

**ALASKA**

**LEGISLATURE**

**COMMITTEE**

**FILES**

**1991-1992**

**8672**

**7467**

**SENATE**

**JUDICIARY**

Section 10. This is a retroactive clause. Makes the provisions of the Act effective to anyone who presently holds a homesite entry permit. Without this provision there is question if it applies only to future permit holders or all present permit holders.

Section 11. Provides an effective date of July 1, 1991.

# TELECOPY COVER SHEET

DIVISION OF LAND AND WATER MANAGEMENT  
P.O. Box 107005  
Anchorage, AK 99510-7005  
Phone (907) 762-2692  
FAX (907) 762-2529

Deliver to: Sam Helford

Telecopy Number: \_\_\_\_\_

From: Tom Swanson

Comments: \_\_\_\_\_

SR 191 New section 10 for

Date: \_\_\_\_\_ Time: \_\_\_\_\_ No. of Pages: 2

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192

SEVENTEENTH LEGISLATURE  
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: 192  
ABBREVIATED TITLE: For forfeiture of Property: Alcohol & Drugs -

SPONSER: Artiss ORIGINAL RECEIVED: 3-21-91  
WRITTEN REQUEST TO SCHEDULE REC'D: 4/14/91 FROM: Artiss  
SPONSER'S STATEMENT REC'D: \_\_\_\_\_ FROM: \_\_\_\_\_  
SECTIONAL ANALYSIS RQST'D: \_\_\_\_\_ FROM: \_\_\_\_\_  
SECTIONAL ANALYSIS RECEIVED: 3-26-91

FISCAL NOTE (ORIGINAL)  
RQST'D OF: \_\_\_\_\_ REC'D FROM: Pub Safety DATE: With Bill  
RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_  
RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_

FISCAL NOTE (C.S.)  
RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_  
RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_  
RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_

FIVE DAY NOTICE GIVEN: \_\_\_\_\_ NOTICE OF HEARINGS GIVEN: \_\_\_\_\_  
COMMITTEES OF REFERRAL: FIRST: SA SECOND: Jud THIRD: \_\_\_\_\_

COMMITTEE ACTION

DATE: 1/30  
\_\_\_\_\_ Passed from Jud 3 do pass  
\_\_\_\_\_ 1 do not pass  
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PERSONS TO BE NOTIFIED OF HEARING

1. SPONSOR Artiss
2. AGENCY Public Safety
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: An Act relating to forfeitures BRU: Alaska State Troopers  
for violations of state drug laws Component: Narcotics Task Force  
 Sponsor: Senator Sturgulewski  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

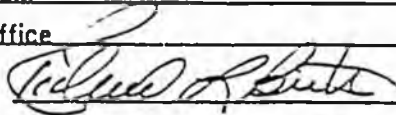
Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

By improving the procedures under which property used to commit drug offenses can be forfeited, this bill could result in an increase of funds and property forfeited to the State. It is impossible to estimate the amount of this increase, however, especially as some of the forfeited assets may be passed on to municipalities that assist in these investigations.

Prepared By: Gayle A. Horetski Phone: 465-4322

Division: Commissioner's Office Date: 1/29/92

Approved by Commissioner:  Richard L. Burton

Agency: Department of Public Safety Date: 1/30/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

*PH*  
11/30/92

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 192

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...seizure and forfeiture of property...alcoholic beverages...controlled substances..." BRU: Prosecution  
 Sponsor: Senator Sturgulowski Component: All  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

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 85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: January 30, 1992

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: January 30, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 192

This bill sets out a comprehensive statutory scheme for the seizure and forfeiture of property involved in the illegal manufacture, distribution and sale of alcoholic beverages, controlled substances, and imitation controlled substances.

Property subject to seizure and forfeiture includes the illicit products, as well as most other property related to illegal conduct such as weapons, money, securities, raw materials used in the manufacture of illicit products, and books, tapes and other written records, including data processing equipment and electronic surveillance equipment. Aircraft, vehicles and vessels, and real property interests would also be subject to forfeiture if the offense making the property subject to forfeiture is a felony offense.

Under the bill, forfeiture proceedings may be either judicial or administrative, except that an administrative proceeding could only be used if the value of the seized property is less than \$100,000. Administrative proceedings would be conducted by the Department of Public Safety. The bill provides procedures for persons claiming an interest in seized property to file claims.

The Department of Law would represent the state at all judicial proceedings, and in some administrative when an attorney is needed to represent the state. We are not able to predict how often this will occur. However, the bill also provides that proceeds from the sale of property may be used to pay the cost of proceedings, among several other public safety purposes. These also include: sharing the proceeds with political subdivisions of the state, when they are involved in the investigation of conduct resulting in forfeiture; transferring equipment to other agencies for administration of justice purposes, and; depositing net proceeds in a general fund account that may be used by the legislature to make appropriations to the Department of Public Safety for use in the administration of justice. To the extent that the Department of Law might incur additional expense for providing forfeiture legal services, the department will seek reimbursement from the Department of Public Safety.

# Alaska State Legislature

311 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7615

While in Juneau  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

SENATOR  
ARLISS STURGULEWSKI

## Senate

MEMORANDUM

13 Jan 1992

TO: Senator Rick Halford  
Chairman, Senate Judiciary Committee

FROM: Senator Arliss Sturgulewski

RE: Senate Bill 192

I respectfully request your scheduling Senate Bill 192 for a hearing before the Senate Judiciary Committee. This legislation amends current seizure and forfeiture laws as they pertain to drugs and bootleg alcohol.

This bill has been passed by the last two Senates and then failed to leave the House Judiciary Committee in the House. It is my hope that we will be able to get this bill through the House during this legislature.

The major change to current procedures is a new chapter in Title 12 outlining seizure and forfeiture proceedings. That new chapter clarifies current procedures and adds an administrative proceeding to the current methods by which property can be declared forfeit.

The major policy changes addressed by the bill include

1. Applying these seizure and forfeiture provisions to violations of alcohol laws.

2. Adding real property to the list of items subject to seizure in felony cases.

3. Adding to the ways in which persons may obtain relief from seizure and forfeiture provisions. This is accomplished by a new section exempting persons who provide for than half the support of a minor child in that persons' household. This relief is the same as that listed in the Alaska Exemptions Act (from bankruptcy).

This legislation is needed in order to bring our state's forfeiture and seizure laws more closely in line with the federal model forfeiture act and with constitutional standards set by the courts since the current law was enacted.

Because of the backlog in the federal courts, there is a possibility that states with seizure laws will have to start processing drug cases through their own courts.

As you know, this bill was introduced into the 15th Legislature and the 16th Legislature as well. The Senate has passed this bill both times

This is good legislation that gives our law enforcement agencies better tools with which to work and at the same time protects the rights of our citizenry.

Attached is a sectional analysis. Please contact me or Melissa Fouse of my staff if you have any questions.

# Alaska State Legislature



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(907) 465-3818

SENATOR  
ARLISS STURGULEWSKI

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25 April 1991

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Chairman, Senate Judiciary Committee

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SECTIONAL ANALYSIS  
SENATE BILL 192  
14 March 1991

**SECTION 1:**

**Removes the provision allowing the state to sell seized liquor without a license. The bill calls for seized liquor to be destroyed.**

**SECTION 2:**

**Repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.**

Sec 04.16.220 (a) outlines the conditions under which alcoholic beverages are subject to seizure and forfeiture.

(b) lists the conditions under which property is subject to seizure and forfeiture.

**Change from current law is the addition of a provision allowing property traceable to or derived from the illegal activity to be subject to forfeiture.**

(c) lists the property that may be forfeited.

**Change from current law adds items in (1), (2), (3), (4), and (6).**

(d) is new language that allows a peace officer to immediately destroy alcoholic beverages if the alcoholic beverages are in a prohibited area.

(e) requires that seized alcoholic beverages be destroyed.

**SECTION 3:**

**This is a new chapter in Title 12 (Code of Criminal Procedure). It sets out procedures to be followed in declaring seized property forfeit.**

Sec. 12.38.010 - procedures apply to property seized under the controlled substance, imitation controlled substance, and bootlegging statutes.

Sec. 12.38.020 - (a) list the conditions under which property may be seized with and without a court order.

(b) describes how constructive seizure may take place.

Sec. 12.38.030 (a) requires the agency with custody of the property to give notice of the seizure to interested parties within 30 days.

(b) authorizes the seizing agency to keep the property, or in its discretion, release the property to an appropriate person.

(c) directs the department of public safety to inventory the seized property and estimate its value. The inventory and estimate is to be sent to the attorney general.

(d) gives the attorney general authority to decide whether or not to pursue forfeiture proceedings on seized property. If forfeiture proceedings are not pursued, the seized property must be returned.

(e) exempts controlled substances, imitation controlled substances, bootleg alcohol, and property ordered forfeit by a court from this section.

Sec. 12.38.040 (a) allows the court to issue orders or requirements to ensure the availability of seized property.

(b) authorizes the state to request sale or other disposition of the property. A person claiming an interest in the property may also request a sale or other disposition if the conditions in subsections 1 - 5 are met.

(c) makes the proceeds from the sale of the property, plus interest, subject to forfeiture.

Sec. 12.38.050 (a) sets out conditions under which a forfeiture proceeding may begin:

(1) by the state's filing of a motion in a civil or criminal proceeding

(2) by the state's filing a complaint in a separate *in rem* proceeding

(3) by publication of a notice by the commissioner of public safety that the state intends to seek administrative forfeiture.

(b) requires that within 30 days after initiation of a forfeiture proceeding persons with an interest in the property must be served with notice and public notice of the proceeding must be initiated. This subsection sets out the requirements for public notice.

(c) exempts public notice requirements for those items subject to automatic forfeiture.

(d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. States that it is *prima facie* evidence that the defendant has been convicted of the conduct making the property subject to forfeiture or that a grand jury has returned an indictment specifying that the property is subject to forfeiture.

(e) outlines court procedures in forfeiture cases.

(f) allows the state to request that forfeiture proceedings be delayed until the conclusion of a pending criminal action relating to the conduct that made the property subject to forfeiture.

(g) states that it is not a defense in a forfeiture proceeding that a criminal violation has not been prosecuted, or has resulted in a conviction of a different offense or in an acquittal.

Sec. 12.38.070 (a) sets out conditions under which a claim may be filed.

(b) sets out where the claim must be filed and the information it must contain.

(c) authorizes property to be forfeited to the state without further proceedings if the claim is not timely filed.

Sec 12.38.080 (a) allows the court to order property to be forfeited to the state.

(b) states that an order of judicial or administrative forfeiture provides to the state clear title to the property. States that an order on behalf of a party subject to relief from the order of forfeiture (see

Sec. 12.38.090) clears any cloud on the title to the property resulting from the forfeiture proceeding.

(c) orders costs of maintenance, storage, disposal, and attorneys' fees to be paid by the person causing the property to be subject to forfeiture.

(d) allows a court to order other assets to be forfeited if the property subject to forfeiture is hard to reach.

(e) allows an order of forfeiture to be made regardless of the location of the property.

(f) creates a perfected priority lien to the state over property ordered forfeited. That lien has priority over all unsecured and all unperfected secured debts associated with the property.\*\*

\*\*This is in response to an Alaska Supreme Court ruling that unrecorded, unsecured creditors can file claims for remission of forfeitable property. According to the Department of Law this is a serious potential problem since it would require the state to give the property to an associate of the defendant unless it could be proven that the transaction was a sham. The Supreme Court (according to the Department of Law) hinted at a possible way of correcting this problem which would be to create a lien in favor of the state having priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

Sec 12.38.090 (a) allows a person to obtain relief by filing a timely claim and proving by a preponderance of the evidence that

-the person has a valid right to the property

-the person did not knowingly participate in or facilitate the conduct that resulted in the property being subject to forfeiture, and

-did not know, or have reason to believe, that a person might engage in the conduct that resulted in the property being subject to forfeiture

or

that the person provides more than half the support of a minor dependent living in the person's household and is claiming

exemptions from the forfeiture under the Alaska Exemptions Act (AS 09.38.010 - 09.38.090. ) This exemption does not apply to liquor licenses.

(b) allows a person with a partial interest in the property to choose to receive the partial value, or, after paying the difference, the entire property. Disposition of multiple claims is to be proportional based on the priority and value of each person's respective interest, or is to be otherwise allocated by a court in the interests of justice.

Sec. 12.38.100 (a) direct property be transferred to the commissioner of administration for disposal. Sets out methods by which property may be disposed of.

(b) directs the commissioner of administration to separately account for the proceeds of the sale of forfeited property. Allows for these funds to be appropriated for the furtherance of the administration of justice.

#### **SECTION 4:**

Sec. 17.30.110 sets out the list of property subject to forfeiture.

**The major change from current law is the addition of real property. This conforms to the federal model forfeiture act, except that in this bill real property is subject to forfeiture only in cases of a felony offense.**

#### **SECTION 5:**

**This is current law with the addition of a statutory reference to the forfeiture procedures under AS 12.38.**

#### **SECTION 6:**

**Repeals current forfeiture provisions in Title 11 (Criminal Law) and Title 17 (Controlled Substances).**

*Sen. Boards*

SENATE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR STURGOLEWSKI

Introduced: 3/13/91

Referred: State Affairs and Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to seizure and forfeiture of property in cases involving alcoholic  
2 beverages, controlled substances, and imitation controlled substances."

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

4 \* Section 1. AS 04.11.020(a) is amended to read:

5 (a) A license or permit is not required to authorize sales made by a person under a  
6 judgment and decree of foreclosure, or under the bankruptcy law of the United States [, OR  
7 UNDER ORDER OF THE BOARD OR A COURT UNDER AS 04.16.220].

8 \* Sec. 2. AS 04.16.220 is repealed and reenacted to read:

9 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Under the procedures  
10 set out in AS 12.38, alcoholic beverages are subject to forfeiture to the state if

11 (1) manufactured, delivered, distributed, possessed, concealed, stored, acquired,  
12 sold, exchanged, offered for sale or exchange, or transported, or one of these acts is attempted  
13 or solicited, in violation of a criminal law under this title;

14 (2) unlawfully possessed in an area where the results of a local election under

SECTION 1:

Removes the provision allowing the state to sell seized liquor without a license. The bill calls for seized liquor to be destroyed.

SECTION 2:

Repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.

Sec 04.16.220 (a) outlines the conditions under which alcoholic beverages are subject to seizure and forfeiture.

(b) lists the conditions under which property is subject to seizure and forfeiture.

**Change from current law is the addition of a provision allowing property traceable to or derived from the illegal activity to be subject to forfeiture.**

(c) lists the property that may be forfeited.

**Change from current law adds items in (1), (2), (3), (4), and (6).**

(d) is new language that allows a peace officer to immediately destroy alcoholic beverages if the alcoholic beverages are in a prohibited area.

1 AS 04.11.498 have prohibited possession of alcoholic beverages; or  
2 (3) found on licensed premises without excise stamps required by federal law.  
3 (c) The property listed in (c) of this section is subject to forfeiture, under the procedures  
4 set out in AS 12.38, if  
5 (1) except for liquor licenses forfeited under AS 04.16.180, the property is used,  
6 or intended to be used, to commit or facilitate an offense under AS 04.11.010, AS 04.16.175,  
7 AS 04.21.060, an offense relating to alcoholic beverages on licensed premises without excise  
8 stamps required by federal law, or an offense relating to conduct made criminal because of the  
9 results of a local election under AS 04.11.490 - 04.11.500; or  
10 (2) the property is used, or intended to be used, in a direct or indirect exchange  
11 for an alcoholic beverage in violation of AS 04.11.010, or is traceable to or derived from the  
12 exchange.  
13 (c) The following property is subject to forfeiture under (b) of this section:  
14 (1) firearms, explosives, and weapons;  
15 (2) money, securities, negotiable instruments, and anything of value, whether  
16 tangible or intangible, secured or unsecured;  
17 (3) raw materials, chemicals, pharmaceuticals, and anything, including plants or  
18 other living organisms, from which alcoholic beverages might be derived;  
19 (4) books, records, tapes, formulas, research papers, and equipment, including data  
20 processing equipment and electronic equipment used in surveillance or countersurveillance  
21 efforts;  
22 (5) aircraft, vehicles, vessels, and conveyances; and  
23 (6) a right, title, or interest in real property, and any improvements or  
24 appurtenances, if the offense making the property subject to forfeiture is a felony offense.  
25 (d) Notwithstanding any other provisions of AS 12.38, alcoholic beverages seized under  
26 AS 12.38.020 are automatically forfeited to the state and subject to immediate destruction by a  
27 peace officer if  
28 (1) unlawfully possessed in an area where the results of a local election under  
29 AS 04.11.498 have prohibited possession of alcoholic beverages; or  
30 (2) in the process of being consumed or in a container that has been opened or  
31 the seal of which has been broken.

(e) requires that seized alcoholic beverages be destroyed.

**SECTION 3:**

**This is a new chapter in Title 12 (Code of Criminal Procedure). It sets out procedures to be followed in declaring seized property forfeit.**

Sec. 12.38.010 - procedures apply to property seized under the controlled substance, imitation controlled substance, and bootlegging statutes.

Sec. 12.38.020 - (a) list the conditions under which property may be seized with and without a court order.

(b) describes how constructive seizure may take place.

Sec. 12.38.030 (a) requires the agency with custody of the property to give notice of the seizure to interested parties within 30 days.

1 (e) Except as provided in (d) of this section, alcoholic beverages forfeited to the state  
2 shall be destroyed by the law enforcement agency with custody of the property under procedures  
3 prescribed by the commissioner of public safety.  
4 \* Sec. 3. AS 12 is amended by adding a new chapter to read:  
5 CHAPTER 38. FORFEITURE OF PROPERTY.  
6 Sec. 12.38.010. APPLICABILITY. This chapter applies to property subject to forfeiture  
7 under AS 04.16.220 and AS 17.30.110.  
8 Sec. 12.38.020. SEIZURE OF PROPERTY SUBJECT TO FORFEITURE. (a) Property  
9 subject to forfeiture may be seized by a peace officer  
10 (1) under an order issued by a court in an ex parte proceeding upon a showing  
11 (A) of probable cause that the property is subject to forfeiture; or  
12 (B) that a grand jury has returned an indictment finding that the evidence,  
13 if unexplained or uncontradicted, would warrant a court's conclusion that the property  
14 specifically identified in the indictment is subject to forfeiture; or  
15 (2) without a court order if  
16 (A) constitutionally permissible or otherwise authorized by law;  
17 (B) the property has been the subject of a judgment in favor of the state  
18 in a forfeiture proceeding; or  
19 (C) there is probable cause to believe that the property is subject to  
20 forfeiture and is easily movable; except for alcoholic beverages, controlled substances, or  
21 imitation controlled substances, property seized solely under this subparagraph may not  
22 be held for more than 48 hours without a court order under (1) of this subsection.  
23 (b) Property that cannot with reasonable effort be taken into physical custody may be  
24 constructively seized by posting a written notice of the seizure in a conspicuous place on the  
25 property. This subsection does not prohibit other reasonable methods of constructive seizure.  
26 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;  
27 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under AS 12.38.020, the  
28 law enforcement agency responsible for custody of the property shall give notice by certified mail  
29 of the seizure to persons known to have a financial interest in an item with an estimated value  
30 more than \$1,000, or whose interest in the property is ascertainable from official tax rolls,  
31 registration numbers, licenses, or other state, federal, or municipal identification numbers affixed

(b) authorizes the seizing agency to keep the property, or in its discretion, release the property to an appropriate person.

(c) directs the department of public safety to inventory the seized property and estimate its value. The inventory and estimate is to be sent to the attorney general.

(d) gives the attorney general authority to decide whether or not to pursue forfeiture proceedings on seized property. If forfeiture proceedings are not pursued, the seized property must be returned.

(e) exempts controlled substances, imitation controlled substances, bootleg alcohol, and property ordered forfeit by a court from this section.

Sec. 12.38.040 (a) allows the court to issue orders or requirements to ensure the availability of seized property.

(b) authorizes the state to request sale or other disposition of the property. A person claiming an interest in the property may also request a sale or other disposition if the conditions in subsections 1 - 5 are met.

1 to the property.  
2 (b) Subject to the order of the court, property seized under AS 12.38.020 remains in the  
3 legal custody of the Department of Public Safety or a municipal law enforcement agency  
4 authorized by the commissioner of public safety to retain custody. The agency responsible for  
5 custody may, in its discretion, release the property to another appropriate person.  
6 (c) Within 10 days after a seizure under AS 12.38.020, the law enforcement agency  
7 responsible for custody of the property shall estimate the value, make an inventory of the  
8 property, and send the inventory and estimate to the attorney general.  
9 (d) If the attorney general determines that a forfeiture proceeding cannot be sustained or  
10 as a matter of discretion will not be instituted, a written report of that decision shall be sent to  
11 the agency responsible for custody of the property and the property must be returned to the  
12 person from whom it was obtained  
13 (e) This section does not apply to property that is subject to automatic forfeiture under  
14 AS 04.16.220(d) or AS 17.30.110(c), or to property seized under AS 12.38.020(a)(2)(B).  
15 Sec. 12.38.040. PRESERVATION OR DISPOSAL OF PROPERTY BEFORE ORDER  
16 OF FORFEITURE. (a) A court may issue an appropriate temporary or other order, require  
17 execution of a satisfactory performance bond to the state, or take other action to preserve the  
18 availability or value of property seized under AS 12.38.020.  
19 (b) The state may, at any time before an order of forfeiture is issued, request the sale or  
20 other disposition of property seized under AS 12.38.020. A person claiming an interest in the  
21 property may also request sale or other disposition before an order of forfeiture is issued if the  
22 person proves by a preponderance of the evidence that  
23 (1) the person has filed a timely claim under AS 12.38.070 or, before the  
24 initiation of a forfeiture proceeding, has sent a notice of claim to the commissioner of public  
25 safety in conformance with the requirements of AS 12.38.070(b);  
26 (2) the property is not likely to be used as evidence in a judicial or administrative  
27 proceeding;  
28 (3) the person has given adequate assurance that the property or its proceeds will  
29 remain subject to the court's jurisdiction;  
30 (4) the sale or other disposition is in the best interests of the state and will  
31 provide for protection of the value of the property; and

(c) makes the proceeds from the sale of the property, plus interest, subject to forfeiture.

Sec. 12.38.050 (a) sets out conditions under which a forfeiture proceeding may begin:

(1) by the state's filing of a motion in a civil or criminal proceeding

(2) by the state's filing a complaint in a separate *in rem* proceeding

(3) by publication of a notice by the commissioner of public safety that the state intends to seek administrative forfeiture.

(b) requires that within 30 days after initiation of a forfeiture proceeding persons with an interest in the property must be served with notice and public notice of the proceeding must be initiated. This subsection sets out the requirements for public notice.

1 (5) ~~the person~~ provides a bond or other equivalent security equal to twice the  
2 estimated value of the property.

3 (c) Proceeds from the sale of property, plus interest earned on the proceeds to the date  
4 of termination of the proceedings, become the subject of the forfeiture action in the same manner  
5 as the property itself.

6 Sec. 12.38.050. FORFEITURE PROCEEDINGS; NOTICE; BURDEN OF PROOF;  
7 DEFENSES EXEMPTED. (a) A forfeiture proceeding

8 (1) may be initiated by the state filing a motion to forfeit in a criminal or civil  
9 proceeding relating to the conduct that makes the property subject to forfeiture;

10 (2) may be initiated by the state filing a complaint in a separate *in rem*  
11 proceeding; or

12 (3) under AS 12.38.060 may be initiated by the commissioner of public safety  
13 directing that publication under (b) of this section be made of the state's intent to seek forfeiture  
14 of property administratively.

15 (b) Within 30 days after a forfeiture proceeding has been initiated as provided in (a) of  
16 this section,

17 (1) persons required to be notified under AS 12.38.030 shall be served with a  
18 copy of the motion, complaint, or other notice in a manner authorized for service of process  
19 under the rules of civil procedure; and

20 (2) the law enforcement agency with custody of the property shall begin to  
21 publish notice of the forfeiture proceeding in the manner provided for service by publication  
22 under the rules of civil procedure; the notice must include

23 (A) a list of property with an estimated value of more than \$1,000, with  
24 a description of the property, including motor vehicle or other registration numbers;

25 (B) the approximate value of the property;

26 (C) the date and place of seizure;

27 (D) the reason the property is subject to forfeiture;

28 (E) a citation to this chapter, and a citation to the court docket number  
29 relating to a judicial forfeiture proceeding; and

30 (F) notice that the property will be forfeited to the state if a timely claim  
31 is not filed under this chapter.

(c) exempts public notice requirements for those items subject to automatic forfeiture.

(d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. Establishes that it is *prima facie* evidence that the defendant has been convicted of the conduct making the property subject to forfeiture or that a grand jury has returned an indictment specifying that the property is subject to forfeiture.

(e) outlines court procedures in forfeiture cases.

(f) allows the state to request that forfeiture proceedings be delayed until the conclusion of a pending criminal action relating to the conduct that made the property subject to forfeiture.

(g) states that it is not a defense in a forfeiture proceeding that a criminal violation has not been prosecuted, or has resulted in a conviction of a different offense or in an acquittal.

Sec. 12.38.070 SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES: (a) sets out conditions under which a claim may be filed.

(b) sets out where the claim must be filed and the information it must contain.

1 (c) The notice requirements of (b) of this section do not apply to property that is subject  
2 to automatic forfeiture under AS 14.16.220(d) or AS 17.30.110(c).

3 (d) In a forfeiture proceeding other than a summary administrative proceeding under  
4 AS 12.38.060, the state must prove by a preponderance of the evidence that the property is  
5 subject to forfeiture. It is prima facie evidence, sufficient to support an order of forfeiture, that  
6 a defendant has been convicted of conduct making the property subject to forfeiture, or that a  
7 grand jury has returned an indictment finding that the evidence, if unexplained or uncontradicted,  
8 would warrant a court to conclude that the property specifically identified in the indictment is  
9 subject to forfeiture.

10 (e) In a forfeiture proceeding other than a summary administrative proceeding under  
11 AS 12.38.060, questions of fact or law shall be determined by the court, sitting without a jury.  
12 A person claiming an interest in the property under AS 12.38.070 and 12.38.090 may testify,  
13 present evidence and witnesses, and cross-examine witnesses presented by other parties. In  
14 addition to other testimony and evidence presented, the court may consider the relevant portions  
15 of the record of a related criminal action.

16 (f) Except for proceedings under AS 12.38.090(a)(2) to permit use of exempted property,  
17 at the request of the state a forfeiture proceeding, including discovery, shall be held in abeyance  
18 until the conclusion of a pending criminal action relating to the conduct making the property  
19 subject to forfeiture.

20 (g) It is not a defense to a forfeiture proceeding that a criminal offense has not been  
21 prosecuted, or has resulted in a conviction of a different offense or an acquittal.

22 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES. (a)  
23 If the value of the property seized under AS 12.38.020 does not exceed \$100,000 and is not real  
24 property, the commissioner of public safety may order administrative forfeiture of the property  
25 under this chapter. The Administrative Procedure Act (AS 44.62) does not apply to an  
26 administrative forfeiture.

27 (b) The commissioner of public safety shall terminate the administrative forfeiture  
28 proceeding and refer the matter to the attorney general for initiation of a judicial forfeiture  
29 proceeding if a person files a timely claim under AS 12.38.070 and deposits with the  
30 commissioner, in cash or bond approved by the commissioner, 25 percent of the appraised value  
31 of the property, but not less than \$1,000. The deposit is conditioned to secure the payment of

(c) authorizes property to be forfeited to the state without further proceedings if the claim is not timely filed.

Sec 12.38.080 (a) allows the court to order property to be forfeited to the state.

(b) states that an order of judicial or administrative forfeiture provides to the state clear title to the property. States that an order on behalf of a party subject to relief from the order of forfeiture (see Sec. 12.38.090) clears any cloud on the title to the property resulting from the forfeiture proceeding.

(c) orders costs of maintenance, storage, disposal, and attorneys' fees to be paid by the person causing the property to be subject to forfeiture.

(d) allows a court to order other assets to be forfeited if the property subject to forfeiture is hard to reach.

1 all reasonable costs and expenses of the judicial forfeiture proceeding, including attorney fees,  
2 if the state is the prevailing party.

3 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming an interest  
4 in property that is the subject of a forfeiture proceeding, including persons who claim an  
5 exemption under AS 12.38.090(a)(2), shall file a claim

6 (1) in a judicial forfeiture proceeding, within the time permitted under applicable  
7 court rules; or

8 (2) in an administrative forfeiture proceeding under AS 12.38.060, within 20 days  
9 of the date of the final publication under AS 12.38.050(b)(2).

10 (b) The claim must

11 (1) be filed with the court in judicial forfeiture proceedings, or with the  
12 commissioner of public safety in administrative forfeiture proceedings under AS 12.38.060;

13 (2) be sworn under oath; and

14 (3) set out with specificity the reasons why the property is not subject to forfeiture  
15 or why the person is entitled to relief under AS 12.38.090, the nature of the person's right, title,  
16 or interest in the property, the time and circumstances of the person's acquisition, the  
17 consideration paid, and additional facts supporting the claim.

18 (c) If a claim is not timely filed, the property shall be forfeited to the state without  
19 further proceedings.

20 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE. (a)  
21 If the state proves that property is subject to forfeiture, the property may be ordered forfeited to  
22 the state, except as provided in AS 12.38.090.

23 (b) An order of judicial or administrative forfeiture, or an order granting relief under  
24 AS 12.38.090, removes all liens, encumbrances, or other clouds on the title resulting from the  
25 forfeiture proceeding.

26 (c) A person whose conduct causes property to be subject to forfeiture shall pay the  
27 reasonable cost of maintenance, storage, disposal, or other expenses of the forfeiture proceeding,  
28 including attorney fees, either as part of a sentence, a condition of probation or suspended  
29 imposition of sentence, or as a mandatory assessment of costs in a forfeiture proceeding.

30 (d) A judicial order of forfeiture shall forfeit to the state any other assets of the person  
31 who caused the property to be subject to forfeiture, up to the value of any property subject to

(e) allows an order of forfeiture to be made regardless of the location of the property.

(f) creates a perfected priority lien to the state over property ordered forfeited. That lien has priority over all unsecured and all unperfected secured debts associated with the property.\*\*

\*\*This is in response to an Alaska Supreme Court ruling that unrecorded, unsecured creditors can file claims for remission of forfeitable property. According to the Department of Law this is a serious potential problem since it would require the state to give the property to an associate of the defendant unless it could be proven that the transaction was a sham. The Supreme Court (according to the Department of Law) hinted at a possible way of correcting this problem which would be to create a lien in favor of the state having priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

Sec 12.38.090 (a) allows a person to obtain relief by filing a timely claim and proving by a preponderance of the evidence that

-the person has a valid right to the property

-the person did not knowingly participate in or facilitate the conduct that resulted in the property being subject to forfeiture, and

-did not know, or have reason to believe, that a person might engage in the conduct that resulted in the property being subject to forfeiture

1 forfeiture, if the property subject to forfeiture has been  
2 (1) commingled with other property and cannot be separated without difficulty;  
3 (2) transferred to, sold to, or deposited with a third party, placed beyond the  
4 jurisdiction of the court, or removed so it cannot be located;  
5 (3) substantially diminished in value by an act or omission of the person who  
6 caused the property to be subject to forfeiture; or  
7 (4) ordered returned to an innocent party under AS 12.38.090(a)(1).  
8 (e) An order of forfeiture issued under this section may be made regardless of the  
9 location of the property that might be subject to forfeiture or that has been ordered forfeited.  
10 (f) A perfected priority lien on property that has been ordered forfeited is created in favor  
11 of the state up to an amount that is the sum of the expenses of investigation, prosecution, and  
12 forfeiture arising out of the conduct making the property subject to forfeiture. In calculating the  
13 amount of the lien, expenses of all state, federal, or local agencies are to be included. The lien  
14 has priority over all unsecured and all unperfected secured debts associated with the property.  
15 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has filed a timely  
16 claim under AS 12.38.070 may obtain relief from the forfeiture upon proof by a preponderance  
17 of the evidence  
18 (1) that the person  
19 (A) has a valid right, title, or interest in the property, acquired in good  
20 faith, which takes priority over a lien in favor of the state under AS 12.38.080(f);  
21 (B) did not knowingly participate in or facilitate the conduct that resulted  
22 in the property being subject to forfeiture; and  
23 (C) did not know or have reasonable cause to believe that a person might  
24 engage in the conduct that resulted in the property being subject to forfeiture; or  
25 (2) that the person provides more than half the support of a minor dependent  
26 living in the person's household, in which case the person may claim exemptions from the  
27 forfeiture to the extent permitted under AS 09.38.010 - 09.38.090; however, an exemption may  
28 not be permitted for a liquor license granted under AS 04.  
29 (b) If the person claiming an interest in the property is found to be entitled to less than  
30 the total value of the property, the person may choose to receive either the proportional value of  
31 the partial interest that is realized upon disposition of the property or, upon payment of the

OR

that the person provides more than half the support of a minor dependent living in the person's household and is claiming exemptions from the forfeiture under the Alaska Exemptions Act (AS 09.38.010 - 09.38.090.) This exemption does not apply to liquor licenses.

(b) allows a person with a partial interest in the property to choose to receive the partial value, or, after paying the difference, the entire property. Disposition of multiple claims is to be proportional based on the priority and value of each person's respective interest, or is to be otherwise allocated by a court in the interests of justice.

Sec. 12.38.100 (a) directs property be transferred to the commissioner of administration for disposal. Sets out methods by which property may be disposed of.

(b) directs the commissioner of administration to separately account for the proceeds of the sale of forfeited property. Allows for these funds to be appropriated for the furtherance of the administration of justice.

1 difference in value, the ~~entire~~ property. In cases of multiple claims, the return of the property  
2 is to be based on the value and priority of each person's respective interest, or is to be otherwise  
3 allocated by the court in the interests of justice.

4 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) Forfeited  
5 property, other than property summarily forfeited under AS 04.16.220(d) or AS 17.30.110(c),  
6 shall be transferred to the commissioner of administration for disposition in accordance with  
7 applicable law. The commissioner of administration may

8 (1) destroy property harmful to the public;  
9 (2) sell the property and, subject to appropriations for that purpose, use the  
10 proceeds to pay the expenses of the proceedings of forfeiture and sale, including expenses of  
11 seizure, custody, and court costs;

12 (3) transfer the property to another agency of the state or a political subdivision  
13 of the state for use in the furtherance of the administration of justice;

14 (4) transfer the property to the United States Department of Justice for disposition;

15 (5) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol;

16 (6) at the direction of the commissioner of public safety, transfer up to 90 percent  
17 of the net value of forfeited property to one or more political subdivisions of the state; in  
18 directing this transfer, the commissioner of public safety may take into account an equitable  
19 allocation based on the amount of the contribution made by each agency to the investigation of  
20 the conduct making the property subject to forfeiture, or any agreements as to the sharing of  
21 assets; or

22 (7) otherwise dispose of the property in accordance with the law.

23 (b) The commissioner of administration shall separately account for the proceeds from  
24 the sale of forfeited property under (a) of this section that the commissioner deposits in the  
25 general fund. The annual estimated balance in the account may be used by the legislature to  
26 make appropriations to the Department of Public Safety for use in the administration of justice.

27 \* Sec. 4. AS 17.30.110 is repealed and reenacted to read:

28 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the procedures  
29 set out in AS 12.38, the property listed in (b) of this section is subject to forfeiture to the state  
30 if

31 (1) manufactured, delivered, dispensed, distributed, possessed, concealed, stored,



**SECTION 6:**

**Repeals current forfeiture provisions in Title 11 (Criminal Law) and Title 17 (Controlled Substances).**

- 
- 1 (1) the transfer shall be made without cost to the Civil Air Patrol;  
2 (2) the aircraft becomes a corporate Civil Air Patrol aircraft;  
3 (3) the aircraft may only be used for Civil Air Patrol search and rescue, civil  
4 defense, and training purposes;  
5 (4) the aircraft may not be transferred to another wing of the Civil Air Patrol  
6 unless  
7 (A) the aircraft has been corporate aircraft of the Alaska Wing, Civil Air  
8 Patrol for at least 36 months after the date of transfer to the Alaska Wing; or  
9 (B) the aircraft is being exchanged for another Civil Air Patrol corporate  
10 aircraft of equivalent or greater value;  
11 (5) if the Civil Air Patrol determines that the aircraft should be disposed of as  
12 surplus property, the disposition shall first be approved by the Department of Administration.  
13 \* Sec. 6. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118, 17.30.120, 17.30.122,  
14 17.30.124, and 17.30.126 are repealed.

CURRENT LAW

Sec. 04.16.220. Forfeitures. (a) The following are subject to forfeiture:  
(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010; alcoholic beverages stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages possessed, sold or offered for sale in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the possession of alcoholic beverages or prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area; alcoholic beverages transported into the state and sold to persons not licensed under this chapter in violation of AS 04.16.170(b);

LICENSE  
REQUIRED →  
←  
WAREHOUSING

Prohibiting  
sale

PROHIBITING SALE  
w/o LICENSE

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of

(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010;

LICENSE  
REQUIRED

(B) property stocked, warehoused, or otherwise stored in violation of AS 04.21.060;

(C) alcoholic beverages imported into a municipality or established village in violation of AS 04.11.496. → SALE + IMPORTATION

(4) alcoholic beverages found on licensed premises that do not bear federal excise stamps if excise stamps are required under federal law;

(5) alcoholic beverages, materials, or equipment used in violation of AS 04.16.175.

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(h) Alcoholic beverages forfeited under (d) of this section shall be placed in the custody of a peace officer of the state and destroyed no earlier than 30 days after forfeiture. All other property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section that is harmful to the public. Other property shall be ordered sold and the proceeds used for payment of expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody and court costs. The remainder of the proceeds shall be deposited in the general fund.

**Sec. 04.16.220 Alcoholic Beverages-Forfeitures**

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

- (1) the seizure is incident to a valid arrest or search;
- (2) the property subject to seizure is the subject of a prior judgment in favor of the state; or
- (3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; except for alcoholic beverages possessed in violation of AS 04.11.498 or an ordinance adopted under AS 04.11.498, property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

**Sec. 17.30.114-Controlled Substances**

Sec. 17.30.114. Seizure and custody of property. (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under AS 17.30.110. Seizure without a court order may be made if.

- (1) the seizure is incident to a valid arrest or a search under a valid search warrant;
- (2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or
- (3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

**Sec. 04.16.220 Alcoholic Beverages-Forfeitures**

(c) Within 30 days of a seizure under this section the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

**Sec. 17.30.116-Controlled Substances**

Sec. 17.30.116. Procedure for forfeiture action. (a) Within 20 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

**Sec. 17.30.114-Controlled Substances**

(c) Within 10 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances. (§ 4 ch 45 SLA 1982)

**Sec.17.30.112-Controlled Substances**

**Sec. 17.30.112. Proceedings resulting in forfeiture.** (a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

**Sec.17.30.116-Controlled Substances**

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

**Sec.17.30.116-Controlled Substances**

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges

**Sec.04.16.220 Alcoholic Beverages-Forfeitures**

(d) Property subject to forfeiture under (a) of this section may be forfeited (1) upon conviction of a person under AS 04.11.010, 04.11.496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498 or an ordinance adopted under AS 04.11.498;

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

**Sec.04.16.220 Alcoholic Beverages-Forfeitures**

(g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of this section that a criminal proceeding is pending or has resulted in conviction or acquittal of a person charged with violating AS 04.11.010, 04.11.496(b), or AS 04.21.060.

**Sec.17.30.118-Controlled Substances**

**Sec. 17.30.118. Petition for release of seized items.** (a) A claimant under AS 17.30.116(b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item. (§ 4 ch 45 SLA 1982)

**Sec. 17.30.120. Petition for sale of seized item.** A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action. (§ 4 ch 45 SLA 1982)

## CURRENT LAW

### Sec. 17.30.110—Controlled Substances

Sec. 17.30.110. Items subject to forfeiture. The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

### Sec. 17.30.126—Controlled Substances

Sec. 17.30.126. Forfeiture of controlled substances. (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state. (§ 4 ch 45 SLA 1982)

### Sec. 17.30.122—Controlled Substances

Sec. 17.30.122. State disposal of forfeited property. Property forfeited under AS 17.30.110 — 17.30.126 other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol. (§ 4 ch 45 SLA 1982; am § 2 ch 18 SLA 1983)

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**FISCAL NOTE**  
AMENDED

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO.** SB 193

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: Uniform Limited Partnership Act BRU: Banking, Securities & Corporations  
 Component: Corporations  
 Sponsor: Sen. Rodey  
 Requestor: \_\_\_\_\_ **COMPONENT SERIAL NO.**

1	2	3	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	1.5	0	0	0	0	0
SUPPLIES	1.5					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>3.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>	<b>4.0</b>
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FUNDING: (Thousands of Dollars)

GENERAL FUND	3.0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>3.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary.) The DNR - District Recorder's office presently files limited partnerships. The change of filing to DCED's computer based information management system will accommodate more efficient distribution of information to the business community. This will take administrative preparation to convert the records to the department's current computer filing system and prepare in advance for the effective date. Costs incurred will be travel and data input by personnel.

Prepared By: W.F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: 5/9/91

Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: 5/9/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

AMENDED  
FISCAL NOTE - SB 193

ANALYSIS:

Limited partnerships are currently filed with the Department of Natural Resources, District Recorder's office. SB 193 requires this filing be changed to the Department of Commerce and Economic Development. This conversion, in order to meet the standards of the current corporation computer filing system, will result in the following expenses:

Postage	\$ .5
Supplies	.2
Motznik Conversion (Private company who has only names of all limited partnership filings) Department will develop complete database	.5
Regulations - Advertising	.3
Travel for conversion only	.8
Conversion - Personnel Data Input	<u>1.5</u>
	<u>\$3.0</u>

The projected revenue of \$4.0 will be new program receipts for the Department of Commerce and Economic Development and a reduction to the Department of Natural Resources. This revenue is based on the present filing fee charged by DNR of \$15.00. Approximately 260 limited partnerships file per year.

AMENDED FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 193

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
Title: Uniform Limited Partnership Act BRU: Banking, Securities & Corporations  
Component: Corporations

Sponsor: Sen. Rodey  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO.	1	2	3	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	3.0	3.0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>3.0</b>	<b>3.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>
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FUNDING: (Thousands of Dollars)

GENERAL FUND	3.0	3.0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>3.0</b>	<b>3.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
  
SEE ATTACHED PAGE

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521  
Division: Banking, Securities & Corporations Date: \_\_\_\_\_  
Approved by Commissioner: Glenn A. Olds  
Agency: Department of Commerce & Economic Development Date: 4-23-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

AMENDED  
FISCAL NOTE - SB 193

ANALYSIS:

The \$6.0 operating costs include a conversion of present DNR filings and promulgation of regulations. Approximate costs are:

Postage	\$ .5
Supplies	.2
Motznik Conversion (Private company who has only names of all limited partnership filings) Department will develop complete database	.5
Regulations - Advertising	.3
Travel for conversion only	.8
Conversion - Personnel Data Input	<u>3.7</u>
	<u>\$6.0</u>

The \$15.0 projected revenue is based on the present filing fee charged by DNR of \$15.00. Approximately, 1,000 limited partnerships file per year.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 193

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources  
 Title: Limited Partnerships BRU: Management & Administration  
 Components: Recorder's Office  
 Sponsor: Senator Rodey  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 8.02

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL	1.0					
CONTRACTUAL	3.5					
SUPPLIES	2.1					
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.6	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	6.6					
FEDERAL FUNDS						
OTHER						
TOTAL	6.6	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Linda Plumb Phone: 762-2437  
 Division: Management and Administration Date: 8-May-91

Approved by Commissioner: Harold Heinze Date: 8-May-91  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,  
& Impacted Agency(ies).

This bill would change the place of record for limited partnerships from the Department of Natural Resources, Division of Management, Recorders/UCC Section to the Department of Commerce and Economic Development, Division of Banking, Securities, and Corporations Corporations Section.

EFFECTS OF ENACTMENT ON RECORDERS/UCC SECTION:

1. **Revenue Reduction:** The ongoing effect of SB 193 would be a minor decrease in revenue from recording fees. Between FY84 and FY88, there were approximately 1130 limited partnership documents accepted into the statewide public records. This is an average of 226 documents annually for the 34 recording districts. If each submitted document was of average length (two pages), the Recorders/UCC Section revenue would be reduced by approximately \$4,068.00 per year or 0.2% based on FY90 revenues.
2. **One Time Expense:** The major impact of this bill would be a one-time cost to duplicate existing limited partnership records that are located in the 14 recording offices.

Many of the existing limited partnerships are active, and the recorders' offices receive amendments and assignments in addition to new limited partnerships. If the change in place of record is to be fully effective, these records would need to be reproduced for the Corporations Section or copies would need to be made for the recording system so that the original files could be transferred. I have outlined two scenarios for consideration.

Because limited partnerships changed from filed documents to recorded documents on January 1, 1989 (AS 40.17), partnerships recorded after that date will be cumbersome and time consuming to extract from the general records. Filed partnerships that existed prior to that time will be relatively easy to access and duplicate because they are maintained separately from the general records.

All limited partnerships accepted after January 1, 1989, were recorded in the same manner as deeds, mortgages, and contracts. To extract these documents, it will be necessary either to manually scan the reception print-outs from January 1, 1989 to the effective date of SB 193, or contract for programming services that would automatically extract the index information. The latter is the most cost-effective and accurate manner of accomplishing the task.

While SB 193 provides for repeal of AS 32.10 it does not address AS 40.17.110. Classes of documents eligible for recording:

(b)(36) "a signed and sworn-to certificate of limited partnership and a signed and sworn-to amendment to a certificate of limited partnership;"

To eliminate public confusion regarding the correct place of record, I suggest that this reference also be repealed.

FISCAL NOTE - SB 193

This scenario assumes that all presently existing limited partnership documents are copied in 16mm roll microfilm form by contract labor. The documents will be shipped to a central location where they will be filmed on a dual head camera. One original and one copy of the film will be forwarded to one Department of Commerce and Economic Development location:

Personal Services (100)	\$ .0
Travel (200)	1.0
Contractual (300)	3.5
Commodities (400):	
Postage	\$1.0
Supplies	1.0
Packing materials	<u>.1</u>
	<u>2.1</u>
	TOTAL \$6.6

NOTES: 1. No personal services are included in this scenario for the 11 DNR recording offices. Recording personnel can pack and ship all limited partnerships within normal work days.

2. If DNR personnel are required to travel to the court system maintained offices in Glennallen, Seward, and Valdez to pack and transport partnership records, approximately \$1000.00 is projected as travel expense.

3. Professional service expenses will be incurred to write a computer program to extract recording data for all limited partnerships recorded from January 1, 1988 to implementation of SB 193.

Additional professional service expenses in this scenario are for contracted microfilm services. This expense may change if present state personnel are employed to microfilm these records in their normal work day.

4. Postage expenses include transportation of partnership files to a central location for microfilming. Microfilm records would be returned to the district recorders' offices for their permanent record and original partnerships forwarded to Corporations Section.

Supplies cover duplicate original 16mm microfilm records and two duplicate copies. One original and one copy would be sent to Corporations Section and one would be retained in the recorders' offices.

Packing materials include transportation of original files to the central filming location and distribution of the replacement microfilm record.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 193

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act relating to limited partnerships..." BRU: Legal Services  
 Component: Operations  
 Sponsor: Senator Rodey  
 Requestor: Senator Rodey COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 This bill amends the state's Uniform Partnership Act to add a new chapter covering limited partnerships. The bill deals with transactions between private parties and will not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: March 20, 1991  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: March 20, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**SEVENTEENTH LEGISLATURE  
SENATE JUDICIARY COMMITTEE BILL FILE**

BILL NUMBER: 193  
 ABBREVIATED TITLE: Limited Partnerships

SPONSER: Rodey ORIGINAL RECEIVED: March 13, 1991  
 WRITTEN REQUEST TO SCHEDULE REC'D: 3-20-91 FROM: Rodey  
 SPONSER'S STATEMENT REC'D: 3-20- FROM: Rodey  
 SECTIONAL ANALYSIS RQST'D: \_\_\_\_\_ FROM: \_\_\_\_\_  
 SECTIONAL ANALYSIS RECEIVED: \_\_\_\_\_

FISCAL NOTE (ORIGINAL)  
 RQST'D OF: \_\_\_\_\_ REC'D FROM: LAW 0 DATE: 3-20-91  
 RQST'D OF: \_\_\_\_\_ REC'D FROM: Bainbridge 30 DATE: 4-16-91  
 RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_

FISCAL NOTE (C.S.)  
 RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_  
 RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_  
 RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_

FIVE DAY NOTICE GIVEN: April 11, 1991 NOTICE OF HEARINGS GIVEN: April 11, 1991  
 COMMITTEES OF REFERRAL: FIRST: Jud SECOND: \_\_\_\_\_ THIRD: \_\_\_\_\_

**COMMITTEE ACTION**

DATE:	
<u>4-18-91</u>	<u>Heard - Held over -</u>
<u>4-23-91</u>	<u>Heard - all OK except para 201 &amp; 303 -</u>
<u>4-24</u>	<u>Requested Draft CS with Dir. Banking Changes:</u>
	<u>holding 1985 Sec 303</u>
<u>5-9-91</u>	<u>Heard - CS adopted - moved 87 -</u>
	<u>Adams &amp; Collins No Rec. Ducl Rec. Rodey/Hoffard</u>
<u>5-10-91</u>	<u>Delivered to Sen Sec. Do Pass</u>
_____	_____
_____	_____
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_____	_____
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_____	_____
_____	_____
_____	_____

**PERSONS TO BE NOTIFIED OF HEARING**

- |                                   |           |
|-----------------------------------|-----------|
| 1. SPONSOR <u>Rodey</u>           | 6. _____  |
| 2. AGENCY <u>Dept of Commerce</u> | 7. _____  |
| 3. <u>Art Peterson 463 3212</u>   | 8. _____  |
| 4. _____                          | 9. _____  |
| 5. _____                          | 10. _____ |

Patrick M. Rodey  
Senator

# Alaska State Legislature



Senate

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561 7618

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3793

## MEMORANDUM

DATE: March 20, 1991

TO: Senator Rick Halford, Chair  
Senate Judiciary Committee

FROM: Senator Pat Rodey *Pat*

SUBJ: Request for Hearing - SB 193

I respectfully request a hearing in the Senate Judiciary Committee for SB 193, the bill to have Alaska adopt the 1985 revisions to the Uniform Limited Partnership Act as recommended by the National Conference of Commissioners on Uniform Law.

SB 193 would update several Alaska statutes relating to the organization of limited partnerships, disclosure of information, and actions and liability of partners. Attached is relevant correspondence on some aspects of the bill.

I would appreciate the earliest possible scheduling of SB 193 before the committee. Please contact Tim Benintendi of my staff for further information.

PMR/tb/memo03

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

April 26, 1991

**SUBJECT:** Sectional summary of SB 193

**TO:** Senator Pat Rodey  
Attn: Tim Benintendi

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

*276 5093  
Mary Cochran -*

You have requested a sectional summary of SB 193, an act relating to limited partnerships. Please be aware that this is only a summary of the bill and that the bill remains the best source of its contents.

The bill is taken from 1985 version of the Uniform Limited Partnership Act ("ULPA"), except that secs. 32.11.010 and 32.11.120 are based on the 1976 version and corresponding changes were made throughout the bill to accommodate the changes in these two sections. The corresponding ULPA section number is given for each section, so that you can more easily refer to the information provided on each ULPA section by the National Conference of Commissioners on Uniform State Laws.

#### Section 1. Main provisions of the bill.

Sec. 32.11.010. This is sec. 201 of the ULPA. It requires the filing of a certificate of limited partnership in order to form a limited partnership. It indicates that two or more persons must execute the certificate and that it is to be filed with the Department of Commerce and Economic Development ("department"). It lists the information that the certificate must include. Subsec. (b) indicates when the partnership is considered to be formed.

Sec. 32.11.020. This is sec. 202 of the ULPA. This section establishes how a certificate of limited partnership can be amended. A certificate of amendment must be filed with the department. The section identifies what information the certificate of amendment must include. Subsec. (b) requires that an amendment to a certificate of limited partnership must be filed after certain listed events. Subsec. (c) requires a general partner to amend the certificate if the partner realizes that the certificate is inaccurate. Subsec. (d) allows the certificate to be amended freely. Subsec. (e)

prohibits a person from being held liable for not filing an amendment required under (b) if the person files the amendment within the 30-day period allowed under (b). Subsec. (f) states that a restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

Sec. 32.11.030. This is sec. 203 of the ULPA. This section directs that a certificate of limited partnership is to be cancelled if the partnership is dissolved and winding up commenced or whenever there aren't any limited partners. Directs that a certificate of cancellation be filed with the department. Identifies what information the certificate of cancellation must include.

Sec. 32.11.040. This is sec. 204 of the ULPA. This section establishes how a certificate required by the chapter is to be executed. Subsec. (b) allows a person to have another person with a power of attorney sign. A power of attorney relating to the admission or increased contribution of a partner must specifically describe the admission or increase. Subsec. (c) states that the execution by a general partner constitutes an affirmation under the penalty of false swearing.

Sec. 32.11.050. This is sec. 205 of the ULPA. This section provides that any person adversely affected by a failure or refusal to sign a certificate has standing to seek judicial intervention.

Sec. 32.11.060. This is sec. 206 of the ULPA. Subsec. (a) addresses some of the mechanics for filing and department handling of certificates of limited partnership, amendment, and cancellation, and of judicial decrees of amendment or cancellation. Declares that amendments become effective when the certificate or judicial decree of amendment is filed. Declares that a certification of limited partnership is cancelled when the certificate or judicial decree of cancellation is filed.

Sec. 32.11.070. This is sec. 207 of the ULPA. This section creates a right of recovery for a person who relies on a certificate that contains a false statement, if the person is damaged by the reliance. Lists the persons who are liable.

Sec. 32.11.080. This is sec. 208 of the ULPA. This section establishes what facts the certificate of limited partnership is considered to be considered notice of.

Sec. 32.11.090. This is sec. 209 of the ULPA. This section directs the general partners to deliver or mail a copy of the filed certificate of limited partnership, amendment, or cancellation to each limited partner unless the partnership agreement provides otherwise.

Sec. 32.11.100. This is sec. 301 of the ULPA. This section describes the situations in which a person may be admitted as a limited partner after the original certificate

of limited partnership is filed. States that the persons become limited partners only when the certificate of limited partnership has been amended to reflect that fact.

Sec. 32.11.110. This is sec. 302 of the ULPA. This section gives voting rights to the limited partners to the extent and in the manner granted by the partnership agreement, subject to sec. 32.11.120.

Sec. 32.11.120. This is sec. 303 of the ULPA. This section indicates when a limited partner becomes liable for the obligations of a limited partnership. Subsec. (b) itemizes the activities undertaken by a limited partner that do not constitute participating in the control of the partnership business.

Sec. 32.11.130. This is sec. 304 of the ULPA. This section prevents a person who makes a contribution to a business enterprise from being considered a general partner in certain situations if the person erroneously in good faith believes the person to be a limited partner. Subsec. (b) limits the relief provided in (a).

Sec. 32.11.140. This is sec. 305 of the ULPA. Gives each limited partner the right to inspect and copy the partnership records and to obtain certain information from the general partners.

Sec. 32.11.150. This is sec. 401 of the ULPA. This section establishes how additional general partners are admitted to a limited partnership after the original certificate of limited partnership has been filed.

Sec. 32.11.160. This is sec. 402 of the ULPA. This section lists the situations in which a person ceases to be general partner of a limited partnership.

Sec. 32.11.170. This is sec. 403 of the ULPA. Subsec. (a) establishes that, except as provided in this chapter or in the partnership agreement, a general partner has the same rights, powers, and restrictions of a partner in a partnership without limited partners. Subsec. (b) establishes generally when a general partner is liable to persons other than the partnership and other partners.

Sec. 32.11.180. This is sec. 404 of the ULPA. This section authorizes a general partner to make contributions and share in the profits, losses, and distributions of the partnership as a general partner and as a limited partner. States that a person who is both a general and limited partner has the rights, powers, restrictions, and liabilities of a general partner and, except as provided in the partnership agreement, the powers and restrictions of a limited partner to the extent of the person's participation as a limited partner.

Sec. 32.11.190. This is sec. 405 of the ULPA. This section authorizes the partnership to provide its general partners with voting rights as provided in the partnership agreement.

Sec. 32.11.200. This is sec. 501 of the ULPA. This section explicitly permits a partner's contribution to be in various forms, including services rendered.

Sec. 32.11.210. This is sec. 502 of the ULPA. This section retains the liability of a partner for the partner's promises even if the partner is unable to perform the promises, unless the certificate of limited partnership provides otherwise. Requires a partner to contribute cash if the partner does not make a required contribution of property or services. Allows a partner's contribution or refund obligation to be compromised only if all partners consent. Authorizes certain creditors to enforce the original obligation despite the compromise.

Sec. 32.11.220. This is sec. 503 of the ULPA. This section indicates how the profits and losses are to be allocated. Generally based on the partnership agreement or the value of the individual contributions of the partners.

Sec. 32.11.230. This is sec. 504 of the ULPA. This section indicates how distributions are to be allocated among the partners. Generally based on the partnership agreement or the value of the individual contributions of the partners.

Sec. 32.11.240. This is sec. 601 of the ULPA. This section establishes when and to what extent a partner is entitled to receive interim distributions from the partnership.

Sec. 32.11.250. This is sec. 602 of the ULPA. This section allows a general partner to withdraw from a partnership at any time. Requires written notice. Authorizes the partnership to recover damages from the withdrawing partner if the withdrawal violates the partnership agreement. The damages may be offset against the amount distributable to the partner.

Sec. 32.11.260. This is sec. 603 of the ULPA. This section allows a limited partner to withdraw as allowed in the certificate of limited partnership. If the certificate doesn't specify, the partner must provide at least six months' prior written notice to the general partners.

Sec. 32.11.270. This is sec. 604 of the ULPA. This section establishes that, with certain exceptions, a withdrawing partner, upon withdrawal, is entitled to receive a distribution. The distribution is based on the partnership agreement, or on the fair value of the partner's interest in the partnership based on the partner's right to share in distributions.

Sec. 32.11.280. This is sec. 605 of the ULPA. This section prohibits, unless the partnership allows, a partner from demanding and receiving a distribution in a form other than cash. Prohibits, unless the agreement allows, compelling a partner to accept certain distributions of assets in kind.

Sec. 32.11.290. This is sec. 606 of the ULPA. This section makes a partner who has become entitled to a distribution a creditor of the partnership and entitled to all the remedies available to a creditor.

Sec. 32.11.300. This is sec. 607 of the ULPA. This section prohibits a partner from receiving a distribution to the extent that after the distribution the partnership's liabilities to third parties exceed the partnership's assets.

Sec. 32.11.310. This is sec. 608 of the ULPA. This section makes a partner whose contribution has been returned to the partner, liable for one year to the partnership to the extent necessary to discharge certain creditors. The period of liability is increased to six years if the return violated the partnership agreement or this chapter.

Sec. 32.11.320. This is sec. 701 of the ULPA. This section establishes that a partnership interest is personal property.

Sec. 32.11.330. This is sec. 702 of the ULPA. This section states that a partnership interest is assignable, except as provided by the partnership agreement. Establishes that an assignment does not dissolve the partnership or entitle the assignee to become or to exercise the rights of a partner. States that an assignment entitles the assignee to receive only the distribution to which the assignor would be entitled. States that a partner who assigns all of the partner's interest ceases to be a partner.

Sec. 32.11.340. This is sec. 703 of the ULPA. This section authorizes a court to charge the partnership interest of a debtor partner with payment of a debt of the debtor partner. Makes the judgment creditor an assignee to the extent of the charge. States that this chapter does not deprive a partner of an exemption allowed by law.

Sec. 32.11.350. This is sec. 704 of the ULPA. This section specifies when and to what extent an assignee of a partnership interest may become a limited partner. The section describes the rights, powers, restrictions, and liabilities of an assignee who has become a limited partner. Maintains the assignor's liability under certain statutes to the partnership.

Sec. 32.11.360. This is sec. 705 of the ULPA. This section establishes the right of an incompetent or deceased partner's legal representative to exercise the partner's rights in order to settle the partner's estate or administer the partner's property. For a partner who is not a natural person and who is dissolved or terminated, the section

authorizes the partner's legal representative or successor to exercise the partner's powers.

Sec. 32.11.370. This is sec. 801 of the ULPA. This section identifies the events causing dissolution and winding up of a limited partnership.

Sec. 32.11.380. This is sec. 802 of the ULPA. This section authorizes a partner to obtain a judicial decree of dissolution of the partnership if it is not reasonably practical to carry on the business under the partnership agreement.

Sec. 32.11.390. This is sec. 803 of the ULPA. This section indicates which partners can wind up the partnership's affairs. The section authorizes a court to wind up the partnership's affairs if a partner, a partner's legal representative, or an assignee applies for the relief.

Sec. 32.11.400. This is sec. 804 of the ULPA. This section establishes how the partnership assets are to be distributed upon the winding up of the partnership.

Sec. 32.11.410. This is sec. 901 of the ULPA. This section establishes that a foreign limited partnership is governed by the laws of the state where it was organized. The section also prohibits denying registration to a foreign limited partnership because the laws of its state of origin differ from those of this state.

Sec. 32.11.420. This is sec. 902 of the ULPA. This section requires a foreign limited partnership to register with the department before transacting business in this state. Establishes how the partnership applies for registration and the information that it must provide to the department in the application.

Sec. 32.11.430. This is sec. 903 of the ULPA. This section directs the department to issue a certificate of registration to transact business in this state to a foreign corporation if its application is in order and it has paid the required fees.

Sec. 32.11.440. This is sec. 904 of the ULPA. This section establishes the parameters for the name that a foreign limited partnership may use when it registers with the department.

Sec. 32.11.450. This is sec. 905 of the ULPA. This section directs the foreign limited partnership that has registered with the state to file with the department a certificate correcting the registration application if a statement in its registration application was inaccurate or has become inaccurate.

Sec. 32.11.460. This is sec. 906 of the ULPA. This section allows a foreign limited partnership to cancel its registration and establishes the procedure for doing so. States that a cancellation does not terminate the authority of the commissioner to

accept service of process on the partnership for actions arising out of its business in the state.

Sec. 32.11.470. This is sec. 907 of the ULPA. This section prohibits a foreign limited partnership from bringing an action in this state until it has registered. States that a failure to register doesn't impair the validity of a contract or act of the partnership or prevent the partnership from defending an action in this state. The section states that a limited partner of a foreign limited partnership is not liable as a general partner solely because of transacting business in this state without being registered. The commissioner becomes the agent for the service of process for a foreign limited partnership that transacts business in the state without being registered.

Sec. 32.11.480. This is sec. 908 of the ULPA. This section authorizes the department to bring an action to restrain a foreign limited partnership from transacting business in this state in violation of secs. 32.11.410 - 32.11.480.

Sec. 32.11.490. This is sec. 1001 of the ULPA. This section authorizes a limited partner to bring a derivative action on behalf of the limited partnership under certain circumstances.

Sec. 32.11.500. This is sec. 1002 of the ULPA. This section indicates how a partner qualifies to bring a derivative action.

Sec. 32.11.510. This is sec. 1003 of the ULPA. This section describes what the initial pleading in a derivative action must set out.

Sec. 32.11.520. This is sec. 1004 of the ULPA. This section directs the court to direct the successful plaintiff in a derivative action to remit a specified portion of certain recoveries to the limited partnership.

Sec. 32.11.800. This is sec. 1101 of the ULPA. This section states that this chapter is to be applied and construed to achieve its purpose of making the law uniform in this area.

Sec. 32.11.810. This is sec. 102 of the ULPA. This section establishes certain parameters for the name of a limited partnership.

Sec. 32.11.820. This is sec. 103 of the ULPA. This section authorizes a person or a limited partnership to reserve for a limited partnership the exclusive right to the use of a particular name. Establishes the procedure for and the duration of the reservation. Authorizes the transfer of a right to the exclusive use of a reserved name.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

April 25, 1991

**SUBJECT:** Draft CSSB 193(Judiciary) (Work Order No. 7-LS0087)

**TO:** Senator Rick Halford  
Attn: Doug

**FROM:** Theresa L. Bannister *TLB*  
Legislative Counsel

This memo accompanies the draft that you requested of CSSB 193(Judiciary) relating to the uniform limited partnership act.

Please note that with regard to the changes relating to the types of copies that need to be filed, it was necessary to modify the requested changes slightly and to make certain corresponding changes at other locations in the bill. The changes are contained in sec. 32.11.060(a), sec. 32.11.420, and sec. 32.11.430. Please examine these carefully to be sure that the changes are what you intended.

The language of the new fees section was changed to apply to all filed certificates and applications, not just to required filings.

In addition,

(1) "be" was added to the first sentence of sec. 32.11.030 where it had been omitted;

(2) the catchline for sec. 32.11.370 was changed to "Dissolution" to make it accurate; and

(3) the catchline of sec. 32.11.520 was changed to "Recoveries" to make it accurate.

If I may be of further assistance, please advise.

TLB:lmb  
91-141.lmb

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### MEMORANDUM

March 13, 1991

**SUBJECT:** New version of bill on limited partnerships (W.O. 7-LS0087/D)

**TO:** Senator Pat Rodey  
Attn: Tim Benintendi

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

This memo accompanies the revised bill on limited partnerships that you requested. You directed that secs. 32.11.010 (sec. 201 of the Uniform Limited Partnership Act ("ULPA")) and 32.11.120 (sec. 303 of the ULPA) be returned to the 1976 version without the 1985 amendments. To accommodate these sections, it was necessary to make corresponding changes throughout the draft. This memo summarizes those changes. Please disregard the memo of March 12, 1991

#### Section 1. Main provisions of the bill.

Sec. 32.11.010. This is sec. 201 of the ULPA. In (a) reinserts the requirement that two or more persons execute the certificate. In (a) reinserts several items of information that must be included in the certificate of limited partnership. Makes minor word changes.

Sec. 32.11.020. Reinserts (b)(1), which was deleted from the 1985 version.

Sec. 32.11.030. No changes.

Sec. 32.11.040. In sec. 32.11.040(1), reinserts the requirement that the document be signed by all of the partners named in the certificate of limited partnership, not just the general partners.

In sec. 32.11.040(2) expands the signature requirements to cover limited partners who are new and limited partners whose contributions have been increased.

In sec. 32.11.040(b) reinserts references to increased contributions.

Senator Pat Rodey  
March 13, 1991  
Page 2

Sec. 32.11.050. No changes.

Sec. 32.11.060. No changes.

Sec. 32.11.070. No changes.

Sec. 32.11.080 replaces "general partners" with "limited partners".

Sec. 32.11.090. No changes.

Sec. 32.11.100. Deletes sec. 32.11.100(a) from the previous draft. Sec. 32.11.100(a) in this version was (b) in the previous draft. Sec. 32.11.100(b) is 1976 language that has been reinserted.

Sec. 32.11.110. No changes.

Sec. 32.11.120. This is sec. 303 of the ULPA. The second sentence of sec. 32.11.120(a) contains the 1976 language relating to a limited partner's exposure to liability when participating in the control of the business.

Sec. 32.11.120(b) reflects the 1976 listing of the situations in which a limited partner will not be considered to be participating in the control of the business.

Sec. 32.11.130. In sec. 32.11.130(b)(2) reinserts the language regarding limited partners. Deletes from (2) "that the person is not a general partner". Adds "under (1) or (2)" to clarify (b).

Sec. 32.11.140. No changes.

Sec. 32.11.150. No changes.

Sec. 32.11.160. No changes.

Sec. 32.11.170. No changes.

Sec. 32.11.180. No changes.

Sec. 32.11.190. No changes.

Sec. 32.11.200. No changes.

Sec. 32.11.210. Sec. 32.11.210(a) was (b) in the previous draft. Sec. 32.11.210(a) of the previous draft has been deleted. In Sec. 32.11.210(a), this draft substitutes "certificate of limited partnership" for "partnership agreement" and substitutes

"certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.220 substitutes "certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.230 substitutes "certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.240. Sec. 32.11.240(2) was reinserted from the 1976 ULPA.

Sec. 32.11.250. No changes.

Sec. 32.11.260 substitutes "the certificate of limited partnership and in accordance with" for "writing in" in the first sentence. In the second sentence substitutes "certificate" for "agreement" and deletes "in writing".

Sec. 32.11.270. No changes.

Sec. 32.11.280 substitutes "certificate of limited partnership" for "partnership agreement" in the first sentence. Also deletes "writing in" from the first sentence.

Sec. 32.11.290. No changes.

Sec. 32.11.300. No changes.

Sec. 32.11.310. In sec. 32.11.310(c) substitutes "certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.320. No changes.

Sec. 32.11.330. No changes.

Sec. 32.11.340. No changes.

Sec. 32.11.350. In sec. 32.11.350(a)(1) substitutes "certificate of limited partnership" for "partnership agreement". In sec. 32.11.350(b) reinserts at the end "and that could not be ascertained from the certificate of limited partnership".

Sec. 32.11.360. No changes.

Sec. 32.11.370. In sec. 32.11.370(1) substitutes "in the certificate of limited partnership" for "in writing in the partnership agreement". In sec. 32.11.370(4)

substitutes "the certificate of limited partnership permits" for "the written provisions of the partnership agreement permit".

Sec. 32.11.380. No changes.

Sec. 32.11.390. No changes.

Sec. 32.11.400. No changes.

Sec. 32.11.410. No changes.

Sec. 32.11.420. Sec 32.11.420(3) is a paragraph from the 1976 version that had been deleted. Sec. 32.11.420(7) contains a modified version of the 1976 ULPA, and deletes most of the 1985 language, except the requirement to list the capital contribution of each limited partner.

Sec. 32.11.430. No changes.

Sec. 32.11.440. No changes.

Sec. 32.11.450. No changes.

Sec. 32.11.460. No changes.

Sec. 32.11.470. No changes.

Sec. 32.11.480. No changes.

Sec. 32.11.490. No changes.

Sec. 32.11.500. No changes.

Sec. 32.11.510. No changes.

Sec. 32.11.520. No changes.

Sec. 32.11.800. No changes.

Sec. 32.11.810. Sec. 32.11.810(3) is language from the 1976 ULPA that was deleted in the 1985 version.

Sec. 32.11.820. No changes.

Sec. 32.11.830. No changes.

Senator Pat Rodey  
March 13, 1991  
Page 5

Sec. 32.11.840. The phrase, "separately identifying the general partners in alphabetical order and the limited partners in alphabetical order" has been deleted from Sec. 32.11.840(1). Sec. 32.11.840(5) from the previous draft has been deleted.

Sec. 32.11.850. No changes.

Sec. 32.11.860. No changes.

Sec. 32.11.890. No changes.

Sec. 32.11.900 adds to the definition of "limited partner" the phrase "and named in the certificate of limited partnership as a limited partner".

Section 2. No change.

Section 3. No change.

Section 4. No change.

Section 5. No change.

TLB:gc  
91-076.lmb

Enclosure

# DIVISION OF LEGAL SERVICES

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### MEMORANDUM

October 5, 1990

**SUBJECT:** Uniform Limited Partnership Act (W.O. 17-LS0087A)

**TO:** Senator Pat Rodey

**FROM:** Theresa L. Bannister *TLB/LMB*  
Legislative Counsel

This memo accompanies the draft that you requested to enact the latest version of the Uniform Limited Partnership Act.

In order to achieve the desired uniformity with other states, the draft is nearly identical to the proposed uniform act. The only significant substantive change occurs in sec. 32.11.520, relating to the expenses of a derivative action. This section was changed to reflect the fact that in Alaska, the court rules already provide that the court will award attorney fees and costs to the plaintiff.

The present Uniform Limited Partnership Act (AS 32.10) was amended in 1990 by ch. 155, SLA 1990, to authorize derivative actions for limited partnerships. Aside from minor differences and the deletion referred to in the previous paragraph, the derivative action provisions in the draft (secs. 32.11.490 - 32.11.520) are the same as AS 32.10.245, which was enacted during the last session.

The uniform act allows the sponsor to select certain provisions. You may wish to consider two provisions for inclusion. These are

(1) whether to prohibit the partnership from any particular activity (sec. 32.11.850); currently AS 32.10 does not impose a limitation; AS 32.10.020 basically states that a limited partnership may carry on any business that a partnership without limited partners may carry on; this is basically the same language that is used in sec. 32.11.850;

(2) whether to limit the names of limited partnerships beyond the standard provision in the draft (sec. 32.11.810); currently AS 32.10.040 contains a name limitation that is similar to that in the draft; the only significant difference appears

Senator Pat Rodey  
October 5, 1990  
Page 2

to be that AS 32.10.040 generally prohibits the use of a person's "surname", while the draft prohibits the use of a person's "name".

Except for the effective dates, the draft contains the same time periods suggested in the uniform act. These can be adjusted in your draft if you disagree with any of them.

Regarding the effective date, the uniform act uses two effective dates, one general one for the bulk of the bill and a later one for certain provisions in the bill. The second date appears to be used merely to give partnerships additional time to comply with those provisions and to give Department of Commerce and Economic Development additional time to establish its central filing system for limited partnerships. Instead of using two dates, the draft contains one delayed effective date. The approach used in the Uniform Act would be very cumbersome and it would be very difficult to draft it without causing numerous substantive problems. I recommend against using that approach.

If you need further assistance with the draft, please advise.

TLB:gc  
90-002.GLC

Enclosure

NOTES FOR SENATOR RODEY

from Tim Benintendi

March 5, 1991

Uniform Limited Partnership Act revisions - Our draft DOES contain the 1985 revisions from the National Conference of Commissioners on Uniform Law. Fessler recommends deleting Sections 201 and 303 of the revisions for the following reasons:

Section 201 - He thinks that the 85 amendments depart from too far from the disclosure obligations. Eliminating many reporting requirements will reduce the certificate to one of notification only, and he thinks this will slight creditors and other third party interests. Cases he cites in his research seem to focus on unusual or atypical situations.

Art Peterson and the national conference believe that since traditionally most pertinent information needed by creditors and others comes from the partnership agreement, for which there is public access, Fessler's concerns are not warranted, and abbreviating the certification process will not restrict access to information about the partnership. The national conference studied this issue and determined no undue restriction, nor loss to partners in terms of excess liability. The thought is that it is not particularly useful to know who the limited partners are since the fiduciary and management duties fall to the general partners. The emphasis should remain on the partnership agreement, not the not the composition of the partners.

Section 303 - Professor Fessler cites cases in which limited partners acted beyond their "safe harbor" of customary limited practices, and engaged in activities usually identified with those of general partners. He says, "The issue is whether a loss of limited liability should turn on an offense to the statutory norm of passivity or only upon specific creditor expectations generated by that activity".

The 1916 Act is silent on the subject of activities of limited partners. The 1976 amendments establish several categories of action that limited partners can take without incurring liability. The 1985 amendments extend that category within the "safe harbor".

Art Peterson and the national conference believe there is no argument on the "blurring point". The trend of law now is for general partners to be the focus of credit worthiness. Further, Section 303-a is fairly strict, and would eliminate the limited partners from being like general partners.

Pat, I have summarized this info. from conversations with Art Peterson, John McCabe of NCCUSL, and Terry Bannister. Our draft contains the revisions for 201 and 303 per the 85 amendments. Prof. Fessler would have us delete these amended sections, Art Peterson supports their retention. Do you want to take any action on these now by revising the draft, or introduce the bill as is, and take up these issues in committee?

Art Peterson - 463-3212 (wk)

John McCabe - (312) 915-0195 (wk)

Terry Bannister - 2450

A:notes

SB193 -

All agree OK for most part -  
201 Brochure in cart.

303 - Changing Mt Parkes Liability Shield.

William Kirkpatrick Div of Banking -

We have 1917 Act save for a few 1990  
Amendments.

We sat kind of phone in meeting certificate.

We will look at Div of Banking Program.

SB193 — 1985 Amendment - Ital PShip —

Why did Rodley want to retain the 1976 Version of  
32.11.010 and 32.11.120

PROPOSED AMENDMENTS TO SB 193

Sec. 32.11.060(a)

Pg. 4 line 20-Amend [Two signed copies] to read an original and an exact copy.

Sec. 32.11.060(a)(1)

Pg. 4 line 26-Amend [duplicate original] to read an original and an exact copy.

Sec. 32.11.420

Pg. 15, line 30-Amend [in duplicate] to read an original and an exact copy.

Sec. 32.11.430(b)

Pg. 16, line 27-Amend [duplicate original] to read an original and an exact copy.

Sec. 32.11.830

Pg. 19, line 29, Insert

(3) a limited partnership may change its registered office, agent, or both, by filing with the department a verified statement signed by a general partner including

(A) the name of the limited partnership;

(B) the address of its registered office;

(C) the address of its new registered office if the registered office is to be changed;

(D) the name of its registered agent;

(E) the name of its new registered agent, if the registered agent is to be changed;

(F) a statement that the change has been approved by all general partners.

SEC. 32.11.870

Add a section, FILING FEES. A domestic or foreign limited partnership that is required to file a certificate of limited partnership, amendment, cancellation, or registration or any other application with the department, shall pay to the commissioner a filing fee established by the department by regulation. The filing fee shall be uniform and fixed.

CS FOR SENATE BILL NO. 193 (JUDICIARY)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATOR RODEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limited partnerships; amending Alaska Rule of Civil Procedure 8; and  
2 providing for an effective date."

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

4 \* Section 1. AS 32 is amended by adding a new chapter to read:

5 CHAPTER 11. UNIFORM LIMITED PARTNERSHIP ACT.

6 ARTICLE 1. FORMATION AND CERTIFICATE OF LIMITED PARTNERSHIP.

7 Sec. 32.11.010. CERTIFICATE OF LIMITED PARTNERSHIP. (a) In order to form  
8 a limited partnership, two or more persons shall execute a certificate of limited partnership. The  
9 certificate shall be filed with the Department of Commerce and Economic Development and must  
10 set out

- 11 (1) the name of the limited partnership;
- 12 (2) the general character of the business of the limited partnership;
- 13 (3) the address of the office and the name and address of the agent for service
- 14 of process required to be maintained by AS 32.11.830;

1 (4) the name and business address of each partner, specifying separately the  
2 general partners and limited partners;

3 (5) the amount of cash and a description and statement of the agreed value of the  
4 other property or services

5 (A) contributed by each partner; and

6 (B) that each partner has agreed to contribute in the future;

7 (6) the times at which or events on the happening of which any additional  
8 contributions agreed to be made by each partner are to be made;

9 (7) any power of a limited partner to grant the right to become a limited partner  
10 to an assignee of a part of the limited partner's partnership interest, and the terms and conditions  
11 of the power;

12 (8) if agreed upon, the time at which or the events on the happening of which a  
13 partner may terminate the partner's membership in the limited partnership, the amount of or the  
14 method of determining the distribution to which the partner may be entitled respecting the  
15 partner's partnership interest, and the terms and conditions of the termination and distribution;

16 (9) any right of a partner to receive distributions of property, including cash, from  
17 the limited partnership;

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

20 (11) any time at which or events upon the happening of which the limited  
21 partnership is to be dissolved and its affairs wound up;

22 (12) any right of the remaining general partners to continue the business on the  
23 happening of an event of withdrawal of a general partner; and

24 (13) other matters the partners determine to include.

25 (b) A limited partnership is formed at the time of the filing of the certificate of limited  
26 partnership with the department or at a later time specified in the certificate of limited partnership  
27 if, in either case, there has been substantial compliance with the requirements of this section.

28 Sec. 32.11.020. AMENDMENT TO CERTIFICATE. (a) A certificate of limited  
29 partnership is amended by filing a certificate of amendment with the department. The certificate  
30 must set out

31 (1) the name of the limited partnership;

- 1 (2) the date of filing the certificate to be amended; and  
2 (3) the amendment to the certificate.

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

5 (1) a change in the amount or character of the contribution of a partner, or in a  
6 partner's obligation to make a contribution;

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

8 (3) the withdrawal of a general partner; or

9 (4) the continuation of the business under AS 32.11.370 after an event of  
10 withdrawal of a general partner.

11 (c) A general partner who becomes aware that a statement in a certificate of limited  
12 partnership was false when made or that an arrangement or other fact described has changed,  
13 making the certificate inaccurate, shall promptly amend the certificate.

14 (d) A certificate of limited partnership may be amended at any time for any other proper  
15 purpose the general partners determine.

16 (e) A person may not be held liable because an amendment to a certificate of limited  
17 partnership has not been filed to reflect the occurrence of an event referred to in (b) of this  
18 section if the amendment is filed within the 30-day period specified in (b) of this section.

19 (f) A restated certificate of limited partnership may be executed and filed in the same  
20 manner as a certificate of amendment.

21 Sec. 32.11.030. CANCELLATION OF CERTIFICATE. A certificate of limited  
22 partnership shall be canceled upon the dissolution and the commencement of winding up of the  
23 partnership or at any other time there are no limited partners. A certificate of cancellation shall  
24 be filed with the department and must set out

25 (1) the name of the limited partnership;

26 (2) the date of filing of its certificate of limited partnership;

27 (3) the reason for filing the certificate of cancellation;

28 (4) the effective date, which must be a date certain, of cancellation if it is not to  
29 be effective upon the filing of the certificate; and

30 (5) other information the general partners filing the certificate determine.

31 Sec. 32.11.040. EXECUTION OF CERTIFICATES. (a) Each certificate required by

1 AS 32.11.010 - 32.11.090 to be filed with the department shall be executed in the following  
2 manner:

3 (1) an original certificate of limited partnership shall be signed by all partners  
4 named in the certificate;

5 (2) a certificate of amendment shall be signed by a least one general partner and  
6 by each other partner designated in the certificate as a new partner or whose contribution is  
7 described as having been increased; and

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

9 (b) A person may sign a certificate by an attorney-in-fact, but a power of attorney to sign  
10 a certificate relating to the admission, or increased contribution, of a partner must specifically  
11 describe the admission or increase.

12 (c) The execution of a certificate by a general partner constitutes an affirmation under  
13 the penalty of false swearing that the facts stated are true.

14 Sec. 32.11.050. EXECUTION BY JUDICIAL ACT. If a person required by  
15 AS 32.11.040 to execute a certificate fails or refuses to do so, a person who is adversely affected  
16 by the failure or refusal may petition the superior court to direct the execution of the certificate.  
17 If the court finds that it is proper for the certificate to be executed and that a person so  
18 designated has failed or refused to execute the certificate, it shall order the department to record  
19 an appropriate certificate.

20 Sec. 32.11.060. FILING WITH DEPARTMENT. (a) An original and an exact copy of  
21 the certificate of limited partnership and of a certificate of amendment or cancellation, or of a  
22 judicial decree of amendment or cancellation, shall be delivered to the department. A person  
23 who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's  
24 authority as a prerequisite to filing. Unless the department finds that a certificate does not  
25 conform to law, upon receipt of all filing fees required by law the department shall

26 (1) endorse on each original and exact copy the word "Filed" and the day, month,  
27 and year of the filing;

28 (2) file the original in the department's office; and

29 (3) return the exact copy to the person who filed it or the person's representative.

30 (b) Upon the filing of a certificate of amendment or judicial decree of amendment with  
31 the department, the certificate of limited partnership is amended, and upon the effective date of

1 a certificate of cancellation or a judicial decree of cancellation, the certificate of limited  
2 partnership is canceled.

3 Sec. 32.11.070. LIABILITY FOR FALSE STATEMENT IN CERTIFICATE. If a  
4 certificate of limited partnership or certificate of amendment or cancellation contains a false  
5 statement, one who suffers loss by reliance on the statement may recover damages for the loss  
6 from

7 (1) a person who executes the certificate, or causes another to execute the  
8 certificate on the person's behalf, and knew, and a general partner who knew or should have  
9 known, the statement to be false at the time the certificate was executed; and

10 (2) a general partner who thereafter knows or should have known that an  
11 arrangement or other fact described in the certificate has changed, making the statement  
12 inaccurate in any respect within a sufficient time before the statement was relied upon reasonably  
13 to have enabled that general partner to cancel or amend the certificate, or to file a petition for  
14 its cancellation or amendment under AS 32.11.050.

15 Sec. 32.11.080. SCOPE OF NOTICE. The fact that a certificate of limited partnership  
16 is on file with the department is notice that the partnership is a limited partnership and the  
17 persons designated in the certificate as limited partners are limited partners, but it is not notice  
18 of any other fact.

19 Sec. 32.11.090. DELIVERY OF CERTIFICATES TO LIMITED PARTNERS. Upon the  
20 return by the department under AS 32.11.060 of a certificate marked "Filed," the general partners  
21 shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate  
22 of amendment or cancellation to each limited partner unless the partnership agreement provides  
23 otherwise.

## 24 ARTICLE 2. LIMITED PARTNERS.

25 Sec. 32.11.100. ADMISSION OF LIMITED PARTNERS. (a) After the filing of a  
26 limited partnership's original certificate of limited partnership, a person may be admitted as an  
27 additional limited partner

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

31 (2) in the case of an assignee of a partnership interest of a partner who has the

1 power under AS 32.11.350 to grant the assignee the right to become a limited partner, upon the  
2 exercise of that power and compliance with conditions limiting the grant or exercise of the  
3 power.

4 (b) In each case under (a) of this section, the person acquiring the partnership interest  
5 becomes a limited partner only upon amendment of the certificate of limited partnership  
6 reflecting that fact.

7 Sec. 32.11.110. VOTING. Subject to AS 32.11.120, the partnership agreement may grant  
8 to all or a specified group of the limited partners the right to vote on a per capita or other basis  
9 on any matter.

10 Sec. 32.11.120. LIABILITY TO THIRD PARTIES. (a) Except as provided in (d) of this  
11 section, a limited partner is not liable for the obligations of a limited partnership unless the  
12 limited partner is also a general partner or, in addition to the exercise of the limited partner's  
13 rights and powers as a limited partner, the limited partner participates in the control of the  
14 business. However, if the limited partner participates in the control of the business, the limited  
15 partner is liable only to persons who transact business with the limited partnership reasonably  
16 believing, based upon the limited partner's conduct, that the limited partner is a general partner.

17 (b) A limited partner does not participate in the control of the business within the  
18 meaning of (a) of this section solely by doing one or more of the following:

19 (1) being a contractor for or an agent or employee of the limited partnership or  
20 of a general partner or being an officer, director, or shareholder of a general partner that is a  
21 corporation;

22 (2) consulting with and advising a general partner with respect to the business of  
23 the limited partnership;

24 (3) acting as surety for the limited partnership or guaranteeing or assuming one  
25 or more specific obligations of the limited partnership;

26 (4) taking any action required or permitted by law to bring or pursue a derivative  
27 action in the right of the limited partnership;

28 (5) requesting or attending a meeting of partners;

29 (6) proposing, approving, or disapproving, by voting or otherwise, one or more  
30 of the following matters:

31 (A) the dissolution and winding up of the limited partnership;

1 (B) the sale, exchange, lease, mortgage, pledge, or other transfer of all or  
2 substantially all of the assets of the limited partnership;

3 (C) the incurrence of indebtedness by the limited partnership other than  
4 in the ordinary course of its business;

5 (D) a change in the nature of the business;

6 (E) the admission or removal of a general partner;

7 (F) the admission or removal of a limited partner;

8 (G) a transaction involving an actual or potential conflict of interest  
9 between a general partner and the limited partnership or the limited partners;

10 (H) an amendment to the partnership agreement or certificate of limited  
11 partnership; or

12 (I) matters related to the business of the limited partnership not otherwise  
13 enumerated in this paragraph that the partnership agreement states in writing may be  
14 subject to the approval or disapproval of limited partners;

15 (7) winding up the limited partnership under AS 32.11.390; or

16 (8) exercising a right or power permitted to limited partners under this chapter  
17 and not specifically enumerated in this subsection.

18 (c) The enumeration in (b) of this section does not mean that the possession or exercise  
19 of any other powers by a limited partner constitutes participation by the limited partner in the  
20 business of the limited partnership.

21 (d) A limited partner who knowingly permits the limited partner's name to be used in  
22 the name of the limited partnership, except under circumstances permitted by AS 32.11.810(2),  
23 is liable to creditors who extend credit to the limited partnership without actual knowledge that  
24 the limited partner is not a general partner.

25 Sec. 32.11.130. ERRONEOUS BELIEF IN STATUS AS A LIMITED PARTNER. (a)  
26 Except as provided in (b) of this section, a person who makes a contribution to a business  
27 enterprise and erroneously but in good faith believes that the person has become a limited partner  
28 in the enterprise is not a general partner in the enterprise and is not bound by its obligations by  
29 reason of making the contribution, receiving distributions from the enterprise, or exercising the  
30 rights of a limited partner, if, on ascertaining the mistake, the person

31 (1) causes an appropriate certificate of limited partnership or a certificate of

1 amendment to be executed and filed; or

2 (2) withdraws from future equity participation in the enterprise by executing and  
3 filing in the office of the commissioner a certificate declaring withdrawal under this section.

4 (b) A person who makes a contribution of the kind described in (a) of this section is  
5 liable as a general partner to a third party who transacts business with the enterprise before (1)  
6 the person withdraws and an appropriate certificate is filed to show withdrawal, or (2) an  
7 appropriate certificate is filed to show the person's status as a limited partner and, in the case of  
8 an amendment, after expiration of the 30-day period for filing an amendment relating to the  
9 person as a limited partner under AS 32.11.020, but in either case under (1) or (2) only if the  
10 third party actually believed in good faith that the person was a general partner at the time of the  
11 transaction.

12 Sec. 32.11.140. INFORMATION. Each limited partner has the right to

13 (1) inspect and copy the partnership records required to be maintained by  
14 AS 32.11.840; and

15 (2) obtain from the general partners from time to time upon reasonable demand

16 (A) true and full information regarding the state of the business and  
17 financial condition of the limited partnership;

18 (B) promptly after it becomes available, a copy of the limited partnership's  
19 federal, state, and local income tax returns for each year; and

20 (C) other information regarding the affairs of the limited partnership as  
21 is just and reasonable.

## 22 ARTICLE 3. GENERAL PARTNERS.

23 Sec. 32.11.150. ADMISSION OF ADDITIONAL GENERAL PARTNERS. After the  
24 filing of a limited partnership's original certificate of limited partnership, additional general  
25 partners may be admitted as provided in writing in the partnership agreement or, if the  
26 partnership agreement does not provide in writing for the admission of additional general  
27 partners, with the written consent of all partners.

28 Sec. 32.11.160. EVENTS OF WITHDRAWAL. Except as approved by the specific  
29 written consent of all partners at the time, a person ceases to be a general partner of a limited  
30 partnership upon the happening of any of the following events:

31 (1) the general partner withdraws from the limited partnership under

1 AS 32.11.250;

2 (2) the general partner ceases to be a member of the limited partnership under  
3 AS 32.11.330;

4 (3) the general partner is removed as a general partner in accordance with the  
5 partnership agreement;

6 (4) unless otherwise provided in writing in the partnership agreement, the general  
7 partner

8 (A) makes an assignment for the benefit of creditors;

9 (B) files a voluntary petition in bankruptcy;

10 (C) is adjudicated a bankrupt or insolvent;

11 (D) files a petition or answer seeking for the general partner  
12 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar  
13 relief under a statute, law, or regulation;

14 (E) files an answer or other pleading admitting or failing to contest the  
15 material allegations of a petition filed against the general partner in a proceeding of the  
16 nature of those specified in (A) - (D) of this paragraph; or

17 (F) seeks, consents to, or acquiesces in the appointment of a trustee,  
18 receiver, or liquidator of the general partner or of all or a substantial part of the general  
19 partner's properties;

20 (5) unless otherwise provided in writing in the partnership agreement, 120 days  
21 after the commencement of a proceeding against the general partner seeking reorganization,  
22 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under a statute,  
23 law, or regulation, the proceeding has not been dismissed, or if within 90 days after the  
24 appointment without the general partner's consent or acquiescence of a trustee, receiver, or  
25 liquidator of the general partner or of all or a substantial part of the general partner's properties,  
26 the appointment is not vacated or stayed or within 90 days after the expiration of a stay, the  
27 appointment is not vacated;

28 (6) in the case of a general partner who is a natural person,

29 (A) the general partner's death; or

30 (B) the entry of an order by a court of competent jurisdiction adjudicating  
31 the general partner incompetent to manage the general partner's person or the general

1 partner's estate;

2 (7) in the case of a general partner who is acting as a general partner by virtue  
3 of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new  
4 trustee;

5 (8) in the case of a general partner that is a separate partnership, the dissolution  
6 and commencement of winding up of the separate partnership;

7 (9) in the case of a general partner that is a corporation, the filing of a certificate  
8 of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

9 (10) in the case of an estate, the distribution by the fiduciary of the estate's entire  
10 interest in the partnership.

11 Sec. 32.11.170. GENERAL POWERS AND LIABILITIES. (a) Except as provided in  
12 this chapter or in the partnership agreement, a general partner of a limited partnership has the  
13 rights and powers and is subject to the restrictions of a partner in a partnership without limited  
14 partners.

15 (b) Except as provided in this chapter, a general partner of a limited partnership has the  
16 liabilities of a partner in a partnership without limited partners to persons other than the  
17 partnership and the other partners. Except as provided in this chapter or in the partnership  
18 agreement, a general partner of a limited partnership has the liabilities of a partner in a  
19 partnership without limited partners to the partnership and to the other partners.

20 Sec. 32.11.180. CONTRIBUTIONS BY GENERAL PARTNER; PERSON BOTH  
21 LIMITED AND GENERAL PARTNER. A general partner of a limited partnership may make  
22 contributions to the partnership and share in the profits and losses of, and in distributions from,  
23 the limited partnership as a general partner. A general partner also may make contributions to  
24 and share in profits, losses, and distributions as a limited partner. A person who is both a general  
25 partner and a limited partner has the rights and powers, and is subject to the restrictions and  
26 liabilities, of a general partner and, except as provided in the partnership agreement, also has the  
27 powers, and is subject to the restrictions, of a limited partner to the extent of the person's  
28 participation in the partnership as a limited partner.

29 Sec. 32.11.190. VOTING. The partnership agreement may grant to all or certain  
30 identified general partners the right to vote, on a per capita or any other basis, separately or with  
31 all or any class of the limited partners, on any matter.

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#### ARTICLE 4. FINANCE.

Sec. 32.11.200. FORM OF CONTRIBUTION. The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Sec. 32.11.210. LIABILITY FOR CONTRIBUTION. (a) Except as provided in the certificate of limited partnership, a partner is obligated to the limited partnership to perform an enforceable promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability, or other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the certificate of limited partnership of the stated contribution that has not been made.

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

Sec. 32.11.220. SHARING OF PROFITS AND LOSSES. The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not specify in writing, profits and losses shall be allocated on the basis of the value, as stated in the certificate of limited partnership, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Sec. 32.11.230. SHARING OF DISTRIBUTIONS. Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not specify in writing, distributions shall be made on the basis of the value, as stated in the certificate of limited partnership of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

#### ARTICLE 5. DISTRIBUTIONS AND WITHDRAWAL.

Sec. 32.11.240. INTERIM DISTRIBUTIONS. Except as provided in AS 32.11.240 -

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

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

6 (2) if a distribution constitutes a return of a part of the partner's contribution  
7 under AS 32.11.310(c), to the extent and at the times or upon the happening of the events  
8 specified in the certificate of limited partnership.

9 Sec. 32.11.250. WITHDRAWAL OF GENERAL PARTNER. A general partner may  
10 withdraw from a limited partnership at any time by giving written notice to the other partners,  
11 but if the withdrawal violates the partnership agreement, the limited partnership may recover from  
12 the withdrawing general partner damages for breach of the partnership agreement and offset the  
13 damages against the amount otherwise distributable to the general partner.

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

22 Sec. 32.11.270. DISTRIBUTION UPON WITHDRAWAL. Except as provided in  
23 AS 32.11.240 - 32.11.310, upon withdrawal a withdrawing partner is entitled to receive a  
24 distribution to which the withdrawing partner is entitled under the partnership agreement and, if  
25 not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within  
26 a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the  
27 limited partnership as of the date of withdrawal based upon the withdrawing partner's right to  
28 share in distributions from the limited partnership.

29 Sec. 32.11.280. DISTRIBUTION IN KIND. Except as provided in the certificate of  
30 limited partnership, a partner, regardless of the nature of the partner's contribution, does not have  
31 the right to demand and receive a distribution from a limited partnership in a form other than