

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


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

MEMORANDUM

March 26, 2015

SUBJECT: Sectional summary of SB 77 relating to the books and records of a corporation (Work Order No. 29-LS0382\E)

TO: Senator Lesil McGuire
Attn: Genevieve Wojtusik

FROM: 
Terry Bannister
Legislative Counsel

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

Bill section 1. Amends AS 06.05.301(b), which lists which provisions of AS 10.06 (Alaska Corporations Code) apply to state banks. Adds new sec. 10.06.431 to the sections that do not apply. Makes a technical correction.

Bill section 2. Amends AS 10.06.424(e), which relates to shareholder agreements. Adds new sec. 10.06.431 to the list of sections that a shareholder agreement may not alter or waive.

Bill section 3. Amends AS 10.06.425(a), which relates to shareholder voting trusts. Adds the new sec. 10.06.431 to the provision addressing the right of examination voting agreement copies and the record of the holders of voting trust certificates.

Bill section 4. Rewrites AS 10.06.430, which relates to the books and records of a corporation.

Sec. 10.06.430(a). Directs a corporation to keep books and records.

Sec. 10.06.430(b). Directs a corporation to make, on written request stating a proper purpose, its books and records reasonably available to a shareholder for inspection and copying. Requires compliance with (c) and (d) of the section. Limits the availability to those books and records that are directly connected to and sufficient to satisfy the shareholder's stated proper purpose.

Sec. 10.06.430(c). Allows a corporation, before making books and records available, to require a shareholder to agree to reasonable, appropriate, and not unreasonably restrictive

limits or conditions on the use or disclosure of the books and records, and to pay the corporation's anticipated reasonable costs to make them available.

Sec. 10.06.430(d). Requires a shareholder with a purpose of uncovering misconduct, misfeasance, or malfeasance to provide evidence of a credible basis for inferring the existence of those activities.

Sec. 10.06.430(e). Allows a corporation to refuse shareholder inspection or copying if the shareholder owes a money judgment to the corporation and the corporation was the prevailing party in the action or was awarded attorney fees.

Bill section 5. Adds a new sec. 10.06.431 relating to shareholder requests to access corporate books and records.

Sec. 10.06.431(a). Establishes a penalty for a shareholder who violates an agreement containing limits and conditions on the use and disclosure of books and records under AS 10.06.430(c)(1). Allows a court to order relief, including payment of the penalty.

Sec. 10.06.431(b). Allows a shareholder to petition the court to order a corporation to make available for inspection or copying those books and records directly connected to and sufficient to satisfy the stated proper purpose of the inspection.

Sec. 10.06.431(c). Authorizes a court to order a corporation to make its books and records available to a shareholder. Lists what a shareholder must show for the court to make the order.

Sec. 10.06.431(d). Requires a shareholder to provide evidence that provides a credible basis for inferring misconduct, misfeasance, or malfeasance if the shareholder's stated purpose is to uncover those actions.

Sec. 10.06.431(e). Prohibits a shareholder from using discovery to obtain the evidence required by (d).

Sec. 10.06.431(f). In addition to ordering a corporation to make its books and records available, authorizes a court to set limits or conditions on the inspection or copying, to order corporate payment of the penalty under (g), and to order other legal or equitable relief.

Sec. 10.06.431(g). States that a corporation is liable to a shareholder for a penalty if the corporation unreasonably refuses to allow a shareholder to examine and make copies of the corporation's books and records for a proper purpose.

Sec. 10.06.431(h). States that a corporation is not liable for a penalty under (g) in certain circumstances based on a shareholder's activities, lack of good faith, or improper purpose.

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Bill section 6. Adds a new definition of "books and records" and of "proper purpose" for AS 10.06.

Bill section 7. Describes the indirect court rule amendment that new sec. 10.06.431(e) makes to Rule 26(b), Alaska Rules of Civil Procedure.

Bill section 8. Indicates to which situations AS 10.06.430, as repealed and reenacted, new sec. 120.06.431, and the two new definitions apply to.

Bill section 9. States that new provision sec. 10.06.431(e) takes effect only if bill sec. 7 receives the increased vote by the legislature.

If I may be of further assistance, please advise.

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