

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9622 SENATE LABOR & COMMERCE

**Sec. 32.06.932. Revocation of registration of foreign limited liability partnership.**

(a) The registration of a foreign limited liability partnership authorizing the partnership to conduct affairs in this state may be revoked by the commissioner if

(1) the partnership is delinquent for six months in filing its biennial report or in paying a fee or penalty imposed under this chapter;

(2) the partnership has failed for 30 days to appoint and maintain a registered agent in the state;

(3) the partnership has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change; or

(4) a misrepresentation of material facts has been made in an application, report, affidavit, or other document submitted under this chapter.

(b) Before a registration may be revoked under this section, the commissioner shall give the partnership written notice of its delinquency, failure, or misrepresentation by certified mail addressed to its registered agent, registered office, or partners at the last known address as shown by the records of the commissioner. If the partnership fails, within 60 days after the notice is sent by certified mail, to contest the alleged delinquency, failure, or misrepresentation, the registration may be revoked under (d) of this section.

(c) If a partnership contests the proposed cancellation, the partnership may request a hearing. If, following a hearing, the commissioner decides there are grounds for revocation under this section, the partnership may appeal the decision to the superior court.

(d) If the registration of a foreign limited liability partnership is subject to revocation under (a) - (c) of this section, the partnership fails to correct the delinquency, failure, or misrepresentation as provided in this section, and there is no controlling order of the superior court, the commissioner shall revoke the partnership by issuing a certificate of revocation containing a statement that the partnership's registration has been revoked, and the date and the reason for the revocation. Upon cancellation, the original certificate of cancellation shall be placed in the department's files and a copy of the certificate mailed to the partnership at its registered office or in care of its registered agent at the last known address shown on the records of the department. Upon the issuance of the certificate of revocation, the foreign limited liability partnership's authority to conduct affairs in this state ceases.

**Sec. 32.06.933. Voluntary withdrawal of foreign limited liability partnership.**

(a) A foreign limited liability partnership registered in this state may withdraw its registration by filing an application for withdrawal with the department.

(b) An application for withdrawal filed by a foreign limited liability partnership must state

(1) the name of the partnership and the state or other jurisdiction where the partnership was formed;

(2) that the partnership is no longer conducting affairs in this state;

(3) that the partnership is withdrawing;

(4) that the partnership revokes the authority of its registered agent for service of process in this state and agrees that service of process may subsequently be made on the partnership by service on the commissioner for a cause of action arising in this state during the time the partnership was registered in this state; and

(5) an address for mailing a copy of the process to the partnership.

(c) The application for withdrawal must be in the form and manner designated by the department and shall be signed on behalf of the foreign limited liability partnership by a partner authorized to execute the application for withdrawal.

**Sec. 32.06.934. Effect of failure to register.**

(a) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the commissioner is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

**Sec. 32.06.935. Activities not constituting transacting business.**

(a) Activities of a foreign limited liability partnership that do not constitute transacting business under AS 32.06.928 - 32.06.936 include

(1) maintaining, defending, or settling an action or proceeding;

(2) holding meetings of its partners or carrying on another activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories for those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or by another method, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) conducting an isolated transaction that is completed within 30 days and is not one transaction in the course of similar transactions; and

- (10) transacting business in interstate commerce.
- (b) In AS 32.06.928 - 32.06.936, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under (a) of this section, constitutes transacting business in this state.
- (c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under another law of this state.

Sec. 32.06.936. Action by attorney general. The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of AS 32.06.928 - 32.06.936.

#### ARTICLE 10. Miscellaneous Provisions.

Sec. 32.06.971. Submission of documents to the department.  
When a document is required or allowed to be delivered to or filed with the department under this chapter, the person delivering the document shall deliver to the department the required fee, the original signed document, and an exact copy of the document.

- Sec. 32.06.972. Filing of documents by the department.
- (a) If the department determines that a document filed under this chapter conforms to all filing requirements, the department shall
- (1) mark on the original signed document and on the exact copy the word "filed" and the date of the document's acceptance for filing;
  - (2) retain the exact copy in the department's files; and
  - (3) return the original signed document to the person who filed the document or to that person's representative.
- (b) The department may not file a document that does not meet the requirements of this section.

Sec. 32.05.740. Disapproval of writing by department; appeal.  
If the department fails to approve applications for registration, amendment, cancellation, or withdrawal, or another document filing required or permissible under this chapter requiring approval by the department, the department shall, within 10 days after the delivery of the document to the department, give written notice of disapproval to the person delivering the document. The notice must specify the reasons for disapproval. The person may appeal the disapproval to the superior court.

LAW OFFICES

# DILLON & FINDLEY

A PROFESSIONAL CORPORATION

## JUNEAU

Dennis C. Buley  
Caroline Crenna  
Paul L. Dillon  
Thomas W. Findley  
Devon P. Groves\*  
Richard D. Monkman  
Arthur H. Peterson  
Peter K. Putzier  
Paralegals  
Susan E. Schrader  
Teri Heuscher  
Firm Administrator  
Melanie E. Mickelson

The Ebner Building  
350 North Franklin Street  
Juneau, Alaska 99801  
Telephone (907) 586-4000  
Facsimile (907) 586-3777

APR 18 1997

## ANCHORAGE

Ray B. Brown  
Maori Long  
Kristen D. Pettersen  
Paralegal  
M. Penita Raymond

510 L Street, Suite 603  
Anchorage, Alaska 99501  
Telephone (907) 277-5400  
Facsimile (907) 277-9896

\*Admitted in Washington only

April 18, 1997

The Honorable Loren Leman, Chair  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Room 113, Capitol Building  
Juneau, Alaska 99801-1182

Hand Delivered

Re: Bill Revising Uniform Partnership Act  
LAA Work Order No. 20-LS0613\A

Dear Loren:

Last week, I received a copy of legislative counsel Terry Bannister's 42-point March 21, 1997 memo to you, covering a draft of this bill. Your staff person, Annette Kreitzer, has asked me to review Terry's memo and provide answers and comments. Here are my responses, with the numbers below referring the item numbers in Terry's memo:

– Before responding to Terry's items, I want to comment on the numbering system. Following the Alaska drafting style, Terry has moved the definitions and other general provisions to the end of the bill, instead of at the beginning, where the official Uniform Partnership Act has them. While I can sympathize with Terry's impulse to do that, I would object to that rearrangement of a Uniform Act. Not only is uniformity of substance among the various states extremely helpful in certain areas of law such as this one, but the uniformity of the location of that substance, as set by the National Conference of Commissioners and Uniform State Laws greatly facilitates people being able to find the relevant provisions. I urge that the official numbering system be restored. That would include putting the definitions that appear in the bill's proposed AS-32.06.995(a) (page 39 of the draft) back into sec. 901, and those in (b) back into sec. 101.

1. I see no need to change the word "otherwise" to "another manner" in proposed AS 32.06.202(c)(3)(A), nor to change that word to "another method" in (c)(3)(F), and I suggest that the official, uniform wording be restored. Besides, I don't know why "manner" was chosen in one instance and "method" in the other.

The Honorable Loren Leman  
April 18, 1997  
Page Two

2. I see no need to substitute "the partnership's" for "its" in proposed AS 32.06.301-(1). For the sake of succinct writing, I suggest that the official, uniform wording be restored. The change in paragraph (2), regarding binding the partnership, looks okay, but unnecessary.
3. Regarding proposed AS 32.06.302, the first change looks good, the second one is unnecessary, the third one is okay, and the fourth is good.
7. The first change in AS 38.06.308 is okay. Regarding the second one, in subsec. (b), I would suggest that, on page 9, lines 13 and 14, instead of repeating the full phrase "the persons consenting to the representation" a simple reference to "those persons" would be better (more succinct and less confusing).
8. Regarding proposed AS 32.06.401, the first change is an improvement, the second is okay, and the third and fourth ones don't seem to make any difference, but I wonder why Terry wants to avoid the use of the word "only." When the wording change achieves no improvement, I suggest that we stick with the official, uniform version.
9. Regarding proposed AS 32.06.403, the first change looks okay, but the second one is unnecessary. I don't know what Terry has against neutral pronouns; their use provides for more succinct wording, without any sex connotation.
10. In proposed AS 32.06.404 (a), Terry's substitution looks okay, but I would have used "stated" instead of her "established." Regarding her question about the "or" in subsec. (d), she has, indeed, spotted an ambiguity, and it is one that the uniform law commissioners wrestled with too. I believe that the problem would be neatly resolved by repeating the word "duties" so that the phrase would read "... chapter and the duties under the partnership agreement ...." Terry's next two changes in proposed AS 32.06.404 look okay.
11. Terry's first point regarding proposed AS 32.06.405 is a good one, noting an apparent inconsistency between the text of the statute and the official NCCUSL commentary. The point should be raised with the NCCUSL, initially, at least, with just a phone call to Legislative Director and Legal Counsel John McCabe (312- 915-0195). We don't need to wait for the resolution of this point before getting the bill introduced, however. Terry's next two changes in this section look good.

The Honorable Loren Lemman  
April 18, 1997  
Page Three

13. Terry's first change in proposed AS 32.06.503 looks okay. Her comment regarding (b)(2) looks accurate. Her change in (e) is okay, but unnecessary.

14. Terry's changes are okay. Her question regarding "termination of a partner" is resolved by the context of this statute, and no change is necessary.

22. In proposed AS 32.06.807, the change in subsec. (a), again, reflects some mysterious aversion for pronouns. In this instance, I would recommend going back to the "their" in the interest of avoiding verbosity, while maintaining absolute accuracy and clarity (the antecedent noun being only three words away from the pronoun). The second change, the one in (c), is not really necessary, but here the antecedent noun is much more remote, which might justify the change.

– Proposed AS 32.06.910 begins the article on limited liability partnerships. In the official, NCCUSL version, this group of sections begins with sec. 1001. Recognizing that we do not use four-digit section numbers in the Alaska numbering system, I would suggest that, rather than having the sections in this article begin with 910, they should begin with 911 and continue without the Alaska five- or 10-number gap between sections, in order to conform as closely as possible with the uniform version of this Act, and thus facilitate its use.

27. In proposed AS 32.06.910, Terry's changes look okay. I believe that the answer to the question she poses is yes, and no change is required.

– In line with my comment two items above, if Terry's sec. 910 is changed to 911, 915 changed to 912, and 920 changed 913, I recommend that sec. 930, beginning the series on foreign limited liability partnerships, be changed to 921, to bring this next series of sections more closely in line with the official, uniform numbering system.

– Proposed AS 32.06.955 begins a series of sections that, in the official version of the Uniform Partnership Act, is at the beginning of the Act. I recommend that they be returned to that location, to facilitate use of the Act and promote the ease of doing business here.

32. In proposed AS 32.06.955, Terry's change in subsec. (c) looks good. I believe that the answer to her question regarding the phrase "in ordinary course" in subsec. (c) (and other places) is yes. However, on the chance that the official version's phrase is a term of art, I recommend that Terry call John McCabe. Her change in (e) is good.

The Honorable Loren Lemman  
April 18, 1997  
Page Four

34. In proposed AS 32.06.965(b), Terry raises the question of the appropriate reference to an interest rate, and I believe that her reference to AS 45.45.010 appropriately resolves the matter.

37. Terry added proposed AS 32.06.980 on regulations, which is usually a good idea. However, the Uniform Act does not include such a provision and, upon my rather hasty search, I could not find a comparable provision in Alaska's current version of the Uniform Partnership Act. Virtually all, if not all, of this law is dealing with the relationships between and among individuals and business entities, and does not involve regulation by a state agency. Therefore, at least for now, I would recommend that proposed AS 32.06.980 be deleted. In addition, the temporary and special provision in sec. 6 of the draft bill (page 42, lines 2 - 4), on the same subject, should be deleted as well.

38. In proposed AS 32.06.995(b), Terry's change looks good. However, this definition section is an important one, and I recommend that the generally applicable definitions be returned to sec. 101, as in the official, uniform version, and that the definitions that pertain only to the limited liability partnerships that are dealt with in secs. 902 - 908 be placed in sec. 901, again tracking the official, uniform version.

39. Terry questions whether the bill's sec. 5, dealing with court rules, is necessary. It is difficult to predict how the court, itself, would handle this question, but I think that Terry is wise in taking the cautious approach reflected in the bill. Another approach that would avoid having to take the separate vote on the court rule "changes" would be to have proposed AS 32.06.701(i) simply refer to our Civil Rules 79 and 82. Similarly, I am not certain that proposed AS 32.06.906(a)(4) "changes" Civil Rule 25(c) regarding substitutions of parties. However, leaving sec. 5(b) in the bill is probably the safest course. In this section, at page 41, line 28, the word "than" at the end of the line should read "from" so that the phrase reads "different from the fees allowed."

40. Terry suggests that we examine the bill's sec. 7 carefully. It deals with transition from the Uniform Partnership Act without limited liability partnership provisions to the new Uniform Partnership Act with limited liability partnership provisions, and is based on sec. 1206 of the official Revised Uniform Partnership Act. A note at the foot of the page on which this section appears in the official printing from the NCCUSL indicates that this section is "necessary only for jurisdictions adopting Uniform Limited Liability Partnership Act Amendments after previously adopting Uniform Partnership Act (1994)."

The Honorable Loren Leman  
April 18, 1997  
Page Five

Alaska's enactment of some limited liability partnership provisions last year further complicates the matter. I think that Terry's questions would best be directed to John McCabe. However, introduction of the bill need not await John's answers to Terry's questions on this matter (although he would probably be able to answer them quickly in a simple telephone call).

41. Terry points to the bill's sec. 9, which tells what happens if sec. 5 fails to receive the required 2/3's vote. This is a new kind of provision -- one I have never seen in my 31 regular sessions working with the Alaska Legislature. Normally, if a statute that requires the 2/3's vote fails to receive it, the revisor of statutes and the courts will deal with the question of the validity of that section. Since we are not even sure that the changes made by the proposed AS 32.06.701(i) and 32.06.906(a)(4) really make "changes" within the constitutional meaning, I suggest that we delete sec. 9 from the bill.

42. Terry's point about annual reports versus biennial reports is a good one, and I am inclined to think that proposed AS 32.06.920 should be changed accordingly. This is another point about which she might wish to confer with John McCabe.

So, those are my comments in response to Terry's memo to you. Items in Terry's memo that are not mentioned here are okay. As usual, she has done an excellent, meticulous job. The fact that I do not agree with her on every point, or that I would not have made all of the changes that she made, does not detract from that fact.

I hope that the bill can now be prepared in final form and introduced immediately. A hearing on it during the legislative interim would then set the stage for passage early next session. Loren, thanks for taking care of this matter.

Yours truly,

Dillon & Findley, P.C.

By: 

Arthur H. Peterson  
Uniform Law Commissioner  
for Alaska

AHP:das

cc: Theresa Bannister, Esq., Legislative Counsel  
Legislative Affairs Agency

# LEGAL SERVICES

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

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


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

## MEMORANDUM

March 21, 1997

**SUBJECT:** Bill draft on partnerships (Work Order No. 20-LS0613\A)

**TO:** Senator Loren Leman, Chair  
Senate Labor and Commerce Committee  
Attn: Annette Kreitzer

**FROM:**  Theresa Bannister  
Legislative Counsel

This memo accompanies the draft described above. The draft contains the 1994 revision of the Uniform Partnership Act (RUPA) by the National Conference of Commissioners on Uniform State Laws (NCCUSL), a NCCUSL technical amendment to UPA sec. 801(2)(A), and the 1996 NCCUSL amendments for RUPA to cover limited liability partnerships.

I have revised the submitted material to put it in the legislature's drafting style. As usual, the bill was prepared with the goal of balancing the use of our legislative drafting style with the need to keep the material uniform with other states. With that in mind, the following changes, comments, and questions are provided for your review. Since these items do not cover all of the changes and since I may not have mentioned a change that you would consider significant, you are encouraged urged to review the mark-ups in the work order file, so that you can determine whether they are faithful to the intent of the submitted material.

1. AS 32.06.202. In (c)(3)(A), substituted "another manner" for "otherwise." In (c)(3)(D), inserted "provided." In (c)(3)(F), substituted "another method" for "otherwise."
2. AS 32.06.301. In (1), inserted "partnership's" for "its" and used present tense. In (2), substituted "does not bind the partnership unless" for "binds the partnership only if."
3. AS 32.06.302. Deleted "partnership property may be transferred as follows" to avoid redundancy. In (b), substituted "the partners" for "them." In (d), substituted "only if the partnership" for "only if it." In (d)(1), changed "(a) and (b)" to "(a) or (b)."
4. AS 32.06.303. In (a)(1)(B), substituted "an office" for "of one." In (c), substituted "person who is not" for "person not." In (d) substituted "grant of authority" for "authority" in two places. In (d)(2), substituted "partnership and contained" for "partnership contained." In (e) and (f) substituted "person who is not" for "person not" and substituted "considered" for "deemed."

Senator Loren Leman

March 21, 1997

Page 2

5. AS 32.06.306. In (c), made several changes. Please examine.
6. AS 32.06.307. In (d), substituted "execute against" for "levy execution against."
7. AS 32.06.308. In (a), substituted "persons who are not" for "persons not." In (b), made several changes in the first sentence (for example, substituting other language for "thus"), so please examine the whole sentence.
8. AS 32.06.401. In (a), substituted "and the value" for "plus the value." In (e), substituted "that results in" for "which gives rise to." In (i), rewrote to avoid "only." In (j), rewrote to avoid "only."
9. AS 32.06.403. Substituted "records" for "books and records" since "records" would seem to include "books." In (b), substituted "the partners' agents" for "their agents."
10. AS 32.06.404. In (a), substituted "established" for "set forth." In (d), should the "or" be an "and"? In (d), substituted "in accordance with" for "consistently with." In (f), there is some rewriting.
11. AS 32.06.405. In (a), this subsection provides that the action can be maintained if the partnership is harmed. However, the commentary suggests that there is no qualification to bringing the action, e.g. harm to the partnership is not necessary. If harm is not necessary, the subsection should be rewritten. In (b), substituted "of partnership business" for "as to partnership business." In (c), substituted "are for "is."
12. AS 32.06.406. In (a), substituted "to the extent" for "so far as is." In (b), substituted "the partners" for "those of them" and "the partners continuing the business are presumed" for "they are presumed."
13. AS 32.06.503. In (a)(3), substituted "records" for "books or records." In (b)(2), as it is now written, "in accordance with the transfer" appears to modify "dissolution and winding up." If this is not the intent, the phrase should be moved to make it clear what it is intended to modify. In (e), substituted "is not required" for "need not."
14. AS 32.06.601. In (1), several changes. In (3), substituted "under" for "pursuant to." In (4)(C), substituted "the corporate partner" and "the corporate partner's" for "it" and "its," and made other changes. In (4)(D), restructured the clause slightly. In (6), substituted "partner" for "partner's," added a comma, and put in present tense. In (8) and (9), substituted "does not by itself qualify as a distribution under this paragraph" for "not merely by reason of." In (10), is it possible to use a different phrase than "termination of a partner." That phrase sounds like the partner is being "knocked off."
15. AS 32.06.602. In (b)(1), substituted "the dissociation breaches" for "it is in breach."

Senator Loren Leman

March 21, 1997

Page 3

16. AS 32.06.701. In (d), moved "against all partnership liabilities" and substituted "whether the liabilities are incurred" for "whether incurred."
17. AS 32.06.702. In (a), substituted "without the dissociation resulting" for "without resulting." In (b), made several changes.
18. AS 32.06.703. In (b), substituted "without the dissociation resulting" for "without resulting" and "unless" for "only if."
19. AS 32.06.705. Substituted "of a partnership name" for "thereof" and "by" for "of."
20. AS 32.06.801. In (1) and (2)(A), some rewriting.
21. AS 32.06.805. In (b), substituted "under" for "for the purposes of" in two places. In (c), substituted "under" for "for the purposes of" and "person who is not a partner is considered" and "person not a partner is deemed." In (d), substituted "person who is not a partner under" for "person not a partner as provided in."
22. AS 32.06.807. In (a), substituted "with the partners' right" for "with their right." In (c), substituted "for which the partners are personally" for "for which they are personally."
23. AS 32.06.902. In (c), substituted "with the department" for "in the jurisdiction in which the limited partnership is to be formed" and "the partnership's former name" for "its former name." Since Alaska laws do not control in other jurisdictions, it does not seem appropriate to require a partnership to file the certificate in another jurisdiction.
24. AS 32.06.905. In (b), substituted "state" for "set forth." In (b)(5), substituted "all or part of" at the beginning of the paragraph for "in whole or part."
25. AS 32.06.906. In (c)(2), some rewriting. In (c)(3) substituted "the obligations under this paragraph" for "those obligations." In (d), substituted "the party to the merger" for "that party." In (e), moved "as of the date the merger takes effect" to the beginning of the subsection.
26. AS 32.06.907. In (b)(3), substituted "any office" for "if any." In (c) and (d), substituted "in" for "for the purposes of."
27. AS 32.06.910. In (b), substituted "by the vote necessary to amend those contribution provisions" for "the vote necessary to amend those provisions." In (b) what does "considers" mean? That the agreement contains a provision dealing with the subject? In (d), substituted "or a person" for "or other person."

Senator Loren Leman

March 21, 1997

Page 4

28. AS 32.06.920. In (c), substituted "to revoke" for "to do so," substituted "stated" for "set forth," and substituted "filed, or the fee" or "filed, the fee." In (f), substituted "on the effective date" for "as of the effective date."

29. AS 32.06.930. In (a), added "between and."

30. AS 32.06.935. In (b), substituted "state or a person" for "state or other person."

31. AS 32.06.945. In (a), substituted "under" for "for the purpose of." In (a)(4), substituted "for those securities" for "with respect to those securities." In (a)(6), substituted "by another method" for "otherwise." In (a)(9), substituted "one transaction in" for "one in." In (b), substituted "In" for "For the purposes of" at the beginning.

① 32. AS 32.06.955. In (c), substituted "to another person" for "to another." In (c) (and wherever else it appears, e.g. AS 32.06.301), can we substitute "in the ordinary course of business" or something similar for "in the ordinary course"? The phrase sounds incomplete as it now stands. In (e), substituted "if the person maintains" for "if it maintains."

33. AS 32.06.960. In (a), added "between and" in two spots.

34. AS 32.06.965. In (b), left the rate up to the various provisions of AS 45.45.010. However, if you want a specific rate, the subsection could be rewritten to refer to the specific numerical rate identified in AS 45.45.010(a).

35. AS 32.06.970. In (e), substituted "person who is not" for "person not."

36. AS 32.06.975. In (a) and (b), substituted "between and among" for "among."

37. AS 32.06.980. Added this section.

38. AS 32.06.995. In (b), in the definition of "property," substituted "an interest in property" for "any interest therein."

39. Bill sec. 5. It is not clear that the court rule references are necessary for Rules 79 and 82; however, we are including them to protect the particular bill provision involved from future attack. You may want to consider whether you need the costs and fees provisions of AS 32.06.701(i), given Alaska's general provisions for attorney fees and costs.

② 40. Bill sec. 7. Please examine this carefully to be sure that it accommodates the transition adequately. In (c), the last sentence seems to have the possibility of affecting contract rights in existence before the Act takes effect. Theoretically, a partnership could make the election soon after January 1, 1998, immediately notify a third party (with whom it has entered into a contract before January 1, 1998), and change the partners' liability on the contract going

Senator Loren Leman

March 21, 1997

Page 5

back one year before the election. If this is possible, it would seem to violate the prohibition against the impairment of contracts under art. I, sec. 15, of the state constitution, and I would suggest adjusting the provision to avoid this problem. Also, would you like to require that some documentation be submitted to the Department of Commerce and Economic Development (by a certain date, or a certain period after formation) by a partnership indicating which chapter (AS 32.05 or AS 32.06) it's governed by under (a) and (c) of the section? This would allow members of the public to determine from department records which chapter applies to the partnership they're dealing with. Even though AS 32.05 requires some documentation for amending (the procedure under sec. 7(c)) the registrations of limited liability companies, it might be helpful in this case to set a deadline for submitting the documentation.

41. Bill sec. 9. This section is included to provide direction if sec. 5 (amending court rules) fails to receive the two-thirds vote.

③ 42. Annual reports. In the past, the Department of Commerce and Economic Development has expressed a preference for biennial reports, rather than the annual reports required by AS 32.06.920. Under current law (AS 32.05.570 - 32.05.590), limited liability partnerships currently are required to file biennial reports.

If I can be of further assistance, please advise.

TLB:glc:jdr  
97-158.glc

# Alaska State Legislature

## Senate



Official Business

Senate Labor & Commerce Committee

State Capitol  
Juneau, AK. 99801-1182

Chairman, Senator Leman  
Vice Chairman, Senator Mackie  
Senator Kelly  
Senator Miller  
Senator Hoffman

MEMO

TO: Terry Bannister, Legal Counsel  
Legislative Legal Services  
via fax: X2029 this page only

FROM: Annette Kreitzer, Aide to  
Senate Labor & Commerce Committee  
X 3844

DATE: December 3, 1997

RE: SB 198 - Limited Liability Partnerships

SB 198 was drafted before the passage of Representative Joe Ryan's HB 166 (CH 78 SLA 97). Representative Ryan is concerned that portions of SB 198 are in conflict with the newly passed law. Please compare the two and recommend any changes necessary to bring SB 198 into agreement with HB 166.

I have spoken with Art Peterson about this bill and have a few questions:

- a) I vaguely remember a vote in the 80's I think whereby Alaskans voted out joint and several liability. How does the language in this bill that reintroduces that term square with that vote?
- b) Has the legislature passed bills with the Uniform Commercial Code system (definitions in the front section)?
- c) Please provide a parallel table of where changes are being made in the statute.

There will be more comment from me on this bill, the comparison for Representative Ryan is the most important and time sensitive element of this memo. Thanks. Call me if this is not clear.

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

# Alaska State Legislature

## Senate



Official Business

Senate Labor & Commerce Committee

State Capitol  
Juneau, AK. 99801-1182

Chairman, Senator Leman  
Vice Chairman, Senator Mackie  
Senator Kelly  
Senator Miller  
Senator Hoffman

MEMO

TO: Terry Bannister, Legal Counsel  
Legislative Legal Services  
via fax: X2029 this page only

FROM: Annette Kreitzer, Aide to  
Senate Labor & Commerce Committee  
X 3844

DATE: December 3, 1997

RE: SB 198 - Limited Liability Partnerships

SB 198 was drafted before the passage of Representative Joe Ryan's HB 166 (CH 78 SLA 97). Representative Ryan is concerned that portions of SB 198 are in conflict with the newly passed law. Please compare the two and recommend any changes necessary to bring SB 198 into agreement with HB 166.

I have spoken with Art Peterson about this bill and have a few questions:

- a) I vaguely remember a vote in the 80's I think whereby Alaskans voted out joint and several liability. How does the language in this bill that reintroduces that term square with that vote?
- b) Has the legislature passed bills with the Uniform Commercial Code system (definitions in the front section)?
- c) Please provide a parallel table of where changes are being made in the statute.

There will be more comment from me on this bill, the comparison for Representative Ryan is the most important and time sensitive element of this memo. Thanks. Call me if this is not clear.

0-LS0613\A  
Bannister  
3/22/97

SENATE BILL NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to partnerships; amending Rules 25(c), 79, and 82, Alaska Rules  
2 of Civil Procedure; and providing for an effective date."

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

4 \* Section 1. AS 09.40.240 is amended to read:

5 Sec. 09.40.240. Appointment of receivers. A receiver may be appointed by  
6 the court in any action or proceeding except an action for the recovery of specific  
7 personal property

8 (1) provisionally, before judgment, on the application of either party,  
9 when the party's right to the property that [WHICH] is the subject of the action or  
10 proceeding and that [WHICH] is in the possession of an adverse party is probable, and  
11 where it is shown that the property or its rents or profits are in danger of being lost  
12 or materially injured or impaired;

13 (2) after judgment, to carry the judgment into effect;

14 (3) after judgment, to dispose of the property according to the judgment

1 or to preserve it during the pendency of an appeal, or when an execution has been  
2 returned unsatisfied and the debtor refuses to apply the debtor's property in satisfaction  
3 of the judgment;

4 (4) in the cases when a corporation has been dissolved, or is insolvent  
5 or in imminent danger of insolvency, or has forfeited its corporate rights;

6 (5) in the cases when a debtor has been declared insolvent;

7 (6) under AS 32.06.504(a).

8 \* Sec. 2. AS 32 is amended by adding a new chapter to read:

9 **Chapter 6. Partnerships and Limited Liability Partnerships.**

10 **Article 1. Nature of Partnership.**

11 **Sec. 32.06.201. Partnership as entity.** (a) A partnership is an entity distinct  
12 from its partners.

13 (b) A limited liability partnership continues to be the same entity that existed  
14 before the filing of a statement of qualification under AS 32.06.910.

15 **Sec. 32.06.202. Formation of partnership.** (a) Except as otherwise provided  
16 in (b) of this section, the association of two or more persons to carry on as co-owners  
17 a business for profit forms a partnership, whether or not the persons intend to form a  
18 partnership.

19 (b) An association formed under a statute other than this chapter, a predecessor  
20 statute, or a comparable statute of another jurisdiction is not a partnership under this  
21 chapter.

22 (c) In determining whether a partnership is formed, the following rules apply:

23 (1) joint tenancy, tenancy in common, tenancy by the entireties, joint  
24 property, common property, or part ownership does not by itself establish a  
25 partnership, even if the co-owners share profits made by the use of the property;

26 (2) the sharing of gross returns does not by itself establish a  
27 partnership, even if the persons sharing them have a joint or common right or interest  
28 in property from which the returns are derived;

29 (3) a person who receives a share of the profits of a business is  
30 presumed to be a partner in the business, unless the profits are received in payment

31 (A) of a debt by installments or another manner;

1 (B) for services as an independent contractor, or of wages or  
2 other compensation to an employee;

3 (C) of rent;

4 (D) of an annuity or other retirement or health benefit provided  
5 to a beneficiary, representative, or designee of a deceased or retired partner;

6 (E) of interest or other charge on a loan, even if the amount of  
7 payment varies with the profits of the business, including a direct or indirect  
8 present or future ownership of the collateral, or rights to income, proceeds, or  
9 increase in value derived from the collateral; or

10 (F) for the sale of the good will of a business or other property  
11 by installments or another method.

12 **Sec. 32.06.203. Partnership property.** Property acquired by a partnership is  
13 property of the partnership and not of the partners individually.

14 **Sec. 32.06.204. When property is partnership property.** (a) Property is  
15 partnership property if acquired in the name of

16 (1) the partnership; or

17 (2) one or more partners with an indication in the instrument  
18 transferring title to the property of the person's capacity as a partner or of the  
19 existence of a partnership but without an indication of the name of the partnership.

20 (b) Property is acquired in the name of the partnership by a transfer to

21 (1) the partnership in its name; or

22 (2) one or more partners in their capacity as partners in the partnership  
23 if the name of the partnership is indicated in the instrument transferring title to the  
24 property.

25 (c) Property is presumed to be partnership property if purchased with  
26 partnership assets, even if not acquired in the name of the partnership or of one or  
27 more partners with an indication in the instrument transferring title to the property of  
28 the person's capacity as a partner or of the existence of a partnership.

29 (d) Property acquired in the name of one or more of the partners, without an  
30 indication in the instrument transferring title to the property of the person's capacity  
31 as a partner or of the existence of a partnership and without use of partnership assets,

1 is presumed to be separate property even if used for partnership purposes.

2 **Article 2. Relations of Partners to**  
3 **Persons Dealing with Partnership.**

4 **Sec. 32.06.301. Partner as agent of partnership.** Subject to the effect of a  
5 statement of partnership authority under AS 32.06.303,

6 (1) each partner is an agent of the partnership for the purpose of the  
7 partnership's business; an act of a partner, including the execution of an instrument in  
8 the partnership name, for apparently carrying on in the ordinary course the partnership  
9 business or business of the kind carried on by the partnership binds the partnership,  
10 unless the partner does not have authority to act for the partnership in the particular  
11 matter and the person with whom the partner is dealing knows or has received a  
12 notification that the partner lacks authority;

13 (2) an act of a partner that is not apparently for carrying on in the  
14 ordinary course the partnership business or business of the kind carried on by the  
15 partnership does not bind the partnership unless the act was authorized by the other  
16 partners.

17 **Sec. 32.06.302. Transfer of partnership property.** (a) Subject to the effect  
18 of a statement of partnership authority under AS 32.06.303, partnership property held  
19 in the name of the partnership may be transferred by an instrument of transfer executed  
20 by a partner in the partnership name.

21 (b) Partnership property held in the name of one or more partners, with an  
22 indication in the instrument transferring the property to the partners of their capacity  
23 as partners or of the existence of a partnership, but without an indication of the name  
24 of the partnership, may be transferred by an instrument of transfer executed by the  
25 persons in whose name the property is held.

26 (c) Partnership property held in the name of one or more persons other than  
27 the partnership, without an indication in the instrument transferring the property to  
28 them of their capacity as partners or of the existence of a partnership, may be  
29 transferred by an instrument of transfer executed by the persons in whose name the  
30 property is held.

31 (d) A partnership may recover partnership property from a transferee only if

1 the partnership proves that execution of the instrument of initial transfer did not bind  
2 the partnership under AS 32.06.301 and

3 (1) as to a subsequent transferee who gave value for property  
4 transferred under (a) or (b) of this section, that the subsequent transferee knew or had  
5 received a notification that the person who executed the instrument of initial transfer  
6 lacked authority to bind the partnership; or

7 (2) as to a transferee who gave value for property transferred under (c)  
8 of this section, that the transferee knew or had received a notification that the property  
9 was partnership property, and that the person who executed the instrument of initial  
10 transfer lacked authority to bind the partnership.

11 (e) A partnership may not recover partnership property from a subsequent  
12 transferee if the partnership would not have been entitled to recover the property under  
13 (d) of this section from an earlier transferee of the property.

14 (f) If a person holds all of the partners' interests in the partnership, all of the  
15 partnership property vests in the person. The person may execute a document in the  
16 name of the partnership to evidence vesting of the property in the person and may file  
17 or record the document.

18 **Sec. 32.06.303. Statement of partnership authority.** (a) A partnership may  
19 file a statement of partnership authority that

20 (1) must include

21 (A) the name of the partnership;

22 (B) the street address of its chief executive office and an office  
23 in this state, if there is one;

24 (C) the names and mailing addresses of all of the partners or an  
25 agent appointed and maintained by the partnership for the purpose of (b) of this  
26 section; and

27 (D) the names of the partners authorized to execute an  
28 instrument transferring real property held in the name of the partnership; and

29 (2) may state

30 (A) the authority, or limitations on the authority, of some or all  
31 of the partners to enter into other transactions on behalf of the partnership; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

(B) any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed under AS 32.06.970(c) and states the name of the partnership but does not contain all of the other information required by (a) of this section, the statement nevertheless operates with respect to a person who is not a partner as provided in (d) and (e) of this section.

(d) Except as otherwise provided in (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on the grant of authority is not then contained in another filed statement; a filed cancellation of a limitation on authority revives the previous grant of authority;

(2) a grant of authority to transfer real property held in the name of the partnership and contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of the real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on the grant of authority is not then of record in the office for recording transfers of that real property; the recording, in the office for recording transfers of that real property, of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person who is not a partner is considered to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in (d) and (e) of this section and in AS 32.06.704 and 32.06.805, a person who is not a partner is not considered to know

1 of a limitation on the authority of a partner merely because the limitation is contained  
2 in a filed statement.

3 (g) Unless earlier cancelled, a filed statement of partnership authority is  
4 cancelled by operation of law five years after the date on which the statement or the  
5 most recent amendment is filed with the department.

6 **Sec. 32.06.304. Statement of denial.** A partner or other person named as a  
7 partner in a filed statement of partnership authority or in a list maintained by an agent  
8 under AS 32.06.303(b) may file a statement of denial stating the name of the  
9 partnership and the fact that is being denied, which may include denial of a person's  
10 authority or status as a partner. A statement of denial is a limitation on authority  
11 under AS 32.06.303(d) and (e).

12 **Sec. 32.06.305. Partnership liable for partner's actionable conduct.** (a)  
13 A partnership is liable for loss or injury caused to a person, or for a penalty incurred,  
14 as a result of a wrongful act or omission, or other actionable conduct, of a partner  
15 acting in the ordinary course of business of the partnership or with authority of the  
16 partnership.

17 (b) If, in the course of the partnership's business or while acting with authority  
18 of the partnership, a partner receives or causes the partnership to receive money or  
19 property of a person who is not a partner and the money or property is misapplied by  
20 a partner, the partnership is liable for the loss.

21 **Sec. 32.06.306. Partner's liability.** (a) Except as otherwise provided in (b)  
22 and (c) of this section, all partners are liable jointly and severally for all obligations  
23 of the partnership unless otherwise agreed by the claimant or provided by law.

24 (b) A person admitted as a partner into an existing partnership is not  
25 personally liable for a partnership obligation incurred before the person's admission  
26 as a partner.

27 (c) An obligation of a partnership incurred while the partnership is a limited  
28 liability partnership, whether arising in contract, in tort, or otherwise, is solely the  
29 obligation of the partnership. A partner is not personally liable, directly or indirectly,  
30 by way of contribution or otherwise, for the obligation solely by reason of being or  
31 acting as a partner. This subsection applies even if inconsistent with a partnership

1 agreement provision that exists immediately before the vote required to become a  
2 limited liability partnership under AS 32.06.910(b).

3 **Sec. 32.06.307. Actions by and against partnership and partners.** (a) A  
4 partnership may sue and be sued in the name of the partnership.

5 (b) An action may be brought against a partnership and, to the extent not  
6 inconsistent with AS 32.06.306, any or all of the partners in the same action or in  
7 separate actions.

8 (c) A judgment against a partnership is not by itself a judgment against a  
9 partner. A judgment against a partnership may not be satisfied from a partner's assets  
10 unless there is also a judgment against the partner.

11 (d) A judgment creditor of a partner may not execute against the assets of the  
12 partner to satisfy a judgment based on a claim against the partnership unless the  
13 partner is personally liable for the claim under AS 32.06.306 and

14 (1) a judgment based on the same claim has been obtained against the  
15 partnership and a writ of execution on the judgment has been returned unsatisfied in  
16 whole or in part;

17 (2) the partnership is a debtor in bankruptcy;

18 (3) the partner has agreed that the creditor is not required to exhaust  
19 partnership assets;

20 (4) a court grants permission to the judgment creditor to execute against  
21 the assets of a partner based on a finding that partnership assets subject to execution  
22 are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is  
23 excessively burdensome, or that the grant of permission is an appropriate exercise of  
24 the court's equitable powers; or

25 (5) liability is imposed on the partner by law or contract independent  
26 of the existence of the partnership.

27 (e) This section applies to any partnership liability or obligation resulting from  
28 a representation by a partner or purported partner under AS 32.06.308.

29 **Sec. 32.06.308. Liability of purported partner.** (a) If a person, by words  
30 or conduct, purports to be a partner, or consents to being represented by another as a  
31 partner, in a partnership or with one or more persons who are not partners, the

1 purported partner is liable to a person to whom the representation is made if that  
2 person, relying on the representation, enters into a transaction with the actual or  
3 purported partnership. If the representation, either by the purported partner or by a  
4 person with the purported partner's consent, is made in a public manner, the purported  
5 partner is liable to a person who relies upon the purported partnership even if the  
6 purported partner is not aware of being held out as a partner to the claimant. If  
7 partnership liability results, the purported partner is liable with respect to the liability  
8 as if the purported partner were a partner. If partnership liability does not result, the  
9 purported partner is liable with respect to the liability jointly and severally with any  
10 other person consenting to the representation.

11 (b) If under (a) of this section a person is represented to be a partner in an  
12 existing partnership, or with one or more persons who are not partners, the purported  
13 partner is an agent of the persons consenting to the representation to bind the persons  
14 consenting to the representation to the same extent and in the same manner as if the  
15 purported partner were a partner with respect to persons who enter into transactions  
16 in reliance upon the representation. If all of the partners of the existing partnership  
17 consent to the representation, a partnership act or obligation results. If fewer than all  
18 of the partners of the existing partnership consent to the representation, the person  
19 acting and the partners consenting to the representation are jointly and severally liable.

20 (c) A person is not liable as a partner merely because the person is named by  
21 another in a statement of partnership authority.

22 (d) A person does not continue to be liable as a partner merely because of a  
23 failure to file a statement of dissociation or to amend a statement of partnership  
24 authority to indicate the partner's dissociation from the partnership.

25 (e) Except as otherwise provided in (a) and (b) of this section, persons who  
26 are not partners as to each other are not liable as partners to other persons.

27 **Article 3. Relations of Partners to Each Other**  
28 **and to Partnership.**

29 **Sec. 32.06.401. Partner's rights and duties.** (a) Each partner is considered  
30 to have an account that is

31 (1) credited with an amount equal to

- 1 (A) the money and the value of any other property, net of the  
2 amount of any liabilities, the partner contributes to the partnership; and  
3 (B) the partner's share of the partnership profits; and  
4 (2) charged with an amount equal to  
5 (A) the money and the value of any other property, net of the  
6 amount of any liabilities, distributed by the partnership to the partner; and  
7 (B) the partner's share of the partnership losses.
- 8 (b) Each partner is entitled to an equal share of the partnership profits and is  
9 chargeable with a share of the partnership losses in proportion to the partner's share  
10 of the profits.
- 11 (c) A partnership shall reimburse a partner for payments made and indemnify  
12 a partner for liabilities incurred by the partner in the ordinary course of the business  
13 of the partnership or for the preservation of the partnership's business or property.
- 14 (d) A partnership shall reimburse a partner for an advance to the partnership  
15 beyond the amount of capital the partner agreed to contribute.
- 16 (e) A payment or advance made by a partner that results in a partnership  
17 obligation under (c) or (d) of this section constitutes a loan to the partnership that  
18 accrues interest from the date of the payment or advance.
- 19 (f) Each partner has equal rights in the management and conduct of the  
20 partnership business.
- 21 (g) A partner may use or possess partnership property only on behalf of the  
22 partnership.
- 23 (h) A partner is not entitled to remuneration for services performed for the  
24 partnership, except for reasonable compensation for services rendered in winding up  
25 the business of the partnership.
- 26 (i) A person may not become a partner unless all the partners consent.
- 27 (j) A difference arising as to a matter in the ordinary course of business of a  
28 partnership may be decided by a majority of the partners. An act outside the ordinary  
29 course of business of a partnership and an amendment to the partnership agreement  
30 may not be undertaken unless all the partners consent.
- 31 (k) This section does not affect the obligations of a partnership to other

1 persons under AS 32.06.301.

2 **Sec. 32.06.402. Distributions in kind.** A partner does not have a right to  
3 receive, and may not be required to accept, a distribution in kind.

4 **Sec. 32.06.403. Partner's rights and duties with respect to information.**

5 (a) A partnership shall keep its records, if any, at its chief executive office.

6 (b) A partnership shall provide partners and the partners' agents and attorneys  
7 access to its records. It shall provide former partners and the partners' agents and  
8 attorneys access to records pertaining to the period during which they were partners.  
9 The right of access provides the opportunity to inspect and copy records during  
10 ordinary business hours. A partnership may impose a reasonable charge covering the  
11 costs of labor and material for copies of documents furnished.

12 (c) Each partner and the partnership shall furnish to a partner, and to the legal  
13 representative of a deceased partner or partner under legal disability

14 (1) without demand, any information concerning the partnership's  
15 business and affairs reasonably required for the proper exercise of the partner's rights  
16 and duties under the partnership agreement or this chapter; and

17 (2) on demand, any other information concerning the partnership's  
18 business and affairs, except to the extent the demand or the information demanded is  
19 unreasonable or otherwise improper under the circumstances.

20 **Sec. 32.06.404. General standards of partner's conduct.** (a) The only  
21 fiduciary duties a partner owes to the partnership and the other partners are the duty  
22 of loyalty and the duty of care established in (b) and (c) of this section.

23 (b) A partner's duty of loyalty to the partnership and the other partners is  
24 limited to the following:

25 (1) to account to the partnership and hold as trustee for it any property,  
26 profit, or benefit derived by the partner in the conduct and winding up of the  
27 partnership business or derived from a use by the partner of partnership property,  
28 including the appropriation of a partnership opportunity;

29 (2) to refrain from dealing with the partnership in the conduct or  
30 winding up of the partnership business as or on behalf of a party having an interest  
31 adverse to the partnership; and

1 (3) to refrain from competing with the partnership in the conduct of the  
2 partnership business before the dissolution of the partnership.

3 (c) A partner's duty of care to the partnership and the other partners in the  
4 conduct and winding up of the partnership business is limited to refraining from  
5 engaging in grossly negligent or reckless conduct, intentional misconduct, or a  
6 knowing violation of law.

7 (d) A partner shall discharge the duties to the partnership and the other  
8 partners under this chapter or under the partnership agreement and exercise any rights  
9 in accordance with the obligation of good faith and fair dealing.

10 (e) Each partner does not violate a duty or obligation under this chapter or  
11 under the partnership agreement merely because the partner's conduct furthers the  
12 partner's own interest.

13 (f) A partner may lend money to and transact other business with the  
14 partnership, and the rights and obligations of the partner are the same with regard to  
15 the loan or transaction as the rights and obligations of a person who is not a partner,  
16 subject to other applicable law.

17 (g) This section applies to a person winding up the partnership business as the  
18 personal or legal representative of the last surviving partner as if the person were a  
19 partner.

20 **Sec. 32.06.405. Actions by partnership and partners.** (a) A partnership  
21 may maintain an action against a partner for a breach of the partnership agreement, or  
22 for the violation of a duty to the partnership, causing harm to the partnership.

23 (b) A partner may maintain an action against the partnership or another partner  
24 for legal or equitable relief, with or without an accounting of partnership business, to  
25 enforce

26 (1) the partner's rights under the partnership agreement;

27 (2) the partner's rights under this chapter, including the partner's

28 (A) rights under AS 32.06.401, 32.06.403, or 32.06.404;

29 (B) right on dissociation to have the partner's interest in the  
30 partnership purchased under AS 32.06.701 or to enforce any other right under  
31 AS 32.06.601 - 32.06.603 or 32.06.701 - 32.06.705; or

1 (C) right to compel a dissolution and winding up of the  
2 partnership business under AS 32.06.801 or to enforce another right under  
3 AS 32.06.801 - 32.06.807; or

4 (3) the rights and otherwise protect the interests of the partner,  
5 including rights and interests arising independently of the partnership relationship.

6 (c) The accrual of, and any time limitation on, a right of action for a remedy  
7 under this section are governed by other law. A right to an accounting upon a  
8 dissolution and winding up does not revive a claim barred by law.

9 **Sec. 32.06.406. Continuation of partnership beyond definite term or**  
10 **particular undertaking.** (a) If a partnership for a definite term or particular  
11 undertaking is continued, without an express agreement, after the expiration of the term  
12 or completion of the undertaking, the rights and duties of the partners remain the same  
13 as they were at the expiration or completion to the extent consistent with a partnership  
14 at will.

15 (b) If the partners, or the partners who habitually acted in the business during  
16 the term or undertaking, continue the business without a settlement or liquidation of  
17 the partnership, the partners continuing the business are presumed to have agreed that  
18 the partnership will continue.

19 **Article 4. Transferees and Creditors of Partners.**

20 **Sec. 32.06.501. Partner not co-owner of partnership property.** A partner  
21 is not a co-owner of partnership property and does not have an interest in partnership  
22 property that can be transferred, either voluntarily or involuntarily.

23 **Sec. 32.06.502. Partner's transferable interest in partnership.** The only  
24 transferable interest of a partner in the partnership is the partner's share of the profits  
25 and losses of the partnership and the partner's right to receive distributions. The  
26 interest is personal property.

27 **Sec. 32.06. 503. Transfer of partner's transferable interest.** (a) A transfer,  
28 in whole or in part, of a partner's transferable interest in the partnership

29 (1) is permissible;

30 (2) does not by itself cause the partner's dissociation or a dissolution  
31 and winding up of the partnership business; and

1 (3) does not, as against the other partners or the partnership, entitle the  
2 transferee during the continuance of the partnership to participate in the management  
3 or conduct of the partnership business, to require access to information concerning  
4 partnership transactions, or to inspect or copy the partnership records.

5 (b) A transferee of a partner's transferable interest in the partnership has a  
6 right to

7 (1) receive, in accordance with the transfer, distributions to which the  
8 transferor would otherwise be entitled;

9 (2) receive upon the dissolution and winding up of the partnership  
10 business, in accordance with the transfer, the net amount otherwise distributable to the  
11 transferor; and

12 (3) seek under AS 32.06.801(6) a judicial determination that it is  
13 equitable to wind up the partnership business.

14 (c) In a dissolution and winding up, a transferee is entitled to an account of  
15 partnership transactions only from the date of the latest account agreed to by all of the  
16 partners.

17 (d) Upon transfer, the transferor retains the rights and duties of a partner other  
18 than the interest in distributions transferred.

19 (e) A partnership is not required to give effect to a transferee's rights under  
20 this section until it has notice of the transfer.

21 (f) A transfer of a partner's transferable interest in the partnership in violation  
22 of a restriction on transfer contained in the partnership agreement is ineffective as to  
23 a person having notice of the restriction at the time of transfer.

24 **Sec. 32.06.504. Partner's transferable interest subject to charging order.**

25 (a) On application by a judgment creditor of a partner or of a partner's transferee, a  
26 court having jurisdiction may charge the transferable interest of the judgment debtor  
27 to satisfy the judgment. The court may appoint a receiver of the share of the  
28 distributions due or to become due to the judgment debtor in respect of the partnership  
29 and make all other orders, directions, accounts, and inquiries the judgment debtor  
30 might have made or that the circumstances of the case may require.

31 (b) A charging order constitutes a lien on the judgment debtor's transferable

1 interest in the partnership. The court may order a foreclosure of the interest subject  
2 to the charging order at any time. The purchaser at the foreclosure sale has the rights  
3 of a transferee.

4 (c) At any time before foreclosure, an interest charged may be redeemed

5 (1) by the judgment debtor;

6 (2) with property other than partnership property by one or more of the  
7 other partners; or

8 (3) with partnership property by one or more of the other partners with  
9 the consent of all of the partners whose interests are not charged.

10 (d) This chapter does not deprive a partner of a right under exemption laws  
11 with respect to the partner's interest in the partnership.

12 (e) This section provides the exclusive remedy by which a judgment creditor  
13 of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's  
14 transferable interest in the partnership.

#### 15 Article 5. Partner's Dissociation.

16 Sec. 32.06.601. Events causing partner's dissociation. A partner is  
17 dissociated from a partnership upon the occurrence of any of the following events:

18 (1) when the partnership has notice of the partner's express will to  
19 withdraw as a partner unless a later date is specified by the partner;

20 (2) an event agreed to in the partnership agreement as causing the  
21 partner's dissociation;

22 (3) the partner's expulsion under the partnership agreement;

23 (4) the partner's expulsion by the unanimous vote of the other partners

24 if

25 (A) it is unlawful to carry on the partnership business with that  
26 partner;

27 (B) there has been a transfer of all or substantially all of that  
28 partner's transferable interest in the partnership, other than a transfer for  
29 security purposes, or a court order charging the partner's interest that has not  
30 been foreclosed;

31 (C) within 90 days after the partnership notifies a corporate

1 partner that it will be expelled because the corporate partner has filed a  
2 certificate of dissolution or the equivalent, the corporate partner's charter has  
3 been revoked, or the corporate partner's right to conduct business has been  
4 suspended by the jurisdiction of its incorporation, the certificate of dissolution  
5 is not revoked or the charter or right to conduct business is not reinstated; or

6 (D) the partner is a partnership that has been dissolved and its  
7 business is being wound up;

8 (5) on application by the partnership or another partner, the partner's  
9 expulsion by judicial determination because the partner

10 (A) engaged in wrongful conduct that adversely and materially  
11 affected the partnership business;

12 (B) wilfully or persistently committed a material breach of the  
13 partnership agreement or of a duty owed to the partnership or the other partners  
14 under AS 32.06.404; or

15 (C) engaged in conduct relating to the partnership business that  
16 makes it not reasonably practicable to carry on the business in partnership with  
17 the partner;

18 (6) the partner

19 (A) becomes a debtor in bankruptcy;

20 (B) executes an assignment for the benefit of creditors;

21 (C) seeks, consents to, or acquiesces in the appointment of a  
22 trustee, receiver, or liquidator of that partner or of all or substantially all of that  
23 partner's property; or

24 (D) fails, within 90 days after the appointment, to have vacated  
25 or stayed the appointment of a trustee, receiver, or liquidator of the partner or  
26 of all or substantially all of the partner's property, obtained without the  
27 partner's consent or acquiescence, or fails within 90 days after the expiration  
28 of a stay to have the appointment vacated;

29 (7) in the case of a partner who is an individual,

30 (A) the partner's death;

31 (B) the appointment of a guardian or general conservator for the

1 partner; or

2 (C) a judicial determination that the partner has otherwise  
3 become incapable of performing the partner's duties under the partnership  
4 agreement;

5 (8) in the case of a partner that is a trust or is acting as a partner by  
6 virtue of being a trustee of a trust, distribution of the trust's entire transferable interest  
7 in the partnership, but the substitution of a successor trustee does not by itself qualify  
8 as a distribution under this paragraph;

9 (9) in the case of a partner that is an estate or is acting as a partner by  
10 virtue of being a personal representative of an estate, distribution of the estate's entire  
11 transferable interest in the partnership, but the substitution of a successor personal  
12 representative does not by itself qualify as a distribution under this paragraph; or

13 (10) termination of a partner who is not an individual, a partnership,  
14 a corporation, a trust, or an estate.

15 **Sec. 32.06.602. Partner's power to dissociate; wrongful dissociation.** (a)  
16 A partner has the power to dissociate at any time, rightfully or wrongfully, by express  
17 will under AS 32.06.601(1).

18 (b) A partner's dissociation is wrongful only if

19 (1) the dissociation breaches an express provision of the partnership  
20 agreement; or

21 (2) in the case of a partnership for a definite term or particular  
22 undertaking, before the expiration of the term or the completion of the undertaking,

23 (A) the partner withdraws by express will, unless the withdrawal  
24 follows within 90 days after another partner's dissociation by death or  
25 otherwise under AS 32.06.601(6) - (10) or wrongful dissociation under this  
26 subsection;

27 (B) the partner is expelled by judicial determination under  
28 AS 32.06.601(5);

29 (C) the partner is dissociated by becoming a debtor in  
30 bankruptcy; or

31 (D) in the case of a partner who is not an individual, a trust

1 other than a business trust, or an estate, the partner is expelled or otherwise  
2 dissociated because it wilfully dissolved or terminated.

3 (c) A partner who wrongfully dissociates is liable to the partnership and to the  
4 other partners for damages caused by the dissociation. The liability is in addition to  
5 any other obligation of the partner to the partnership or to the other partners.

6 **Sec. 32.06.603. Effect of partner's dissociation.** (a) If a partner's  
7 dissociation results in a dissolution and winding up of the partnership business,  
8 AS 32.06.801 - 32.06.807 apply, otherwise AS 32.06.701 - 32.06.705 apply.

9 (b) Upon a partner's dissociation, the partner's

10 (1) right to participate in the management and conduct of the  
11 partnership business terminates, except as otherwise provided in AS 32.06.803;

12 (2) duty of loyalty under AS 32.06.404(b)(3) terminates; and

13 (3) duty of loyalty under AS 32.06.404(b)(1) and (2) and duty of care  
14 under AS 32.06.404(c) continue only with regard to matters arising and events  
15 occurring before the partner's dissociation unless the partner participates in winding  
16 up the partnership's business under AS 32.06.803.

17 **Article 6. Partner's Dissociation when Business not Wound Up.**

18 **Sec. 32.06.701. Purchase of dissociated partner's interest.** (a) If a partner  
19 is dissociated from a partnership without resulting in a dissolution and winding up of  
20 the partnership business under AS 32.06.801, the partnership shall cause the dissociated  
21 partner's interest in the partnership to be purchased for a buy-out price determined  
22 under (b) of this section.

23 (b) The buy-out price of a dissociated partner's interest is the amount that  
24 would have been distributable to the dissociating partner under AS 32.06.807(b) if, on  
25 the date of dissociation, the assets of the partnership were sold at a price equal to the  
26 greater of the liquidation value or the value based on a sale of the entire business as  
27 a going concern without the dissociated partner and if the partnership were wound up  
28 as of that date. Interest must be paid from the date of dissociation to the date of  
29 payment.

30 (c) Damages for wrongful dissociation under AS 32.06.602(b), and all other  
31 amounts owing, whether or not presently due, from the dissociated partner to the

1 partnership must be offset against the buy-out price. Interest must be paid from the  
2 date the amount owed becomes due to the date of payment.

3 (d) A partnership shall indemnify against all partnership liabilities a dissociated  
4 partner whose interest is being purchased, whether the liabilities are incurred before  
5 or after the dissociation, except liabilities incurred by an act of the dissociated partner  
6 under AS 32.06.702.

7 (e) If an agreement for the purchase of a dissociated partner's interest is not  
8 reached within 120 days after a written demand for payment, the partnership shall pay,  
9 or cause to be paid, in cash to the dissociated partner the amount the partnership  
10 estimates to be the buy-out price and accrued interest, reduced by any offsets and  
11 accrued interest under (c) of this section.

12 (f) If a deferred payment is authorized under (h) of this section, the partnership  
13 may tender a written offer to pay the amount it estimates to be the buy-out price and  
14 accrued interest, reduced by any offsets under (c) of this section, stating the time of  
15 payment, the amount and type of security for payment, and the other terms and  
16 conditions of the obligation.

17 (g) The payment or tender required by (e) or (f) of this section must be  
18 accompanied by

19 (1) a statement of partnership assets and liabilities as of the date of  
20 dissociation;

21 (2) the latest available partnership balance sheet and income statement,  
22 if any;

23 (3) an explanation of how the estimated amount of the payment was  
24 calculated; and

25 (4) written notice that the payment is in full satisfaction of the  
26 obligation to purchase unless, within 120 days after the written notice, the dissociated  
27 partner commences an action to determine the buy-out price, any offsets under (c) of  
28 this section, or other terms of the obligation to purchase.

29 (h) A partner who wrongfully dissociates before the expiration of a definite  
30 term or the completion of a particular undertaking is not entitled to payment of any  
31 portion of the buy-out price until the expiration of the term or completion of the

1           undertaking unless the partner establishes to the satisfaction of a court that earlier  
2           payment will not cause undue hardship to the business of the partnership. A deferred  
3           payment must be adequately secured and bear interest.

4           (i) A dissociated partner may maintain an action against the partnership under  
5           AS 32.06.405(b)(2)(B) to determine the buy-out price of that partner's interest, any  
6           offsets under (c) of this section, or other terms of the obligation to purchase. The  
7           action must be commenced within 120 days after the partnership has tendered payment  
8           or an offer to pay or within one year after written demand for payment if a payment  
9           or offer to pay is not tendered. The court shall determine the buy-out price of the  
10          dissociated partner's interest, any offset due under (c) of this section, and accrued  
11          interest and enter judgment for any additional payment or refund. If deferred payment  
12          is authorized under (h) of this section, the court shall also determine the security for  
13          payment and other terms of the obligation to purchase. The court may assess  
14          reasonable attorney fees and the fees and expenses of appraisers or other experts for  
15          a party to the action, in amounts the court finds equitable, against a party that the court  
16          finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on  
17          the partnership's failure to tender payment or an offer to pay or to comply with (g) of  
18          this section.

19          **Sec. 32.06.702. Dissociated partner's power to bind and liability to**  
20          **partnership.** (a) For two years after a partner dissociates without the dissociation  
21          resulting in a dissolution and winding up of the partnership business, the partnership,  
22          including a surviving partnership under AS 32.06.902 - 32.06.908, is bound by an act  
23          of the dissociated partner that would have bound the partnership under AS 32.06.301  
24          before dissociation only if at the time of entering into the transaction the other party

25                 (1) reasonably believed that the dissociated partner was then a partner;

26                 (2) did not have notice of the partner's dissociation; and

27                 (3) is not considered to have had knowledge under AS 32.06.303(c) or  
28          notice under AS 32.06.704(c).

29          (b) A dissociated partner is liable to the partnership for damage that is caused  
30          to the partnership by an obligation incurred by the dissociated partner after dissociation  
31          and for which the partnership is liable under (a) of this section.

1           **Sec. 32.06.703. Dissociated partner's liability to other persons.** (a) A  
2 partner's dissociation does not of itself discharge the partner's liability for a  
3 partnership obligation incurred before dissociation. A dissociated partner is not liable  
4 for a partnership obligation incurred after dissociation, except as otherwise provided  
5 in (b) of this section.

6           (b) A partner who dissociates without the dissociation resulting in a dissolution  
7 and winding up of the partnership business is liable as a partner to the other party in  
8 a transaction entered into by the partnership, or a surviving partnership under  
9 AS 32.06.902 - 32.06.908, within two years after the partner's dissociation only if the  
10 partner is liable for the obligation under AS 32.06.306 and at the time of entering into  
11 the transaction the other party

12                   (1) reasonably believed that the dissociated partner was then a partner;

13                   (2) did not have notice of the partner's dissociation; and

14                   (3) is not considered to have had knowledge under AS 32.06.303(e) or  
15 notice under AS 32.06.704(c).

16           (c) By agreement with the partnership creditor and the partners continuing the  
17 business, a dissociated partner may be released from liability for a partnership  
18 obligation.

19           (d) A dissociated partner is released from liability for a partnership obligation  
20 if a partnership creditor, with notice of the partner's dissociation but without the  
21 partner's consent, agrees to a material alteration in the nature or time of payment of  
22 a partnership obligation.

23           **Sec. 32.06.704. Statement of dissociation.** (a) A dissociated partner or the  
24 partnership may file a statement of dissociation stating the name of the partnership and  
25 that the partner is dissociated from the partnership.

26           (b) A statement of dissociation is a limitation on the authority of a dissociated  
27 partner for the purposes of AS 32.06.303(d) and (e).

28           (c) In AS 32.06.702(a)(3) and 32.06.703(b)(3), a person who is not a partner  
29 is considered to have notice of the dissociation 90 days after the statement of  
30 dissociation is filed.

31           **Sec. 32.06.705. Continued use of partnership name.** Continued use of a

1 partnership name, or of a dissociated partner's name as part of a partnership name, by  
2 partners continuing the business does not by itself make the dissociated partner liable  
3 for an obligation of the partners or the partnership continuing the business.

4 **Article 7. Winding up Partnership Business.**

5 **Sec. 32.06.801. Events causing dissolution and winding up of partnership**  
6 **business.** A partnership is dissolved, and its business must be wound up, only on the  
7 occurrence of any of the following events:

8 (1) in a partnership at will, when the partnership has notice from a  
9 partner, other than a partner who is dissociated under AS 32.06.601(2) - (10), of that  
10 partner's express will to withdraw as a partner, or on a later date specified by the  
11 partner;

12 (2) in a partnership for a definite term or particular undertaking,

13 (A) within 90 days after a partner's dissociation by death or by  
14 other event under AS 32.06.601(6) - (10) or by wrongful dissociation under  
15 AS 32.06.602(b), at least one-half of the remaining partners state their express  
16 will to wind up the partnership business; in this subparagraph, a partner's  
17 rightful dissociation under AS 32.06.602(b)(2)(A) constitutes the expression of  
18 that partner's will to wind up the partnership business;

19 (B) the express will of all of the partners to wind up the  
20 partnership business; or

21 (C) the expiration of the term or the completion of the  
22 undertaking;

23 (3) an event agreed to in the partnership agreement resulting in the  
24 winding up of the partnership business;

25 (4) an event that makes it unlawful for all or substantially all of the  
26 business of the partnership to be continued, but a cure of illegality within 90 days after  
27 notice to the partnership of the event is effective retroactively to the date of the event  
28 for purposes of this section;

29 (5) on application by a partner, a judicial determination that

30 (A) the economic purpose of the partnership is likely to be  
31 unreasonably frustrated;

1 (B) another partner has engaged in conduct relating to the  
2 partnership business that makes it not reasonably practicable to carry on the  
3 business in partnership with that partner; or

4 (C) it is not otherwise reasonably practicable to carry on the  
5 partnership business in conformity with the partnership agreement; or

6 (6) on application by a transferee of a partner's transferable interest,  
7 a judicial determination that it is equitable to wind up the partnership business

8 (A) after the expiration of the term or completion of the  
9 undertaking if the partnership was for a definite term or particular undertaking  
10 at the time of the transfer or entry of the charging order that gave rise to the  
11 transfer; or

12 (B) at any time if the partnership was a partnership at will at  
13 the time of the transfer or entry of the charging order that gave rise to the  
14 transfer.

15 **Sec. 32.06.802. Partnership continuation after dissolution.** (a) Subject to  
16 (b) of this section, a partnership continues after dissolution only for the purpose of  
17 winding up its business. The partnership is terminated when the winding up of its  
18 business is completed.

19 (b) At any time after the dissolution of a partnership and before the winding  
20 up of its business is completed, all of the partners, including any dissociating partner  
21 other than a wrongfully dissociating partner, may waive the right to have the  
22 partnership's business wound up and the partnership terminated. In that event,

23 (1) the partnership resumes carrying on its business as if dissolution  
24 had never occurred, and any liability incurred by the partnership or a partner after the  
25 dissolution and before the waiver is determined as if dissolution had never occurred;  
26 and

27 (2) the rights of a third party accruing under AS 32.06.804(1) or arising  
28 out of conduct in reliance on the dissolution before the third party knew or received  
29 a notification of the waiver may not be adversely affected.

30 **Sec. 32.06.803. Right to wind up partnership business.** (a) After  
31 dissolution, a partner who has not wrongfully dissociated may participate in winding

1 up the partnership's business, but, on application of a partner, partner's legal  
2 representative, or transferee, the superior court, for good cause shown, may order  
3 judicial supervision of the winding up.

4 (b) The legal representative of the last surviving partner may wind up a  
5 partnership's business.

6 (c) A person winding up a partnership's business may preserve the partnership  
7 business or property as a going concern for a reasonable time, prosecute and defend  
8 actions and proceedings, whether civil, criminal, or administrative, settle and close the  
9 partnership's business, dispose of and transfer the partnership's property, discharge the  
10 partnership's liabilities, distribute the assets of the partnership under AS 32.06.807,  
11 settle disputes by mediation or arbitration, and perform other necessary acts.

12 **Sec. 32.06.804. Partner's power to bind partnership after dissolution.**

13 Subject to AS 32.06.805, a partnership is bound by a partner's act after dissolution that

14 (1) is appropriate for winding up the partnership business; or

15 (2) would have bound the partnership under AS 32.06.301 before  
16 dissolution if the other party to the transaction did not have notice of the dissolution.

17 **Sec. 32.06.805. Statement of dissolution.** (a) After dissolution, a partner  
18 who has not wrongfully dissociated may file a statement of dissolution stating the  
19 name of the partnership and that the partnership has dissolved and is winding up its  
20 business.

21 (b) A statement of dissolution cancels a filed statement of partnership authority  
22 for the purposes of AS 32.06.303(d) and is a limitation on authority under  
23 AS 32.06.303(e).

24 (c) Under AS 32.06.301 and 32.06.804, a person who is not a partner is  
25 considered to have notice of the dissolution and the limitation on the partners'  
26 authority as a result of the statement of dissolution 90 days after it is filed.

27 (d) After filing and, if appropriate, recording a statement of dissolution, a  
28 dissolved partnership may file and, if appropriate, record a statement of partnership  
29 authority that will operate with respect to a person who is not a partner under  
30 AS 32.06.303(d) and (e) in any transaction, whether or not the transaction is  
31 appropriate for winding up the partnership business.

1           **Sec. 32.06.806. Partner's liability to other partners after dissolution.** (a)

2           Except as otherwise provided in (b) of this section, after dissolution, a partner is liable  
3           to the other partners for the partner's share of any partnership liability incurred under  
4           AS 32.06.804.

5           (b) A partner who, with knowledge of the dissolution, incurs a partnership  
6           liability under AS 32.06.804(2) by an act that is not appropriate for winding up the  
7           partnership business is liable to the partnership for any damage caused to the  
8           partnership arising from the liability.

9           **Sec. 32.06.807. Settlement of accounts and contributions among partners.**

10          (a) In winding up a partnership's business, the assets of the partnership, including the  
11          contributions of the partners required by this section, must be applied to discharge its  
12          obligations to creditors, including, to the extent permitted by law, partners who are  
13          creditors. Any surplus must be applied to pay in cash the net amount distributable to  
14          partners in accordance with the partners' right to distributions under (b) of this section.

15          (b) Each partner is entitled to a settlement of all partnership accounts upon  
16          winding up the partnership business. In settling accounts among the partners, the  
17          profits and losses that result from the liquidation of the partnership assets must be  
18          credited and charged to the partners' accounts. The partnership shall make a  
19          distribution to a partner in an amount equal to any excess of the credits over the  
20          charges in the partner's account. A partner shall contribute to the partnership an  
21          amount equal to any excess of the charges over the credits in the partner's account, but  
22          excluding from the calculation charges attributable to an obligation for which the  
23          partner is not personally liable under AS 32.06.306.

24          (c) If a partner fails to contribute, all of the other partners shall contribute the  
25          full amount required under (b) of this section, in the proportions in which those  
26          partners share partnership losses, the additional amount necessary to satisfy the  
27          partnership obligations for which the partners are personally liable under AS 32.06.306.  
28          A partner or partner's legal representative may recover from the other partners any  
29          contributions the partner makes to the extent the amount contributed exceeds that  
30          partner's share of the partnership obligations for which the partner is personally liable  
31          under AS 32.06.306.

1 (d) After the settlement of accounts, each partner shall contribute, in the  
2 proportion in which the partner shares partnership losses, the amount necessary to  
3 satisfy partnership obligations that were not known at the time of the settlement and  
4 for which the partner is personally liable under AS 32.06.306.

5 (e) The estate of a deceased partner is liable for the partner's obligation to  
6 contribute to the partnership.

7 (f) An assignee for the benefit of creditors of a partnership or a partner, or a  
8 person appointed by a court to represent creditors of a partnership or a partner, may  
9 enforce a partner's obligation to contribute to the partnership.

#### 10 Article 8. Conversions and Mergers.

11 Sec. 32.06.902. Conversion of partnership to limited partnership. (a) A  
12 partnership may be converted to a limited partnership under this section.

13 (b) The terms and conditions of a conversion of a partnership to a limited  
14 partnership must be approved by all of the partners or by a number or percentage  
15 specified for conversion in the partnership agreement.

16 (c) After the conversion is approved by the partners, the partnership shall file  
17 a certificate of limited partnership with the department. The certificate must include

18 (1) a statement that the partnership was converted to a limited  
19 partnership from a partnership;

20 (2) the partnership's former name; and

21 (3) a statement of the number of votes cast by the partners for and  
22 against the conversion and, if the vote is less than unanimous, the number or  
23 percentage required to approve the conversion under the partnership agreement.

24 (d) The conversion takes effect when the certificate of limited partnership is  
25 filed or at a later date specified in the certificate.

26 (e) A general partner who becomes a limited partner as a result of the  
27 conversion remains liable as a general partner for an obligation incurred by the  
28 partnership before the conversion takes effect. If the other party to a transaction with  
29 the limited partnership reasonably believes when entering the transaction that the  
30 limited partner is a general partner, the limited partner is liable for an obligation  
31 incurred by the limited partnership within 90 days after the conversion takes effect.

1 The limited partner's liability for all other obligations of the limited partnership  
2 incurred after the conversion takes effect is that of a limited partner under AS 32.11.

3 **Sec. 32.06.903. Conversion of limited partnership to partnership.** (a) A  
4 limited partnership may be converted to a partnership under this section.

5 (b) Notwithstanding a provision to the contrary in a limited partnership  
6 agreement, the terms and conditions of a conversion of a limited partnership to a  
7 partnership must be approved by all of the partners.

8 (c) After the conversion is approved by the partners, the limited partnership  
9 shall cancel its certificate of limited partnership.

10 (d) The conversion takes effect when the certificate of limited partnership is  
11 canceled.

12 (e) A limited partner who becomes a general partner as a result of the  
13 conversion remains liable only as a limited partner for an obligation incurred by the  
14 limited partnership before the conversion takes effect. The partner is liable as a  
15 general partner for an obligation of the partnership incurred after the conversion takes  
16 effect.

17 **Sec. 32.06.904. Effect of conversion; entity unchanged.** (a) A partnership  
18 or limited partnership that has been converted under AS 32.06.902 - 32.06.908 is for  
19 all purposes the same entity that existed before the conversion.

20 (b) When a conversion takes effect,

21 (1) all property owned by the converting partnership or limited  
22 partnership remains vested in the converted entity;

23 (2) all obligations of the converting partnership or limited partnership  
24 continue as obligations of the converted entity; and

25 (3) an action or proceeding pending against the converting partnership  
26 or limited partnership may be continued as if the conversion had not occurred.

27 **Sec. 32.06.905. Merger of partnerships.** (a) Under a plan of merger  
28 approved under (c) of this section, a partnership may be merged with one or more  
29 partnerships or limited partnerships.

30 (b) The plan of merger must state

31 (1) the name of each partnership or limited partnership that is a party

1 to the merger;

2 (2) the name of the surviving entity into which the other partnerships  
3 or limited partnerships will merge;

4 (3) whether the surviving entity is a partnership or a limited partnership  
5 and the status of each partner;

6 (4) the terms and conditions of the merger;

7 (5) the manner and basis of converting all or part of the interests of  
8 each party to the merger into interests or obligations of the surviving entity or into  
9 money or other property; and

10 (6) the street address of the surviving entity's chief executive office.

11 (c) The plan of merger must be approved

12 (1) in the case of a partnership that is a party to the merger, by all of  
13 the partners or a number or percentage specified for merger in the partnership  
14 agreement; and

15 (2) in the case of a limited partnership that is a party to the merger, by  
16 the vote required for approval of a merger by the law of the state or foreign  
17 jurisdiction where the limited partnership is organized and, in the absence of such a  
18 specifically applicable law, by all of the partners, notwithstanding a provision to the  
19 contrary in the partnership agreement.

20 (d) After a plan of merger is approved and before the merger takes effect, the  
21 plan may be amended or abandoned as provided in the plan.

22 (e) The merger takes effect on the later of

23 (1) the approval of the plan of merger by all parties to the merger  
24 under (c) of this section;

25 (2) the filing of all documents required by law to be filed as a  
26 condition to the effectiveness of the merger; or

27 (3) an effective date specified in the plan of merger.

28 **Sec. 32.06.906. Effect of merger.** (a) When a merger takes effect,

29 (1) the separate existence of every partnership or limited partnership  
30 that is a party to the merger, other than the surviving entity, ceases;

31 (2) all property owned by each of the merged partnerships or limited

1 partnerships vests in the surviving entity;

2 (3) all obligations of every partnership or limited partnership that is a  
3 party to the merger become the obligations of the surviving entity; and

4 (4) an action or proceeding pending against a partnership or limited  
5 partnership that is a party to the merger may be continued as if the merger had not  
6 occurred, or the surviving entity may be substituted as a party to the action or  
7 proceeding.

8 (b) The commissioner is the agent for service of process in an action or  
9 proceeding against a surviving foreign partnership or limited partnership to enforce an  
10 obligation of a domestic partnership or limited partnership that is a party to a merger.  
11 The surviving entity shall promptly notify the department of the mailing address of its  
12 chief executive office and of any change of address. Upon receipt of process, the  
13 department shall mail a copy of the process to the surviving foreign partnership or  
14 limited partnership.

15 (c) A partner of the surviving partnership or limited partnership is liable for

16 (1) all obligations of a party to the merger for which the partner was  
17 personally liable before the merger;

18 (2) all obligations of the surviving entity incurred before the merger by  
19 a party to the merger and not covered by (1) of this subsection, but the obligations  
20 under this paragraph may be satisfied only out of property of the entity; and

21 (3) except as otherwise provided in AS 32.06.306, all obligations of the  
22 surviving entity incurred after the merger takes effect, but the obligations under this  
23 paragraph may be satisfied only out of property of the entity if the partner is a limited  
24 partner.

25 (d) If the obligations incurred before the merger by a party to the merger are  
26 not satisfied out of the property of the surviving partnership or limited partnership, the  
27 general partners of the party to the merger immediately before the effective date of the  
28 merger shall contribute the amount necessary to satisfy the party's obligations to the  
29 surviving entity, in the manner provided in AS 32.06.807, in AS 32.11, or in the  
30 limited partnership law of the jurisdiction where the party was formed, as the case may  
31 be, as if the merged party were dissolved.

1 (e) As of the date the merger takes effect, a partner of a party to a merger who  
2 does not become a partner of the surviving partnership or limited partnership is  
3 dissociated from the entity of which that partner was a partner. The surviving entity  
4 shall cause the partner's interest in the entity to be purchased under AS 32.06.701 or  
5 another statute specifically applicable to that partner's interest with respect to a merger.  
6 The surviving entity is bound under AS 32.06.702 by an act of a general partner  
7 dissociated under this subsection, and the partner is liable under AS 32.06.703 for  
8 transactions entered into by the surviving entity after the merger takes effect.

9 **Sec. 32.06.907. Statement of merger.** (a) After a merger, the surviving  
10 partnership or limited partnership may file a statement that one or more partnerships  
11 or limited partnerships have merged into the surviving entity.

12 (b) A statement of merger must contain

13 (1) the name of each partnership or limited partnership that is a party  
14 to the merger;

15 (2) the name of the surviving entity into which the other partnerships  
16 or limited partnership are merged;

17 (3) the street address of the surviving entity's chief executive office and  
18 of any office in this state; and

19 (4) whether the surviving entity is a partnership or a limited  
20 partnership.

21 (c) Except as otherwise provided in (d) of this section, in AS 32.06.302  
22 property of the surviving partnership or limited partnership that before the merger was  
23 held in the name of another party to the merger is property held in the name of the  
24 surviving entity upon filing a statement of merger.

25 (d) In AS 32.06.302, real property of the surviving partnership or limited  
26 partnership that before the merger was held in the name of another party to the merger  
27 is property held in the name of the surviving entity upon recording a certified copy of  
28 the statement of merger in the office for recording transfers of the real property.

29 (e) A filed and, if appropriate, recorded statement of merger, executed and  
30 declared to be accurate under AS 32.06.970(c), stating the name of a partnership or  
31 limited partnership that is a party to the merger in whose name property was held

1 before the merger and the name of the surviving entity, but not containing all of the  
2 other information required by (b) of this section, operates with respect to the  
3 partnerships or limited partnerships named to the extent provided in (c) and (d) of this  
4 section.

5 **Sec. 32.06.908. Nonexclusivity.** AS 32.06.902 - 32.06.908 are not exclusive.  
6 Partnerships or limited partnerships may be converted or merged in any other manner  
7 provided by law.

#### 8 **Article 9. Limited Liability Partnerships.**

9 **Sec. 32.06.910. Statement of qualification.** (a) A partnership may become  
10 a limited liability partnership under this section.

11 (b) The terms and conditions on which a partnership becomes a limited  
12 liability partnership must be approved by the vote necessary to amend the partnership  
13 agreement except, in the case of a partnership agreement that expressly considers  
14 obligations to contribute to the partnership, by the vote necessary to amend those  
15 contribution provisions.

16 (c) After the approval required by (b) of this section, a partnership may  
17 become a limited liability partnership by filing a statement of qualification. The  
18 statement must contain

19 (1) the name of the partnership;

20 (2) the street address of the partnership's chief executive office and, if  
21 different, the street address of an office in this state, if any;

22 (3) if the partnership does not have an office in this state, the name and  
23 street address of the partnership's agent for service of process;

24 (4) a statement that the partnership elects to be a limited liability  
25 partnership; and

26 (5) a deferred effective date, if any.

27 (d) The agent of a limited liability partnership for service of process must be  
28 an individual who is a resident of this state or a person authorized to do business in  
29 this state.

30 (e) The status of a partnership as a limited liability partnership is effective on  
31 the later of the filing of the statement or a date specified in the statement. The status

1 remains effective, regardless of changes in the partnership, until it is cancelled under  
2 AS 32.06.970(d) or revoked under AS 32.06.920.

3 (f) The status of a partnership as a limited liability partnership and the liability  
4 of its partners are not affected by errors or later changes in the information required  
5 to be contained in the statement of qualification under (c) of this section.

6 (g) The filing of a statement of qualification establishes that a partnership has  
7 satisfied all conditions precedent to the qualification of the partnership as a limited  
8 liability partnership.

9 (h) An amendment or cancellation of a statement of qualification is effective  
10 when it is filed or on a deferred effective date specified in the amendment or  
11 cancellation.

12 **Sec. 32.06.915. Name.** The name of a limited liability partnership must end  
13 with "Registered Limited Liability Partnership," "Limited Liability Partnership,"  
14 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."

15 **Sec. 32.06.920. Annual report; revocation of qualification.** (a) A limited  
16 liability partnership, and a foreign limited liability partnership authorized to transact  
17 business in this state, shall file with the department an annual report that contains

18 (1) the name of the limited liability partnership and the state or other  
19 jurisdiction under whose laws the foreign limited liability partnership is formed;

20 (2) the street address of the partnership's chief executive office and, if  
21 different, the street address of an office of the partnership in this state, if any; and

22 (3) if the partnership does not have an office in this state, the name and  
23 street address of the partnership's current agent for service of process.

24 (b) An annual report must be filed between January 1 and April 1 of each year  
25 following the calendar year when a partnership files a statement of qualification or a  
26 foreign partnership becomes authorized to transact business in this state.

27 (c) The department may revoke the statement of qualification of a partnership  
28 that fails to file an annual report when due or pay the required filing fee. To revoke,  
29 the department shall provide the partnership at least 60 days' written notice of intent  
30 to revoke the statement. The notice must be mailed to the partnership at its chief  
31 executive office stated in the last filed statement of qualification or annual report. The

1 notice must specify the annual report that has not been filed or the fee that has not  
2 been paid, and the effective date of the revocation. The revocation is not effective if  
3 the annual report is filed and the fee is paid before the effective date of the revocation.

4 (d) A revocation under (c) of this section only affects a partnership's status as  
5 a limited liability partnership and is not an event of dissolution of the partnership.

6 (e) A partnership whose statement of qualification has been revoked may apply  
7 to the department for reinstatement within two years after the effective date of the  
8 revocation. The application must state

9 (1) the name of the partnership and the effective date of the revocation;  
10 and

11 (2) that the ground for revocation either did not exist or has been  
12 corrected.

13 (f) A reinstatement under (e) of this section relates back to and takes effect on  
14 the effective date of the revocation, and the partnership's status as a limited liability  
15 partnership continues as if the revocation had never occurred.

16 **Sec. 32.06.930. Law governing foreign limited liability partnerships.** (a)  
17 The law under which a foreign limited liability partnership is formed governs relations  
18 between and among the partners and between the partners and the partnership and the  
19 liability of partners for obligations of the partnership.

20 (b) A foreign limited liability partnership may not be denied a statement of  
21 foreign qualification by reason of any difference between the law under which the  
22 partnership was formed and the law of this state.

23 (c) A statement of foreign qualification does not authorize a foreign limited  
24 liability partnership to engage in a business or exercise a power that a partnership may  
25 not engage in or exercise in this state as a limited liability partnership.

26 **Sec. 32.06.935. Statement of foreign qualification.** (a) Before transacting  
27 business in this state, a foreign limited liability partnership must file a statement of  
28 foreign qualification. The statement must contain

29 (1) the name of the foreign limited liability partnership that satisfies the  
30 requirements of the state or other jurisdiction under whose law it is formed and ends  
31 with "Registered Limited Liability Partnership," "Limited Liability Partnership,"

1 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

2 (2) the street address of the partnership's chief executive office and, if  
3 different, the street address of an office of the partnership in this state, if any;

4 (3) if there is not an office of the partnership in this state, the name and  
5 street address of the partnership's agent for service of process; and

6 (4) a deferred effective date, if any.

7 (b) The agent of a foreign limited liability company for service of process  
8 must be an individual who is a resident of this state or a person authorized to do  
9 business in this state.

10 (c) The status of a partnership as a foreign limited liability partnership is  
11 effective on the later of the filing of the statement of foreign qualification or a date  
12 specified in the statement. The status remains effective, regardless of changes in the  
13 partnership, until it is cancelled under AS 32.06.970(d) or revoked under  
14 AS 32.06.920.

15 (d) An amendment or cancellation of a statement of foreign qualification is  
16 effective when it is filed or on a deferred effective date specified in the amendment  
17 or cancellation.

18 **Sec. 32.06.940. Effect of failure to qualify.** (a) A foreign limited liability  
19 partnership transacting business in this state may not maintain an action or proceeding  
20 in this state unless it has in effect a statement of foreign qualification.

21 (b) The failure of a foreign limited liability partnership to have in effect a  
22 statement of foreign qualification does not impair the validity of a contract or act of  
23 the foreign limited liability partnership or preclude it from defending an action or  
24 proceeding in this state.

25 (c) A limitation on personal liability of a partner is not waived solely by  
26 transacting business in this state without a statement of foreign qualification.

27 (d) If a foreign limited liability partnership transacts business in this state  
28 without a statement of foreign qualification, the commissioner is its agent for service  
29 of process with respect to a right of action arising out of the transaction of business  
30 in this state.

31 **Sec. 32.06.945. Activities not constituting transacting business.** (a)

1 Activities of a foreign limited liability partnership that do not constitute transacting  
2 business under AS 32.06.930 - 32.06.950 include

- 3 (1) maintaining, defending, or settling an action or proceeding;  
4 (2) holding meetings of its partners or carrying on another activity  
5 concerning its internal affairs;  
6 (3) maintaining bank accounts;  
7 (4) maintaining offices or agencies for the transfer, exchange, and  
8 registration of the partnership's own securities or maintaining trustees or depositories  
9 for those securities;  
10 (5) selling through independent contractors;  
11 (6) soliciting or obtaining orders, whether by mail or through  
12 employees or agents or by another method, if the orders require acceptance outside this  
13 state before they become contracts;  
14 (7) creating or acquiring indebtedness, with or without a mortgage, or  
15 other security interest in property;  
16 (8) collecting debts or foreclosing mortgages or other security interests  
17 in property securing the debts, and holding, protecting, and maintaining property so  
18 acquired;  
19 (9) conducting an isolated transaction that is completed within 30 days  
20 and is not one transaction in the course of similar transactions; and  
21 (10) transacting business in interstate commerce.

22 (b) In AS 32.06.930 - 32.06.950, the ownership in this state of income-  
23 producing real property or tangible personal property, other than property excluded  
24 under (a) of this section, constitutes transacting business in this state.

25 (c) This section does not apply in determining the contacts or activities that  
26 may subject a foreign limited liability partnership to service of process, taxation, or  
27 regulation under another law of this state.

28 **Sec. 32.06.950. Action by attorney general.** The attorney general may  
29 maintain an action to restrain a foreign limited liability partnership from transacting  
30 business in this state in violation of AS 32.06.930 - 32.06.950.

31 **Article 10. Miscellaneous Provisions.**

1           **Sec. 32.06.955. Knowledge and notice.** (a) A person knows a fact if the  
2 person has actual knowledge of it.

3           (b) A person has notice of a fact if the person

4                 (1) knows of it;

5                 (2) has received a notification of it; or

6                 (3) has reason to know it exists from all of the facts known to the  
7 person at the time in question.

8           (c) A person notifies or gives a notification to another person by taking steps  
9 reasonably required to inform the other person in ordinary course, whether or not the  
10 other person learns of it.

11           (d) A person receives a notification when the notification

12                 (1) comes to the person's attention; or

13                 (2) is duly delivered at the person's place of business or at any other  
14 place held out by the person as a place for receiving communications.

15           (e) Except as otherwise provided in (f) of this section, a person other than an  
16 individual knows, has notice, or receives a notification of a fact for purposes of a  
17 particular transaction when the individual conducting the transaction knows, has notice  
18 of, or receives a notification of the fact, or in any event when the fact would have  
19 been brought to the individual's attention if the person had exercised reasonable  
20 diligence. The person exercises reasonable diligence if the person maintains  
21 reasonable routines for communicating significant information to the individual  
22 conducting the transaction and there is reasonable compliance with the routines.  
23 Reasonable diligence does not require an individual acting for the person to  
24 communicate information unless the communication is part of the individual's regular  
25 duties or the individual has reason to know of the transaction and that the transaction  
26 would be materially affected by the information.

27           (f) A partner's knowledge, notice, or receipt of a notification of a fact relating  
28 to the partnership is effective immediately as knowledge by, notice to, or receipt of a  
29 notification by the partnership, except in the case of a fraud on the partnership  
30 committed by or with the consent of that partner.

31           **Sec. 32.06.960. Effect of partnership agreement; nonwaivable provisions.**

1 (a) Except as otherwise provided in (b) of this section, relations between and among  
2 the partners and between the partners and the partnership are governed by the  
3 partnership agreement. To the extent the partnership agreement does not otherwise  
4 provide, this chapter governs relations between and among the partners and between  
5 the partners and the partnership.

6 (b) The partnership agreement may not

7 (1) vary the rights and duties under AS 32.06.970 except to eliminate  
8 the duty to provide copies of statements to all of the partners;

9 (2) unreasonably restrict the right of access to records under  
10 AS 32.06.403(b);

11 (3) eliminate the duty of loyalty under AS 32.06.404(b) or  
12 32.06.603(b)(3), but

13 (A) the partnership agreement may identify specific types or  
14 categories of activities that do not violate the duty of loyalty, if not manifestly  
15 unreasonable; or

16 (B) all of the partners or a number or percentage specified in  
17 the partnership agreement may authorize or ratify, after full disclosure of all  
18 material facts, a specific act or transaction that otherwise would violate the  
19 duty of loyalty;

20 (4) unreasonably reduce the duty of care under AS 32.06.404(c) or  
21 32.06.603(b)(3);

22 (5) eliminate the obligation of good faith and fair dealing under  
23 AS 32.06.404(d), but the partnership agreement may prescribe the standards by which  
24 the performance of the obligation is to be measured, if the standards are not manifestly  
25 unreasonable;

26 (6) vary the power to dissociate as a partner under AS 32.06.602(a),  
27 except to require the notice under AS 32.06.601(1) to be in writing;

28 (7) vary the right of a court to expel a partner in the events specified  
29 in AS 32.06.601(5);

30 (8) vary the requirement to wind up the partnership business in cases  
31 under AS 32.06.801(4), (5), or (6);

1 (9) vary the law applicable to a limited liability partnership under  
2 AS 32.06.975(b); or

3 (10) restrict rights of third parties under this chapter.

4 **Sec. 32.06.965. Supplemental principles of law.** (a) Unless displaced by  
5 particular provisions of this chapter, the principles of law and equity supplement this  
6 chapter.

7 (b) If an obligation to pay interest arises under this chapter and the rate is not  
8 specified, the rate is governed by AS 45.45.010.

9 **Sec. 32.06.970. Execution, filing, and recording of statements.** (a) A  
10 statement may be filed with the department. A certified copy of a statement that is  
11 filed in an office in another state may be filed with the department. Either filing has  
12 the effect provided in this chapter with respect to partnership property located in or  
13 transactions that occur in this state.

14 (b) A certified copy of a statement that has been filed with the department and  
15 recorded in the office for recording transfers of real property has the effect provided  
16 for recorded statements in this chapter. A recorded statement that is not a certified  
17 copy of a statement filed with the department does not have the effect provided for  
18 recorded statements in this chapter.

19 (c) A statement filed by a partnership must be executed by at least two  
20 partners. Other statements must be executed by a partner or other person authorized  
21 by this chapter. An individual who executes a statement as, or on behalf of, a partner  
22 or other person named as a partner in a statement shall personally declare under  
23 penalty of perjury that the contents of the statement are accurate.

24 (d) A person authorized by this chapter to file a statement may amend or  
25 cancel the statement by filing an amendment or cancellation that names the  
26 partnership, identifies the statement, and states the substance of the amendment or  
27 cancellation.

28 (e) A person who files a statement under this section shall promptly send a  
29 copy of the statement to every nonfiling partner and to any other person named as a  
30 partner in the statement. Failure to send a copy of a statement to a partner or other  
31 person does not limit the effectiveness of the statement as to a person who is not a

1 partner.

2 (f) The department may collect a fee for filing or providing a certified copy  
3 of a statement.

4 **Sec. 32.06.975. Governing law.** (a) Except as otherwise provided in (b) of  
5 this section, the law of the jurisdiction where a partnership has its chief executive  
6 office governs the relations between and among the partners and between the partners  
7 and the partnership.

8 (b) The law of this state governs relations between and among the partners and  
9 between the partners and the partnership and the liability of partners for an obligation  
10 of a limited liability partnership.

11 **Sec. 32.06.980. Regulations.** The department may adopt regulations under  
12 AS 44.62 (Administrative Procedure Act) to implement this chapter.

13 **Sec. 32.06.985. Partnership subject to amendment or repeal of chapter.**  
14 A partnership governed by this chapter is subject to an amendment or repeal of this  
15 chapter.

#### 16 **Article 11. General Provisions.**

17 **Sec. 32.06.990. Uniformity of application and construction.** This chapter  
18 shall be applied and construed to effectuate its general purpose to make uniform the  
19 law with respect to the subject of this chapter among states enacting it.

20 **Sec. 32.06.995. Definitions.** (a) In AS 32.06.902 - 32.06.908,

21 (1) "general partner" means a partner in a partnership and a general  
22 partner in a limited partnership;

23 (2) "limited partner" means a limited partner in a limited partnership;

24 (3) "limited partnership" means a limited partnership created under  
25 AS 32.11, predecessor law, or a comparable law of another jurisdiction;

26 (4) "partner" includes both a general partner and a limited partner.

27 (b) In this chapter, unless the context indicates otherwise,

28 (1) "business" includes a trade, an occupation, or a profession;

29 (2) "commissioner" means the commissioner of commerce and  
30 economic development;

31 (3) "debtor in bankruptcy" means a person who is the subject of

1 (A) an order for relief under 11 U.S.C. (Bankruptcy Code) or  
2 a comparable order under a successor statute of general application; or

3 (B) a comparable order under federal, state, or foreign law  
4 governing insolvency;

5 (4) "department" means the Department of Commerce and Economic  
6 Development;

7 (5) "distribution" means a transfer of money or other property from a  
8 partnership to a partner in the partner's capacity as a partner or to the partner's  
9 transferee;

10  
11 (6) "foreign limited liability partnership" means a partnership that

12 (A) is formed under laws other than the laws of this state; and

13 (B) has the status of a limited liability partnership under those  
14 laws;

15 (7) "limited liability partnership" means a partnership that has filed a  
16 statement of qualification under AS 32.06.910 and does not have a similar statement  
17 in effect in another jurisdiction;

18 (8) "partnership" means an association of two or more persons to carry  
19 on as co-owners a business for profit formed under AS 32.06.202, predecessor law, or  
20 a comparable law of another jurisdiction;

21 (9) "partnership agreement" means the agreement, whether written, oral,  
22 or implied, among the partners concerning the partnership, including amendments to  
23 the partnership agreement;

24 (10) "partnership at will" means a partnership in which the partners  
25 have not agreed to remain partners until the expiration of a definite term or the  
26 completion of a particular undertaking;

27 (11) "partnership interest" or "partner's interest in the partnership"  
28 means all of a partner's interests in the partnership, including the partner's transferable  
29 interest and all management and other rights;

30 (12) "person" means an individual, corporation, business trust, estate,  
31 trust, partnership, association, joint venture, government, governmental subdivision,

1 agency, or instrumentality, or any other legal or commercial entity;

2 (13) "property" means all property, including real, personal, mixed,  
3 tangible, or intangible property, or an interest in property;

4 (14) "state" means a state of the United States, the District of  
5 Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession  
6 subject to the jurisdiction of the United States;

7 (15) "statement" means a statement of partnership authority under  
8 AS 32.06.303, a statement of denial under AS 32.06.304, a statement of dissociation  
9 under AS 32.06.704, a statement of dissolution under AS 32.06.805, a statement of  
10 merger under AS 32.06.907, a statement of qualification under AS 32.06.910, a  
11 statement of foreign qualification under AS 32.06.935, or an amendment or  
12 cancellation of any of the foregoing;

13 (16) "transfer" includes an assignment, conveyance, lease, mortgage,  
14 deed, and encumbrance.

15 Sec. 32.06.997. Short title. This chapter may be cited as the "Uniform  
16 Partnership Act."

17 \* Sec. 3. AS 32.11.890 is amended to read:

18 Sec. 32.11.890. Rules for conversions and other cases not covered by  
19 chapter. In a case not provided for in this chapter, including conversion of a  
20 partnership to a limited partnership and conversion of a limited partnership to  
21 a partnership, the provisions of AS 32.06 [AS 32.05] govern.

22 \* Sec. 4. AS 32.05 is repealed.

23 \* Sec. 5. COURT RULES. (a) AS 32.06.701(i), enacted by sec. 2 of this Act, changes

24 (1) Rule 79, Alaska Rules of Civil Procedure, by allowing a court to award  
25 expert fees and expenses against certain parties, rather than awarding the costs allowed by  
26 Rule 79;

27 (2) Rule 82, Alaska Rules of Civil Procedure, by allowing for attorney fees  
28 that may be awarded against parties, including nonprevailing parties, that are different than  
29 the fees allowed by Rule 82.

30 (b) AS 32.06.906(a)(4), enacted by sec. 2 of this Act, changes Rule 25(c), Alaska  
31 Rules of Civil Procedure, by allowing certain substitutions of parties as a right without being

1 subject to any court discretion under Rule 25(c).

2 \* Sec. 6. ADOPTION OF REGULATIONS. The Department of Commerce and Economic  
3 Development may adopt regulations to implement AS 32.06, enacted by sec. 2 of this Act.  
4 The regulations take effect under AS 44.62, but not before the effective date of AS 32.06.

5 \* Sec. 7. APPLICABILITY. (a) Before January 1, 2003, secs. 1 - 3 of this Act do not  
6 apply to a partnership or limited liability partnership unless the partnership or limited liability  
7 partnership is formed

8 (1) on or after January 1, 1998, but this paragraph does not apply to  
9 a partnership or limited liability partnership that is continuing the business of a  
10 partnership or limited liability partnership dissolved under AS 32.05; or

11 (2) before January 1, 1998, and the partnership or limited liability  
12 partnership elects, under (c) of this section, to be governed by secs. 1 - 3 of this Act.

13 (b) On and after January 1, 2003, secs. 1 - 3 of this Act apply to all  
14 partnerships and limited liability partnerships.

15 (c) On or after January 1, 1998, and before January 1, 2003, partnerships and  
16 limited liability partnerships may voluntarily elect, in the manner provided in its partnership  
17 agreement or by law for amending the partnership agreement, to be governed by secs. 1 - 3  
18 of this Act. The provisions of secs. 1 - 3 of this Act relating to the liability of those  
19 partnership's partners to third parties do not apply to limit the partners' liability to a third  
20 party who does business with the partnership within one year preceding the partnership's  
21 election to be governed by secs. 1 - 3 of this Act unless the third party knows or has received  
22 a notification of the partnership's election to be governed by secs. 1 - 3 of this Act.

23 (d) If, under (a) or (b) of this section, secs. 1 - 3 of this Act apply to a  
24 partnership or limited partnership, AS 09.40.240, as amended by this Act, AS 32.05, and  
25 AS 32.11.890, as amended by this Act, do not apply to the partnership or limited partnership.

26 (e) In this section, "limited liability partnership" and "partnership" have the  
27 meanings given in AS 32.06.995(b), enacted by sec. 2 of this Act.

28 \* Sec. 8. SAVINGS CLAUSE. Sections 1 - 5 of this Act do not affect an action or  
29 proceeding begun or right accrued before January 1, 1998.

30 \* Sec. 9. AS 32.06.701(i) and 32.06.906(a)(4), enacted by sec. 2 of this Act, take effect  
31 only if sec. 5 of this Act receives the two-thirds majority vote of each house required by

- 1 art. IV, sec. 15, Constitution of the State of Alaska.
- 2 \* **Sec. 10.** Section 4 of this Act takes effect January 1, 2003.
- 3 \* **Sec. 11.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).
- 4 \* **Sec. 12.** Except for secs. 4 and 6, this Act takes effect January 1, 1998.

**SB**

**2022**

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO: SSSB 202**

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to insurance..." BRU: Motor Vehicles  
 Component: Driver Services  
 Sponsor: Senator Donley  
 Requestor: (S) JUD COMPONENT SERIAL NO. 2150

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

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

CHANGE IN REVENUES ( ) Revenue Code						
--	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of current year (FY 98) impact: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Juanita M. Hensley Phone: 465-5648  
 Division: Motor Vehicles Date: 2/4/98  
 Approved by Commissioner: Mark Boyer *Mark Boyer* Date: 2/4/98  
 Agency: Department of Administration

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

For further distribution information call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SSSB 202

Revision Date ( 4/3/98 ) Dept. Affected Commerce & Economic Development  
 Title An Act relating to insurance amending; Rules BRU Insurance  
79 and 82, Alaska rules of civil procedure Component Insurance  
 Sponsor Senator Donley  
 Requester (S) L&C Component Serial No. 354

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill has no fiscal impact on this component.

Prepared by Marianne K. Burke, Director *Marianne K. Burke* Phone 465-2515  
 Division Insurance Date 4/3/98  
 Approved by Commissioner Deborah B. Sedwick *D. Sedwick* Date 4/3/98  
 Agency Commerce & Economic Development

**PREPARER TO PROVIDE AL'. DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 2/6/98

FURTHER: Judiciary

Date of 5-Day Notice: 2-12-98  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 4-3-98

Labor and Commerce Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL 202

"An Act relating to insurance; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

and recommends:

- be replaced with CS SS SB 202 (L4C)
- adopt previous CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Mike Miller</i>	✓		
		<i>[Signature]</i>	x		
CHAIR:		CHAIR: <i>Forew D. Senan</i>	✓		

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
<i>CS, v. 200</i> ADMIN-DMV	<i>2/1/98</i>	✓	

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

Department	Date	Zero	Fiscal

\*include fiscal notes accompanying Governor's bill

[ ]

*Requested new in  
 - Commerce  
 - Admin*

*4/2/98*

**CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 202( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATOR DONLEY**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to insurance; amending Rules 79 and 82, Alaska Rules of**  
2 **Civil Procedure; and providing for an effective date."**

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

4 **\* Section 1. SHORT TITLE.** This Act may be known as the Alaska Insurance Consumers  
5 **Protection Act.**

6 **\* Sec. 2. PURPOSE.** It is the purpose of this Act to amend existing law regarding  
7 **insurance in a manner that ensures that injured parties, whether first or third parties, are fairly**  
8 **treated by insurers, fully compensated by applicable policy limits, and receive interest legally**  
9 **due.**

10 **\* Sec. 3. AS 21.36.125 is amended by adding new paragraphs to read:**

11 **(16) restrict or limit oral or written communications between**

12 **(A) an insurance producer, a claims adjuster, or other person**  
13 **representing an insurer and an insured regarding a property or damage claim**  
14 **or repair estimate; this paragraph does not apply to oral or written**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

communications between a person representing an insurer and an attorney representing an insurer; or

(B) a person who repairs damage to an automobile covered under a policy of the insurer and an insured;

(17) restrict or limit oral or written communications between a person who repairs damage to property covered under a policy of the insurer, including damage to an automobile, and a claimant;

(18) terminate a contract with an insurance producer if the termination results from

(A) refusal to perform an unfair or deceptive claim settlement practice identified under this chapter; or

(B) the reporting of an unfair or deceptive claim settlement practice by the insurance producer to the director.

\* Sec. 4. AS 21.36 is amended by adding new sections to read:

*Amended by K...  
no objection  
on 3/10/2011*

**Sec. 21.36.212. Prejudgment interest.** Prejudgment interest due an insured from an insurer as a result of a claim covered under an insurance policy is not subject to limitation or reduction by application of the policy limits. An insurer is liable for prejudgment interest even if the payment would exceed applicable policy limits.

**Sec. 21.36.214. Payment of loss claims.** (a) Using due diligence, an insurer shall make an estimate of those covered losses that can be reasonably determined within 15 days after the date the insurer receives notice of a claim under an insurance policy.

(b) If a claim involves a covered loss that cannot be reasonably determined as required under (a) of this section, the insurer shall review and estimate the covered loss within 15 days after the date the loss becomes determinable.

(c) Within 30 days after an insurer receives notice of a claim, the insurer shall pay the claimant the amount due under (a) of this section. A claim described under (b) of this section shall be paid within 30 days after the loss becomes determinable. An amount paid under (a) or (b) of this section shall be known as the undisputed covered claims. The insurer shall also provide a written explanation of the payment to the insured. The written explanation must include covered loss payments and any

1 loss not covered. An insurer may not require an insured to sign a release for claims  
2 that are undisputed before payment by the insurer.

3 (d) If, after the insurer makes the payment of undisputed claims required under  
4 (c) of this section, the insured obtains judgment for damages resulting from the  
5 disputed claims and the damages awarded by the jury, court, appraiser, or arbitrator  
6 are at least 10 percent greater than the undisputed claims payment made by the insurer,  
7 the insurer, in addition to interest due under AS 09.30.070, shall also pay reasonable  
8 actual attorney fees, actual costs incurred by the insured in obtaining the judgment, and  
9 a penalty equal to at least 10 percent of the damages awarded in the action.

10 (e) If the director determines that an insurer has violated (a) - (c) of this  
11 section, the director or an insured who failed to receive a covered loss payment as  
12 required by (c) of this section may bring an action for bad faith claims practices  
13 against the insurer.

14 (f) Subsection (d) of this section does not apply to or preclude a bad faith  
15 claims action described under (e) of this section and does not preclude an award of  
16 interest under AS 09.30.070 if damages are 10 percent or less than the undisputed  
17 claims payment.

18 **Sec. 21.36.216. Required telephone contact.** An insurer who offers, issues,  
19 or delivers an automobile liability insurance policy in this state against automobile  
20 liability must provide a statewide toll-free telephone listing in addition to any local  
21 listing.

22 \* Sec. 5. AS 21.89.020(f) is amended to read:

23 (f) An automobile liability insurance policy must provide

24 (1) that all expenses and fees, not including counsel fees or adjuster  
25 fees, incurred because of arbitration or mediation shall be paid by the insurer, if  
26 applicable, from the claim; the arbitrator may, as a part of the arbitrator's  
27 decision, require the insured to reimburse the insurer for expenses or fees paid  
28 by the insurer; if the arbitrator awards expenses or fees to the insurer, the  
29 insurer may deduct the awarded expenses or fees from an amount due the insured  
30 [AS DETERMINED BY THE ARBITRATOR];

31 (2) liability coverage in the amount set out in AS 28.22.101(d) for

1 motor vehicles rented in the United States or Canada by a person insured under the  
2 policy;

3 (3) physical damage coverage for motor vehicles rented in the United  
4 States or Canada [,] if the policy provides physical damage coverage; if the insured  
5 declines physical damage coverage, the insurer shall offer physical damage coverage  
6 for rented vehicles;

7 (4) that payments from applicable coverage provided under (2) and (3)  
8 of this subsection will be made in the following order of priority:

9 (A) from a policy or coverage purchased by the operator from  
10 the person who has the vehicle available for rent;

11 (B) from a policy or coverage covering the operator of a rented  
12 vehicle but not purchased from the person who has the vehicle available for  
13 rent; and

14 (C) from a policy or coverage of the person who has the vehicle  
15 available for rent;

16 (5) medical payment coverage required under AS 28.20.447 or  
17 AS 28.22.150.

18 \* Sec. 6. AS 21.89.020 is amended by adding a new subsection to read:

19 (i) The premium charged for an automobile liability insurance policy with a  
20 term of less than 30 days may not exceed 200 percent of the pro rata premium charged  
21 for longer term policies.

22 \* Sec. 7. AS 28.20 is amended by adding a new section to read:

23 **Sec. 28.20.447. Medical payments coverage requirements.** An insurance  
24 company offering automobile liability insurance in this state shall also offer coverage  
25 for medical payments when the policy is initially offered.

26 \* Sec. 8. AS 28.22 is amended by adding a new section to article 2 to read:

27 **Sec. 28.22.150. Medical payments coverage requirements.** An insurance  
28 company offering automobile liability insurance in this state shall also offer coverage  
29 for medical payments when the policy is initially offered.

30 \* Sec. 9. AS 21.36.214(d), enacted by sec. 4 of this Act, amends Rule 79, Alaska Rules  
31 of Civil Procedure, by providing for an award of costs that differs from an award under

1 Rule 79.

2 \* Sec. 10. AS 21.36.214(d), enacted by sec. 4 of this Act, amends Rule 82, Alaska Rules  
3 of Civil Procedure, by providing for attorney fee awards in certain cases that may differ from  
4 those awarded under Rule 82.

5 \* Sec. 11. APPLICABILITY. This Act applies to a

6 (1) policy of insurance entered into or renewed on or after the effective date  
7 of this Act;

8 (2) civil action that accrues on or after the effective date of this Act.

9 \* Sec. 12. This Act takes effect January 1, 1999.



# SENATOR DAVE DONLEY

---

## ALASKA STATE LEGISLATURE

**Differences between  
the Sponsor Substitute  
and the Committee Substitute  
for Senate Bill 202  
3/11/98  
Prepared by Senator Donley**

**1) Termination of contracts between insurers and agents**

The language regarding the termination of contracts between insurance agents and insurers has been limited to protection for reporting illegal acts and added to the list of unfair claims settlement practices found in AS 21.36.125.

The committee substitute states that insurers may not terminate a contract with an agent solely because an agent refused to perform an unfair or deceptive settlement practice or reported such activities to the Division of Insurance.

**2) Restrictions or limitations on oral or written communication**

The committee substitute still prohibits restrictions or limitations on oral or written communications between an insured and an insurance agent, representative, or a person making repairs. A new provision was added exempting these prohibitions on oral or written communications between a person or attorney representing an insurer.

**3) Prejudgment interest**

At the suggestion of the Division of Insurance the language regarding prejudgment interest has been moved to AS 21.36 which regulates insurance trade practices.

**4) Payment of loss claims**

At the suggestion of the Division of Insurance the language regarding payment of loss claims has also been moved into chapter 21.36 which regulates trade practices of insurance.

The concern about the time frame on when an insurer shall pay the undisputed portion of a claim that could not be determined has also been addressed. It simply states that an insurer shall pay a claim within 30 days after the loss becomes determinable.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

---

**MEMBER:** Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House

The committee substitute reduces the penalty (from 20% to 10%) of damages awarded should an insured obtain a judgment for damages resulting from the disputed claims and the judgment is at least 10% greater than the insurer's covered loss payment.

Additionally, appraisers and arbitrators have been added to those entities (jury and court) which may offer judgment for damages resulting from disputed claims.

**5) Required telephone contact**

At the suggestion of the Division of Insurance the language regarding required telephone contact has also been moved to AS 21.36 which regulates trade practices of insurance.

**6) Automobile insurance following driver's license revocation**

Sections #5 & #10 of the sponsor substitute, relating to license revocation, have been removed from the committee substitute as these provisions are addressed in Senate Bill 158.

**7) Expenses and fees for arbitration**

The committee substitute still requires the insurer to pay for the expense of arbitration. The arbitrator can require the insured to reimburse the insurer for arbitration expenses. The committee substitute specifically authorizes the insurer in such instances to deduct the awarded expenses from the amount due the insured.

**8) Premiums for short term policies**

The language which amended the definition of short term insurance policies has been deleted. The committee substitute now simply establishes that premiums for short term policies under 30 days shall not exceed 200% of the pro rata premium charged for longer term policies.

**8) Medical payment coverage requirements**

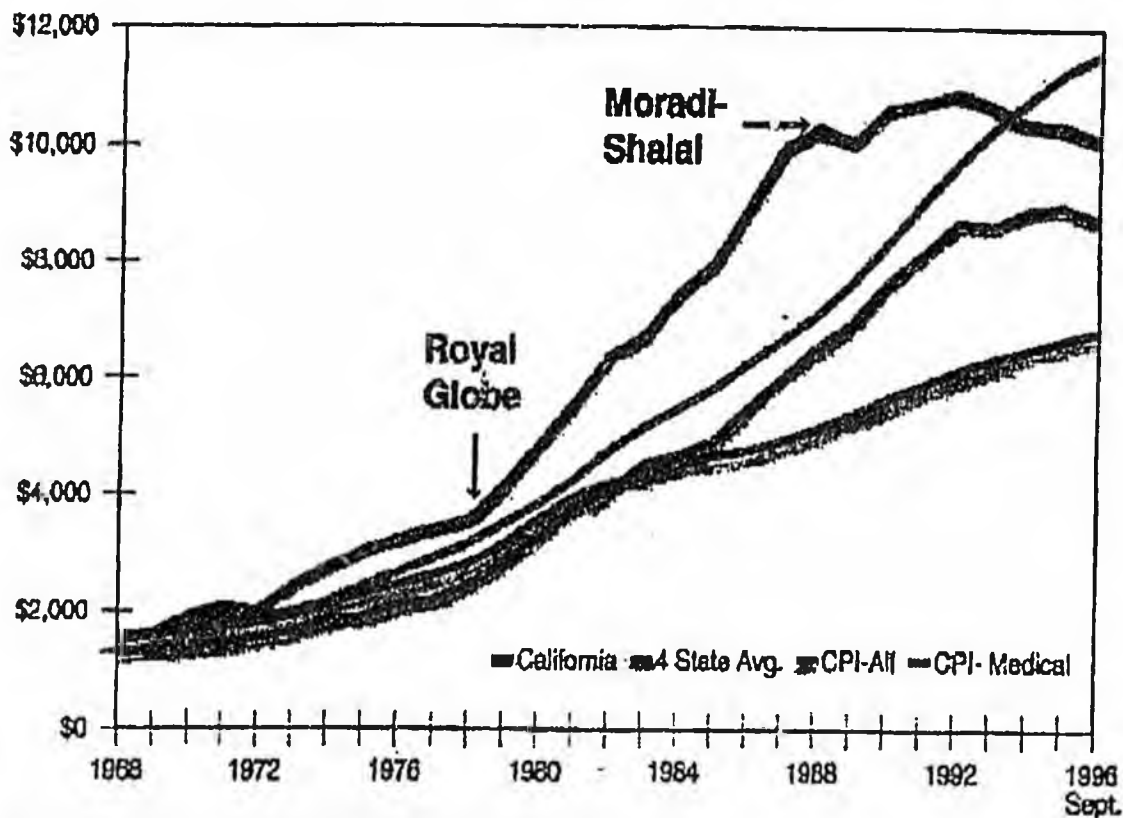
The committee substitute still requires insurance companies offering automobile liability insurance to offer coverage for medical payments but now only requires the offer to be made once, at the initial sale of the insurance. This is consistent with existing statutory requirements for offers of sale of uninsured and underinsured coverage.

The language dealing with payment of loss medical claims has been deleted since it is already addressed in section #4 of the legislation.

- The committee substitute also contains some minor drafting changes, requested by the division, which conform the language in the bill with existing statute.

# Our Claim Costs Soared in California

## Bodily Injury Average Claim Cost



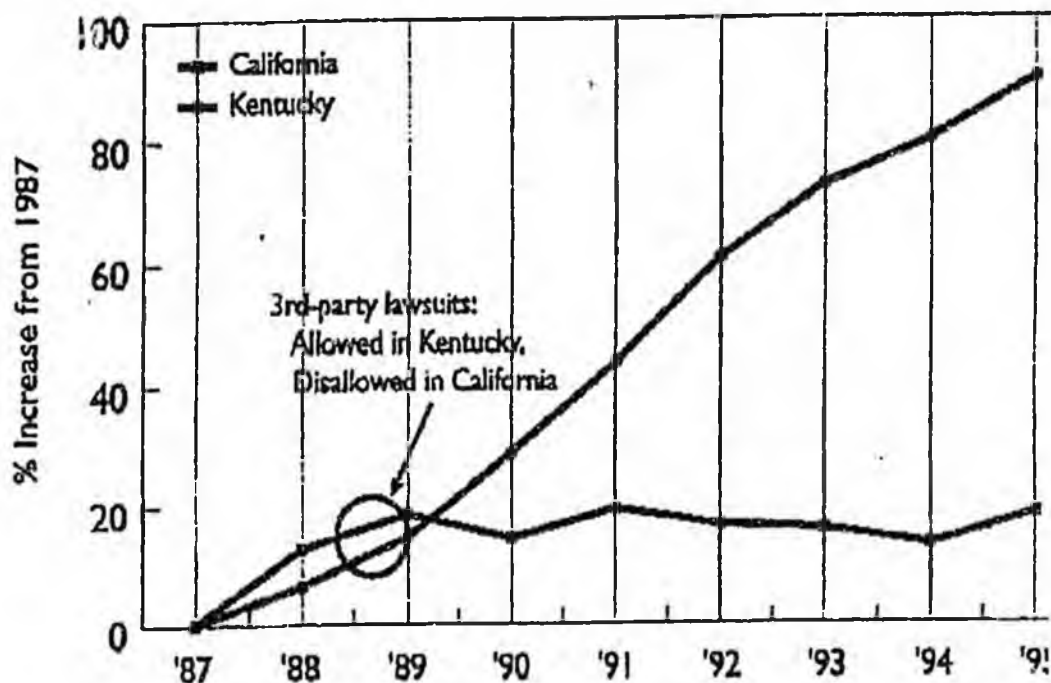
\*4 State Avg.\* represents Alabama, Illinois, Ohio and Texas

California Business Brief : Bad Faith an Engine of Costly Lawsuits

# More Lawsuits ? Liability Premiums Go Up



## CALIFORNIA vs. KENTUCKY Average Personal Auto Liability Premium Trends



Source: National Association of Insurance Commissioners Personal Auto Average Premiums Report

California Business Brief : Bad Faith an Engine of Costly Lawsuits

# Alaska State Legislature

## Senate



Official Business

State Capitol  
Juneau, AK. 99801-1182

### Senate Labor & Commerce Committee

#### MEMO

TO: Senator Mackie, Vice Chairman  
Senator Miller  
Senator Kelly  
Senator Hoffman

FROM: Senator Leman, Chairman

A handwritten signature in cursive script, appearing to read "Leman".

DATE: March 3, 1998

RE: Division of Insurance testimony on SB 202: Motor Vehicle Ins.

---

You have all received a copy of Ms. Burke's February 23, 1998, letter clarifying Sara McNair-Grove's testimony before the committee. Because we have several bills related to insurance, I want to be certain that your questions on each one are answered. If you have reservations about the clarification or need more information from the Division, please contact Ms. Burke.

Also attached is a copy of Ms. McNair-Grove's written testimony as requested.

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

### DIVISION OF INSURANCE

TONY KNOWLES, GOVERNOR

P.O. BOX 110805  
JUNEAU, ALASKA 99811-0805  
PHONE: (907) 465-2515  
FAX: (907) 465-3422  
TDD: (907) 465-5437  
<http://www.state.ak.us/local/akpages/COMMERCE/ins.htm>

February 23, 1998

The Honorable Loren D. Leman  
Chairman, Senate Labor and  
Commerce Committee  
Alaska State Senate  
State Capitol, Room 113  
Juneau, AK 99801-1182

FEB 24 1998

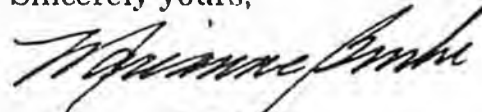
Dear Senator Leman:

It has come to my attention that certain testimony presented by a representative of the Division of Insurance may have inadvertently misled members of the Senate Labor and Commerce Committee. This was not the intent of the staff member and certainly not the intent of the division to ever mislead members of the Legislature. Accordingly, please accept the following clarification.

The testimony pertained to Section 7, of SB 202, and was presented February 19, 1998. Regulation 3 AAC 26.070 states that those portions of a first-party claim not in dispute shall be paid within 30-working days after receipt of notice or evidence of loss. Ms. McNair was referring to this provision. I understand that her testimony may have been interpreted as the division becoming involved in the claim if the undisputed amount was not paid timely. This was not what Ms. McNair was saying. The regulation requires that insurers pay undisputed claims in a timely manner, but the division gets involved in claim payment delays only when a consumer brings them to our attention or we discover a pattern of such delays during a market conduct examination.

Again, I would like to state that it is always the intent of the Division of Insurance to present facts and respond to queries of the committee members. Thank you for your time and consideration.

Sincerely yours,



Marianne K. Burke  
Director

MKB/SMN/lv3475.ins  
022398a

cc: The Honorable Dave Donley  
Alaska State Senate  
State Capitol, Room 508  
Juneau, AK 99801-1182  
Members of the Senate Labor and  
Commerce Committee:  
The Honorable Jerry Mackie, Vice Chairman  
The Honorable Tim Kelly  
The Honorable Mike Miller  
The Honorable Lyman Hoffman

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

TONY KNOWLES, GOVERNOR

P.O. BOX 110805

JUNEAU, ALASKA 99811-0805

PHONE: (907) 465-2515

FAX: (907) 465-3422

TDD: (907) 465-5437

<http://www.state.ak.us/local/akpages/COMMERCE/ins.htm>

February 25, 1998

FEB 27 1998

The Honorable Loren D. Leman  
Chairman, Senate Labor and  
Commerce Committee  
Alaska State Senate  
State Capitol, Room 113  
Juneau, AK 99801-1182

Dear Senator Leman:

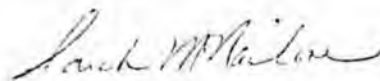
Re: Testimony on Senate Bill 202

At the February 19, 1998, hearing on Senate Bill 202, you requested a copy of my comments. Since the Division of Insurance would be the agency responsible for determining compliance with these proposals, my comments were intended to raise issues that we saw as unclear in their intent or which might cause ambiguity in enforcing.

The committee also asked how a claim is paid when there is a dispute. The regulations are silent. Regulation 3 AAC 26.070 addresses claims not in dispute.

If you need any further information, please contact me.

Sincerely,



Sarah McNair-Grove  
Insurance Analyst

SMN/lvs3497.ins  
022598a

## Comments on Senate Bill 202

### **Sec 3. AS 21.09.250**

The division has historically taken the position that we do not become involved with contracts between insurers and their representatives.

AS 21.27.110 requires that when a producer's appointment is terminated, the termination notice must include the reasons for termination. For public protection, when a contract is terminated for cause, we investigate to ensure that the termination is in compliance with the statute.

The proposed language states that the insurer may not terminate the contract with a producer except for good cause. (This proposal also includes independent adjusters, who are currently not required to have a contract with the insurer.) The definition of good cause is left to the division to establish by regulation. However, determination of "good cause" may be a legal matter, not a compliance matter.

Enforcement of this section would be a problem.

Language change suggestions: Page 2, line 1, agent and broker could be removed since they are included in producer.

### **Sec. 4 AS 21.36.125**

This section prohibits a person from limiting communication between producers, insureds and repair persons. The broad scope of the proposed language could extend to an attorney representing the insured, which may not be the intent.

We are not aware that this is a problem in Alaska. Enforcement of this section would be a problem.

Language change suggestions: Page 2, line 5, producer should be included.

### **Sec. 6 AS 21.42.285**

This section requires that insurers pay prejudgement interest without being limited by policy limits. By placing this section in Chapter 42, it applies only to admitted insurers. This leaves an uneven playing field, as non-admitted insurers would not be required to pay it.

We assume that the intent is to say that prejudgement interest should be paid in addition to policy limits. However, the proposed language does not make this clear. Also, it is ambiguous as to how the required prejudgement interest amount is to be

calculated. Is it calculated on the total judgment or only on the policy limits if the judgment exceeds the policy limits?

**Sec 7 AS 21.42.305**

This section specifies a time frame in which claims are to be paid. Again, by placing it in Chapter 42, only admitted insurers are affected, and it becomes a policy provision rather than a trade practice.

Regulation 3 AAC 26.010 - 26.300 already provides times in which insurers must respond to notices of claims and times in which undisputed claims must be paid.

Subsection (b) requires that an insurer pay a loss within 15 days after the date the amount of the loss becomes determinable. Subsection (c) requires that the insurer pay a claim within 30 days of receiving notice of the claim. This creates a conflict for those situations in which the amount of the loss cannot be determined within 30 days. The insurer must pay an amount that has not yet been determined.

We are unsure how subsection (d) will be applied when there are legitimate coverage disputes.

**Sec. 8 AS 21.89.020(f)**

This section clarifies that the insurer must pay arbitration fees, but that the arbitrator's decision can require the insured to reimburse the insurer. It is unclear what the collection process will be if the arbitrator requires the insured to pay part or all of the fees.

**Sec. 9 AS 21.89.020(g)**

This section changes the short term policy from exactly 7 days to "at least 7 days but not more than 30 days". A new sentence is added that the premium may not exceed 200% of the pro rata premium for longer term policies.

There is a danger in setting amounts like this; they tend to become what everyone charges. It is also not exactly clear how the pro rata premium is to be computed, particularly in relation to policies with minimum premiums. If a policy has a minimum premium that is greater than 200% of the pro rata amount, would this require that the short term policy be sold for less than the cost of issuing the policy? There may be other ways of addressing the rating issue.

**Sec. 11 AS 21.89.027**

This section requires an insurer to provide a statewide toll-free telephone listing.

**Sec. 12 AS 28.20.447**

This section requires an insurer to offer medical payments coverage. This section should be restructured along the lines of UM/UIM coverage. Title 28 should contain the mandate that it be offered, probably as a new subsection in AS 28.22.101 and AS 28.20.440.

Title 21, Chapter 89 should contain the policy provisions and insurer requirements.

**FACSIMILE COVER SHEET**

**THERESA BEDOY  
ALLSTATE INSURANCE COMPANY  
3100 ZINFANDEL DRIVE, SUITE 400  
PHONE: (916) 852-4899  
FAX: (916) 852-4953**

DATE: April 1, 1998

TO: Honorable Liron Lerman

OFFICE: \_\_\_\_\_

FAX NUMBER(S): ~~465-2810~~ (907) 465-2810

SENT BY: Theresa Reddy

URGENT \_\_\_ REVIEW \_\_\_ PLEASE COMMENT \_\_\_ PLEASE REPLY \_\_\_

WE ARE TRANSMITTING A TOTAL OF 3 PAGES INCLUDING THE COVER PAGE.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL NEDRA WILLIAMS AT (916) 852-4933.

**ADDITIONAL COMMENTS:**

**ALLSTATE INSURANCE GROUP  
LAW AND REGULATION  
3100 Zinfandel Drive, Suite 400  
Rancho Cordova, CA 95670**

**Writer's Direct Dial 916-852-4899  
Telecopier 916-852-4953**

**THERESA REDDY  
Government Relations Manager**

**April 1, 1998**

**The Honorable Loren Leman  
Chair, Senate Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801-1182**

**VIA FACSIMILE**

**RE: Sponsor Substitute SB 202; An Act Relating to Insurance; Amending Rules  
79 and 82, Alaska Rules of Civil Procedure. - OPPOSE**

**Dear Senator Leman:**

**I am writing on behalf of the Allstate Insurance Company. I understand that Senator Donnelly is proposing to substitute a new version of his previously introduced SB 202. I have had an opportunity to review a work draft of the substitute bill. Allstate remains strongly opposed to SB 202; it is both expensive and anti-consumer. It will drive up the cost of every insurance policy in Alaska because it expands Rule 82 and eliminates the concept of policy limits agreed to by the policyholder.**

**Last year the legislature and the insurance industry worked hard to craft and pass landmark legislation to favorably impact the cost of the insurance product for each and every one who needs it. Passing onerous legislation, like SB 202, sends a negative signal to the existing insurance industry in Alaska.**

**Alaska already has tough Unfair Claims Settlement Practices Regulations in place. Current Alaska law sets out a strict timetable for insurers to pay claims with enforcement actions available by the Division of Insurance for non-compliance.**

**At Allstate it is always our goal to settle claims in a timely, friendly manner. Delays cost Allstate more money in additional living expenses, adjuster expenses and customer policy retention.**

SB 202 is bad news for Alaskans. It does nothing to make their insurance product more available or more affordable. Instead, it undoes the positive tort reforms passed last session. This bill will enrich the trial lawyers to the detriment of the insurance purchasing public. An infusion of unnecessary lawsuits will hurt the cost of the insurance product, draining off money better spent improving products and services for consumers.

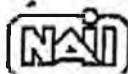
Allstate strongly urges your "NO" vote on SB 202.

Respectfully,



Theresa Bedoy  
Government Relations Manager

cc: Members of the Senate Labor and Commerce  
Trisha Connors  
John George

**National Association of Independent Insurers**

Phone: 847-297-7800

Fax: 847-297-5064

Fax Cover Letter

*\*NAII use only***To: Annette Kreitzer****Labor & Commerce  
Committee****907-465-3810****From: Trisha Connors****Date: 4/1/98****Ext: 332****Time: 2:44 PM**

If any pages are not legible, call Audrey McCabe at Extension 307

**Total Pages: 3****Message:**

Annette, here is our letter regarding the substitute SB 202. This bill would impose incredible costs on all policyholders in Alaska and would not solve any known problem. Please call if you have any questions. I would like to participate in the hearing on this bill if possible via teleconference. Do you know the order of the bills to be heard yet? Please call or let John George know. Also, please tell your boss that we would really like to defeat this bill in his committee. Thank you!

Trisha



**National Association  
of Independent Insurers**

2600 River Road, Des Plaines, IL 60018-3286

Trisha M. Connors  
Counsel

March 31, 1998

Honorable Loren Leman  
Chair, Senate Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801-1182

**RE: SSSB 202 (Donley)**  
**NAII POSITION: OPPOSE**

Dear Senator Leman:

I am writing on behalf of the National Association of Independent Insurers (NAII) to stress our continued opposition to SSSB 202 (Donley). The NAII represents over 560 property and casualty insurance companies throughout the country, and many NAII member companies write business in Alaska. This letter addresses our continuing opposition to the March 9, 1998 working draft to be presented to your committee this week.

Like the earlier versions of the bill, SSSB202 reverses all of last year's meaningful tort reforms and actually increases the opportunities for Alaska's trial bar at policyholders' expense.

SSSB 202 expands Civil Rule 82 and erases any policy limits agreed to in an insurance contract. First, it requires insurers to pay loss claims within 30 days of receiving notice of the loss or face a possible payoff in excess of policy limits. Under this bill, if the insurer disputes the existence of the claim, the amount of the claim or does not receive notice of the claim within thirty days and the claimant prevails at trial or arbitration, the insurer must pay all damages up to the policy limits and at least a 20 percent penalty. In addition, the insurer is subject to a second lawsuit (with more damages and attorneys' fees) for unfair claims practices. Thus, under this provision alone, trial lawyers get more fees and a second lawsuit simply because the insurer did not settle a claim within thirty days of being told of the claim's existence!

SSSB 202 further expands Civil Rule 82 and eliminates the policy limits for insurance consumers because it requires insurers to pay prejudgment interest over and above the policy limits sold to the policyholder.

These two provisions will force all Alaskans to pay for maximum insurance coverage. Alaskans wanting to drive legally and purchase the liability limits required by law will pay the same premiums as those purchasing greater policy limits.

Finally, NAII member companies are perplexed at the motives behind SSSB 202. Insurers encourage their claims handlers to pay claims as quickly as possible to lower costs and to keep

Phone: (847) 297-7800 FAX: (847) 297-5064

FAX on demand: 1-800-291-0229 Internet address: <http://www.naai.org>