

**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

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

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

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

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

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

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

(A) the posting; or

(B) the giving of separate notice; or

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

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

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

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

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

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

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

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

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

30 (1) an annual report and proxy statements for two consecutive annual  
31 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 transmission, or by a posting on an electronic network together with a separate notice of the specific posting to the shareholder, if the

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

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

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

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

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

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

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

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

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

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