ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8415 SENATE LABOR & COMMERCE

APPENDIX

§ 43D. Insurance or financial responsibility of registered limited liability partnerships.

(a) A registered limited liability partnership shall carry at least $ [insert amount] of liability insurance, beyond the amount of any applicable deductible, of a kind that is designed to cover the kinds of omissions, negligence, wrongful acts, misconduct, and malpractice for which liability is limited by paragraph (2) of section 15, and which insures the partnership and its partners.

(b) If a registered limited liability partnership is in compliance with the requirements of paragraph (a) of this section, the requirements of this section shall not be admissible or in any way be made known to a jury in determining an issue of liability for or extent of the debt or obligation or damages in question.

(c) A registered limited liability partnership is considered to be in compliance with paragraph (a) of this section if the partnership provides $ [insert amount] of funds specifically designated and segregated for the satisfaction of judgments against the partnership or its partners based on the kinds of omissions, negligence, wrongful acts, misconduct, and malpractice for which liability is limited by paragraph (2) of section 15 by:

(i) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or

(ii) a bank letter of credit or insurance company bond.

Changes to CSSSHB 420 version K

1. 10.50.058. Deleted entire section at lines 22 through 31 on page 4.

   Change made at the suggestion of Department of Commerce to save money. There is no stated opposition to this change.

2. 10.50.063. Inserted the phrase "and the limited liability company" between "department" and "and" at line 25 on page 5.

   This requires a registered agent to notify the LLC for which it is an agent when it changes its address.

3. 10.50.075(3). Deleted "business, residence, or mailing address" from line 16 on page 7.

   Brings the requirements into line with current provisions of corporate code.

4. 10.50.075(6). Moved this entire subsection at lines 21 through 23 of page 7, to 10.50.110. Renumbered subsection (7) as subsection (6). Modified 10.50.110(a) by substituting the identical subsection from the sponsor substitute (the J version). In other words, lines 8 through 10 of page 9 of the K version were replaced by lines 12 through 18 on page 7 of the J version.

   Change made to maintain the flexible operating approach for Alaska LLC's.

5. Added a new 10.50.078.

   Requested by Department of Commerce.

6. 10.50.080. Deleted "even" through the end of the sentence from 10.50.080 at line 30 of page 7.

   Clarification.

7. 10.50.135(a)(1). Changed "director" to "person" at line 16 on page 10.

   Conforms to LLC structure.

8. 10.50.140(d). Deleted this entire section at lines 24 through 26 of page 11 and changed "(e)" to "(d)".

Conforms to LLC structure.

9. 10.50.145(a). Deleted "company's members" from line 31 of page 11 and replaced with "managers or managing members".

Conforms to LLC structure.

10. 10.50.148(d). Added "the members" immediately after "by" at line 8 of page 14 and deleted lines 9 through 15 of page 14.

Conforms to LLC structure.

11. 10.50.148(f). Inserted "." at line 29 of page 14 immediately after "entitled" and deleted "under a bylaw," from the balance of line 29 along with all of lines 30 and 31 (page 14) and "another capacity while holding the office." from line 1 on page 15.

Clarification.

12. 10.50.150. Deleted "if an operating agreement of the company names more than one manager for the company," from lines 18 and 19 of page 15.

Changed to clarify that the operating agreement will set out how the company is governed and operated, but generally will not actually name the managers.

13. 10.50.205(a). Added "by removal" between "terminated" and "except" in line 13 on page 18.

Clarification.

14. 10.50.225. Added the entire section "OTHER EVENTS TERMINATING MEMBERSHIP" to the bill from the J version. The section is located in the J version at pages 12 and 13.

An LLC working group reviewed the matter in depth and decided the provision should be included because there are important tax classification reasons for retaining the provisions.

15. 10.50.485. Added "provided that the member's interest has not been terminated" to the end of line 21 on page 29.

Change was suggested to reconcile 10.50.210 and 10.50.385.

16. 10.50.275. Deleted the K version of this section and replaced it with 10.50.275 from the J version, with a slight modification to deal with promissory notes. (Deleted line 31 of page 21 and lines 1 through 5 of page 22 from the K version and replaced with lines 12 through 14 from page 16 of the J version.)

It was decided the earlier version, rather than the corporate version, was more applicable to LLCs.

17. 10.50.350(b). Changed "may" to "shall" at line 24 of page 27. Deleted the second sentence of this subsection starting with "if" and ending with "company" on lines 25 through 27 on page 27.

Clarifies that a limited liability company must hold title in its own name and not in the name of its members.

18. 10.50.600(a). Deleted "and the liability and authority of its managers and members" from lines 26 and 27 on page 38.

Clean-up amendment.

19. 10.50.615(b). Replaced "a certificate" with "proof" at line 3 of page 40 and replaced the phrase "in good standing" with "organized" at line 4 of page 40.

Modifies corporate code to conform with LLC structure.

20. 10.50.625. Deleted "articles of" from line 19 of page 40 and inserted "of registration" immediately after "amendment" on that same line.

Conforms language to changes made in 10.50.605-615, which calls for a registration rather than articles.

21. 10.50.630. Deleted "ARTICLES OF AMENDMENT" and replaced with "AMENDMENT OF REGISTRATION" in the title at line 22 of page 40. Deleted "Articles of Amendment" from line 23 of page 40 and replaced with "Amendment of Registration".

Same as previous amendment.

22. 10.50.755. Added a new subsection (4).

Requires the name and address of each person owning at least a 5 percent interest in the company and the percentage of interest owned by that person in the company. Change made at the request of the Department of Commerce.

23. 10.50.760(d). Replaced "or a foreign limited liability company" with "formed in this state." in line 25 at page 46. Deleted "incorporation or authorization to transact business in this state" and replaced it with "organization" in line 26 on page 46.

Change made at the request of the Department of Commerce to conform to LLC structure.

24. 10.50.305. Deleted 10.50.305 starting at line 12 on page 23 continuing over to line 20 on page 24. Replaced the deleted language with a new section exactly the same as the alternate language on pages 42 and 43 of the prototype act, excluding subsection (d).

Replaces language with wording from the prototype act.

25. Deleted 10.50.308 and 10.50.310 at lines 21 through 31 on page 24 and lines 1 through 5 on page 25.

Already covered in replacement language.

26. Deleted 10.50.325 at lines 5 through 10 on page 26.

Language replaced with prototype act.

27. Added a new 10.50.450. This new section should be drawn from the October 21, 1992, Monagle draft 8315t

Adds enforcement provisions for the reporting requirements.

28. Added a new 10.50.730 and 10.50.740. This language should be drawn from the October 21, 1992 Monagle draft 8315t.

Adds enforcement provisions for the reporting requirements.

BUSINESSES

...s issue of The Wall Street Journal is intended ...companies. First references to these companies ...ot those on page one, the editorial pages and ...doesn't cite companies listed solely ...ich appears today on page C9. ...the pages where the stories begin.

ENTERPRISE

Partnership, Corporation Aren't Only Ways to Start Out

Forming as a Limited Liability Company Offers Best of Both Worlds

By JEFFREY A. TANNENBAUM
Staff Reporter of THE WALL STREET JOURNAL

Robert H. Kane's start-up enterprise is a mouthful: Octagon Communications Limited Liability Co.

The name doesn't exactly have a ring to it. It's rather awkward on stationery and business cards. It even fails to convey the company's intended business: investments in rural cellular-telephone companies.

But loud and clear, the name conveys something else: a new form of ownership that Mr. Kane and his seven partners expect will serve them well. Their enterprise—to be based in Denver—is neither a traditional partnership nor a traditional corporation. Rather, under Colorado law, it is a "limited liability company," or LLC.

Growing Interest

Mr. Kane and his partners expect to enjoy the best of both worlds: the tax advantages of a partnership and the legal safeguards of a corporation. Yet they face none of the drawbacks associated with forming a so-called subchapter-S corporation, which also is taxed much like a partnership. For example, S corporations can't have corporate shareholders, but LLCs can. "If some corporation ever wants to offer me jillions of dollars for my interest, I'll be able to sell it," Mr. Kane says.

Not yet worth jillions, Octagon doesn't even have an office. But it is in the forefront of a movement toward the LLC as a form of ownership for small U.S. businesses and joint ventures. "Interest in the LLC concept is growing remarkably fast," says John R. Maxfield, a Denver lawyer who helped write the LLC law there.

Fast, anyway, by the slow-paced standards of lawmaking. In 1977, Wyoming became the first state to authorize LLCs, but it took until 1988 for the Internal Revenue Service to confirm that the new Wyoming entities would be treated as partnerships for federal tax purposes.

To date, only five other states—Colorado, Florida, Kansas, Virginia and, most recently, Utah—have followed Wyoming in authorizing their own LLCs, according to an American Bar Association survey. But lawyers in many other states report growing interest because of the IRS ruling. Two ABA panels are studying the topic, as is the National Conference of Commissioners on Uniform State Laws, a group allied with the ABA. Meantime, moves are afoot to introduce LLC statutes in Arizona, Illinois, Maryland, Michigan, Nevada, Ohio, Oklahoma and Texas, the ABA survey found.

"I'm stunned by the amount of excitement generated by these entities," says Barbara C. Spudis, a Chicago attorney and the head of one ABA panel on LLCs.

Flexibility of a Partnership

One appeal of LLCs is that, as with partnerships, any income flows through untaxed to the individual owners. Such owners don't avoid personal taxes, but they do avoid corporate taxes. Regular corporations face higher maximum taxes in the first place. And if the corporations pay dividends, owners are taxed again.

Of course, S corporations avoid double taxation—but they don't enjoy all the advantages of partnerships when it comes to juggling income and deductions. For example, the 20%-owner of an S corporation normally must pay taxes on 20% of any income. By contrast, partnership members are free to divvy up any income and tax liability as they see fit. Thus, equal partners might change the allocations of profit or loss year to year to fit their individual tax needs. LLCs offer the same freedom.

With LLCs, as with regular corporations, only the company's assets, and not the owners' personal assets, are at risk in business-related lawsuits. In partnerships, so-called limited partners enjoy such protection, but general partners don't. And limited partners face restrictions on how active they can be in the business. LLCs are designed to protect all partners while imposing no limits on their activity.

Not surprisingly, lawyers in a few states say LLCs are an easy sell. Since Colorado's LLC statute went into effect in April 1990, 250 LLCs have been organized there, an official says. Forming an LLC usually costs $1,000 to $5,000 in attorney and filing fees, depending on complexity, says Mr. Maxfield, the Denver lawyer.

But some state programs have drawbacks. Florida LLCs are exempt from federal corporate taxes but subject to the state's 5.5% corporate-income tax. Since Florida has no personal income tax affecting partnership income, "that 5.5% is enough to scare people off," says Jose M. Sarlego, a Miami lawyer.

Moreover, the IRS has yet to give its imprimatur to any state LLC program except Wyoming's, though a few LLCs elsewhere have gotten favorable private-letter rulings. And lawyers say it's unclear how enterprises treated as LLCs in their home states will be treated in states without LLC laws. Of the states without LLCs, Indiana alone explicitly recognizes LLCs organized elsewhere. "There has been no litigation on LLCs," says Robert R. Keatinge, a Colorado lawyer who heads the other ABA panel on LLCs. "And nobody wants to be the test case."

Benefit for Foreigners

Still, proponents say the LLC raises little risk for enterprises operating only in their home state or outside the U.S. And it's ideal for foreign investors—normally barred from S corporations.

LLCs don't limit the number or type of owners, as S corporations do, except for a two-owner minimum. But because of other restrictions, only closely held enterprises are suited to be LLCs. For example, if any owner leaves, the others must all formally agree to keep the enterprise going. "If you have 200 members, it's hard to get everybody to sign off on anything," Mr. Keatinge says.

But even closely held companies face uncertainties on a number of technical and procedural issues, such as whether the conversion of a partnership into an LLC amounts to a "termination" under tax law, which might increase tax liability. IRS rulings are still awaited. In the meantime, warns Ms. Spudis, the Chicago lawyer, many LLC investors are entering uncharted territory.

Draft - DOR
07/30/93

CORPORATION NET INCOME TAXATION OF SUBCHAPTER S AND LIMITED LIABILITY COMPANIES-DRAFT LEGISLATION

AS 43.20.031 is amended by adding a new subsection to read:

(j) In computing the tax under this chapter, a limited liability company pursuant to state law that is classified for tax purposes as a partnership under 26 U.S.C. 7701 (Internal Revenue Code) and a S Corporation pursuant to 26 U.S.C. 1361 -- 1379 (Internal Revenue Code), as amended, shall determine its taxable income, and pay the tax due under this chapter at the same time and in the same manner, as a corporation that is not classified for federal tax purposes as a partnership or that is not a S Corporation.

AS 43.20.340(2) is amended to read:

(2) "corporation" includes an association, joint-stock company, **limited liability company,** and an insurance company.

SENATE COMMITT

FIRST COMMITTEE C

DATE: 3/9/94

FU RTHER Judiciary

Date of 5-Day Notice: 3/17/94
(in accordance with Uniform Rule 23)

DA E T RNED
IN O OF ICE: 4/12/94

L&C Committee considered SB 347

"An Act related to limited liability companies; amending Alaska Rules of Civil Procedure 20 and 24; and providing for an effective date."

and recommends:

[X] replace with ________ CS SB 347 (L&C)

[ ] same title
[✓] new title
[ ] technical title change (HB only)

[ ] attaches amendment(s)

[ ] adopts ______________________ Letter of Intent

[ ] further referral to the ______________________

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

FISCAL NOTE INFORMATION

	Department	Date	Zero	Fiscal
CS & SB	DCED	3/16/94	✓	
CS & SB	COURT SYSTEM	3/21/94	✓	

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

[ ] Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

[illegible] N. R.

[illegible] No Recommendation

Judith E. Salo No Rec

[illegible] NR

Tim Kelly - Do Pass

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 347

Revision Date:
Title: An Act relating to limited liability companies

Sponsor: Senate Judiciary
Requestor: Senate Labor & Commerce

Department Affected: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component:

COMPONENT SERIAL NO. 1233

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0
FUND SOURCE						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: $ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2521
Date:

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development
Date: 3-16-94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 11/93
WFK/KP/dgl300FN.kp

FISCAL NOTES

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 347

Revision Date:
Title: An Act relating to limited liability companies
Sponsor: Judiciary
Requestor:

Dept. Affected: Alaska Court System
BRU. Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel — Phone: 264-8228
Agency: Alaska Court System — Date: 03/21/94

Approved by: Arthur H. Snowden, II, Administrative Director by
Agency: Alaska Court System — Date: 03/21/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 347 (L&C)

Revision Date:		Dept. Affected:	Revenue
Title:	Limited Liability Companies	BRU:	Revenue Operations
		Component:	Income and Excise Audit
Sponsor:	(S) JUD		
Requestor:	(S) L&C	**COMPONENT SERIAL NO.**	113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE: General	(5.5 - 2,975.0)	(22.0-11,900.0)	(33.0-17,850.0)	(44.0-23,800.0)	(55.0-29,750.0)	(66.0-35,700.0)

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared by:	Larry E. Meyers	Phone:	465-2320
Division:	Income and Excise Audit Division	Date:	April 7, 1994
Approved by Commissioner:	Darrel J. Rexwinkel	Date:	April 7, 1994
Agency:	Department of Revenue		

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

(Rev 11/93) 94fiscal.nte/lal

lpb.94fiscal.nte

Overview

Limited liability companies (LLC) are hybrid entities possessing corporate and partnership attributes. Under existing Alaska law, corporations pay an income tax while partnerships do not. This legislation does not address how the LLCs will be taxed for state purposes. Of 36 states which have enacted LLC legislation, the vast majority have adopted federal Internal Revenue Code (IRC) provisions which classify LLCs as partnerships. Without a further clarification in this bill, Alaska would similarly follow with partnership classification pursuant to AS 43.20.021 which incorporates IRC provisions by reference, including definitions of corporations and partnerships.

If LLCs are determined to be partnerships they will join another group of tax return filers, namely subchapter S corporations that generally do not pay tax at the corporation level. Instead, the income is passed through to the recipient level which are often times individuals. It is anticipated that numerous existing corporations will migrate toward becoming LLCs and that new business ventures will initially register as LLCs to escape liability for state corporation net income tax.

The impact of LLCs on state revenues in the other 36 states that have enacted similar legislation remains unclear. LLCs are relatively recent entities (they have become an available form of business organization in a majority of states only within the past year), and states have developed little specific experience within the past year. Those states that have projected revenues to remain neutral or increase are relying on individual income taxes and fees from increased business filings. Alaska has no similar tax base. Other states have projected losses on an annual basis including California ($50 million), New York ($70 million) and Minnesota ($2 million).

All but two of the states that have enacted LLC legislation have a state individual income tax which insures that taxes are not avoided by choosing LLC status. The two states, Florida and Texas, which like Alaska, have no individual income tax have classified LLCs as corporations for tax purposes. This follows the similar trend seen with subchapter S corporations where states with no individual income tax have closed the tax loophole.

Operating Costs

Department of Revenue does not anticipate that this bill will affect its operating budget. The status of the corporation, whether a regular corporation or LLC, will not affect their corporation tax filing requirement with the Department. Although LLCs will not incur a corporaion net income tax, they will be required to file returns.

Revenue

Over the past 3 years, Department of Commerce and Economic Development has experienced an average of 1100 new corporations registered each year.

For calendar year 1992 tax filing period, Department of Revenue received 3000 corporation net income tax returns indicating a tax liability owed. Total revenue collected from the returns amounted to $32,455,000 or an overall average of $10,818 per taxpayer. Of the returns filed, 1800 had a tax liability of less than $500 per return. This group averaged $100 per corporation in tax liability.

If 10% (or 110) of new c rporations registered as LLCs, the potential loss in tax revenue would be a range of from $11,000 (110 X $100) to $1,189,980 (110 X $10,818) per year. Subsequent years would experience the cumulative effect of corporations registered as LLCs in prior years.

Although it is not known how many corporations will register as LLCs, Department of Revenue estimates that between 10% and 50% of corporations may be affected. Following are tables which reflect impact on revenue under low and high range scenarios.

Effect of Filers From:	Fiscal Year Revenue Impact (10% of Corporations Register as LLC)					
	FY 95*	FY 96	FY 97	FY 98	FY99	FY 00
FY 95	(5.5 - 595.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 96		(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 97			(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 98				(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 99					(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 00						(11.0 - 1,190.0)
Total	**(5.5 - 595.0)**	**(22.0 - 2,380.0)**	**(33.0 - 3,570.0)**	**(44.0 - 4,760.0)**	**(55.0 - 5,950.0)**	**(66.0 - 7,140.0)**

Effect of Filers From:	Fiscal Year Revenue Impact (50% of Corporations Register as LLC)					
	FY 95*	FY 96	FY 97	FY 98	FY99	FY 00
FY 95	(27.5 - 2,975.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 96		(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 97			(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 98				(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 99					(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 00						(55.0 - 5,950.0)
Total	**(27.5 - 2,975.0)**	**(110.0 - 11,900.0)**	**(165.0 - 17,850.0)**	**(220.0 - 23,800.0)**	**(275.0 - 29,750.0)**	**(330.0 - 35,700.0)**

* Since this bill doesn't become effective until January 1, 1995, Department of Revenue will only receive half of a year's revenue (from estimated payments through June 30, 1995) for FY 95.

SB
348

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

<u>M E M O R A N D U M</u> March 16, 1994

SUBJECT: Sectional summary of SB 348

TO: Senator Tim Kelly
Chair, Senate Labor & Commerce Committee
Attn: Josh

FROM: Theresa L. Bannister TB
Legislative Counsel

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

You have asked that this sectional identify the corrections that I suggested for the bill. In Sec. 32.05.500, the caption for the section should read "registration allowed" rather than "registration required" since a limited liability partnership is not required to register under that section. In secs. 32.05.540 and 32.05.580, the references to "application" should be replaced by "document." In sec. 32.05.590, "of" should be deleted.

<u>Section 1.</u> Declares that a partnership includes a registered limited liability partnership.

<u>Section 2.</u> Makes the liability provisions in AS 32.05.100 subject to an exception for the partners of registered limited liability partnerships.

<u>Section 3.</u> Establishes two new liability provisions that cover the partners of registered limited liability partnerships.

Sec. 32.05.100(b) states that a partner in a registered limited liability partnership is not liable for the obligations of the partnership that arise from the acts of another partner, an employee, or an agent of the partnership in the course of the partnership business.

[redacted]

—Div. of Legal Services' Sectional—

Sec. 32.05.100(c) states that the liability limitation in (b) doesn't affect the liability of a partner for the partner's own acts or for the acts of a person under the partner's direct supervision and control.

Section 4. Makes a change to implement the new provisions limiting the liability of the partners of registered limited liability partnerships.

Section 5. Makes a change to implement the new provisions limiting the liability of the partners of registered limited liability partnerships.

Section 6. Makes a change to conform the section to the new provisions limiting the liability of the partners of registered limited liability partnerships.

Section 7. Changes the provisions for settling accounts between partners following dissolution to make the section compatible with the new provisions limiting the liability of the partners of registered limited liability partnerships.

Section 8. Declares that a partnership from this state may operate in another jurisdiction. States that the intent of the chapter is that the legal existence of a partnership from this state be recognized outside this state and receive the protection of the U.S. Constitution's full faith and credit provision, subject to another state requiring the partnership to register in that state. States that the liability of the partners of partnerships from this state is to be determined under the laws of this state. Defines "partnership" for the section.

Section 9. Adds two new definitions to AS 32.05.

Section 10. Adds new provisions to AS 32.05. These sections relate to limited liability partnerships.

Sec. 32.05.500 allows a partnership that is formed and operating under an agreement governed by this chapter to register as a registered limited liability partnership. To register, the partnership must file a registration document with the Department of Commerce and Economic Development.

Sec. 32.05.510 establishes what the registration document must contain and allows the partnership to include other information.

Sec. 32.05.520 states that registration is effective immediately and that the registration remains effective until the partnership withdraws voluntarily or fails to file a specific report within a specific time.

Sec. 32.05.530 requires a registered limited liability partnership to file an annual report with the department. Establishes what is to be in the report and when the report is to be filed. Directs the department to notify a partnership if the department does not receive the report within the filing period.

Sec. 32.05.540 establishes who can execute the registration document.

Sec. 32.05.550 requires a registered limited liability partnership to maintain in this state a registered office and an agent for the service of process.

Sec. 32.05.560 establishes what the name of a registered limited liability partnership must contain.

Sec. 32.05.570 allows a registered limited liability partnership to withdraw its registration by filing a signed written withdrawal notice with the department.

Sec. 32.05.580 states that the registration status of a registered limited liability partnership is not affected by errors in the information provided in the registration document or by subsequent changes in the information.

Sec. 32.05.590 authorizes the department to provide forms for registration and for filing the annual report.

Sec. 32.05.600 relates to "foreign" limited liability partnerships, partnerships that are formed under an agreement governed by the laws of another jurisdiction, that conduct business in this state. Authorizes them to conduct business in this state. The conduct of their business is subject to other statutes that may apply to or regulate them. Indicates that they are not required to register with the department under this chapter. States what their names must contain. States that their internal affairs are governed by the laws of the state where they are formed as limited liability partnerships. Defines "foreign limited liability partnership" for the section.

Sec. 32.05.610 declares that a partner in a registered limited liability partnership is not a proper party to a proceeding by or against the partnership under certain conditions.

Section 11. States how sec. 32.05.610 amends Alaska Rules of Civil Procedure 20 and 24.

Section 12. Gives the bill an effective date of July 1, 1994.

If I may be of further assistance, please advise.

TLB:pl
94-211.plm

MEMORANDUM March 16, 1994

Subject: Sectional summary of SB 348

To: Senator Tim Kelly
Attn: Josh Fink

From: Rodney Lind
Alaska Society of CPA's Legislative Committee

You have requested a sectional summary of the above-described bill from the State Society. Following is our interpretation, which should not be considered an authoritative interpretation of the bill as CPA's can not practice law in the State of Alaska.

OVERVIEW

This bill provides for the registration of limited liability partnerships. A limited liability partnership (LLP) is a general partnership with one change- a partner in a limited liability partnership would not be held liable for the unsatisfied debts and obligations of the partnership arising from the negligence, wrongful acts or misconduct of other partners or other persons not under that partner's direct supervision and control. The partners continue to be personally liable for their own acts and omissions and the acts and omissions of persons over whom they have control. The partners may also continue to be liable for the debts and obligations of the partnership. The capital of a partnership with an LLP designation, as well as all of its other assets and insurance, continue to be at risk for all claims to the extent that they would be at risk if the partnership was not a limited liability partnership

Section 1. Adds a "registered limited liability partnership" to the definition of a partnership as defined in Sec. 32.05.010(a).

Section 2. Sec. 32.05.100 refers to the following section which modifies joint and several liability for limited liability partnership partners.

Section 3. Adds subsections (b) and (c) to Sec. 32.05.100. Subsection (b) provides that a partner in a registered limited liability partnership is not liable for the claims for negligence, wrongful acts, wrongful omissions, malpractice or misconduct committed by another partner or employees of the partnership. Subsection (c) provides that the limited liability in (b) does not apply to the partner who committed such acts or to partners who directly supervise and control persons who performed such acts.

Section 4. Modifies Sec. 32.05.130 (1) to provide that a partner is not required to contribute capital to a limited liability partnership to pay for liabilities he or she is not liable for under Section 3 above.

Section 5. Adds Sec. 32.05.290 (3) to provide that a partner is not liable to his or her copartners for liabilities he or she is not liable for as discussed in Section 3.

Section 6. Modifies Sec 32.05.310 (d) to say that the property of a deceased partner is subject only to liabilities that the partner would be liable for under Section 3.

Section 7. Sec. 32.05.350 is modified to provide that upon dissolution of a partnership, a partner is not liable for partnership debts for which the partner is not liable under Section 3.

Section 8. Adds Sec. 32.05.405 to provide for Alaska limited liability partnerships the ability to do business outside of Alaska and to be governed by the laws of Alaska.

Section 9. Adds paragraphs (7) and (8) to Sec. 32.05.420 to indicate that the term partnership includes registered limited liability partnership as defined in Sections 32.05.500-32.05.600.

Section 10. Adds to Sec. 32.05 new sections .500 through .C10 which define and provide for the operations of registered limited liability partnerships.

Sec. 32.05.500 provides for the registration of limited liability partnerships formed under these sections.

Sec. 32.05.510 provides for the contents of the registration document.

Sec. 32.05.520 provides for the effective date and duration of the registration. The registration is effective immediately upon filing and is good until withdrawn or until the annual registration is late.

Sec. 32.05.530 provides for the filing of an annual report to indicate any material changes from the previous registration document.

Sec. 32.05.540 provides that an authorized partner may file the registration document.

Sec. 32.05.550 provides that the limited liability partnership shall maintain a registered office and agent in Alaska.

Sec. 32.05.560 provides that a limited liability partnership's name must contain the word "Limited Liability Partnership", or the abbreviation "L.L.P." or "LLP".

Sec. 32.05.570 provides for a voluntary withdrawal of the registration by the partnership.

Sec. 32.05.580 provides that errors in the registration document, annual report, or post filing changes in the information contained therein, do not affect the limited liability partnership status.

Sec. 32.05.590 provides that the State may provide forms for registration and the annual report.

Sec. 32.05.600 defines a foreign limited liability partnership as a partnership formed under the limited liability partnership provisions of another jurisdiction. This section authorizes the foreign LLP to do business in Alaska and have its internal affairs governed by its home jurisdiction. The foreign LLP must use the same descriptions in its name as an Alaska LLP.

Section 32.05.610 provides that a partner in a limited liability partnership is not a proper party in action if the action seeks to impose liability of the type for which the partner is not liable under Section 3.

Section 11. Amends Alaska Rule of Civil Procedure 20 and 24 to provide for the change of Sec. 32.05.610.

Section 12. Provides for an effective date of July 1, 1994.

ASCPA

ALASKA SOCIETY OF CPA'S
341 W. TUDOR #105
ANCHORAGE, AK 99503
(907) 562-4334
800-478-4334
FAX (907) 562-4025

March 16, 1994

Senator Tim Kelly
Alaska State Capitol
Juneau, AK 99801-1182

Re: Limited Liability Partnerships

Dear Senator Kelly:

On February 17, 1994 the Board of the Alaska Society of Certified Public Accountants unanimously voted to endorse the introduction of legislation allowing businesses to form and operate as a Limited Liability Partnership in the State of Alaska.

The Board also agreed to support the Limited Liability Company legislation that has been introduced.

The membership of the Alaska Society of Certified Public Accountants is State wide. The Board is representative of the membership.

In order for the State of Alaska to continue to grow through new commerce, it is important that there is flexibility in the type of entity a business can form. The State should be able to offer the same type of entities as any other state offers.

We look forward to the passage of these laws in a swift and expedient manner. Businesses that want to operate as a Limited Liability Partnership or Company may not wait for the legislature, and will seek an operating "home" in some other state.

Very truly yours,

William D. Arnold

William D. Arnold
President

KPMG Peat Marwick

Certified Public Accountants

601 West Fifth Avenue
Suite 700
Anchorage, AK 99501-2258

Telephone 907 276 7401

Telefax 907 274 4953

March 21, 1994

VIA FAX: 465-3756

Senator Tim Kelly
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Senator Kelly:

Limited liability companies combine many of the features of corporations and partnerships. Use of limited liability companies by Alaska businessmen will provide tax advantages and a simplified business operating system. Please support this legislation.

Very truly yours,

KPMG PEAT MARWICK

Michael E. Stone
Managing Partner

MES amo

Post-it® Fax Note 7671 | # of pages ▸ 2
To SENATOR KELLEY | From CRAIG INGHAM
Co./Dept. | Co. AK BANKERS ASSOC
Phone # | Phone #
Fax # 465-3756 | Fax # 456-5982

March 30, 199[illegible]

Craig Ingham
Mt. McKinley Mutual Savings Bank
P.O. Box 73880
Fairbanks, Alaska 99707

Re: Senate Bill 348

Dear Mr. Ingham:

Alaska, like 51 other American jurisdictions, has adopted the Uniform Partnership Act (AS 32.05). That statute codifies the long established rule that general partners are personally liable for debts and obligations of the partnership. The above bill would amend that statute by enabling partners to limit their personal liability for partnership obligations. I offer the following comments:

1. It may be that I am simply hidebound, but it strikes me that any such limitation is fundamentally inconsistent with the nature of general partnership. The National Conference of Commissions on Uniform State Laws, which sponsors and monitors developments under the Uniform Partnership Act, has not endorsed -- as far as I can determine, it has not even considered -- any sort of qualification or limitation to the rule of partner liability. In 1992 the Conference approved a Revised Uniform Partnership Act that retains the rule that "All partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law." (RUPA §306) The revised act would mitigate the rule by requiring a creditor to resort first to partnership assets; only if partnership assets are exhausted would the creditor be allowed to seek recovery from partners' assets. RUPA §307

2. The scope of the limitation the bill would allow is not clear, but it appears to be very broad. It would seem to insulate a partner from all liabilities of the partnership

-- "whether in tort, in contract, or under any other theory" -- unless the partnership's liability arose from the partner's own wrong-doing. If partner A causes the firm to sell shoddy goods or services to a customer, partners B-Z, who will participate in the benefits of the transaction (e.g. the customer's payment), would apparently have no liability to the customer for the harm caused by the transaction.

3. The bill would seem to give partners the same insulation from liability that shareholders of corporations are given, but it would leave the partners free from the constraints that shareholders are subject to. For example, shareholders do not participate in the management of the business and are not agents of the firm. Partners do and are. A corporation may not make distributions to shareholders that impair its ability to satisfy its liabilities. There is no such limitation on distributions to partners. The partners' liability for the liabilities of the firm, and their obligation to contribute as necessary to satisfy those liabilities, are corollaries of their direct involvement in the conduct of the business and the absence of restrictions on distributions.

Very truly yours,

John R. Beard

JRB/dmw

Deloitte & Touche

Fax Transmission

To:

SENATOR TIM KELLY

Fax Number:

465-3756

Office:

Comments:

RE S.B. 348

I am enclosing a copy of a fax I sent to Mr. Craig Ingham today. This fax provides a response to Mr. Beard's letter of March 30 and the misconceptions in it. I also provided Mr. Ingham with proposed language for a distribution section for the LLP bill to meet his concerns with partnership distributions that he feels may not be in the public good. I subsequently received from Mr. Ingham a copy of the letter he faxed to you on April 5. I believe the proposed language regarding distributions meets the concerns Mr. Ingham has with distributions.

From:

RODNEY LIND

Fax Number:

907 264-3181

Date:

April 5, 1994

Office:

ANCHORAGE, ALASKA

Number of Pages (including this one).

13

To confirm receipt, or if you do not receive all pages, please call:

907 272 8462

Deloitte & Touche

Fax Transmission

To:

CRAIG INGHAM

Fax Number:

456-5982

Office:

MT. MCKINLEY MUTUAL SAVINGS BANK

Comments:

I have attached the following to this cover sheet. (1) a response to John Beard's letter to you of March 30, 1994 (8 pages) and (2) proposed distribution provisions which meet the concern you have expressed to me regarding an LLP distributing amounts to its partners to the detriment of creditors (3 pages). I will call you this afternoon to discuss the LLP bill further with you.

I have taken the liberty to fax this to your attorney to expedite matters.

Thank you for your attention to this matter.

cc: John Beard (277-9883)

From:

RODNEY LIND

Fax Number:

907 264-3181

Date:

April 5, 1994

Office:

ANCHORAGE, ALASKA

Number of Pages (including this one):

12

To confirm receipt, or if you do not receive all pages, please call:

907 272 8462

Hughes Hubbard & Reed
1300 I Street, N.W.
Washington, D.C. 20005-3305
TELEPHONE: 202-408-3600
TELECOPIER: 202-408-3636
TELEX: [illegible]

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004
212-837-6000

47, AVENUE GEORGES MANDEL
75116 PARIS, FRANCE
(1) 44-05-80-00

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071
213-489-5140

201 BRICKELL AVENUE
MIAMI, FLORIDA 33131
[illegible]

WILLIAM R. STEIN
[illegible]

April 4, 1994

BY FACSIMILE

Rod Lind
Deloitte & Touche
550 West Seventh Avenue
Anchorage, Alaska 99501

Re: Senate Bill 348

Dear Rod:

You asked me to comment on John Beard's letter of March 30, 1994 to Craig Ingrahm in which Mr. Beard discusses the Alaska limited liability partnership ("LLP") bill (S.B. 348). I took it upon myself to ask Professor Larry E. Ribstein of George Mason University School of Law to comment on Mr. Beard's letter. I enclose Professor Ribstein's response.

Professor Ribstein is a leading authority on partnership law. He is an Official Advisor to the Committee to Revise the Uniform Partnership Act of the National Conference of Commissioners on Uniform State Laws, and thus is well suited to address Mr. Beard's concerns about NCCUSL. He also is Reporter to the American Bar Association Ad Hoc Committee that drafted the Prototype Limited Liability Company Act, and a member of the American Bar Association Ad Hoc Subcommittee on the Revised Uniform Partnership Act. Professor Ribstein is co-author with Professor Arthur Bromberg of a widely used multi-volume treatise on partnership law, and the author of other books and numerous law review articles on partnership law and related subjects. He was the principal drafter of the 1984 Georgia Uniform Partnership Act and 1988 Georgia Revised Uniform Limited Partnership Act. As counsel to the Accountants Coalition, I retain Professor Ribstein from time to time to provide theoretical analysis on issues relevant to LLP legislation.

As you will see from Professor Ribstein's analysis, Mr. Beard is wrong in each of the assertions he makes in his letter:

- The LLP is, indeed, fully consistent with the concept of partnership. The most important characteristics of partnership -- sharing of profits and losses, ability of partners to bind the partnership, partner participation in management -- are equally present in LLPs. In fact, the Attorney General of Delaware has formally opined that LLPs are partnerships under Delaware law. (I enclose a copy of the opinion.)

- While partners of an LLP have a lesser degree of personal liability than partners of a standard general partnerhsip, that limitation of liability does not differ radically from limitations inherent in existing law under the Uniform Partnership Act. It is, moreover, fully consistent with the trend in the Revised Uniform Partnership Act toward greater limited liability for partners.

- The scope of limited liability in the bill is not "very broad" nor does it "insulate a partner from all liabilities of the partnership . . . unless the partnership's liability arose from the partner's own wrong-doing," as Mr. Beard claims. The LLP bill provides limited liability only for "uninvolved" partners where the liability stems from others' negligence or wrongdoing. It does <u>not</u> provide limited liabilities for a partner where

  - the partnership obligation does not arise from negligence or wrongdoing, e.g., a loan, lease or tax obligation

  - the partnership liability is incurred before the partnership registers as an LLP or while the registration has lapsed (e.g., if it fails to maintain the requisite insurance)

  - the partner personally engages in negligence or wrongdoing

Mr. Rod Lind
April 4, 1994
Page 3

- the partner directly supervises another partner or a partnership employee who engages in negligence or wrongdoing.

- Furthermore, the bill does not affect the liability of the partnership or the availability of its assets and insurance to satisfy partnership liabilities. Thus, the liability limitation in the bill would act to limit a claimant's recovery only where the partnership's and involved partners' assets and insurance are insufficient to satisfy the claim.

- The shareholders of a corporation enjoy a much more protective level of limited liability than the partners of an LLP would, even when shareholders participate in the management of the firm and are agents of the firm (as they frequently do and are, contrary to Mr. Beard's belief). Moreover, the restrictions on distributions to shareholders are not substantial, and are far less severe than the personal liability exposure of partners (including partners in LLPs). That personal liability serves as a de facto restriction on distributions to partners, as does the minimum insurance requirement.

I hope these comments and those of Professor Ribstein are helpful.

Sincerely,

Bill

cc: William F. Ezzell

DC940940.010

Larry E. Ribstein

George Mason University School of Law

April 4, 1994

Mr. William R. Stein, Esq.
Hughes Hubbard & Reed
1300 I Street, N.W.
Washington, D.C. 20005-3306

Dear Bill:

You asked me to comment on the letter dated March 30, 1994, from John R. Beard, Esq. to Craig Ingham regarding the proposed Alaska limited liability partnership ("LLP") legislation.

I. MR. BEARD OBJECTS THAT THE LLP IS "FUNDAMENTALLY INCONSISTENT WITH THE NATURE OF GENERAL PARTNERSHIP" AND THAT NCCUSL HAS NOT ENDORSED THIS DEVELOPMENT

I disagree with Mr. Beard. The LLP is consistent with the nature of "partnership." LLPs have the fundamental characteristics of partnership: the partners intend to form a partnership, they operate a business for profit, they share in profits and losses, they actively participate in management, and they can bind the partnership.

While LLPs do provide some degree of limited liability, that also is consistent with the trend of RUPA innovations toward limited liability. The exhaustion rule in RUPA §307 extends to joint and several liability a procedural barrier to recovery that formerly had applied only to joint liability. See A. Bromberg & L. Ribstein, Bromberg & Ribstein on Partnership, §5.08(e)-(f). RUPA also cuts off partner liabilities following dissociation. Under UPA §35, dissociated partners are liable for non-winding-up debts, such as contract or lease renewals, incurred after dissolution to creditors who did not have actual or constructive notice of the dissolution. Even publishing a notice of dissolution does not halt this continuing liability as to creditors who had extended credit prior to the dissolution. By contrast, under RUPA §§702-704 and 805-806, a partnership can halt this continuing liability 90 days after publicly filing a notice of dissociation or of dissolution. Thus, partners in RUPA partnerships, like LLP partners, can, by making a public filing, limit the liability for partnership debts that they otherwise would incur.

3401 N. Fairfax Dr.
Arlington, VA 22201

703-993-8041/993-8088 (Fax)
lribstei@gmuvax.gmu.edu

Moreover, NCCUSL does not make or control partnership law. In fact, states considering NCCUSL's new Revised Uniform Partnership Act ("RUPA") are likely to vary substantially from the NCCUSL model, which is controversial in many respects. Thus, partnership law almost certainly will become non-uniform in the wake of RUPA. Indeed, the first major state revision of partnership law, in Texas, differs from RUPA in several major respects, including concerning dissolution and the definition of partnership. In my view, this is a salutary development. Non-uniformity facilitates desirable innovation and change.

Indeed, state variations also exist under the 1914 Uniform Partnership Act ("UPA"). For example, such important RUPA innovations as the §303 "statement of partnership authority" and the §204 definition of partnership property were based on state variations on the UPA, including the Georgia act that I helped draft. This illustrates how non-uniform aspects of a state law ultimately may become widely accepted and part of the next generation of partnership law. LLP provisions like those now being widely adopted may also become standard in state variations of RUPA, just as they have been included in the new Texas act.

2. MR. BEARD CLAIMS THAT THE SCOPE OF THE LIMITATION ON PARTNERS' LIABILITY IS BROAD.

I believe that Mr. Beard has overstated the limitations on the liability of partners in LLPs. The personal liability of partners in LLPs is not sharply different from that of partners in non-LLPs. Third parties suing LLPs not only can recover from the partnership itself to the same extent as from non-LLPs, but also can recover from the partners individually under several circumstances:

• Partners are personally liable for all debts if the partnership was not registered, or for liabilities arising from conduct prior to registration. Thus, the only claimants affected by the LLP's limited liability are those who had at least constructive notice through the public filing of a potential limitation of liability.

• Partners are personally liable for all partnership obligations if the partnership does not maintain adequate insurance or other financial responsibility.

• The LLP provisions do not excuse partners from liability arising out of their own misconduct or negligence.

• The LLP provisions impose personal liability on partners who directly supervise and control other partners or partnership employees who act negligently or wrongly. Moreover, partners' liability in this regard arguably can be imposed apart from what is explicitly provided for in the statute. The liability described in the statute is that arising out of negligence and misconduct by partners and employees *other than* the partner whose liability is at issue. Thus, for example, an accounting partner who is part of a team that conducts a negligent audit might be held *indirectly* liable as a supervisor under the statute even if he lacks knowledge or notice of the negligence. Alternatively, a partner who is not a team member might be held to be *directly* negligent under general tort principles, even if he is not indirectly liable as a supervisor under the statute, if he has knowledge or notice of the malpractice. In short, LLP partners have no license to commit or to tolerate negligence or other malpractice.

• LLP partners are personally liable for obligations and conduct undertaken in the course of the partnership business other than the errors-and-omissions liability explicitly excepted by the statute. Thus, partners retain personal liability for such matters as the failure to pay a loan or rental or to fulfill some other contractual obligation.

Thus, Mr. Beard is mistaken in concluding that LLP status "would seem to insulate a partner from all liabilities of the partnership. . . unless the partnership's liability arose from the partner's wrongdoing."

Mr. Beard also fails to appreciate that, even without LLP designation, a third party's ability to recover from individual partners for errors and omissions is limited in several important respects. A partner is not liable for co-partner conduct that is unconnected with the firm's business (see Douglas Reservoirs Water Users Association v. Maurer & Garst, 398 P.2d 74 (Wyo. 1965)). Moreover, a non-LLP can limit partners' personal liability by contract with third parties. For example, in Dominion National Bank v. Sundowner Joint Venture, 50 Md. App. 145, 436 A.2d 501 (1981), the court recognized the possibility of contractual limitation but held that there was insufficient notice to creditors. This case suggests that limitation of liability in the partnership agreement, coupled with notice to creditors comparable to that provided under the name and registration provisions of the LLP statute, would be enough to create limited liability by contract even in a non-LLP. Finally, as discussed above, partners in both LLPs and in RUPA non-LLPs are protected by the exhaustion requirement and by their ability to exit the firm.

In summary, adding LLP provisions to the partnership statute reduces a claimant's ability to recover from a partner in an LLP *only* where (1) the claimant can successfully prove a claim against the partnership; (2) the partner is subject to process and has personal assets; (3) the claim arose while the partnership was registered, designated as an LLP and was insured or otherwise financially responsible; (4) the claim is based on negligence or other partner misconduct; (5) the partner did not commit malpractice, did not negligently fail to monitor co-partners, and did not otherwise directly supervise or control those who engaged in the negligence or misconduct: and (6) the partnership is unable to pay or has inadequate insurance, despite having maintained at least the statutory minimum amount of insurance or financial responsibility.

Thus, partners in LLPs will have incentives comparable to those of non-LLP partners to ensure that their firms deliver high-quality goods and services. Moreover, even if an individual client or customer cannot recover against a partner, the recovery of creditors as a whole may not be reduced. Rather, one claimant's reduced recovery may leave more individual partner assets available to others whose claims arose while the firm was unregistered or uninsured or who are able to show the requisite partner misconduct or involvement in the wrongdoing. In these situations, the LLP statutes may serve to allocate funds to the more deserving claimants.

3. MR. BEARD ARGUES THAT PARTNERS OUGHT TO SHARE IN THE LIABILITY BECAUSE THEY PARTICIPATE IN THE BENEFITS OF THE TRANSACTION.

There is no general legal principle that those who benefit from transactions should be personally liable for those transactions. Indeed, personal liability of those who benefit from transactions is more the exception than the rule, as illustrated by corporate shareholders and limited partners. Whether partners ought to be held liable should depend on their contracts with third parties or, in the case of tort liability, on the policies underlying tort law. The limitations on the liability of partners in LLPs discussed in the preceding section represent a thoughtful and balanced approach. In general, as discussed above, LLP partners will escape liability only where third parties are made aware of the limitation on liabilities, the partners are insured, and the partners did not participate directly or indirectly in the wrongdoing. Indeed, it is my considered opinion that partnership statutes should go further and eliminate most partner liability. See Ribstein, The Deregulation of Limited Liability and the Death of Partnership, 70 Wash. U. L.Q. 417 (1992).

4. MR. BEARD ASSERTS THAT PARTNERS WOULD HAVE SHAREHOLDER-LIKE INSULATION FROM LIABILITY WHILE BEING FREE FROM CONSTRAINTS ON SHAREHOLDERS

As the above discussion makes clear, corporate shareholders enjoy a substantially greater degree of limited liability than LLP partners. Further, shareholders are subject to many fewer constraints than are partners in LLPs. Shareholders may participate in management while being free from liability unless they directly participate in the wrongdoing. By contrast, as discussed above, LLP partners may be held indirectly liable for supervising wrongdoers even if the partners are not directly involved in the wrongdoing. In addition, shareholders generally can be held liable on account of distributions only in very limited circumstances where the firm makes distributions while it was insolvent or was otherwise in very poor financial condition. Even in these limited circumstances, the shareholders are liable only for the distributions rather than for the full amount of the debt. Moreover, shareholders cannot be held personally liable merely because the firm conducted business while it was insolvent. By contrast, LLP partners can be held personally liable for all debts of the firm that were incurred while the firm did not have the requisite insurance.

Sincerely,

Larry E. Ribstein
GMU Foundation Professor of Law

SECTION __. LIMITATIONS ON DISTRIBUTIONS.

(a) A registered limited liability partnership may not make a distribution to the partners thereof if:

(1) the partnership would not be able to pay its debts as they become due in the ordinary course of business; or

(2) the partnership's assets would be less than its liabilities.

(b) A registered limited liability partnership may base a determination that a distribution is not prohibited under subsection (a) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of the registered limited liability partnership's partnership interests, as of the earlier of:

(i) the date money or other property is transferred or debt incurred by the partnership; or

(ii) the date the partner ceases to be a partner with respect to the acquired partnership interest;

(2) in the case of any other distribution of indebtedness, as of the date of the indebtedness is distributed; and

(3) in all other cases, as of the date the:

(i) distribution is authorized if the payment occurs within 120 days after the date of authorization, or

(ii) payment is made if it occurs more than 120 days after the date of authorization.

(d) A registered limited liability partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the partnership's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(e) Indebtedness of a registered limited liability partnership, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (a) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to partners could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(f) A partner who receives a distribution made in violation of section 407 is personally liable to the registered limited liability partnership for the amount by which the distribution exceeds the amount that could properly have been paid under this section, but only if the partner knew at the time of the distribution that the distribution exceeded the amount that could properly have been paid under this section.

(g) A proceeding under this section is barred unless it is commenced within two years after the date of the distribution.

MT. McKINLEY BANK

530 Fourth Avenue • P. O. Box 73880 • Fairbanks, Alaska 99707 • (907) 452-1751 • FAX (907) 456-5982

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 4

To SENATOR KELLEY	From CRAIG INGHAM
Co.	Co.
Dept. 465-3822	Phone # 452-1751
Fax # 465-3756	Fax # 456-5982

April 5, 1994

Senator Kelley
Alaska State Senate
State Capitol
Juneau, AK 99801

RE: Senate Bill No. 348
Registered Limited Liability Partnership

Dear Senator Kelley:

Since time given for public testimony often must be kept brief, I felt it would be beneficial for the Alaska Bankers Association to provide you and the other committee members with a written statement on our position regarding Limited Liability Partnerships.

Before we get into specifics on the issue of Limited Liability Partnerships, I think it would be helpful to examine the fundamental differences between a General Partnership and other business organizations that provide for limited liability to their owners.

First, a partnership's assets can be held in both the partners' individual names and the partnership's name; this provides ease of operation but also creates an element of confusion when trying to determine only the partnership assets. However, since under current law the partners can be held personally liable for the debts of the partnership this creates no problem for third party creditors. In the case of a Corporation and now the proposed Limited Liability Company, the assets of these organizations must be in the company name not the individual owners' name.

Next, we need to look at how a partnership distributes profits and provides capital. Under the Uniform Partnership Act, the partners are free to distribute all earnings to the partners and maintain no capital at all. If the business should sustain losses, the partners are required to contribute towards those losses. In the case of a Corporation or a Limited Liability Company, they are prohibited from making any distribution which would result in the likelihood of the company being unable to meet its liabilities when they come due.

Finally, a partnership is managed by its owners and as such, each partner is the agent of the other partner(s). This simply means the act of one partner binds all partners. In the case of a corporation, the owners/shareholders must elect directors who are charged with the responsibility of managing the affairs of a corporation. The directors have a strong fiduciary duty, as set out in Statute, to protect the interests of the company shareholders. The Limited Liability Company is different in that the owners/members can manage the affairs of the company. However, if the members elect to have direct management control over the company, they must assume the same fiduciary duties to one another that a director would have to shareholders. Also, the act of a managing member binds the company in third party dealings even if that member lacked the authority, providing the third party was unaware of this lack of authority.

There are many more technical differences between Partnerships and Corporations/Limited Liability Companies. However, the fundamental differences as they pertain to liability have been addressed.

Now we can look at how this new Registered Limited Liability Partnership Act would change these fundamental relationships. At the present time, we interpret the proposed law to be quite broad in its application of limited liability. The proponents of the bill feel it to be much narrower in scope. The present bill will obviously spawn a great deal of litigation just to determine what it means. But suppose that could be rectified, and that the legislation somehow made it clear that the limitation only applies to liability caused by another partner's negligence or other tortious conduct. Would even that "narrow" a limitation serve the public interest? In an effort to find out, let me offer the following example. Individuals A & B decide to form a partnership business called A & B Bookkeeping. A puts up $10,000 working capital and provides a small area in his rental property to operate the business. B put up his expertise and some office equipment. They agree to form a Registered Limited Liability Partnership. The cash A contributed is used to pay start up expenses, thereafter the firm experiences several years of profit. As their limited liability encourages them to do, A and B cause the profits to be distributed monthly, and A pays no attention to the qu: .ity or competence of the work B is doing for customers of the firm. It eventuates that partner B, through a negligent act, has created a $50,000 tax liability for customer C. The limited liability provisions of the bill would entitle C to a $50,000 judgement against the partnership and partner B. But the partnership's only assets are some office equipment worth nothing; and B has dissipated his assets and has nothing from which C can recover. A's property cannot be reached by C. Partner A simply dissolves the partnership with B, sets up a new partnership with D, and goes on with business as before, while C has to sell his home to pay the $50,000 tax liability. Isn't that a lovely ending?

But wait, those few sacrificial lambs are well worth the economic benefits to our state, right? O.K., let's examine that issue. The proponents of this bill feel this "new" partnership organization will encourage all kinds of new businesses that we wouldn't have if it isn't made available. Come on, people go into business for one reason and one reason only, because they see a profit in it. The only thing this legislation is going to do is encourage people to utilize a Registered Limited Liability Partnership rather than a general partnership or a corporate structure. That won't benefit our economy one bit but given the fact that most new businesses fail in the first couple of years, it might create a lot more public suffering.

We are always willing to listen to all sides of the story; but quite frankly, to provide the necessary safeguards as provided in corporations and limited liability companies will destroy much of the benefits in operating a general partnership business. We offer the following suggestion. In 1992, the National Conference of Commissions on Uniform State Laws approved a revised Uniform Partnership Act. While this revised law does not provide the kind of limited liability the proponents of this bill are looking for, it does require that any creditors first seek recovery of debts against partnership assets before pursuing personal assets. It is our recommendation that we pursue a complete study of this revised Uniform Partnership Act with the hope of adopting it next year.

I want to thank you and your committee members for taking the time to hear our concerns. We will make every effort to have a representative available to answer any of your questions when you have your next hearing.

Sincerely,

Craig Ingham
Chairperson
Legislative Affairs Committee
Alaska Bankers Association

cc: Alaska Bankers Association Members
Wes Coyner
Rod Lind
John Beard

PRESENTATION TO THE SENATE LABOR AND COMMERCE COMMITTEE ON SENATE BILL 348

MISTER CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS ROD LIND, I AM AN ALASKAN CPA, HAVING LIVED AND WORKED IN THE STATE FOR THE LAST 19 YEARS. I AM THE MANAGING PARTNER OF THE ALASKA PRACTICE FOR DELOITTE & TOUCHE , AND I AM HERE TODAY AS A MEMBER OF AND ON BEHALF OF THE ALASKA SOCIETY OF CPA'S. I GREATLY APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO SPEAK IN FAVOR OF SB 348, THE PROPOSED REGISTERED LIMITED LIABILITY PARTNERSHIP LAW.

SELECTING THE FORM IN WHICH TO OPERATE IS ONE OF THE MOST SIGNIFICANT DECISIONS A CLIENT STARTING A BUSINESS, OR CONTINUING AN EXISTING ONE, WILL HAVE TO MAKE WITH RESPECT TO THAT BUSINESS. THERE ARE A VARIETY OF CONSIDERATIONS, BOTH TAX AND NON-TAX, INCLUDING THE APPLICATION OF RELEVANT FEDERAL AND STATE LAW, AS WELL AS THE OBJECTIVES AND DESIRES OF THE BUSINESS PERSON.

THE CHOICE OF ENTITY WILL HAVE BROAD IMPLICATIONS. IT WILL AFFECT HOW THE BUSINESS IS CONDUCTED, THE PERSONAL AFFAIRS OF ITS OWNERS, AND EVEN IMPACT ON THE BUSINESSES' EMPLOYEES. CONSEQUENTLY, IT IS IMPORTANT THAT BUSINESSES HAVE, AND ALASKA PROVIDES, A FULL CHOICE OF FORMS IN WHICH BUSINESSES MAY OPERATE.

THE LIMITED LIABILITY PARTNERSHIP (OR LLP) IS A **NEW TYPE OF GENERAL PARTNERSHIP** THAT IS BEGINNING TO SWEEP THE NATION. SIX STATES HAVE ALREADY ADOPTED IT (TEXAS, NORTH CAROLINA, LOUISIANA, DELAWARE,

MISSISSIPPI, THE DISTRICT OF COLUMBIA). SIX OTHER STATES HAVE THE LLP LEGISLATION ON THE GOVERNOR'S DESK FOR SIGNATURE. ANOTHER FIFTEEN ARE EITHER CURRENTLY CONSIDERING ADOPTING IT OR PLAN TO CONSIDER IT THIS YEAR.

THE LLP FORM IS APPEALING TO LOTS OF PARTNERSHIPS, BUT PARTICULARLY TO THE SEGMENT OF THE ECONOMY THAT IS GROWING THE FASTEST -- SMALL BUSINESSES AND START-UP VENTURES. THIS IS BECAUSE IT HAS LOW START-UP COSTS, IS FLEXIBLE AND RELATIVELY EASY TO OPERATE.

SMALL BUSINESS EXPERTS TYPICALLY CITE THE COMPLICATIONS ASSOCIATED WITH ORGANIZING A BUSINESS (AND KEEPING IT OPERATING) AS A MAJOR REASON FOR BUSINESS FAILURE. LLP'S PROVIDE A FLEXIBLE FORM OF ORGANIZATION FOR SMALL BUSINESSES THAT HELPS THEM OBTAIN PARITY WITH LARGER, BETTER CAPITALIZED ORGANIZATIONS WHICH CAN AFFORD THE ANCILLARY BENEFITS OF MORE COMPLICATED BUSINESS ORGANIZATIONS.

THE LIMITED LIABILITY PARTNERSHIP HAS MANY OF THE POSITIVE ATTRIBUTES OF A GENERAL PARTNERSHIP.

FIRST, IT IS SIMPLE TO FORM.

SECOND, IT IS SIMPLE TO OPERATE -- UNLIKE GENERAL CORPORATIONS THERE ARE NO REQUIRED ARTICLES OF INCORPORATION, BOARD OF DIRECTORS MEETINGS, ETC.

THIRD, IT IS TAXED LIKE A PARTNERSHIP -- MEANING THAT THE TAX LIABILITY FLOWS THROUGH DIRECTLY TO THE LLP'S PARTNERS AND THERE IS NO TAX AT THE ENTITY LEVEL.

THE LIMITED LIABILITY PARTNERSHIP ALSO HAS ONE OF THE POSITIVE ATTRIBUTES OF MORE COMPLICATED BUSINESS FORMS - PARTIAL LIMITED LIABILITY.

PARTNERS IN AN LLP ARE NOT PERSONALLY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THE LLP ARISING OUT OF ERRORS, OMISSIONS, NEGLIGENCE, INCOMPETENCE OR MALFEASANCE COMMITTED IN THE COURSE OF THE PARTNERSHIP BUSINESS BY ANOTHER PARTNER OR REPRESENTATIVES OF THE PARTNERSHIP NOT WORKING UNDER THEIR DIRECTION OR SUPERVISION.

PLEASE NOTE THAT **ALL PARTNERS CONTINUE TO BE PERSONALLY LIABLE** FOR THEIR OWNS ACTS AND OMISSIONS AND THE ACTS AND OMISSIONS OF PERSONS OVER WHOM THEY HAVE CONTROL. THE PARTNERS ALSO CONTINUE TO BE LIABLE FOR ALL OTHER DEBTS AND OBLIGATIONS OF THE PARTNERSHIP.

THE PARTNERSHIP IS LIABLE FOR ALL DEBTS AND OBLIGATIONS OF THE PARTNERSHIP AS WELL AS FOR ALL ACTIONS OF ITS OWNERS AND EMPLOYEES. THE CAPITAL OF A PARTNERSHIP WITH AN LLP DESIGNATION, AS WELL AS ALL OF ITS OTHER ASSETS AND INSURANCE, CONTINUE TO BE AT RISK FOR ALL CLAIMS TO THE EXTENT THEY WOULD BE AT RISK IF THE PARTNERSHIP WAS NOT A LIMITED LIABILITY PARTNERSHIP.

WHILE THE OTHER FORMS OF ORGANIZATION THAT PROVIDE PROTECTION FOR THE PERSONAL ASSETS OF A BUSINESS OWNER (CORPORATIONS, PROFESSIONAL CORPORATIONS, AND LIMITED PARTNERSHIPS) ARE FAR MORE COMPREHENSIVE, GENERALLY COVERING ANY ACTION AGAINST THE ENTITY, THESE FORMS ALSO CARRY WITH THEM SIGNIFICANT COSTS AND REQUIRE A LEVEL OF SOPHISTICATION TO SET UP AND OPERATE.

THE LLP REMAINS LIABLE FOR THE ACTIONS OF ITS OWNERS AND EMPLOYEES, AND THE LLP OWNERS REMAIN PERSONALLY LIABLE FOR THEIR OWN ACTIONS AND THE ACTIONS OF THOSE UNDER THEIR CONTROL. BUT BEYOND ANY INVESTMENTS IN THE LLP ITSELF, THE PERSONAL ASSETS OF THE OWNERS AND THEIR FAMILIES NEED NOT BE SACRIFICED TO PAY JUDGEMENTS ARISING FROM EVENTS OR ACTIONS OVER WHICH THEY HAVE NO CONTROL.

CONSEQUENTLY, THE LIMITED LIABILITY PARTNERSHIP SHOULD APPEAL TO THE TYPES OF BUSINESSES TODAY THAT ARE OPERATING AS PARTNERSHIPS AND THAT CAN NOT AFFORD OR DO NOT HAVE THE TIME TO DEAL WITH STATUTORY AND REGULATORY REQUIREMENTS OF QUALIFYING AND OPERATING AS THESE OTHER BUSINESS FORMS.

FROM ALASKA'S PERSPECTIVE, IT WILL BE A TREMENDOUS ADVANTAGE TO OFFER BUSINESS THE LLP FORM FOR THE FOLLOWING REASONS.

THE LLP IS BUSINESS DEVELOPMENT ORIENTED. STATES AT THE FOREFRONT OF ECONOMIC DEVELOPMENT ARE THERE BECAUSE THEY OFFER AN EXPANSIVE MENU OF ORGANIZATIONAL ALTERNATIVES FOR DOING BUSINESS -- CORPORATIONS, LIMITED LIABILITY COMPANIES, LIMITED PARTNERSHIPS,

PROFESSIONAL CORPORATIONS, LIMITED LIABILITY PARTNERSHIPS, AND SO ON. THEY ENABLE THE BUSINESSES IN THEIR STATES TO BE COMPETITIVE WITH BUSINESSES FROM OTHER STATES AND ABROAD BY ENABLING THEM TO USE THE BUSINESS FORM MOST SUITABLE TO THEIR BUSINESS SITUATION.

ENACTMENT OF AN LLP IS CONSISTENT WITH PUBLIC POLICY POSITIONS ALREADY ADOPTED BY THE STATE. LIKE ANY BUSINESS FORM, THE PARTNERS IN AN LLP ALWAYS REMAIN RESPONSIBLE FOR THEIR OWN ACTIONS, AND THE PARTNERSHIP REMAINS RESPONSIBLE FOR THE ACTIONS TAKEN ON ITS BEHALF BY EMPLOYEES OR PARTNERS.

ADOPTION OF A LIMITED LIABILITY PARTNERSHIP LAW WILL PROVIDE A FAVORABLE BUSINESS CLIMATE -- AND WILL ESPECIALLY BENEFIT THAT PORTION OF THE ECONOMY THAT HAS THE POTENTIAL TO GROW THE FASTEST, SMALL BUSINESSES AND START-UP VENTURES.

AN LLP LAW WILL ENABLE ALASKA TO KEEP PACE WITH THE REST OF THE NATION AND ALLOW BUSINESSES THAT ARE RESIDENT HERE TO BETTER COMPETE WITH OUT OF STATE FIRMS.

FOR THESE REASONS WE URGE YOU TO ADOPT THIS LEGISLATION.

THANK YOU FOR ALLOWING ME TO APPEAR HERE. IF YOU HAVE ANY QUESTIONS, I WILL BE HAPPY TO TRY TO ANSWER THEM.

LIABILITY CHART

	GENERAL PARTNERSHIP (GP)	LIMITED LIABILITY PARTNERSHIP (L.L.P.)	CORPORATION/ PROFESSIONAL CORPORATION
Is a partner/shareholder personally liable for all commercial obligations of the partnership/corporation (bank debt, leases, wages, etc.)	Y	Y	N
Is a partner/shareholder personally liable for his/her own acts	Y	Y	Y
Is a partnership/corporation liable for any and all acts of all partners/shareholders and employees	Y	Y	Y
Are all partnership/corporation assets, insurance and capital accounts of all partners/shareholders available to pay for any and all liability of the partnership/corporation	Y	Y	Y
Is a partner/shareholder personally liable for the act of an employee working under his/her supervision	Y	Y	N
Is a partner/shareholder personally liable for the wrongful acts of another partner/shareholder or person not under their control	Y	N	N

PAYMENT RESPONSIBILITY - G.P. VS. L.L.P.

	COMMERCIAL BUSINESS OBLIGATION		JUDGMENT FOR A WRONGFUL ACT, OMISSION, ETC.	
	G.P.	L.L.P.	G.P.	L.L.P.
ASSETS AVAILABLE TO PAY THESE:				
All Partnership Assets	Y	Y	Y	Y
All Partnership Insurance	Y	Y	Y	Y
All Partners Investment in the Partnership (Capital Account)	Y	Y	Y	Y
All Personal Assets of the Partner,				
Where Partner Committed the Act	Y	Y	Y	Y
Where Partner did not Commit the Act	Y	Y	Y	N

The only time a limited liability provision comes into effect is when a wrongful act, omissions, etc. has occurred and the resulting judgment exceeds all of the partnership assets, plus all of the partnership insurance, plus all of the capital accounts (investment in partnership) of all of the partners. At that point, and not until then, do the personal assets of the partners come into play.

In a GP, all partners total personal assets are available to satisfy the judgment and all remaining commercial obligations. At the point the partners personal assets are subject to attachment, the partnership is bankrupt, all partners have lost their interest in the partnership and all partners have lost their livelihood to satisfy the judgment.

In an LLP all partners personal assets are available to satisfy all the commercial obligations. But only the personal assets of the partner who committed the act are available to satisfy the judgment for the wrongful act. Why take the innocent partners house, car, and savings account, if they did nothing?

Businesses can obtain protection through the costly process of incorporation, etc. Why not allow a less costly, less protective form of business to be available to businesses. If businesses do business with corporations, professional corporations and limited partnerships (all of which have far more partner/shareholder protection) why not LLP's.

LIABILITY CHART

	GENERAL PARTNERSHIP (GP)	LIMITED LIABILITY PARTNERSHIP (L.L.P.)	CORPORATION/ PROFESSIONAL CORPORATION
Is a partner/shareholder personally liable for all commercial obligations of the partnership/corporation (bank debt, leases, wages, etc.)	Y	Y	N
Is a partner/shareholder personally liable for his/her own acts	Y	Y	Y
Is a partnership/corporation liable for any and all acts of all partners/shareholders and employees	Y	Y	Y
Are all partnership/corporation assets, insurance and capital accounts of all partners/shareholders available to pay for any and all liability of the partnership/corporation	Y	Y	Y
Is a partner/shareholder personally liable for the act of an employee working under his/her supervision	Y	Y	N
Is a partner/shareholder personally liable for the wrongful acts of another partner/shareholder or person not under their control	Y	N	N

PAYMENT RESPONSIBILITY - G.P. VS. L.L.P.

	COMMERCIAL BUSINESS OBLIGATION		JUDGMENT FOR A WRONGFUL ACT. OMISSION. ETC.	
	G.P.	L.L.P.	G.P.	L.L.P.
ASSETS AVAILABLE TO PAY THESE:				
All Partnership Assets	Y	Y	Y	Y
All Partnership Insurance	Y	Y	Y	Y
All Partners Investment in the Partnership (Capital Account)	Y	Y	Y	Y
All Personal Assets of the Partner,				
Where Partner Committed the Act	Y	Y	Y	Y
Where Partner did not Commit the Act	Y	Y	Y	N

The only time a limited liability provision comes into effect is when a wrongful act, omissions, etc. has occurred and the resulting judgment exceeds all of the partnership assets, plus all of the partnership insurance, plus all of the capital accounts (investment in partnership) of all of the partners. At that point, and not until then, do the personal assets of the partners come into play.

In a GP, all partners total personal assets are available to satisfy the judgment and all remaining commercial obligations. At the point the partners personal assets are subject to attachment, the partnership is bankrupt, all partners have lost their interest in the partnership and all partners have lost their livelihood to satisfy the judgment.

In an LLP all partners personal assets are available to satisfy all the commercial obligations. But only the personal assets of the partner who committed the act are available to satisfy the judgment for the wrongful act. Why take the innocent partners house, car, and savings account, if they did nothing?

Businesses can obtain protection through the costly process of incorporation, etc. Why not allow a less costly, less protective form of business to be available to businesses. If businesses do business with corporations, professional corporations and limited partnerships (all of which have far more partner/shareholder protection) why not LLP's.

COMPARISON OF VARIOUS FORMS

	INDIVIDUAL OWNERSHIP	PARTNERSHIP	REGISTERED LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY COMPANY ("LLC")	S CORPORATION	C CORPORATION
Limited Liability	No	Limited partners have protection from the partnership's debts unless provided otherwise	Same as general partnership except partners not liable for errors and omissions of other partners.	All members have protection from the LLCs debts unless provided otherwise	All shareholders	All shareholders
Participation in Management	Yes	Participation by limited partners generally must be restricted to preserve limited liability.	No restrictions	No restrictions	No restrictions	N restrictions
Transferability of Interests	Yes	Restrictions are imposed by state law, by securities laws and generally by the partnership agreement	Restrictions are imposed by state law, by securities laws and generally by the partnership agreement.	Restrictions are imposed by state laws, securities laws and LLC Regulations, if any.	Restrictions are imposed by securities laws and by a shareholders' agreement, if any.	Restrictions are imposed by securities laws and by a shareholders' agreement, if any
Continuity of Life	N/A	Generally, no	Generally, no	Generally, no	Yes	Yes
Certainty of Classification	N/A	Yes However, a limited partnership must lack two of four corporate characteristics (i) limited liability; (ii) free transferability of interests; (iii) continuity of life and (iv) centralized management.	May lack three, and possibly four, of the corporate characteristics.	Yes. However, an LLC must lack free transferability of interest and continuity of life. Occasionally, an LLC may lack centralized management As to a single-member LLC, it is not clear.	Yes, However, any shareholder may cause loss of tax status.	Yes
Qualification	N/A	A limited partnership generally needs an individual general partner or a corporate general partner with substantial assets.	No restrictions other than insurance requirement.	No restrictions	There are various eligibility requirements including a restriction on the number and type of shareholders on the ownership subsidiaries	No restrictions
Number of Owners	N/A	At least 2	At least 2	No restrictions, but at least 2 to be considered a partnership for tax purpose	1 to 35	No restrictions

	INDIVIDUAL OWNERSHIP	PARTNERSHIP	REGISTERED LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY COMPANY ("LLC")	S CORPORATION	C CORPORATION
Types of Owner	N/A	Any	Any	Any	Ownership is limited to U.S. residents and citizens and to certain U.S. trusts.	Any
Classes of Ownership Interest	N/A	Multiple classes are permitted	Multiple classes are permitted	Multiple classes are permitted.	One. However, there can be differences in voting rights	Multiple classes are permitted
Ability to do business in other states	Yes	Yes	Unclear	Unclear in those states that do not have the LLC form.	Yes	Yes
Levels of Income Tax	One	Partner level only	Partner level only	Member level only	Generally, only shareholder level. However, former C corporations may be subject to tax. In addition, some states will tax S corporations.	Corporate and shareholder level
Formation	N/A	Nontaxable unless disguised sale or the partner is relieved from debt	Nontaxable unless disguised sale or the partner is relieved from debt.	Nontaxable unless disguised sale or the member is relieved from debt.	Taxable. However, if the transferors meet the 80% control test of IRC §351, nontaxable except to the extent of debt relief.	Taxable. However, if the transferors meet the 80% control test of IRC §351, nontaxable except to the extent of debt relief.
Special Allocations of Income and Loss	N/A	Yes	Yes	Yes	No, all allocations are pro rata.	N/A
Deductibility of Losses	No problem	Partners may deduct the partnership's losses only to the extent of their tax basis in their partnership interest which includes their allocable share of partnership debt.	Partners may deduct the partnership's losses only to the extent of their tax basis in their partnership interest which includes their allocable share of partnership debt	Members may deduct the LLCs losses only to the extent of their tax basis in their LLC interest which includes their allocable share of LLC debt	Shareholders may deduct the corporation's losses only to the extent of their tax basis in their stock which does not include any portion of the corporation's debt	Shareholders may not deduct any of the corporation's losses.

	INDIVIDUAL OWNERSHIP	PARTNERSHIP	REGISTERED LIMITED LIABILITY PARTNERSHIP	LIMITED LIABILITY COMPANY ("LLC")	S CORPORATION	C CORPORATION
Passive Activity Limitations	All "material participation" tests applicable	Limited partner can be active under only 3 of 7 tests (i.e., essentially, the limited partner must participate in the activity for 500 hours).	Unclear	It is not clear whether Members or Managers can qualify under all 7 or only 3 tests.	All 7 tests apply.	N/A
Fiscal Year	Calendar	Generally calendar	Generally calendar	Generally calendar	Generally calendar	No restrictions
Cash Distributions	N/A	Nontaxable to the extent of a partner's tax basis in his partnership interest.	Nontaxable to the extent of a partner's tax basis in his partnership interest.	Nontaxable to the extent of a member's tax basis in his LLC interest.	Generally nontaxable to the extent of the shareholder's tax basis in his stock.	Taxable as dividends to the extent of the corporation's earnings and profits and then nontaxable to the extent of the shareholder's tax basis in his stock
Liquidation	N/A	Nontaxable to the extent of a partner's tax basis in his partnership interest.	Nontaxable to the extent of a partner's tax basis in his partnership interest.	Nontaxable to the extent of a member's tax basis in his LLC interest.	Generally, nontaxable at corporate level and taxable at shareholder level through flow-through of corporate tax items.	Taxable to both corporations and shareholders.

NOTE: Adapted from State Bar of Texas, Section of Taxation Newsletter, October 1991, p. 3.

MAR-24-94 THU 13:07 ANCHORAGE LTD FAX NO. 9072581281 P. 04

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 348

Revision Date:
Dept. Affected: Alaska Court System
Title: An Act relating to partnerships
BRU: Trial Courts
Components:
Sponsor: Labor & Commerce
Requestor:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel [signature] Phone: 264-8228
Agency: Alaska Court System Date: 03/15/94

Approved: Arthur H. Snowden, II, Administrative Director [signature]
Agency: Alaska Court System Date: 03/15/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Rev 8/93

TOTAL P.02

FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 348

Revision Date:
Title: An Act relating to partnerships

Sponsor: Senate Labor & Commerce
Requestor:

Department Affected: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component:

COMPONENT SERIAL NO. 1233

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: $ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director Willis F Kirkpatrick
Division: Banking, Securities and Corporations

Phone: 465-2521
Date:

Approved by Commissioner: Paul Fuhs Paul Fuhs
Agency: Commerce and Economic Development

3-16-94
Date:

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 11/93
WFK/KP/dgl311fn.kp

SB
356

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln

STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE (907) 465-3822
FAX: (907) 465-3756

SENATE LABOR AND COMMERCE COMMITTEE

716 W. 4TH. SUITE 400
ANCHORAGE, AK 99501-2133
PHONE (907) 258-8180
FAX: (907) 258-4524

SUMMARY & ANALYSIS OF CS SB 356 (L&C)

CS SB 356 (L&C) would 1) Exempt amateur sports officials employed on a contractual basis from worker's compensation coverage; 2) Remove employers from worker's compensation liability for their employees if they are voluntarily participating in a recreational activity sponsored by the employer.

<u>Section 1:</u> Amends AS 23.30.230(a), persons not covered by workers' compensation, to include persons employed as sports officials on a contractual basis who officiate at sports events in which the players are not compensated. This would include umpires, referees, judges, scorekeepers, timekeepers and others who are neutral participants in a sports event.

This section was necessitated following an audit of the Anchorage Sports Association by their insurance carrier in the fall of 1992, in which they asserted the Association must pay workers' compensation premiums for contracted umpires and other sports officials. Prior to that, the association did not consider umpires and other sports officials as their employees as they were hired on contract. The Association contested their carrier's position, but the Division of Insurance agreed with the insurance carrier that under state law such officials must be considered employees of the Association.

The National Council on Compensation Insurance (N.C.C.I.) has classified these officials under a ranking of extremely high risk, that of professional athlete. The N.C.C.I. was asked to re-classify this job category to a ranking of groundskeeper, but the N.C.C.I. declined. The result, according to sports officials' associations, will cause sports organizations which contract with sports officials to pay anywhere between 17 and 54% of their compensation for officiating to cover workers' compensation premiums.

The Anchorage Sports Association appealed this decision to the Attorney General's Office and a decision is pending. However, under current law, it is not felt their appeal will be successful.

This section is designed to eliminate this problem by exempting amateur sports officials from workers' compensation coverage as is done for other contractual groups. Workers' compensation laws were designed to provide medical and income replacement for injured workers. Whereas few, if any, amateur sports officials are injured while officiating, the current high insurance premiums do not accurately reflect the amount of risk they experience as officials.

This section is supported by sporting associations and officials' groups throughout the state. Included in the packets are letters of support from these groups.

Section 2: Amends AS 23.30.265(2), Definitions, to provide that "employer sanctioned activities" do not include recreational activities unless the activity occurs at a remote job site or on the employment premises.

Recent court interpretation has held that employers are liable for their employees' injuries while the employees are participating in an optional employer sponsored recreational activity. This has placed generous Alaskan employers in jeopardy concerning team sponsorships. For example, an employer supplies uniforms, umpiring fees, field rental fees or other team related items, the courts have treated that involvement as an employer-sanctioned activity. The result has been that many employers are reluctant to increase their risk and legal exposure for a recreational activity and are less likely to support recreational leagues throughout Alaska.

This section offers a solution by providing that as long as the participation is voluntary and not a condition of employment then no workers' compensation liability extends to the employer/sponsor.

APPENDIX—Continued

Villages' subsistence life styles would be minimally affected by the Cascaden disposal. There was a reasonable basis for the decision by DNR to hold the land disposal at Cascaden. The decision was not unreasonable, arbitrary, or an abuse of discretion. The Decision of the DNR is hereby affirmed.

DATED at Fairbanks, Alaska, this 24 day of May, 1990.

/s/ Richard D. Savell
RICHARD D. SAVELL
Superior Court Judge

Judi J. LeSUER-JOHNSON, Appellant,

v.

ROLLINS-BURDICK HUNTER OF ALASKA and National Union Fire Insurance Co., Appellees.

No. 3681.

Supreme Court of Alaska.

April 12, 1991.

Employee who was injured while playing softball on employer-sanctioned team at employer-provided field sought workers' compensation benefits. The Workers' Compensation Board awarded benefits and the Superior Court reversed and remanded. On remand, the Board denied benefits and appeal was taken. The Superior Court, Third Judicial District, Anchorage, Ralph Stemp, J., affirmed and employee appealed. The Supreme Court held that employee was entitled to benefits.

Reversed and remanded.

1. Workers' Compensation ⇐664

Employee who was injured while playing softball on employer-sanctioned team at field rented by league to which employer paid money for ball field rental was entitled to workers' compensation benefits. AS 23.30.265(2).

2. Workers' Compensation ⇐664

Portion of workers' compensation statute defining "arising out of and in the course of employment" with regard to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as statute is written. AS 23.30.265(2).

Chancy Croft, Anchorage, for appellant.

Patricia L. Zobel, Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Anchorage, for appellees.

Before MATTHEWS, C.J., and RABINOWITZ, BURKE, COMPTON and MOORE, JJ.

OPINION

PER CURIAM.

[1] Appellant Judi LeSuer-Johnson (LeSuer) was injured on June 4, 1986, while playing softball at an Anchorage ballpark for the Rollins-Burdick Hunter (RBH) team against an "insurance league" opponent. The injury occurred after work hours, on a field rented by the insurance league. LeSuer, an employee of RBH, filed a claim for workers' compensation, alleging that the injury arose out of and in the course of her employment. An Alaska statute enacted in 1982 defines "arising out of and in the course of employment" to include

> employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at the employer-provided facilities; but excludes activities of

SUPREME COURT OPINION
NECESSITATEING SECTION 2

a personal nature away from employer-provided facilities.

AS 23.30.265(2).

LeSuer's argument that her injury arose out of and in the course of her employment is based on her employer's connection to the softball team. RBH provided balls, bats, T-shirts and caps for the team members. It paid $250 to the league's organizers who rented the ballfield and purchased bases. RBH encouraged its employees to either play on the team or attend the game as spectators. In her job interview LeSuer was asked if she played softball and if she would like to play on the company team. She stated that joining the team was voluntary, but she personally felt pressured to play by co-employees who wanted to be sure that RBH had enough players to field the team each week.

The Workers' Compensation Board found for LeSuer. The board concluded that participation on the softball team was both employer-sanctioned and that it occurred at an employer-provided facility:

> We find RBH gave support and encouragement for their employees to participate on the team. By paying the league fee, providing part of the uniform, providing bats and balls and permitting employees to perform activities such as picking up the T-shirts and hats as part of their work duties RBH sanctioned the activity....
>
> Next we consider whether the injury occurred at an employer-provided facility. Defendants argued that the injury was not on Employer's premises. However, the legislature chose to use the term "facility" and not premises. We find this terminology distinction is important. Thus the injury does not have to occur on an employer's property to be compensable.
>
> The term "provide" is defined in *Webster* at 1144 as "to make available, supply, afford; furnish with...." We find that paying the league fee RBH made available to its employees a field on which to play softball. We conclude that the softball game was at an employer-provided facility.

RBH appealed the board's decision to the superior court. The court held that where, as here, a remote job site was not involved, a four-part test rather than the two-part test set out in the statute was appropriate. The court stated:

> The criteria analyzed in Larson, 1A *The Law of Workman's Compensation* § 22.24(a)-(f), for determining whether an injury on a company team is compensable are the appropriate factors to weigh in deciding this case. They are primarily the time and place of the recreation, the degree of the employer initiative and encouragement, the financial support and equipment furnished, and the benefit to the employer.

The court remanded this case to the board for an analysis using these factors. On remand, the board found in favor of RBH with one member dissenting.

LeSuer then appealed to the superior court, which affirmed the board's decision on remand. LeSuer now appeals this decision.

[2] In our view, the first decision of the board was correct. That portion of AS 23.30.265(2) which pertains to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as the statute is written. If the legislature had intended such a limitation it could have easily been expressed. The board's conclusions that playing for the RBH softball team was employer-sanctioned and that the injury occurred at an employer-provided facility are supported by substantial evidence.

For the above reasons, the decision of the superior court is REVERSED and this case is REMANDED to reinstate the first decision of the board.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 3/10/94

FURTHER: Judiciary

Date of 5-Day Notice: ______
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: ______

L&C Committee considered SB 356

"An Act excluding certain recreational activities sanctioned by an employer from coverage provided under workers' compensation; and providing for an effective date."

and recommends:

[X] replace with ______ CS SB 356 (L&C)

[ ] same title
[X] new title
[ ] technical title change (HB only)

[ ] attaches amendment(s)

[ ] adopts ______ Letter of Intent

[ ] further referral to the ______

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

FISCAL NOTE INFORMATION

	Department	Date	Zero	Fiscal
CSSB	DOL	3/15/94	✓	
CSSB	DOA	3/15/94	✓	

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

[ ] Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Tim Kelly

Judith E. Salo

Robin Taylor

Steve Frank

OTHER RECOMMENDATIONS:

NR

______

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO : SB 356

Revision Date.
Title: Workers' Compensation for Recreational Activities
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation

COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul B. Arnoldt, Director Paul B. Arnoldt
Phone : 465-2790
Division: Workers' Compensation
Date : 3/15/94

Approved by Commissioner: Charles W. Mahlen C W Mahlen
Agency: Department of Labor
Date: 3/15/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 11/92

FISCAL NOTES

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 356

Revision Date:
Title: "An Act relating to recreational activities sponsored by an employer . . ."
Sponsor: Senate Labor and Commerce
Requestor: Senate Labor and Commerce

Department Affected: Administration
BRU: Risk Management
Component:

COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: J. Brad Thompson, Director
Division: Risk Management
Phone: 465-5723
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 3/15/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 01/94
1/Leg94/9/4910.kp

FISCAL NOTE

STATE OF ALASKA **BILL NO :** SB 356
1994 LEGISLATIVE SESSION

Revision Date:
Title: Workers' Compensation for Recreational Activities
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul B. Arnoldt, Director Paul B. Arnoldt
Phone : 465-2790
Division: Workers' Compensation
Date : 3/15/94

Approved by Commissioner: Charles W. Mahlen CW Mahlen
Agency: Department of Labor
Date: 3/15/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 11/92 [redacted]e 1 of 1

- FISCAL NOTES -

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 356

Revision Date:
Title: "An Act relating to recreational activities sponsored by an employer . . ."
Sponsor: Senate Labor and Commerce
Requestor: Senate Labor and Commerce

Department Affected: Administration
BRU: Risk Management
Component:

COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: J. Brad Thompson, Director
Division: Risk Management
Phone: 465-5723
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 3/15/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 01/94
1/Leg94/9/4910.kp

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 356

Revision Date:
Title: "An Act relating to recreational activities sponsored by an employer . . ."
Sponsor: Senate Labor and Commerce
Requestor: Senate Labor and Commerce

Department Affected: Administration
BRU: Risk Management
Component:

COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 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

ANALYSIS: (Attach a separate page if necessary.)

Changes in CS SB 356 (L&C) have no fiscal impact. This fiscal note is appropriate.

3/22/94 — date
[initials] — Comte Aide (initial)

Prepared by: J. Brad Thompson, Director
Division: Risk Management
Phone: 465-5723
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 3/15/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 01/94
1/Leg94/9/4910.fp

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO : SB 356

Revision Date:
Title: Workers' Compensation for Recreational Activities
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation

COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Changes in CSSB 356 (L&C) have no fiscal impact. This fiscal note is appropriate.
3/22/94 date
JDF Comte Aide (initial)

Prepared by: Paul B. Arnoldt, Director Paul B. Arnoldt
Phone : 465-2790
Division: Workers' Compensation
Date : 3/15/94

Approved by Commissioner: Charles W. Mahlen C W Mahlen
Agency: Department of Labor
Date: 3/15/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 11/92

8-LS1812\E
Ford
3/16/94

CS FOR SENATE BILL NO. 356(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act excluding certain sports officials and certain recreational activities sanctioned by an employer from coverage provided under workers' compensation; and providing for an effective date."

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

* Section 1. AS 23.30.230(a) is amended to read:

(a) The following persons are not covered by this chapter:

HB 240
L&C - 4PP (3/10)
STA
Mulder

(1) part-time baby-sitters;

(2) cleaning persons;

(3) harvest help and similar part-time or transient help;

(4) persons employed as sports officials on a contractual basis and who officiate only at sports events in which the players are not compensated; in this paragraph, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event;

(5) persons employed as entertainers on a contractual basis;

(6) [(5)] commercial fishermen, as defined in AS 16.05.940; and

(7) [(6)] individuals who drive taxicabs whose compensation and written contractual arrangements are as described in AS 23.10.055(13), unless the hours worked by the individual or the areas in which the individual may work are restricted except to comply with local ordinances.

* **Sec. 2.** AS 23.30.265(2) is amended to read:

(2) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities; **"employer-sanctioned activities" do not include recreational activities unless the activity occurs**

(A) at a remote job site; or

(B) on the employment premises;

* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

HB 307 3/24

AMATEUR SOFTBALL ASSOCIATION

THE AMATEUR SOFTBALL ASSOCIATION OF AMERICA

PATRICIA A. LILLIAN
Alaska State Commissioner
2950 Drake Drive
Anchorage, Alaska 99508
(907) 272-7683

March 9, 1994

Honorable Eldon Mulder
Alaska House of Representatives
Juneau, AK 99811

Dear Mr. Mulder:

I want to speak in favor of House Bill 290. This bill addresses an extremely important issue, the Worker's Compensation exemption for amateur sports officials.

Speaking for the sport of softball in particular, this issue bears directly on the ability of several Alaska communities to continue to be able to afford the cost of recreation programs. The additional burden of an exorbitant rate for a program which has no history of claims seems less than reasonable.

The number of sports officials, programs, and communities this affects, is significant.

Please continue the efforts to exempt these officials from the Worker's Compensation coverage requirement.

Sincerely,

Patricia A. Lillian

Patricia A. Lillian
Alaska Commissioner
Amateur Softball Association

- Letters of Support for -
Section 1

Mat-Su Softball Association, Inc.
P.O. Box 875550
Wasilla, Alaska 99687
(907) 376-9050

March 10, 1994

SUPPORT OF HOUSE BILL NO. 290

To All Members of the House and Senate:

I am writing to urge your support of House Bill No. 290 regarding the exempt status of contracted sports officials working with unpaid athletes. These sports include youth and adult basketball, volleyball, baseball, hockey, broomball, softball, skiing, dog mushing, rodeo and all other amateur sports.

Please keep in mind that the Workman's Compensation requirement did not originate from any sports officials but from insurance audits.

The Mat-Su Softball Association has paid Workman's Compensation on our umpires, scorekeepers, and tournament directors since a 1992-93 insurance audit revealed the requirement.

While researching the insurance requirements, I found that while branches of the state government disagree with the requirement of this insurance, they did agree on the fines for not having it.

I found that there have been no reported instances of injury by any such sports official in this state and that our insurance carrier could find no statistics nation wide to support the need for such insurance (but she was sure there must be some).

I found that the rates seem to be set arbitrarily in order to build an insurance fund "jus' in case" there ever is such an incident and are based on a National Insurance Code with no geographic nor population variance allowed.

I was also told that the goal of the national insurance board is also to require Workman's Compensation payments for unpaid volunteers and to increase the rates. Please refer to the amateur Anchorage Aces hockey team.

Mat-Su Softball Association, Inc.

Currently, the rates are approximately $15.99 per $100.00 earned and there is a $500.00 wage minimum, ie., if an umpire from Kenai comes to our tournament and earns $150.00 in a weekend, our Association is required to pay insurance as if he or she had earned $500. At this time, the rate also applies to a scorekeeper who earns $5.00 per game, ie., if a person keeps score on 1 game in a tournament and is paid $5.00 for that service, the workman's compensation insurance for that individual will be $79.95.

The not-profit sports organizations in this state do not depend on state funding to provide service to our communities. Most communities in this state do not have anything except their imagination and energy to create activities for their people.

The stipend paid amateur officials is not a livable wage. The amateur officials I have met enjoy what the do and realize that without them, participants could not enjoy what they do.

I have coached Little League T-Ball players and continue to coach Junior Softball Players and Youth Bowlers. I have served on the Mat-Su Softball Association Board of Directors for 8 years and was President for 3 years. I am presently the Mat-Su District Commissioner to the Alaska State Softball Association and Vice-President of that Association. I am also the league representative to the Mat-Su Association for our Youth League. My husband, daughter and I play softball, bowl, ride horses, train dogs, and ski.

I understand the costs involved in running recreational activities and in participating. Our goal has always been to keep the costs as low as possible to allow as many people to participate as possible.

This unnecessary and expensive cost will be passed on to participants and will stop many people from becoming active in their communities through these recreational outlets.

Please support House Bill No. 290.

Sincerely,

Genie Borgford

Genie Borgford
Hm phone 376-1636
Wk phone 272-1457

Rep. Eldon Mulder
Capital Room 116
Juneau, Alaska 99801

March 3, 1994

RE: House Bill #290

Sir,

The board of directors of the Anchorage Soccer Referee's Association have directed me to write you as to our position on Bill #290. We would like to go on record as to being IN FAVOR of the bill.

We are independent contractors, and are covered under USSF insurance as to accidents/liability, etc. We have no need to be covered under workmen's compensation. We believe that the original concept was never to include groups such as ours. This is a perfect opportunity to clear up the situation.

Attached is a list of our Board and a membership roster for your information.

Sincerely,

Vernon W. Rush

Vernon W. Rush
President

PEARSON & HANSON
ATTORNEYS AT LAW
408 OJA WAY - SUITE B
P O BOX 98
SITKA, ALASKA 99835
PHONE 907-747-3257 FAX 907-747-4977

DENTON J. PEARSON
ALASKA / OREGON

BRIAN E. HANSON
ALASKA

March 9, 1994

VIA FAX

Rep. Eldon Mulder
Alaska State Legislative
State Capital (MS 3100)
Juneau, Alaska 99801-1182

Re: HB 290

Dear Rep. Mulder:

I am writing this letter on behalf of the Sitka Softball Umpires Association.

We are writing to support HB 290 which would exempt sports officials from the Workers Compensation Act.

Please contact me if more specific information is needed to support our position. Thank you.

Sincerely,

Brian E. Hanson

Brian E. Hanson

BEH/rlw
mulder.wp.cn

Guy Warren
Past-President
Juneau-Douglas Officials Assn
4362 Taku Blvd
Juneau, AK 99801

March 7, 1994

The Honorable Eldon Mulder
Alaska State House of Representatives
Room 116
State Capitol
Juneau, Alaska 99811-1182

Dear Representative Mulder:

On behalf of the Juneau-Douglas Officials Association, I sincerely appreciate your sponsorship of House Bill 290, "An Act exempting certain sports officials from workers' compensation coverage."

This bill, which is supported by officials, officials groups and amateur sports associations throughout the state, will, if passed, address a serious problem facing amateur sports and amateur sports officials. Recent interpretations of existing law have led to the determination that amateur sports officials must be covered by workers' compensation policies. Further, these interpretations have placed sports officials into extremely high-risk categories. For example, we have been informed that the cost of providing this coverage to our softball umpires will be 17% of our current compensation. For football officials the rate will be 54% of our current compensation. These high rates will force increased costs for amateur sports participants and seriously decreased compensation for sports officials. These increased costs will only serve to decrease the number of individuals willing to officiate or will reduce the number of individuals participating in amateur athletics.

We believe the workers' compensation laws were designed to provide benefits to workers, providing medical and income replacement coverage for workers statewide. However, whereas few, if any amateur sports officials in the state receive a significant amount of their personal income from sports officiating, we cannot justify the high expense of this coverage for the limited benefits it will provide. It should be understood that for most officials, officiating is a hobby, our way of participating in the sports we enjoy. The money we receive, while important to maintaining our participation as officials, is never the sole reason we officiate.

In conclusion, I would once again like to thank you for your sponsorship of House Bill 290, and would like to offer our organizations support for its passage. Please contact us if you would like any assistance in presenting this bill to the Legislature.

Sincerely,

Guy M. Warren

FARTHEST NORTH UMPIRES ASSOCIATION
PO BOX 74988
FAIRBANKS, AK 99707-4988

March 5, 1994

RE: House Bill No. 290

I would like to take this opportunity to voice our organizations support for House Bill No. 290, "An Act exempting certain sports officials from workers' compensation coverage".

Our organization trains umpires in support of recreational slow pitch softball in the Interior of Alaska. Our organization services such groups as Ft. Wainwright Softball Association, Golden Heart Softball Association, Interior Girls Softball Association and North Pole Church Softball Leagues.

Without the passage of House Bill No. 290, an unjust financial burden will be placed on all sports officials. The current rate of workers' compensation is such that continuing in this part-time, seasonal and recreational field would not be justified.

Our organization would appreciate any effort in support of the passage of the House Bill No. 290. On behalf of Farthest North Umpires Association, thank you for your consideration in this matter.

Sincerely,

Randall D. Port

Randall D. Port
President, Farthest North Umpires Association

GOLDEN HEART SOFTBALL ASSOCIATION, INC.
P.O. Box 74921, Fairbanks, AK 99707
Phone (907) 452-6768
Office located at 2120 Lathrop Street
• Hez Ray Complex •

March 8, 1994

TO: Tim Sullivan

FROM: G.H.S.A, Executive Board of Directors

RE: Worker's Compensation Coverage for Umpires
(HOUSE BILL NO. 290)

The members of the Golden Heart Softball Board of Directors would like to express our unanimous support for House Bill No. 290. The passage of Bill 290, which will exempt certain persons employed as sports officials on a contractual basis from worker's compensation coverage, is a must.

Local softball umpires consider officiating nothing more than a part-time job. Of those polled none expressed a desire to be covered by worker's compensation insurance for officiating.

The current rates of 15 to 17 percent (Surcharged through pool) per $100 are outrageous. Neither the officials nor the G.H.S.A. can afford to pay the current rates. Slowpitch softball poses little or no risk to officials and no worker's compensation claims have ever been filed.

Thanks for your attention to the above.

TO: Rep. Eldon Muldur

This letter is to inform you of and lend my support to HB 290 of which you are the sponsor. I feel that this bill is very important as it eliminates costs that I feel are very detrimental to my participation as a sponsor of local non-profit recreation activities. The added cost of workmans compensation for softball umpires, scorekeeper organizers, and officials would eventually be picked up through raised sponsor fees and player fees. These added costs will potentially also cause loss of sponsorship, and cause participants to be left out due to not being able to afford participation. Our goal here in the Mat-Su area is to provide a safe, enjoyable and affordable recreational environment thus allowing for maximum participation by all of our residents.

Thank You

TED W. ANDERSON JR.
DBA MUG-SHOT SALOON

Ted W. Anderson Jr.

Anchorage Amateur Softball Umpires Association
6016 Prosperity Dr
Anchorage, Alaska 99504

March 9, 1994

Representative Eldon Mulder
Capital Room 116
Juneau, Alaska 99801

RE: House Bill #290

Dear Representative Mulder,

The Board of Directors and membership of the Anchorage Amateur Softball Umpires Association have directed me to inform you as to our position on House Bill #290. We would like to go on record as to being IN FAVOR of this bill.

We are independent contractors, and are covered under the Amateur Softball Umpires Association insurance as to accident/liability, etc. We feel no need to be covered under workmen's compensation. We believe that the original concept was never to include groups such as ours. This is a perfect opportunity to clear up this situation.

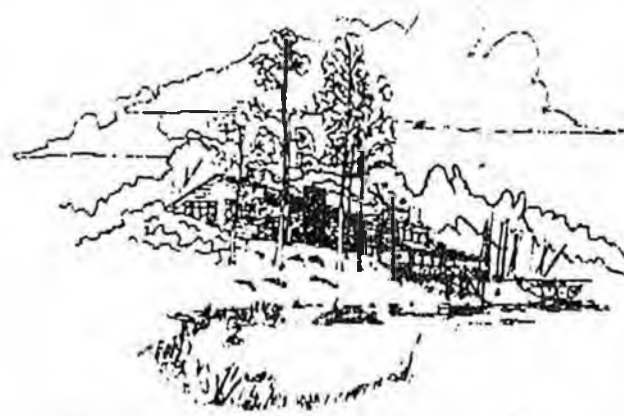
The membership congratulates you on your energetic efforts to introduce and push for passage of this legislation.

Thank you for a solid representation of your constituency.

Sincerely,

James E. Mason
AASUA President

Mat-Su Resort



1850 BOGARD ROAD — WASILLA, ALASKA 99654 — (907) 376-3228 — FAX (907) 376-7781

RE: House Bill 290

We are in strong support of this
bill. We sponsor three ball tea[ms]
However, if this bills fails, we could
not pay the additional costs for
insurance -

Please make sure this letter is delivered
to all legislators of the House + Senate -

Don Keuler
Owner