

CS FOR HOUSE BILL NO. 418(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/6/02

Referred: Rules

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending the Alaska Corporations Code as it relates to delivery of annual**
2 **reports, notice of shareholders' meetings, proxy statements, and other information and**
3 **items to shareholders, to voting, and to proxies, including electronic proxy voting and**
4 **proxy signing; and providing for an effective date."**

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

6 * **Section 1.** AS 10.06.410 is amended to read:

7 **Sec. 10.06.410. Notice of shareholders' meetings.** Written or printed notice
8 stating the place, day, and hour of the meeting and, in the case of a special meeting,
9 the purpose for which the meeting is called [,] shall be delivered not less than 20 or
10 more than 60 days before the date of the meeting, either personally, [OR] by mail, **or**
11 **by electronic transmission under (b) of this section,** by or at the direction of the
12 president, the secretary, the officer, or persons calling the meeting, to each shareholder
13 of record entitled to vote at the meeting. If mailed, the notice is considered delivered
14 when deposited with postage prepaid in the United States mail addressed to the

1 shareholder at the address of the shareholder as it appears on the stock transfer books
 2 of the corporation, or, if the shareholder has filed with the secretary of the corporation
 3 a written request that notice be mailed to a different address, addressed to the
 4 shareholder at the new address. An affidavit of the secretary or other person giving
 5 the notice or of a transfer agent of the corporation that the notice required by this
 6 section has been given [,] is prima facie evidence of the facts stated in the affidavit.

7 * **Sec. 2.** AS 10.06.410 is amended by adding a new subsection to read:

8 (b) Notice under (a) of this section may be given by electronic transmission if
 9 the shareholder authorizes delivery by electronic transmission. Authorization must be
 10 in the form of a writing signed by the shareholder or an electronic transmission that
 11 sets out or is submitted with information demonstrating that the shareholder authorized
 12 the electronic transmission. An affidavit of the secretary or an assistant secretary or of
 13 the transfer agent or other agent of the corporation that the notice has been given by a
 14 form of electronic transmission shall be prima facie evidence of the facts stated in the
 15 affidavit. Notice by electronic transmission shall be considered given

16 (1) by facsimile telecommunication when directed to a number at
 17 which the shareholder has consented to receive notice;

18 (2) by electronic mail when directed to an electronic mail address at
 19 which the shareholder has consented to receive notice;

20 (3) by a posting on an electronic network together with a separate
 21 notice of the specific posting to the shareholder on the later of

22 (A) the posting; or

23 (B) the giving of separate notice; or

24 (4) by any other form of electronic transmission when directed to the
 25 shareholder.

26 * **Sec. 3.** AS 10.06 is amended by adding a new section to read:

27 **Sec. 10.06.411. Delivery of information and items to shareholders.** (a) A
 28 corporation shall be considered to have delivered an annual report, proxy statement, or
 29 other information to shareholders of record who reside at the same physical location
 30 and share an address if the corporation delivers an annual report, proxy statement, or
 31 other information to the shared address; the corporation addresses the annual report,

1 proxy statement, or other information to the shareholders as a group (for example,
2 "ABC Corporation Shareholders," "Jane Doe and Household," or "the Smith Family")
3 or to each of the shareholders individually (for example, "John Doe and Richard
4 Jones"); and

5 (1) each shareholder consents in writing to delivery of one copy of the
6 annual report, proxy statement, or other information to the shareholder's shared
7 address, and the corporation has notified each shareholder of the duration of that
8 shareholder's consent, explained how the shareholder can revoke the consent, and
9 explained that the corporation will begin sending an individual copy of the annual
10 report, proxy statement, or other information to the shareholder within 30 days after
11 revocation of the shareholder's consent; or

12 (2) all of the following conditions are met:

13 (A) the shareholder has the same last name as the other
14 shareholders at the shared address or the corporation reasonably believes that
15 the shareholders are members of the same family;

16 (B) the corporation has sent the shareholder a notice at least 60
17 days before the corporation begins to rely on this section concerning delivery
18 of annual reports, proxy statements, or other information to that shareholder;
19 the notice must

20 (i) state that only one copy of the annual report, proxy
21 statement, or other information will be delivered to the shared address
22 unless the corporation receives contrary instructions from the
23 shareholder;

24 (ii) include a toll-free telephone number or be
25 accompanied by a reply form that is pre-addressed with postage
26 provided that the shareholder can use to notify the corporation that the
27 shareholder wishes to receive a separate copy of the annual report,
28 proxy statement, or other information;

29 (iii) state that the corporation will begin sending
30 individual copies to a shareholder within 30 days after the shareholder
31 notifies the corporation that the shareholder wishes to receive a

separate copy of the annual report, proxy statement, or other information; and

(iv) include the following statement or a similar clear and understandable statement in boldface type within the text of the notice or on the envelope containing the notice, or, in the case of a notice mailed with other shareholder communications, both within the text of the notice and on the envelope containing the notice: "Important Notice Regarding Delivery of Shareholder Documents";

(C) the corporation has not received notice from the shareholder indicating that the shareholder wishes to continue to receive an individual copy of the annual report, proxy statement, or other information; and

(D) the corporation delivers the annual report, proxy statement, or other information to a post office box or to a residential street address; the corporation may assume a street address is a residential street address unless the corporation has information that indicates that the address is a business address.

(b) If a shareholder revokes consent to delivery of one copy of the annual report, proxy statement, or other information to a shared address or notifies the corporation that the shareholder wishes to receive an individual copy of the annual report, proxy statement, or other information, the corporation shall begin sending individual copies to that shareholder within 30 days after the corporation receives the revocation of consent or notice.

(c) A corporation is not required to send a notice of a shareholders' meeting, an annual report, a payment, a notice of a payment, or a proxy statement to a shareholder until the shareholder provides the corporation with written notice of the shareholder's current address if materials set out in (1) or (2) of this subsection have been sent by first class mail to the shareholder's address and have been returned as undeliverable:

(1) an annual report and proxy statements for two consecutive annual shareholders' meetings;

(2) during a period of at least 12 months, at least two payments of dividends or interest on securities, or at least two dividend reinvestment confirmations.

(d) For purposes of (a) of this section, "address" means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or another similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the corporation has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

* **Sec. 4.** AS 10.06.420(c) is amended to read:

(c) A shareholder may vote [EITHER] in person, [OR] by proxy executed in writing by the shareholder or by the authorized attorney-in-fact of the shareholder, or by proxy executed by electronic transmission by the shareholder or by the authorized attorney-in-fact of the shareholder. A proxy executed by electronic transmission must

(1) be directed to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent that is authorized by the person who will be the holder of the proxy to receive the transmission; and

(2) include information that demonstrates that the shareholder authorized the transmission.

* **Sec. 5.** AS 10.06.420 is amended by adding a new subsection to read:

(j) If a corporation adopts rules to provide for voting by proxy executed by electronic transmission, the rules must provide that all legally qualified proxies may be voted in the same manner as the corporation's proxy.

* **Sec. 6.** AS 10.06.433 is amended by adding a new subsection to read:

(h) A corporation may deliver the annual report required under (a) of this section

(1) by mail;

(2) in person; or

(3) by electronic

together with a separate notice of the specific posting to the shareholder, if the

corporation has received a writing or an electronic transmission from the shareholder that includes information demonstrating that the shareholder authorized the electronic transmission and delivery of annual reports by electronic transmission or electronic posting.

* Sec. 7. AS 10.06.990(33) is amended to read:

(33) "proxy" means a written authorization or an electronic transmission signed by a shareholder or the shareholder's attorney-in-fact giving another person power to vote with respect to the shares of the shareholder; ["SIGNED" FOR THE PURPOSE OF THIS PARAGRAPH MEANS THE PLACING OF THE SHAREHOLDER'S NAME ON THE PROXY BY MANUAL SIGNATURE BY THE SHAREHOLDER OR THE SHAREHOLDER'S ATTORNEY-IN-FACT;]

* **Sec. 8.** AS 10.06.990 is amended by adding new paragraphs to read:

(49) "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and that may be directly reproduced in paper form by a recipient through an automated process;

(50) "signed," as it relates to proxies, means the placing of the shareholder's name on the proxy by manual signature by the shareholder or the shareholder's attorney-in-fact or by electronic means if the electronic means clearly demonstrates that the shareholder has authorized the placing of the shareholder's name or the name of the shareholder's attorney-in-fact on the proxy.

* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. Notwithstanding sec. 11 of this Act, the Department of Community and Economic Development may proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory changes.

* **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2003.