholic beverage.** (a) A person is not liable beyond the
 3 limits of any applicable insurance policy purchased by or on behalf of the owner of the
 4 vehicle, or the taxicab or limousine company or the company's owner, agents, or
 5 employees, for damages resulting from a motor vehicle accident if the person was
 6 driving a vehicle involved in the accident and

7 (1) before the accident, started driving the vehicle involved in the
 8 accident from or near licensed premises;

9 (2) is, at the time of the accident, a person employed in the course and
 10 scope of employment to or under contract to drive a taxicab or limousine, a taxicab or
 11 limousine owner, a holder of a taxicab or limousine permit issued by a municipality,
 12 or an owner or employee of a company that dispatches taxicabs or limousines;

13 (3) was not under the influence of an alcoholic beverage, inhalant, or
 14 controlled substance at the time of the accident;

15 (4) was driving the vehicle to the motor vehicle owner's residence or
 16 designated residential location at the request of the motor vehicle owner or operator or
 17 a law enforcement officer; and

18 (5) was driving the vehicle because the motor vehicle owner or
 19 operator was under the influence of an alcoholic beverage or reasonably believed to be
 20 under the influence of an alcoholic beverage.

21 (b) A person licensed under AS 04.11.080 - 04.11.255, or an agent or
 22 employee of the person, is not liable for damages resulting from a motor vehicle
 23 accident described under (a) of this section. A person or entity that participates in
 24 making arrangements for transportation of a vehicle under (a) of this section is not
 25 liable for damages resulting from a motor vehicle accident described in (a) of this
 26 section.

27 (c) This section does not

28 (1) preclude liability for civil damages as a result of gross negligence
 29 or reckless or intentional misconduct;

30 (2) limit the ability of a person to recover damages under any
 31 applicable uninsured or underinsured motor vehicle insurance coverage; or

1 (3) limit the ability of a person to recover damages under any
2 applicable liability insurance coverage purchased by or on behalf of the person being
3 transported under (a) of this section.

4 (d) A motor vehicle owner is considered to have given consent to another
5 person to drive the owner's motor vehicle if the other person is involved in an accident
6 and the provisions of (a) of this section apply to the other person.

7 (e) In this section,

8 (1) "controlled substance" has the meaning given in AS 28.33.190;

9 (2) "inhalant" has the meaning given to the phrase "hazardous volatile
10 material or substance" in AS 47.37.270;

11 (3) "licensed premises" has the meaning given in AS 04.21.080.

12 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 APPLICABILITY. Section 2 of this Act applies to a civil action that accrues on or
15 after the effective date of this Act.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PASKVAN

TO: CSSB 78(), Draft Version "B"

- 1 Page 2, line 4, following the first occurrence of "vehicle":
- 2 Insert ", or the taxicab or limousine company or the company's owner, agents, or
- 3 employees,"

Sec. 28.20.010 Declaration of Purpose. The legislature is concerned over the rising toll of motor vehicle accidents and the suffering and loss inflicted by them. The legislature determines that it is a matter of grave concern that motorists be financially responsible for their negligent acts so that innocent victims of motor vehicle accidents may be recompensed for the injury and financial loss inflicted upon them. The legislature finds and declares that the public interest can best be served by the requirements that the operator of a motor vehicle involved in an accident respond for damages and show proof of financial ability to respond for damages in future accidents as a prerequisite to the person's exercise of the privilege of operating a motor vehicle in the state.

ALASKA STATE LEGISLATURE

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Member

Senate Finance Committee
Senate Resources Committee
Senate Judiciary Committee
Senate Special Committee on World Trade,
Technology, and Innovations

SENATOR LESIL MCGUIRE

Statistics

In 2008 in Anchorage there were 2,777 DUI arrests, out of this amount 453 resulted in accidents. In 2008 there were 16 total fatalities of which 8 resulted in an alcohol related fatality.

In 2008, Alaska experienced 62 fatalities of which 17 resulted in alcohol related fatal crashes.

In 2009, in Anchorage there were 2,604 DUI arrests of which 324 had resulted in accidents.

According to the Anchorage Police Department, in 2009 there were 17 fatal accidents of which 7 were alcohol related. This number is down from 2008 by 4% and our plan is to continue to assist our police department in taking this percentage down every year. Not everyone will participate in the program, but we hope that with every ride taken a life could be saved.

In 2009, Alaska experienced 64 fatalities of which 20 were alcohol related crashes.



off the road

About the program - “Off the Road” is a unique program because we can provide a safe mode of transportation for the patron and their vehicle. There are other programs in Alaska but they will not compare to the “Off the Road”. This service can be requested by the patron or by the determination of the on premise liquor licensed establishment to limit liabilities and to protect the general public.

Although we try to encourage those who choose to drink alcohol to do so responsibly, we recognize that some people are going to choose to drink to the point of intoxication. Even those who make provisions for alternative rides may have those plans thwarted -- a designated driver may lapse into drinking, a bus may be missed, and so forth. The programs administrators assume that it is the nature of safety nets to catch more than the minimum. With the philosophy that it is better to accept some limited amount of abuse (such as using the service when other sage ways home may exist) rather than risk excluding any legitimate use, servers are instructed never to turn down an *Off the Road* request. *Our thinking is that the risk of denying a legitimate ride far outweighs the risk of allowing a certain amount of abuse.*

Everyone, regardless of socio-economic level, is a potential victim of a drunk driver. Therefore everyone in our community will benefit from this program – not only the potential drunk driver, but also every person who may be a victim of that drunk driver. Another basic principal of the program is to remove all physical and psychological barriers to its use. The ride home is completely free and confidential. **Since the program started in 2005, there have not been any accidents proving that it is safer to have a sober professional licensed chauffeur transport the patron’s vehicle home by not taking the risk of having the patron drive their vehicle.**

The information required on the *Off the Road* voucher is minimal but necessary for responsible operation of the program. The person initiating the call for the ride must complete basic information on the voucher such as the date and time, establishment name, location of the rides origination, the authorizing person’s name and signature, the full name of the rider and the exact destination. The safe ride driver will ask the patron if they are covered with insurance or if they have insurance; the drivers will complete the driver’s information part of the voucher. The remaining voucher information will be completed by the personnel at the participating establishments. Vouchers must be completely filled out.

In 2008 in Anchorage there were 2,777 DUI arrests out of this amount 453 resulted in accidents. In 2008 there were 16 total fatalities of which 8 resulted in an alcohol related fatality.

In 2008, Alaska experienced 62 fatalities of which 17 resulted in alcohol related fatal crashes.

In 2009, in Anchorage there were 2,604 DUI arrests of which 324 resulted in accidents. In 2009 there were 17 fatal accidents of which 7 were alcohol related. According to the Anchorage Police Department this number is down from 2008 by 4% and our plan is to continue to assist our police department in taking this percentage down every year. Not everyone will participate in the program, but we hope that with every ride taken a life could be saved.

In 2009, Alaska experienced 64 fatalities of which 20 resulted in alcohol related crashes. In collaboration with the Anchorage Police Department and the Alaska Highway Safety Office ultimately would help reduce the amount of alcohol related fatalities by finding new and strategic measures to fight against impaired driving in general. We would like to see alcohol related DUI's reduced 1% by the end of 2010 and as of this writing, we can say that alcohol related accidents reduced by 4%. According to the Anchorage Police Department alcohol is no longer the main reason for DUI arrests. DUI arrests have increased because the amount of drug use (prescription and illegal) is on the rise in youth as well as adults. Even enough cough syrup while operating a vehicle can be classified as a DUI. We strongly believe through the power of education, we can help our citizens make the right choice. Conducting program awareness classes in the military bases will help partner our efforts in reducing drunken driving.

The overall result would be a reduction of drunk drivers which will benefit the community at large.

According to the Alaska Highway Safety Office in the State of Alaska in 2008, 17 out of 62 fatalities were alcohol related for a rate of 31%. Our motto "one ride taken can result in one life saved".

Currently there are 63 participating establishments. Since 2005 when the program began, over 821 individual rides have taken place and over 2379 vouchers have been sold.

Although the safe ride is free to the patron, program participants purchase ten vouchers at time at \$10 each to support the program. Not all establishments use the vouchers for the complete safe ride; some establishments use the vouchers when a patron is in need of a ride home without a vehicle; the only down side is that the voucher is used but not counted as an "off the road" ride.

In order to be able to maintain a ridership level that is not abused or under-utilized vouchers are assigned as they are purchased to each individual establishment. Vouchers are recorded on a spreadsheet as they are used and returned to us by the safe ride company. The patrons' information is confidential and kept for informational purpose only.

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SENATOR LESIL MCGUIRE

SPONSOR STATEMENT CS SENATE BILL NO. 78

Senate Bill 78 comprises of two sections. The first seeks to treat members of limited liability companies ("LLC") in the same manner as shareholders of corporations for liability purposes under Alaska liquor laws. It seeks to reflect the fact that LLC's are more similar to and used in the business world as alternatives to corporations and are less commonly used as alternatives to sole proprietorships or general partnerships, which pass on general liability to their owners. As it is currently written, AS 04.21.035 provides that a member of a limited liability company ("LLC") or a partner of a limited liability partnership that holds a license under Title 4, governing alcoholic beverages, is not relieved of the liability imposed upon a liquor license holder solely because the license is held by a LLC or a limited liability partnership.

However, businesses have recognized the greater flexibility in internal governance matters afforded by the LLC structure and have increasingly turned to LLC's as a preferred form of entity for doing business. Businesses consciously choose LLC's to have greater management and efficiency without sacrificing the limited liability protection from business creditors afforded to owners of corporations. Therefore SB 78 seeks to provide equal treatment to LLCs in the liquor liability context as they are treated in the business world generally.

The committee substitute adds two sections which simply provide a limitation of liability for a taxi or limousine driver who gets in an accident while driving another person's vehicle from a licensed premise. These sections were originally passed in 2004 by a vote of 39-0 in the House and 20-0 in the Senate but had a sunset date of 2007, a fact that was overlooked. This language would correct that oversight and the CS language mirrors the original legislation.

Everyone is a potential victim of a drunk driver. Therefore everyone will benefit from this program – not only the potential drunk driver, but also every person who may be a victim of that drunk driver. Another basic principal of the program is to remove all physical and psychological barriers to its use. The ride home is completely free to the intoxicated person and confidential.

There are 63 participating establishments in the Anchorage Bowl. Since 2005 when the program began, over 821 individual rides have taken place and over 2379 vouchers have been sold.

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Summary of Changes Between SB 78\M and CS for SB 78\B

This document is an identification of the changes between W.O. 27-LS0282\M and W.O. 27-LS0282\B.

The CS for SB 22 adds new language in the title of SB 78. It adds “; and relating to accidents involving the vehicle of a person under the influence of alcoholic beverages.”

The CS adds Section 2, which adds a new section to AS 09.65 that relates to damages resulting from driving the vehicle of a person under the influence of an alcoholic beverage. Section 09.65.315 (a) gives five conditions under which a person is not liable beyond the limits of any applicable insurance policy purchased by or on behalf of the owner of the vehicle for damages resulting from a motor vehicle accident.

Section 09.65.315(b) states that the taxicab company, drivers and the person who makes arrangements for transportation are not liable for damages resulting from a motor vehicle accident if they meet described under Section 09.65.315(a).

Section 09.65.315(c) outlines that this statute would not preclude liability for civil damages in cases of gross negligence, reckless or intentional misconduct. It also does not limit the ability of a person to recover damages under any applicable uninsured or underinsured motor vehicle insurance coverage or under any applicable liability insurance coverage purchased by or on behalf of the person being transported.

Section 09.65.315(d) defines what is considered consent to another person to drive the owner’s motor vehicle.

Section 09.65.315(e) points to where the definitions of “controlled substance”, “inhalant” and “licensed premises” can be found in Alaska Statutes.

The CS adds Section 3, which dictates that Section 2 applies to a civil action that accrues on or after the effective date of this Act.

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TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

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5 *** Section 1.** AS 04.21.035 is amended to read:

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7 **or foreign limited liability partnership [ORGANIZATION MEMBERS].**
8 Notwithstanding any other provision of [AS 10.50 OR] AS 32.06, a **partner**
9 **[MEMBER]** of a limited liability **partnership or a foreign limited liability**
10 **partnership** [ORGANIZATION] holding a license under this title is not relieved of
11 the obligation or the liability otherwise imposed upon a holder of a liquor license
12 under this title solely because the license is held by a limited liability **partnership or**
13 **a foreign limited liability partnership** [ORGANIZATION].

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1 **Sec. 09.65.315. Damages resulting from driving the vehicle of a person**
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3 limits of any applicable insurance policy purchased by or on behalf of the owner of the
4 vehicle for damages resulting from a motor vehicle accident if the person was driving
5 a vehicle involved in the accident and

6 (1) before the accident, started driving the vehicle involved in the
7 accident from or near licensed premises;

8 (2) is, at the time of the accident, a person employed in the course and
9 scope of employment to or under contract to drive a taxicab or limousine, a taxicab or
10 limousine owner, a holder of a taxicab or limousine permit issued by a municipality,
11 or an owner or employee of a company that dispatches taxicabs or limousines;

12 (3) was not under the influence of an alcoholic beverage, inhalant, or
13 controlled substance at the time of the accident;

14 (4) was driving the vehicle to the motor vehicle owner's residence or
15 designated residential location at the request of the motor vehicle owner or operator or
16 a law enforcement officer; and

17 (5) was driving the vehicle because the motor vehicle owner or
18 operator was under the influence of an alcoholic beverage or reasonably believed to be
19 under the influence of an alcoholic beverage.

20 (b) A person licensed under AS 04.11.080 - 04.11.255, or an agent or
21 employee of the person, is not liable for damages resulting from a motor vehicle
22 accident described under (a) of this section. A person or entity that participates in
23 making arrangements for transportation of a vehicle under (a) of this section is not
24 liable for damages resulting from a motor vehicle accident described in (a) of this
25 section.

26 (c) This section does not

27 (1) preclude liability for civil damages as a result of gross negligence
28 or reckless or intentional misconduct;

29 (2) limit the ability of a person to recover damages under any
30 applicable uninsured or underinsured motor vehicle insurance coverage; or

31 (3) limit the ability of a person to recover damages under any

1 applicable liability insurance coverage purchased by or on behalf of the person being
2 transported under (a) of this section.

3 (d) A motor vehicle owner is considered to have given consent to another
4 person to drive the owner's motor vehicle if the other person is involved in an accident
5 and the provisions of (a) of this section apply to the other person.

6 (e) In this section,

7 (1) "controlled substance" has the meaning given in AS 28.33.190;

8 (2) "inhalant" has the meaning given to the phrase "hazardous volatile
9 material or substance" in AS 47.37.270;

10 (3) "licensed premises" has the meaning given in AS 04.21.080.

11 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 **APPLICABILITY.** Section 2 of this Act applies to a civil action that accrues on or
14 after the effective date of this Act.

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SENATOR LESIL MCGUIRE

SPONSOR STATEMENT SENATE BILL NO. 78

Senate Bill 78 seeks to treat members of limited liability companies ("LLC") in the same manner as shareholders of corporations for liability purposes under Alaska liquor laws. As it is currently written, AS 04.21.035 provides that a member of a limited liability company ("LLC") or a partner of a limited liability partnership that holds a license under Title 4, governing alcoholic beverages, is not relieved of the liability imposed upon a liquor license holder solely because the license is held by a LLC or a limited liability partnership.

SB 78 seeks to change current statute to reflect the fact that presently, persons engaged in businesses commonly use LLC's instead of corporations while leaving intact the limited liability of the LLC members for all other business purposes. In general, LLC members have limited liability protection from LLC creditors, just like shareholders of corporations do from corporation creditors. However, AS 04.21.035 takes away that limited liability protection with respect to holding a liquor license and in liquor related businesses. To avoid that result under the current statutes, the owner of a liquor business holding a liquor license seeking limited liability protection has to do business through a corporate entity.

Businesses have recognized the greater flexibility in internal governance matters afforded by the LLC structure and have increasingly turned to LLC's as a preferred form of entity for doing business. Businesses consciously choose LLC's to have greater management and efficiency without sacrificing the limited liability protection from business creditors afforded to owners of corporations. LLC's are routinely used in Alaska (as well as the rest of the United States) as limited liability protection entities in place of corporations. Therefore SB 78 seeks to provide equal treatment to LLCs in the liquor liability context as they are treated in the business world generally.

If passed, SB 78 will help to encourage business development by reflecting the fact that LLC's are more similar to and used in the business world as alternatives to corporations and are less commonly used as alternatives to sole proprietorships or general partnerships, which pass on general liability to their owners.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number SB 78
 Bill Version _____
 () Publish Date _____

Identifier (file name) SB078-DPS-ABC-03-21-11 Dept. Affected Public Safety
 Title "An Act relating to liability of certain limited liability organizations
holding liquor licenses." Appropriation Statewide Support
 Allocation Alcoholic Beverage Control Board
 Sponsor Senator McGuire
 Requester Senate Labor & Commerce OMB Component Number 2690

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable; initial version.

Prepared by Shirley Gifford, Director
 Division Alcoholic Beverage Control Board
 Approved by Joseph Masters
Commissioner

Phone 907-269-0351
 Date/Time 3/21/11 3:45 PM
 Date 3/21/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. SB 78

Analysis

SB 78 provides members of limited liability companies ("LLC") the same protections as shareholders of corporations for liability purposes under Alaska liquor laws.

Currently AS 04.21.035 provides that a member of a limited liability company ("LLC") or a partner of a limited liability partnership that holds a license under Title 4 is not relieved of the liability imposed upon a liquor license holder solely because the license is held by a LLC or a limited liability partnership.

Passage of this legislation will not have a fiscal impact on the Alcoholic Beverage Control Board.



ALYESKA RESORT
A L A S K A

February 14, 2011

VIA EXPRESS COURIER

The Honorable Dennis Egan
Chair
Senate Labor & Commerce Committee
State Capitol, Room 150
Juneau, Alaska 99801

Re: Letter of Support for SB 78

Dear Senator Egan:

Alyeska Resort supports passage of Senate Bill 78, which would treat members of limited liability companies in the same manner as shareholders of corporations for liability purposes under Alaska liquor laws by eliminating the pass through exposure that members of limited liability companies now have under AS 04.21.035.

Summary of AS 04.21.035

Alaska Statute 04.21.035 provides that a member of a limited liability company ("LLC") or a partner of a limited liability partnership that holds a license under Title 4, which governs alcoholic beverages, is not relieved of the liability imposed upon a liquor license holder solely because the license is held by an LLC or a limited liability partnership.

Why AS 04.21.035 Is Unworkable

AS 04.21.035 does not recognize the realities of doing business today in the LLC format, unfairly penalizes those who choose to do business as an LLC rather than a corporation in the alcohol business, and causes unnecessary expense. AS 04.21.035 frustrates business development because it does not reflect the fact that LLC's are more similar to and used in the business world as alternatives to corporations, which do not pass general liability to their owners, than similar to and used as alternatives to sole proprietorships or general partnerships, which do pass general liability to their owners. Owners of businesses elect to use the simplified entity form of an LLC over a corporation while retaining the limited liability protection for the LLC's members. The owners of these businesses, however, cannot realize the benefits of using an LLC instead of a corporation without subjecting themselves to liability under AS 04.21.035.

LLC members typically have limited liability protection from LLC creditors, just like shareholders of corporations do from corporation creditors. Under AS 10.50.265 in the Alaska Revised Limited Liability Company Act, a member of an LLC "is not liable, solely by reason of being a member...for a liability of the company to a third party, whether the liability arises in contract, tort or another form, or for the acts or omissions of another member, manager, agent or

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ALASKA

employee of the company to a third party.” AS 04.21.035 takes away that limited liability protection with respect to the holding of a liquor license and in liquor related businesses. To avoid that result under the current statutes, the owner of a liquor business holding a liquor license seeking limited liability protection must do business through a corporate entity.

Businesses consciously choose LLC's to have greater management and efficiency without sacrificing the limited liability protection from business creditors afforded to owners of corporations. LLC's are routinely used in Alaska (as well as the rest of the United States) as limited liability protection entities in place of corporations. There is no reason to treat LLC's differently in the liquor liability context than they are treated in the business world generally.

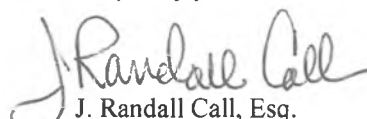
Why AS 04.21.035 Should Be Changed

At the time that AS 04.21.035 was enacted in 1999, the LLC statute in Alaska was relatively new (enacted in 1994) and LLC's were not as well understood and as commonly used by the general business community as they are now. Apparently, in 1999, someone thought in the licensed liquor business LLC's should be treated more like sole proprietorships or general partnerships with unlimited liability for their owners. However, now that LLC's are better understood and more commonly used in place of corporations as limited liability vehicles for doing business, the time has come to place LLC's on equal footing with corporations in the liquor business context. When we met with the Executive Director and staff of the Alaska Alcoholic Beverage Control Board (“ABC”) and explained the reasons for changing the statute, the ABC Executive Director and staff understood the reason for the requested change and voiced no opposition to the amendment.

Additionally, we are aware of other corporations that hold liquor licenses and would prefer to hold the liquor licenses as LLC's but will not do so until AS 04.21.035 is amended.

Please feel free to contact me if you have any questions.

Very truly yours,


J. Randall Call, Esq.
General Counsel

SENATE BILL 78

Additional Information

CORPORATIONS	GENERAL PARTNERSHIPS
<p>Owned by shareholders; Requires directors and officers; Requires Articles of Incorporation and Bylaws.</p> <p>Sub-S Corporations can be used only in limited circumstances and are not available for certain shareholders. All non-Sub-S Corporations are C-Corporations.</p> <p>Limited liability for owners—no personal liability for shareholders generally for acts of corporation. Officers and Directors maintain fiduciary obligations to run corporations in accordance with applicable laws.</p> <p>Prior to the creation of Limited Liability Companies, which are now authorized by statute in all 50 States*, Sub-S Corporations were used as the corporation of choice for investors.</p> <p>In approximately 1994, Alaska followed the majority of other States in allowing Limited Liability Companies in Alaska.</p>	<p>Owned by partners.</p> <p>No limited liability for owners—all partners are individually liable for acts of partnership. Profits are divided among the partners.</p> <p>LIMITED PARTNERSHIPS</p> <p>At least one general partner which is liable for debts of the Limited Partnership, limited partners are not liable for debts of the Limited Partnership.</p> <p>General Partners in a General Partnership or a Limited Partnership are responsible for the debts of the entity.</p> <p>Prior to the creation of Limited Liability Companies, Limited Partnerships were used as an alternative to Sub-S Corporations for investors, where the Sub-S Corporation was not available to the investment entity.</p> <p>In approximately 2000, Alaska followed the majority of other States in allowing Limited Liability Partnerships in Alaska.</p> <p>A Limited Liability Partnership must start out as a general partnership and be subsequently converted to a Limited Liability Partnership.</p>

SENATE BILL 78

Additional Information

LIMITED LIABILITY COMPANIES	LIMITED LIABILITY PARTNERSHIPS
<p>Owned by members.</p> <p>Commonly used as alternative to Limited Partnerships and Sub-S Corporations because easier to use—greater flexibility in governance and structuring return on investment to owners.</p> <p>Limited Liability Companies are often managed by the members (owners) without need for officers and/or directors. Managers maintain fiduciary obligations to the LLC.</p> <p>Limited liability for owners—no personal liability for members generally for acts of limited liability company.</p>	<p>Owned by partners</p> <p>Used as alternative to general partnership by vote to amend general partnership agreement to become limited liability partnership and then filing statement of qualification with State</p> <p>Limited liability for owners for partnership obligations incurred after conversion to limited liability partnership</p>

SENATE BILL 78

Additional Information

PURPOSE OF SENATE BILL 78

Senate Bill 78 deletes the “pass through liability” to members of Limited Liability Companies with respect to liquor license issues imposed by AS 04.21.035, while retaining the current “pass through liability” for limited liability and foreign limited liability partnerships. This modification will make Alaska Law substantively more consistent with other States, including Washington, Oregon, California, Nevada, Idaho and Utah with respect to pass through liability for members of Limited Liability Companies.

***BACKGROUND OF LLCs.**

Starting with the pioneering state of Wyoming in 1977, and ending with the action of the Hawaii legislature in 1996, every state has, during those twenty years, passed laws creating a new type of legal entity called a "limited liability company" (or LLC). These entities, which resemble (and are usually taxed as) partnerships, offer the advantages of limited liability, like corporations. While it has long been possible for partnerships to offer limited liability to their LIMITED partners, a limited partnership always had to have at least one GENERAL partner, who was fully liable for the debts of the business.

In addition, all 50 states and D.C. have now adopted a similar type of entity, the limited liability partnership (LLP) or registered limited liability partnership (RLLP). The LLP (or an RLLP) is simply a garden variety partnership that registers with the state and pays a specified fee, in order to become an LLP or RLLP and to have limited liability conferred upon the partnership, which is generally quite similar to an LLC, except that it may be operated like a regular partnership, for the most part.

However, LLPs are mostly used for professional firms, and in some states (New York and California and, until recently, Nevada) only professional firms may set up LLPs. For professionals, the LLP offers only somewhat limited protection from liability, in that a professional who is a partner in an LLP remains personally liable for his or her own malpractice or gross negligence, or such misdeeds committed by employees of the LLP who operate under that partner's direction. (The same is generally true of professional corporations or professional LLCs.) But in most states, other, non-professional businesses may also operate as LLPs, and generally obtain more liability protection than professional LLPs.

See: www.roninsoft.com/llc.htm

LEGAL SERVICES

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 22, 2011

SUBJECT: Proposed amendments to AS 04.21.035
(Work Order No. 27-LS0282\M)

TO: Senator Lesil McGuire
Attn: Esther Tempel

FROM: Doug Gardner
Director



Currently, AS 04.21.035 is an exception to the protections against individual liability offered to partners of properly registered and maintained LLPs and to members of properly registered and maintained LLCs. In other words, partners of LLPs and LLCs--notwithstanding the fact that they have complied with AS 10.50 (LLCs) or AS 32.06 (LLPs)--are not relieved of the obligation or the liability otherwise imposed upon a liquor license holder under Title 4.

LLCs and LLPs are two approaches that have been used throughout the U.S. in recent years to combine the federal tax benefits of partnerships with the non-liability of the shareholders of corporations.¹ Both LLCs and LLPs are being used to capture the traditional non-liability of shareholders of corporations. Currently, Title 4 treats LLCs differently than how LLCs are treated elsewhere in Alaska law. SB 78 deletes reference to LLCs from AS 04.21.035, thereby allowing members of LLCs to rely on AS 10.50.265 for purposes of liability when the LLC holds a liquor license under Title 4, and allows LLCs to be treated consistently in Alaska law. By removing LLCs from AS 04.21.035 and leaving LLPs in the statute, a person who wants to manage liability under AS 04.21 would be able to form as an LLC rather than as an LLP as long as all the LLC requirements in AS 10.50 are met.

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¹ LLCs can elect for federal tax purposes the pass-through taxation of partnerships, where the partner is taxed on partnership income, but the partnership itself is not. In general (there are exceptions), a corporation is taxed on corporate income, and the shareholders are taxed on their dividends.

ALASKA STATE LEGISLATURE

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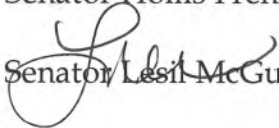
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SENATOR LESIL MCGUIRE

MEMORANDUM

DATE: March 23, 2011

TO: Senator Hollis French, Chair, Senate Judiciary Committee

FROM:  Senator Lesil McGuire, Senate District N

RE: Hearing Request for SB 78: Liquor License Holder Liability

I respectfully request that SB 78: Liquor License Holder Liability be scheduled for a hearing in the Senate Judiciary Committee pending referral at your earliest convenience. Accompanying this memo, you will find:

1. Current Version of the Bill: SB 78 (27-LS0282\M)
2. Sponsor Statement
3. Fiscal Note
4. Letter of Support / Supporting Documents

A list of people willing to testify for SB 78 will be forthcoming.

If you have any questions or concerns, please feel free to contact me personally or my staff, Esther Tempel, at 465-2995. Thank you for your time and consideration.