



LAWS OF ALASKA

1988

Source

CSHB 322(Jud)(efd am S)

Chapter No.

166

AN ACT

Revising the corporations code; amending Alaska Rules of Civil Procedure 4, 10, 11, 19, 20, 23.1, 24, 65, 73, and 82, Alaska Rules of Appellate Procedure 204 and 609, and Alaska Rule of Evidence 803(8); and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 12

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 17, 1988
Actual Effective Date: July 1, 1989

AN ACT

Revising the corporations code; amending Alaska Rules of Civil Procedure 4, 10, 11, 19, 20, 23.1, 24, 65, 73, and 82, Alaska Rules of Appellate Procedure 204 and 609, and Alaska Rule of Evidence 803(8); and providing for an effective date.

* Section 1. AS 10 is amended by adding a new chapter to read:

CHAPTER 06. ALASKA CORPORATIONS CODE.

ARTICLE 1. CORPORATE PURPOSES AND POWERS.

Sec. 10.06.005. PURPOSES. A corporation may be organized under this chapter for any lawful purpose except for the purposes of banking and insurance.

Sec. 10.06.010. GENERAL POWERS. Subject to the limitations in its articles of incorporation, the provisions of this chapter and other applicable law, a corporation has all the powers of a natural person in carrying out its business activities, including, without limitation, the power to

- (1) have perpetual succession by its corporate name;
- (2) sue and be sued in its corporate name;
- (3) adopt a corporate seal and alter it, and use it by having it or a facsimile of it impressed, affixed or reproduced;
- (4) buy, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in, real or personal property or an interest in the property, wherever situated;

Chapter 166

1 (5) sell, convey, mortgage, pledge, lease, exchange, trans-
2 fer, and otherwise dispose of all or a part of its property and as-
3 sets;

4 (6) lend money to its employees and, if properly approved,
5 to its officers and directors, and otherwise assist its employees,
6 officers, and directors;

7 (7) buy, take, receive, subscribe for, or otherwise ac-
8 quire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or
9 otherwise dispose of, and otherwise use and deal in shares or other
10 interests in, or obligations of, other domestic or foreign corpora-
11 tions, associations, partnerships, or individuals, or direct or in-
12 direct obligations of the United States or of any other government,
13 state, territory, governmental district or municipality or an instru-
14 mentality of these;

15 (8) make contracts and incur liabilities, borrow money at
16 the rates of interest the corporation determines, issue notes, bonds,
17 and other obligations, and secure its obligations by mortgage or
18 pledge of all or any of its property, franchise and income;

19 (9) lend money for its corporate purposes, invest and re-
20 invest its money, and take and hold real and personal property as
21 security for the payment of money loaned or invested;

22 (10) conduct business, carry on operations, and have offices
23 and exercise the powers granted by this chapter in a state, territory,
24 district, or possession of the United States, or in a foreign country;

25 (11) elect or appoint officers and agents of the corporation
26 and define their duties and fix their compensation;

27 (12) make and alter bylaws not inconsistent with its arti-
28 cles of incorporation or with state law, for the administration and
29 regulation of the affairs of the corporation;

1 (13) donate for the public welfare or for charitable, scientific or educational purposes, and in time of war donate in aid of war
2 activities;
3

4 (14) transact lawful business in time of war in aid of the
5 United States in the prosecution of the war;

6 (15) pay pensions and establish pension plans, pension
7 trusts, profit-sharing plans, stock bonus plans, stock option plans
8 and other incentive plans for its directors, officers, and employees;

9 (16) cease its corporate activities and surrender its corporate franchise;
10

11 (17) have and exercise the powers of a limited or general
12 partnership or a joint adventurer in association with one or more
13 persons, corporations, partnerships, or associations;

14 (18) have and exercise all powers necessary or convenient to
15 carry out the purposes for which the corporation is organized.

16 Sec. 10.06.015. DEFENSE OF ULTRA VIRES. (a) An act of a corporation or a transfer of real or personal property to or by a corporation, otherwise lawful, is not invalid because the corporation was
17 without capacity or power to do the act or to make or receive the
18 transfer, but the lack of capacity or power may be asserted
19

20 (1) in an action by a shareholder against the corporation
21 to enjoin the doing of an act or the transfer of real or personal
22 property by or to the corporation; if the unauthorized act or transfer
23 sought to be enjoined is being, or is to be, performed or made under a
24 contract to which the corporation is a party, the court may, if all of
25 the parties to the contract are parties to the action, set aside and
26 enjoin the performance of the contract, and in so doing may allow to
27 the corporation or to the other parties to the contract, compensation
28 as may be equitable for the loss or damage sustained by any of them
29

Chapter 166

1 from the action of the court in setting aside and enjoining the per-
2 formance of the contract; however, anticipated profits to be derived
3 from the contract may not be awarded by the court as a loss or damage
4 sustained;

5 (2) in an action by or in the right of the corporation to
6 obtain a judgment in its favor against an incumbent or former officer,
7 director, or incorporator of the corporation for loss or damage due to
8 that individual's unauthorized act;

9 (3) in an action or special proceeding by the commissioner
10 to annul or dissolve the corporation or to enjoin it from the doing of
11 unauthorized business.

12 (b) This section applies to contracts and conveyances made by
13 foreign corporations in this state and to conveyances by foreign
14 corporations of real property situated in this state.

15 Sec. 10.06.020. LIMITATIONS ON AUTHORITY OF CORPORATE AGENTS. A
16 limitation upon the powers of the shareholders, officers, or direc-
17 tors, or the manner or exercise of their powers, contained in or
18 implied by the articles of incorporation, bylaws, or action of the
19 board, or by AS 10.06.605 - 10.06.678 or 10.06.705 - 10.06.788 or by a
20 shareholders' agreement may not be asserted as between the corporation
21 or a shareholder and a third person, except in a proceeding

22 (1) by a shareholder or the state to enjoin the doing or
23 continuance of unauthorized business by the corporation or its offi-
24 cers, or both, in a case where a third party has not acquired rights
25 under AS 10.06.025(a);

26 (2) to dissolve the corporation; or

27 (3) by the corporation or by a shareholder suing in a rep-
28 resentative suit against the officers or directors of the corporation
29 for violation of their duty.
S

1 Sec. 10.06.025. CONTRACTS OR CONVEYANCES BINDING DOMESTIC AND
2 FOREIGN CORPORATIONS. (a) A contract or conveyance made in the name
3 of the corporation that is authorized or ratified by the board, or is
4 done within the scope of the authority, actual or apparent, conferred
5 by the board or within the agency power of the officers executing it,
6 except as the board's authority is limited by law other than this
7 chapter, binds the corporation, and the corporation acquires rights
8 under the contract, whether the contract is executed or is wholly or
9 in part executory.

0 (b) This section applies to contracts and conveyances made by
1 foreign corporations in this state and to conveyances by foreign
2 corporations of real property situated in this state.

3 ARTICLE 2. NAME AND SERVICE OF PROCESS.

4 Sec. 10.06.105. CORPORATE NAME. (a) A corporate name shall
5 contain the word "corporation", "company", "incorporated", or
6 "limited", or an abbreviation of one of these words. The corporate
7 name may not contain a word or phrase that indicates or implies that
8 the corporation is organized for a purpose other than the purpose
9 contained in its articles of incorporation. The corporate name may
0 not be the same as, or deceptively similar to, the name of a domestic
1 corporation existing under the laws of this state or a foreign corpo-
2 ration authorized to transact business in this state, or a name that
3 has been reserved or registered as provided in this title.

4 (b) The corporate name may not contain the word "city", "bor-
5 ough", or "village" or otherwise imply that the corporation is a
6 municipality. The name of a city, borough, or village may be used in
7 the corporate name.

8 (c) A person may not adopt a name that contains the word "cor-
9 poration", "incorporated", or "limited", or an abbreviation of one of

Chapter 166

1 these words, unless the person has been issued a certificate of incor-
2 poration, or, in the case of a foreign corporation, a certificate of
3 authority, by the commissioner.

4 Sec. 10.06.110. RESERVATION OF CORPORATE NAME. The exclusive
5 right to the use of a corporate name may be reserved by a

6 (1) person intending to organize a corporation under this
7 chapter;

8 (2) domestic corporation intending to change its name;

9 (3) foreign corporation intending to apply for a certifi-
10 cate of authority to transact business in this state;

11 (4) foreign corporation authorized to transact business in
12 this state and intending to change its name; or

13 (5) person intending to organize a foreign corporation and
14 to have it apply for a certificate of authority to transact business
15 in this state.

16 Sec. 10.06.115. APPLICATION TO RESERVE CORPORATE NAME. Reserva-
17 tion of a corporate name is made by filing an application with the
18 commissioner. If the commissioner finds that the name is available
19 for corporate use, and not a reserved or registered business name as
20 set out in AS 10.35, the commissioner shall reserve it for the exclu-
21 sive use of the applicant for a period of 120 days.

22 Sec. 10.06.120. TRANSFER OF RESERVED NAME. The holder of a
23 reserved corporate name may transfer the right to the exclusive use of
24 the corporate name to another person by filing a notice of transfer
25 with the commissioner, signed by the holder of the name, and specifying
26 the name and address of the transferee.

27 Sec. 10.06.125. REGISTRATION OF CORPORATE NAME. A corporation
28 organized and existing under the laws of a state or territory of the
29 United States may register its corporate name if the name is not the
S

1 same as, or deceptively similar to, the name of a domestic corpo-
2 ration, the name of a foreign corporation authorized to transact
3 business in this state, or a corporate name reserved or registered
4 under this chapter or a business name reserved or registered under
5 AS 10.35.

6 Sec. 10.06.130. USE OF SAME OR DECEPTIVELY SIMILAR NAME. Regis-
7 tration of a corporate name gives the exclusive right to the use of
8 the name. The person who has registered the corporate name may enjoy
9 the use of the same or deceptively similar name and has a cause of
10 action for damages against a person who uses the same or deceptively
11 similar name.

12 Sec. 10.06.135. PROCEDURE FOR REGISTRATION OF CORPORATE NAME.
13 Registration of a corporate name is made by filing with the commis-
14 sioner

15 (1) an application for registration executed by an officer
16 of the corporation setting out the name of the corporation, the state
17 or territory under the laws of which it is incorporated, the date of
18 incorporation, a statement that it is doing business, and a brief
19 statement of its business; and

20 (2) a certificate from an official of the state or terri-
21 tory where the corporation is organized who has custody of the records
22 pertaining to corporations stating that the corporation is in good
23 standing under the laws of that state or territory.

24 Sec. 10.06.140. FEE FOR AND DURATION OF REGISTERED NAME. (a)
25 The fee for registration of a corporate name shall be established by
26 the department by regulation.

27 (b) The registration is effective until the close of the cal-
28 endar year in which the application for registration is filed unless
29 terminated earlier by involuntary dissolution in accordance with
S

Chapter 166

1 AS 10.06.633.

2 Sec. 10.06.145. RENEWAL OF REGISTERED NAME. A corporation that
3 has registered its corporate name may renew the registration each year
4 by (1) filing an application for renewal each year setting out the
5 facts required in an original application for registration; (2) filing
6 a certificate of good standing required for an original registration;
7 and (3) paying a fee established by the department by regulation. An
8 application for renewal shall be filed between October 1 and Decem-
9 ber 31 in each year. The renewal extends the registration for the
10 following calendar year.

11 Sec. 10.06.150. REGISTERED OFFICE AND REGISTERED AGENT. A cor-
12 poration shall continuously maintain in this state a registered agent
13 and a registered office. The registered office may be the same as the
14 place of business of the corporation. The registered agent may be
15 either an individual resident of this state whose business office is
16 the same as the registered office, or a domestic or foreign corpora-
17 tion authorized to transact business in this state whose business
18 office is the same as the registered office.

19 Sec. 10.06.155. REGISTRATION OF AGENT BY NONRESIDENT WITH CON-
20 TROLLING INTEREST. (a) If a person who is not a resident of this
21 state or a foreign corporation not authorized to do business in this
22 state possesses a controlling interest in a corporation subject to the
23 reporting requirements of this chapter, the person or corporation
24 shall designate in writing an agent in this state upon whom service of
25 notices and process and orders, decisions, and requirements of the
26 department or the commissioner may be made for or on behalf of that
27 person or corporation. The designation shall be filed in the office
28 of the commissioner and may be amended by filing written notice in the
29 office of the commissioner. Service of notices, process, orders,
S

1 decisions, and requirements of the department or the commissioner may
2 be made upon the person or corporation who designates an agent under
3 this section by service upon the designated agent at the agent's
4 office or usual place of residence. Service upon a designated agent
5 has the same effect as service made personally upon the person or
6 corporation who designates the agent.

7 (b) A person or foreign corporation required to designate an
8 agent under (a) of this section and the corporation subject to that
9 controlling interest may not initiate an action in the courts of this
10 state until the person or corporation complies with the provisions of
11 (a) of this section. If a person or foreign corporation or corpora-
12 tion subject to that controlling interest initiates an action in the
13 courts of this state and the court finds that there has been noncom-
14 pliance with (a) of this section, the court shall dismiss the action
15 without prejudice.

16 Sec. 10.06.160. FILING LIST OF REGISTERED CORPORATIONS WITH
17 SUPERIOR COURT; UPDATING AND PUBLISHING. The commissioner shall file
18 a list of the names of each domestic and authorized foreign corpora-
19 tion, and the name and address of the registered agent of the corpo-
20 rations with the superior court of each judicial district. The com-
21 missioner shall provide a weekly update of the list indicating addi-
22 tions, deletions, and changes by mechanical or electronic means that
23 can be reduced to legible written copy. Upon request, the commis-
24 sioner shall make available a copy of the list and weekly updates for
25 a fee established by the department by regulation. The commissioner
26 shall publish an updated compilation of the entire list at least once
27 each year.

28 Sec. 10.06.165. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A
29 corporation may change its registered office, agent, or both, by
S

Chapter 166

1 filing with the department a verified statement signed by the presi-
2 dent or vice-president including

- 3 (1) the name of the corporation;
4 (2) the address of its registered office;
5 (3) the address of its new registered office if the regis-
6 tered office is to be changed;
7 (4) the name of its registered agent;
8 (5) the name of its new registered agent, if the registered
9 agent is to be changed; and
10 (6) a statement that the change is authorized by resolution
11 of its board of directors.

12 (b) If the commissioner finds that the verified statement com-
13 plies with this chapter, the commissioner shall file it in the commis-
14 sioner's office. The change becomes effective when the statement is
15 filed.

16 Sec. 10.06.170. CHANGE OR RESIGNATION OF REGISTERED AGENT. (a)
17 A registered agent of a domestic or foreign corporation may change the
18 location of the agent's office from one address to another in this
19 state. The agent may change the registered office for each corpo-
20 ration for which the person is acting as registered agent by filing in
21 the office of the commissioner a statement setting out (1) the name of
22 the agent; (2) the address of the agent's office before change; (3)
23 the address to which the office is changed; and (4) a list of corpo-
24 rations for which the person is the registered agent. The statement
25 shall be executed by the registered agent in the individual name of
26 the agent or, if the agent is a corporation, it shall be executed and
27 verified by its president or a vice-president. The statement shall be
28 delivered to the commissioner and if the commissioner finds that the
29 statement complies with this chapter, the commissioner shall file it
S

1 in the commissioner's office. The change becomes effective when the
2 statement is filed.

3 (b) A registered agent may resign by filing a written notice and
4 an exact copy of the notice with the commissioner. The written notice
5 of resignation shall set out the latest address of the principal
6 office of the corporation and the names, addresses, and titles of the
7 most recent officers of the corporation known by the agent. The
8 commissioner shall immediately mail a copy of the notice to the corpo-
9 ration at its principal office. The resignation becomes effective 30
10 days after the filing of the written notice, unless the corporation
11 sooner appoints a successor registered agent, as provided in AS 10.-
12 06.165.

13 Sec. 10.06.175. SERVICE OF PROCESS ON CORPORATION. (a) The
14 registered agent of a corporation is an agent upon whom process,
15 notice, or demand required or permitted by law to be served upon the
16 corporation may be served.

17 (b) If a corporation fails to appoint or maintain a registered
18 agent in this state, or if its registered agent cannot, with reason-
19 able diligence, be found at the registered office, the commissioner is
20 an agent of the corporation upon whom the process, notice, or demand
21 may be served. A person may serve the commissioner under this sub-
22 section by

23 (1) serving on the commissioner or the designee of the
24 commissioner a copy of the process, notice, or demand, with any papers
25 required by law to be delivered in connection with the service, and a
26 fee established by the department by regulation;

27 (2) sending to the corporation being served by certified
28 mail a notice that service has been made on the commissioner under
29 this subsection and a copy of the process, notice, or demand and

Chapter 166

1 accompanying papers; notice to the corporation shall be sent to

2 (A) the address of the last registered office of the
3 corporation as shown by the records on file in the office of the
4 commissioner; and

5 (B) the address, the use of which the person initiat-
6 ing the proceedings knows or, on the basis of reasonable inquiry,
7 has reason to believe is most likely to result in actual notice;
8 and

9 (3) filing with the appropriate court or other body, as
10 part of the return of service, the return receipt of mailing and an
11 affidavit of the person initiating the proceedings that this section
12 has been complied with.

13 (c) The commissioner shall keep a record of processes, notices,
14 and demands served upon the commissioner under this section.

15 (d) This section does not affect the right to serve process,
16 notice, or demand required or permitted by law to be served upon a
17 corporation in any other manner permitted.

18 ARTICLE 3. FORMATION OF CORPORATIONS.

19 Sec. 10.06.205. INCORPORATORS. One or more natural persons at
20 least 18 years of age may act as incorporators of a corporation by
21 signing, verifying, and delivering to the commissioner an original and
22 an exact copy of the articles of incorporation for the corporation.

23 Sec. 10.06.208. ARTICLES OF INCORPORATION. The articles of
24 incorporation shall set out

25 (1) the name of the corporation;

26 (2) the purpose or purposes for which the corporation is
27 organized that may be stated to be, or to include, the transaction of
28 any or all lawful business for which corporations may be incorporated
29 under this chapter;

1 (3) if incorporation is after March 24, 1982, the address
2 of its initial registered office and the name of its initial regis-
3 tered agent;

4 (4) the name and address of each alien affiliate or a
5 statement that there are no alien affiliates;

6 (5) if the corporation is authorized to issue only one
7 class of shares, the total number of shares that the corporation is
8 authorized to issue;

9 (6) if the corporation is authorized to issue more than one
10 class of shares, or if a class of shares is to have two or more
11 series,

12 (A) the total number of shares of each class the
13 corporation is authorized to issue, and the total number of
14 shares of each series that the corporation is authorized to issue
15 or of which the board is authorized to fix the number of shares;

16 (B) the designation of each class, and the designation
17 of each series or that the board may determine the designation of
18 any series;

19 (C) the rights, preferences, privileges, and restric-
20 tions granted to or imposed on the respective classes or series
21 of shares or the holders of the shares, or that the board, within
22 any limits and restrictions stated, may determine or alter the
23 rights, preferences, privileges, and restrictions granted to or
24 imposed on a wholly unissued class of shares or a wholly unissued
25 series of any class of shares; and

26 (D) if the number of shares of a series is authorized
27 to be fixed by the board, the articles of incorporation may also
28 authorize the board, within the limits and restrictions stated in
29 the articles or stated in a resolution of the board originally
S

Chapter 166

1 fixing the number of shares constituting a series, to increase or
2 decrease, but not below the number of shares of the series then
3 outstanding, the number of shares of a series after the issue of
4 shares of that series; if the number of shares of a series are
5 decreased, the shares constituting the decrease shall resume the
6 status they had before the adoption of the resolution originally
7 fixing the number of shares of the series.

8 Sec. 10.06.210. ARTICLES OF INCORPORATION: OPTIONAL PROVISIONS.

9 The articles of incorporation may set out

10 (1) any of the following provisions, that are not effective
11 unless expressly provided in the articles:

12 (A) a provision granting, with or without limitations,
13 the power to levy assessments upon the shares or class of shares;

14 (B) a provision removing from shareholders preemptive
15 rights to subscribe to any or all issues of shares or securities;

16 (C) special qualifications of persons who may be
17 shareholders;

18 (D) a provision limiting the duration of the corpora-
19 tion's existence to a specified date;

20 (E) a provision restricting or eliminating the power
21 of the board or of the outstanding shares to adopt, amend, or
22 repeal provisions of the bylaws as provided in AS 10.06.228;

23 (F) a provision requiring, for any corporate action
24 except as provided in AS 10.06.460 and AS 10.06.605, the vote of
25 a larger proportion or of all of the shares of a class or series,
26 or the vote or quorum for taking action of a larger proportion or
27 of all of the directors, than is otherwise required by this
28 chapter;

29 (G) a provision limiting or restricting the business
S

1 in which the corporation may engage or the powers that the cor-
2 poration may exercise or both;

3 (H) a provision conferring upon the holder of an evi-
4 dence of indebtedness, issued or to be issued by the corporation,
5 the right to vote in the election of directors and on any other
6 matters on which shareholders may vote;

7 (I) a provision conferring on shareholders the right
8 to determine the consideration for which shares shall be issued;

9 (J) a provision requiring the approval of the share-
10 holders or the approval of the outstanding shares for a corporate
11 action, even though not otherwise required by this chapter;

12 (K) a provision that one or more classes or series of
13 shares are redeemable as provided in AS 10.06.325;

14 (L) a provision, in the case of a corporation with
15 less than 100 holders of record of its shares as determined in
16 AS 10.06.408, waiving the requirements of AS 10.06.433(a);

17 (M) a provision that confers or imposes the powers,
18 duties, privileges, and liabilities of directors upon delegates
19 under AS 10.06.450;

20 (2) reasonable restrictions upon the right to transfer or
21 hypothecate shares of a class or series, but a restriction is not
22 binding on shares issued before the adoption of the restriction unless
23 the holders of those shares voted in favor of the restriction;

24 (3) the names and addresses of the persons appointed to act
25 as initial directors;

26 (4) any other provision not in conflict with this chapter
27 for the management of the business and for the conduct of the affairs
28 of the corporation, including any provision that is required or per-
29 mitted by this chapter to be stated in the bylaws.

1 Sec. 10.06.213. FILING OF ARTICLES OF INCORPORATION. An origi-
2 nal and an exact copy of the articles of incorporation shall be de-
3 livered to the commissioner for processing under AS 10.06.910 and for
4 issuance of a certificate of incorporation.

5 Sec. 10.06.215. DISCLOSURE OF CORPORATE PURPOSES. An incorpo-
6 rator presenting articles of incorporation under AS 10.06.213 shall
7 deliver, with the articles, a separate statement of the codes, from
8 the identification codes established under AS 10.06.870, which most
9 closely describe the activities in which the corporation will ini-
10 tially engage.

11 Sec. 10.06.218. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORA-
12 TION. The corporate existence begins on the issuance of the certifi-
13 cate of incorporation. That certificate is conclusive evidence that
14 all precedent conditions required to be performed by the incorporators
15 have been satisfied and that the corporation has been incorporated.
16 Issuance does not affect the right of the state to bring a proceeding
17 to cancel or revoke the certificate or for involuntary dissolution of
18 the corporation. The doctrines of de jure compliance, de facto corpo-
19 rations, and corporations by estoppel are abolished.

20 Sec. 10.06.220. ASSUMPTION OF PURPORTED POWERS OF NONEXISTENT
21 CORPORATION: LIABILITY. (a) Except as provided in (b) of this sec-
22 tion persons who assume to act as a corporation for which there has
23 been no issuance of a certificate of incorporation under AS 10.06.218
24 are jointly and severally liable for debts and liabilities incurred or
25 arising as a result of that action.

26 (b) The terms of a written contract between a third party and
27 persons acting on behalf of a corporation for which there has been no
28 issuance of a certificate of incorporation may modify or preclude the
29 liability created by this section.
S

1 (c) An oral promise, agreement or understanding is not effective
2 to modify or preclude the liability created in (a) of this section.

3 Sec. 10.06.223. ORGANIZATION MEETING. After the commencement of
4 corporate existence by the issuance of a certificate of incorporation,
5 an organization meeting of either the incorporators or the board of
6 directors named in the articles of incorporation shall be held, either
7 inside or outside the state, at the call of a majority of the incorpo-
8 rators or directors named in the articles of incorporation, for the
9 purpose of adopting bylaws, electing directors if none have been named
10 in the articles, electing officers, and transacting such other busi-
11 ness as may come before the meeting. Those calling the meeting shall
12 give at least 20 days notice of the meeting by mail to each incorpora-
13 tor or director named. The notice shall state the time and place of
14 the meeting.

15 Sec. 10.06.225. POWER OF INCORPORATORS BEFORE DIRECTORS' ELEC-
16 TION. If initial directors have not been named in the articles of
17 incorporation, the incorporator or incorporators may do whatever is
18 necessary and proper to perfect the organization of the corporation
19 until the directors are elected, including the adoption and amendment
20 of bylaws of the corporation and the election of directors.

21 Sec. 10.06.228. BYLAWS: ADOPTION, AMENDMENT OR REPEAL. Bylaws
22 may be adopted, amended, or repealed either by approval of the out-
23 standing shares or by approval of the board, except as provided in
24 AS 10.06.230. The articles of incorporation may restrict or eliminate
25 the power of either the board or the outstanding shares to adopt,
26 amend, or repeal bylaws.

27 Sec. 10.06.230. BYLAWS: NUMBER OF DIRECTORS AND OTHER CONTENT.
28 (a) Unless a provision is contained in the articles, the bylaws shall
29 state the number of directors of the corporation or state that the

Chapter 166

1 number of directors may not be less than a stated number or more than
2 a stated number, with the exact number of the directors to be fixed,
3 within the limits specified, by approval of the board or the share-
4 holders in the manner provided in the bylaws. The stated maximum
5 number of directors may not be greater than two times the stated
6 minimum number minus one and the number of minimum number of directors
7 may not be less than three. If the articles provide for the number of
8 directors, the number of directors may only be changed by an amendment
9 to the articles.

10 (b) Notwithstanding (a) of this section the number of directors
11 may be

12 (1) one or two before shares are issued or so long as the
13 corporation has only one shareholder; and

14 (2) two so long as the corporation has only two share-
15 holders.

16 (c) After the issuance of shares, a bylaw specifying or changing
17 a fixed number of directors, or the maximum or minimum number of
18 directors or changing from a fixed to a variable board or vice versa,
19 shall be adopted by approval of the outstanding shares.

20 (d) Notwithstanding (c) of this section, a bylaw or amendment of
21 the articles of incorporation reducing the fixed or minimum number of
22 directors to a number less than five may not be adopted if the number
23 of votes cast against its adoption at a meeting is more than 16-2/3
24 percent of the outstanding shares entitled to vote.

25 (e) The bylaws may contain any provision, not in conflict with
26 law or the articles or incorporation, for the management of the busi-
27 ness of the corporation and for the conduct of the affairs of the
28 corporation, including but not limited to,

29 (1) a provision referred to in AS 10.06.210(2), (3), or
S

1 (4);

2 (2) the time, place, and manner of calling, conducting and
3 giving notice of meetings of shareholders, directors, and committees;

4 (3) the manner of execution, revocation, and use of
5 proxies;

6 (4) the qualifications, duties, and compensation of direc-
7 tors; the time of their annual election; and the requirements of a
8 quorum for directors' and committee meetings;

9 (5) the appointment and authority of committees of the
10 board;

11 (6) the appointment, duties, compensation, and tenure of
12 officers;

13 (7) the mode of determination of holders of record of the
14 shares of the corporation;

15 (8) the making of annual reports and financial statements
16 to the shareholders.

17 Sec. 10.06.233. BYLAWS TO BE KEPT AT OFFICE; INSPECTION BY
18 SHAREHOLDERS. Each corporation shall keep at its principal executive
19 office in this state or, if its principal executive office is not in
20 this state, at its principal business office in this state, the ori-
21 ginal or a copy of its bylaws with amendments to date, that shall be
22 open to inspection by the shareholders at all reasonable times during
23 office hours. If the principal executive office of the corporation is
24 outside this state and the corporation has no principal business
25 office in this state, it shall upon the written request of a share-
26 holder furnish to a shareholder a copy of the bylaws with amendments
27 to date.

ARTICLE 4. CORPORATE FINANCE.

Sec. 10.06.305. CREATION, CLASSES, AND ISSUANCE OF SHARES. (a)

Chapter 166

1 Subject to the provisions of this chapter, a corporation may issue one
2 or more classes or series of shares or both, with full, limited, or no
3 voting rights and with other rights, preferences, privileges, and
4 restrictions as are stated or authorized in its articles of incorpora-
5 tion. A denial or limitation of voting rights is not effective unless
6 at the time one or more classes or series of outstanding shares or
7 debt securities, singly or in the aggregate, are entitled to full
8 voting rights. A denial or limitation of dividend or liquidation
9 rights is not effective unless at the time one or more classes or
10 series of outstanding shares, singly or in the aggregate, are entitled
11 to unlimited dividend or liquidation rights.

12 (b) All shares of a class shall have the same voting, conver-
13 sion, and redemption rights and other rights, preferences, privileges,
14 and restrictions, unless the class is divided into series. If a class
15 is divided into series, all the shares of a series shall have the same
16 voting, conversion, and redemption rights and other rights, prefer-
17 ences, privileges, and restrictions.

18 Sec. 10.06.308. ISSUANCE OF PREFERRED OR SPECIAL CLASSES OF
19 SHARES. If authorized by the articles of incorporation, a corporation
20 may issue preferred or special classes of shares

21 (1) subject to the right of the corporation to redeem any
22 of the shares at the price fixed by the articles for redemption;

23 (2) entitling the holders to cumulative, noncumulative, or
24 partially cumulative dividends;

25 (3) having preferences over another class or classes of
26 shares for the payment of dividends;

27 (4) having preference in the assets of the corporation over
28 another class of shares upon the voluntary or involuntary liquidation
29 of the corporation;

1 (5) convertible into shares of another class or into shares
2 of a series of the same or another class, except a class having prior
3 or superior rights and preferences as to dividends or distribution of
4 assets upon liquidation.

5 Sec. 10.06.310. ISSUANCE OF SHARES IN SERIES. If authorized by
6 the articles of incorporation, the shares of a preferred or special
7 class may be divided into and issued in series. Each series shall be
8 designated to distinguish the shares of the series from the shares of
9 other series and classes.

10 Sec. 10.06.313. VARIATION IN RIGHTS AND PREFERENCES OF SHARES.
11 Any or all of the rights and preferences of a series of a preferred or
12 special class of shares and the variations in the relative rights and
13 preferences between different series may be fixed and determined by
14 the articles of incorporation, but shares of the same class shall be
15 identical except for the following relative rights and preferences as
16 to which there may be variations between series:

- 17 (1) the rate of dividend;
- 18 (2) the price and the terms and conditions on which shares
19 may be redeemed;
- 20 (3) the amount payable upon shares in the event of involun-
21 tary liquidation;
- 22 (4) the amount payable upon shares in the event of volun-
23 tary liquidation;
- 24 (5) sinking fund provisions for the redemption or purchase
25 of shares;
- 26 (6) the terms and conditions on which shares may be con-
27 verted, if the shares of a series are issued with the privilege of
28 conversion;
- 29 (7) voting rights, if any.

Chapter 166

1 Sec. 10.06.315. SERIES RIGHTS AND PREFERENCES ESTABLISHED BY
2 BOARD. If the articles of incorporation expressly vest authority in
3 the board, then, to the extent that the articles have not established
4 series and fixed and determined the variations in the relative rights
5 and preferences between series, the board may divide a class into
6 series and, within the limitations set out in AS 10.06.305 - 10.06.323
7 and in the articles, fix and determine the relative rights and pref-
8 erences of the shares of a series.

9 Sec. 10.06.318. MANNER OF ESTABLISHING SERIES. If the authority
10 to establish a series is contained in the articles of incorporation,
11 the board shall adopt a resolution setting out the designation of the
12 series and fixing and determining the relative rights and preferences
13 of the series to the extent not fixed and determined by the articles.

14 Sec. 10.06.320. FILING OF STATEMENT BEFORE ISSUANCE OF SERIES.
15 (a) Before the issuance of shares of a class the rights, preferences,
16 privileges, and restrictions of which have been fixed by resolution of
17 the board, or before the issuance of shares of a series established by
18 resolution of the board, the corporation shall file with the commis-
19 sioner a statement, and an exact copy of the statement, signed by the
20 president or vice-president and the secretary or assistant secretary,
21 verified by one of the officers signing the statement, and setting
22 out:

23 (1) the name of the corporation;

24 (2) a copy of the resolution determining the rights, pref-
25 erences, privileges, and restrictions of the wholly unissued class, or
26 of the resolution establishing and designating a series, and fixing
27 and determining the relative rights and preferences of the series;

28 (3) the date of the adoption of the resolution;

29 (4) that the resolution was adopted by the board.
S

(b) The commissioner shall process the statement in accordance with AS 10.06.910.

Sec. 10.06.323. EFFECT OF FILING STATEMENT. When the commissioner has filed the statement under AS 10.06.320, the resolution fixing the rights, preferences, privileges, and restrictions of a wholly unissued class of shares or the resolution establishing and designating a series of shares and fixing and determining the relative rights and preferences of the series becomes effective and constitutes an amendment of the articles of incorporation.

Sec. 10.06.325. REDEMPTION OF SHARES; CREATION OF SINKING FUND; REPURCHASE AGREEMENTS. (a) Except as provided in (b) of this section, a corporation may provide in its articles of incorporation for one or more classes or series of shares which are redeemable, in whole or in part, at the option of the corporation, at the price or prices, within the time or upon the happening of one or more specified events and upon the terms and conditions as are stated in its articles.

(b) A corporation may not issue redeemable or other shares that purport by their terms to grant to a holder of the shares the right to compel the corporation to redeem the shares, except that an open-end investment company registered under the United States Investment Company Act of 1940 may, if its articles of incorporation so provide, issue shares that are redeemable at the option of the holder at a price approximately equal to the shares' proportionate interest in the net assets of the corporation and a shareholder may compel redemption of the shares in accordance with their terms.

(c) Nothing in this section prevents a corporation from creating a sinking fund or similar provision or entering into an agreement for the redemption or purchase of its shares to the extent permitted by this chapter.

Chapter 166

1 Sec. 10.06.328. IRREVOCABILITY OF SUBSCRIPTIONS FOR SHARES. A
2 subscription for shares of a corporation to be organized is irrevocable for a period of six months, unless the subscription agreement
3 provides otherwise or unless all of the subscribers consent to the
4 revocation of the subscription.
5

6 Sec. 10.06.330. PAYMENT OF SUBSCRIPTION FOR SHARES. Unless
7 otherwise provided in the subscription agreement, subscriptions for
8 shares, whether made before or after the organization of a corporation, shall be paid in full at the time or in installments as determined by the board. A call made by the board for payment on subscriptions shall be uniform for shares of the same class or shares of the same series.
9
10

11 Sec. 10.06.333. FORFEITURE OF SHARES FOR DEFAULT IN PAYMENT. In case of default in the payment of an installment or call when payment is due, the corporation may proceed to collect the amount due as any debt due the corporation. The bylaws may prescribe other remedies for failure to pay installments or calls that become due. No remedy working a forfeiture of a subscription, or of the amounts paid on a subscription, may be declared against a subscriber unless the amount due remains unpaid for a period of 20 days after written demand has been made. If mailed, written demand is considered to be made when it is deposited in the United States mail in a sealed envelope addressed to the subscriber at the last post office address known to the corporation, with postage prepaid. On a sale of shares by reason of forfeiture, the excess of proceeds realized over the amount due and unpaid on the shares shall be paid to the delinquent subscriber or to the legal representative of the subscriber.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 Sec. 10.06.335. CONSIDERATION FOR SHARES. Shares may be issued
29 for consideration expressed in dollars fixed by the board unless the
S

1 articles of incorporation reserve to the shareholders the right to fix
2 the consideration. If this right is reserved as to any shares, the
3 shareholders shall, before the issuance of the shares, fix the con-
4 sideration to be received for the shares by approval of the outstand-
5 ing shares.

6 Sec. 10.06.338. PAYMENT FOR SHARES. (a) Consideration for the
7 issuance of shares may be paid, in whole or in part, in money, in
8 other property, tangible or intangible, or in labor or services ac-
9 tually performed for the corporation. Unless otherwise provided in
0 the articles of incorporation, when payment of the consideration for
1 shares is received by the corporation, the shares are considered fully
2 paid and nonassessable.

3 (b) A promissory note or future service does not constitute
4 payment or part payment for shares of a corporation.

5 Sec. 10.06.340. JUDGMENT OF BOARD OR SHAREHOLDERS AS TO VALUE OF
6 CONSIDERATION CONCLUSIVE. In the absence of fraud in the transaction,
7 the judgment of the board or the shareholders as to the value of the
8 consideration received for shares is conclusive.

9 Sec. 10.06.343. STOCK RIGHTS AND OPTIONS. Subject to a provi-
0 sion in its articles, a corporation may create and issue, whether or
1 not in connection with the issuance and sale of any of its shares or
2 other securities, rights or options entitling the holders of the
3 shares to purchase from the corporation shares of any class or
4 classes. These rights or options shall be evidenced in the manner the
5 board approves and, subject to the provisions of the articles, shall
6 set out the terms upon which, the time within which, and the price at
7 which the shares may be purchased from the corporation upon the exer-
8 cise of the right or option. If the rights or options are to be
9 issued to directors, officers, or employees of the corporation or of a

Chapter 166

1 subsidiary of the corporation and not to the shareholders generally,
2 their issuance shall be authorized by the approval of the outstanding
3 shares or shall be consistent with a plan so approved or ratified. In
4 the absence of fraud in the transaction, the judgment of the board as
5 to the adequacy of the consideration received for the rights or op-
6 tions is conclusive.

7 Sec. 10.06.345. EXPENSES OF ORGANIZATION, REORGANIZATION, AND
8 FINANCING. The reasonable charges and expenses of organization or
9 reorganization of a corporation, and the reasonable expenses of and
10 compensation for the sale or underwriting of its shares, may be paid
11 or allowed by the corporation out of the consideration received by the
12 corporation in payment for its shares without rendering the shares not
13 fully paid or assessable.

14 Sec. 10.06.348. CERTIFICATES REPRESENTING SHARES. The shares of
15 a corporation shall be represented by certificates signed by the
16 president or vice-president and the secretary or an assistant secre-
17 tary of the corporation, and may be sealed with the seal of the corpo-
18 ration or a facsimile of the seal. The signatures of the president or
19 vice-president and the secretary or assistant secretary upon a certifi-
20 cate may be facsimiles if the certificate is countersigned by a
21 transfer agent or registered by a registrar, other than the corpora-
22 tion itself or an employee of the corporation. If an officer who has
23 signed or whose facsimile signature has been placed on the certificate
24 ceases to be an officer before the certificate is issued, the certifi-
25 cate may be issued by the corporation with the same effect as if the
26 officer were an officer at the date of its issue.

27 Sec. 10.06.350. INFORMATION REQUIRED TO BE STATED ON CERTIFI-
28 CATE. (a) Each certificate representing shares issued by a corpo-
29 ration authorized to issue shares of more than one class shall set out
S

1 on the face or back of the certificate, or state that the corporation
2 will furnish to a shareholder upon request and without charge, a full
3 or summary statement of the designations, preferences, limitations,
4 and relative rights of the shares of each class authorized to be
5 issued and, if the corporation is authorized to issue preferred or
6 special class in series, the variations in the relative rights and
7 preferences between the shares of each series so far as they have been
8 fixed and determined and the authority of the board to fix and deter-
9 mine the relative rights and preferences of subsequent series.

0 (b) Each certificate representing shares shall state upon its
1 face

2 (1) that the corporation is organized under the laws of the
3 state;

4 (2) the name of the person to whom issued;

5 (3) the number and class of shares, and the designation of
6 the series, if any, that the certificate represents.

7 Sec. 10.06.353. FULL PAYMENT REQUIRED FOR CERTIFICATE. A cer-
8 tificate may not be issued for a share until the share is fully paid.

9 Sec. 10.06.355. ISSUANCE OF FRACTIONAL SHARES OR SCRIP. (a) A
0 corporation may issue a certificate for a fractional share, and, by
1 action of its board, may issue, instead of a fractional certificate,
2 scrip in registered or bearer form that entitles the holder to receive
3 a certificate for a full share upon the surrender of the scrip aggre-
4 gating a full share.

5 (b) A certificate for a fractional share entitles the holder to
6 exercise voting rights, to receive dividends, and to participate in
7 the assets of the corporation in the event of liquidation. Unless
8 otherwise provided in the scrip, scrip does not entitle the holder to
9 exercise voting rights, to receive dividends, or to participate in the

Chapter 166

1 assets of the corporation in the event of liquidation.

2 (c) The board may issue scrip subject to the condition that it
3 is void if not exchanged for certificates representing full shares
4 before a specified date, or subject to the condition that the shares
5 for which the scrip is exchangeable may be sold by the corporation and
6 the proceeds distributed to the holders of that scrip, or subject to
7 other conditions which the board considers advisable.

8 Sec. 10.06.358. DISTRIBUTIONS; CONDITIONS. (a) A corporation
9 or a subsidiary of the corporation may not make a distribution to the
10 corporation's shareholders, as defined in AS 10.06.990(17), unless

11 (1) the amount of the retained earnings of the corporation
12 immediately before the distribution equals or exceeds the amount of
13 the proposed distribution; or

14 (2) immediately after giving effect to the distribution the

15 (A) sum of the assets of the corporation, exclusive of
16 goodwill, capitalized research and development expenses, evi-
17 dences of debts owing from directors or officers or secured by
18 the corporation's own shares, and deferred charges, would be at
19 least equal to one and one-fourth times its liabilities, not
20 including deferred taxes, deferred income, and other deferred
21 credits; and

22 (B) current assets of the corporation would be at
23 least equal to its current liabilities or, if the average of the
24 earnings of the corporation before taxes on income and before
25 interest expense for the two preceding fiscal years was less than
26 the average of the interest expense of the corporation for those
27 fiscal years, at least equal to one and one-fourth its current
28 liabilities.

29 (b) For purposes of this section,
S

1 (1) in determining the amount of the assets of the corpora-
2 tion, profits derived from an exchange of assets may not be included
3 unless the assets received are currently realizable in cash;

4 (2) "current assets" may include net amounts that the board
5 has determined in good faith may reasonably be expected to be received
6 from customers during the 12-month period used in calculating current
7 liabilities under existing contractual relationships obligating the
8 customers to make fixed or periodic payments during the term of the
9 contracts after in each case giving effect to future costs not then
10 included in current liabilities but reasonably expected to be incurred
11 by the corporation in performing the contracts.

12 (c) For the purposes of this chapter, the amount of a distribu-
13 tion payable in property shall be determined on the basis of the value
14 at which the property is carried on the corporation's financial state-
15 ments in accordance with generally accepted accounting principles.

16 (d) Only a corporation that classifies its assets as current
17 assets and fixed assets under generally accepted accounting principles
18 is governed by (a)(2)(B) of this section.

19 Sec. 10.06.360. PROHIBITED DISTRIBUTION; INABILITY TO MEET
20 MATURING DEBTS AND LIABILITIES. A corporation or subsidiary of a
1 corporation may not make a distribution to the corporation's share-
2 holders if the corporation or the subsidiary making the distribution
3 is, or as a result of the distribution would be, likely to be unable
4 to meet its liabilities as they mature.

5 Sec. 10.06.363. PROHIBITED DISTRIBUTION OF JUNIOR SHARES; LIQ-
6 UIDATION PREFERENCE. A corporation or subsidiary of a corporation may
7 not make a distribution to the corporation's shareholders on any
8 shares of its stock of a class or series that are junior to outstand-
9 ing shares of another class or series with respect to distribution of

Chapter 166

1 assets on liquidation if, after giving effect to the distribution, the
2 excess of its assets, exclusive of goodwill, capitalized research and
3 development expenses, evidences of debts owing from directors or
4 officers or secured by the corporation's own shares, and deferred
5 charges, over its liabilities, not including deferred taxes, deferred
6 income and other deferred credits, would be less than the liquidation
7 preference of all shares having a preference on liquidation over the
8 class or series to which the distribution is made.

9 Sec. 10.06.365. PROHIBITED DISTRIBUTION TO JUNIOR SHARES; RATIO
10 OF RETAINED EARNINGS. A corporation or a subsidiary of a corporation
11 may not make a distribution to the corporation's shareholders on any
12 shares of its stock of a class or series that are junior to outstand-
13 ing shares of another class or series with respect to payment of
14 dividends unless the amount of the retained earnings of the corpora-
15 tion immediately before the distribution equals or exceeds the amount
16 of the proposed distribution plus the aggregate amount of the cumula-
17 tive dividends in arrears on all shares having a preference with
18 respect to payment of dividends over the class or series to which the
19 distribution is made.

20 Sec. 10.06.368. EXCEPTION FOR PURCHASE OR REDEMPTION OF SHARES
21 OF DECEASED SHAREHOLDER. The provisions of AS 10.06.358, 10.06.360,
22 10.06.363, and 10.06.365 do not apply to a purchase or redemption of
23 shares of a deceased shareholder from the proceeds of insurance on the
24 life of the shareholder in excess of the total amount of all premiums
25 paid by the corporation for the insurance, in order to carry out the
26 provisions of an agreement between the corporation and the shareholder
27 to purchase or redeem the shares upon the death of the shareholder.

28 Sec. 10.06.370. INAPPLICABILITY TO REGULATED INVESTMENT COMPANY.
29 The provisions of AS 10.06.358 do not apply to a dividend declared by
S

1 a regulated investment company, as defined in the United States In-
2 ternal Revenue Code, to the extent that the dividend is necessary to
3 maintain the status of the corporation as a regulated investment
4 company under the provisions of that code. The provisions of this
5 chapter do not apply to a purchase or redemption of shares redeemable
6 at the option of the holder by a registered open-end investment com-
7 pany under the United States Investment Company Act of 1940, so long
8 as the right of redemption remains unsuspended under the provisions of
9 that statute and the articles and bylaws of the corporation.

10 Sec. 10.06.373. SHARE DIVIDENDS: RESTRICTIONS. A dividend
11 payable in shares of a class may not be paid to the holders of shares
12 of another class unless authorized by the articles of incorporation or
13 unless payment is authorized by the affirmative vote or the written
14 consent of the holders of at least a majority of the outstanding
15 shares of the class in which the payment is to be made.

16 Sec. 10.06.375. ADDITIONAL RESTRICTIONS IN ARTICLES, BYLAWS,
17 INDENTURES OR AGREEMENTS. Nothing in this chapter prohibits addi-
18 tional restrictions upon the declaration of dividends or the purchase
19 or redemption of a corporation's own shares by provision in the arti-
20 cles or bylaws of the corporation or in any indenture or other agree-
21 ment entered into by the corporation.

22 Sec. 10.06.378. LIABILITY OF SHAREHOLDERS RECEIVING PROHIBITED
23 DISTRIBUTIONS; SUIT AGAINST SHAREHOLDERS. (a) A shareholder who
24 receives a distribution prohibited by this chapter with knowledge of
25 facts indicating the impropriety of the distribution is liable to the
26 corporation for the benefit of all of the creditors or shareholders
27 entitled to institute an action under (b) of this section for the
28 amount received by the shareholder with interest at the legal rate on
29 judgments until paid. The liability of the shareholder under this

Chapter 166

1 subsection may not exceed the liabilities of the corporation owed to
2 nonconsenting creditors at the time of the violation and the injury
3 suffered by nonconsenting shareholders.

4 (b) Suit may be brought in the name of the corporation to en-
5 force the liability to

6 (1) creditors arising under (a) of this section for a
7 violation of AS 10.06.358 or 10.06.360 against any or all shareholders
8 liable by any one or more creditors of the corporation whose debts or
9 claims arose before the time of the distribution to shareholders and
10 who have not consented to the distribution, whether or not they have
11 reduced their claims to judgment; or

12 (2) shareholders arising under (a) of this section for a
13 violation of AS 10.06.363 or 10.06.365 against any or all shareholders
14 liable by any one or more holders of preferred shares outstanding at
15 the time of the distribution who have not consented to the distribu-
16 tion, without regard to the provisions of AS 10.06.435.

17 (c) A shareholder sued under this section may implead all other
18 shareholders liable under this section and may compel contribution,
19 either in that action or in an independent action against shareholders
20 not joined in that action.

21 (d) This section does not affect the liability that a share-
22 holder may have under other applicable law.

23 Sec. 10.06.380. IDENTIFICATION OF DISTRIBUTION IN NOTICE TO
24 SHAREHOLDERS. A distribution other than one chargeable to retained
25 earnings shall be identified in a notice to shareholders as being made
26 from a source other than retained earnings, and shall include a state-
27 ment of the accounting treatment of the distribution. The notice
28 shall accompany the distribution or shall be given within three months
29 after the end of the fiscal year in which the distribution is paid.

30
31
32
33
34
35

1 Sec. 10.06.383. INAPPLICABILITY TO WINDING UP AND INVOLUNTARY OR
2 VOLUNTARY DISSOLUTION. AS 10.06.305 - 10.06.390 do not apply in a
3 proceeding for winding up and dissolution under AS 10.06.605 - 10.06.-
4 678.

5 Sec. 10.06.385. REDEMPTION OF SHARES AT THE OPTION OF CORPORA-
6 TION; MANNER. (a) A corporation may redeem any or all shares that
7 are redeemable at its option by

8 (1) giving notice of redemption; and

9 (2) payment or deposit of the redemption price of the
10 shares as provided in its articles of incorporation or deposit of the
11 redemption price in accordance with (d) of this section.

12 (b) Subject to any provisions in its articles of incorporation
13 with respect to the notice required for redemption of shares, the
14 corporation may give notice of the redemption of any or all shares
15 subject to redemption by publishing a notice of redemption in a news-
16 paper of general circulation in the judicial district in which the
17 principal executive office of the corporation is located at least once
18 a week for two successive weeks, beginning not earlier than 60 nor
19 later than 20 days before the date fixed for redemption. The notice
20 of redemption shall set out the following:

1 (1) the class or series of shares or part of any class or
2 series of shares to be redeemed;

3 (2) the date fixed for redemption;

4 (3) the redemption price; and

5 (4) the place at which the shareholders may obtain payment
6 of the redemption price upon surrender of their share certificates.

7 (c) If the corporation gives notice of redemption under (b) of
8 this section, it shall also mail a copy of the notice of redemption to
9 each holder of record of shares to be redeemed as of the date of

Chapter 166

1 mailing or record date fixed in accordance with AS 10.06.408, ad-
2 dressed to the holder at the address of the holder appearing on the
3 books of the corporation or given by the holder to the corporation for
4 the purpose of notice not earlier than 60 nor later than 20 days
5 before the date fixed for redemption. Failure to comply with this
6 subsection does not invalidate the redemption of the shares.

7 (d) On or before the date fixed for redemption of redeemable
8 shares, a corporation may deposit with a bank or trust company in this
9 state as a trust fund a sum sufficient to redeem the shares called on
10 the date fixed for redemption, with irrevocable instructions to the
11 bank or trust company to publish a notice of redemption, or to com-
12 plete the publication if begun, and to pay, on and after or before the
13 date fixed for redemption, the redemption price of the shares to
14 holders of the shares upon the surrender of their share certificates.
15 From and after the date of the deposit with the bank or trust company,
16 although before the date fixed for redemption, the shares called for
17 redemption are redeemed and dividends on those shares cease to accrue
18 after the date fixed for redemption. The deposit constitutes full
19 payment of the shares to their holders and from and after the date of
20 the deposit the shares are no longer outstanding and the holders of
21 the shares cease to be shareholders with respect to the shares and
22 have no rights with respect to the shares except the right to receive
23 from the bank or trust company payment of the redemption price of the
24 shares without interest, upon surrender of the certificates for the
25 shares, and any right to convert the shares that may exist and con-
26 tinue for a period fixed by the terms of the shares.

27 Sec. 10.06.388. ACQUISITION OF CORPORATION'S OWN SHARES; REISSU-
28 ANCE OR RETIREMENT. (a) When a corporation purchases or redeems or
29 otherwise acquires its own shares, the shares are restored to the
S

1 status of authorized but unissued shares unless the articles prohibit
2 their reissuance.

3 (b) If the articles prohibit the reissuance of shares upon their
4 acquisition by the corporation, then upon the acquisition of those
5 shares the authorized number of shares of the class and series, if
6 any, to which the shares belonged is reduced by the number of shares
7 acquired and the articles shall be amended to reflect the reduction in
8 authorized shares. If all of the authorized shares of a class or
9 series are acquired and their reissue is prohibited by the articles of
10 incorporation, then the articles shall also be amended to eliminate
11 any statement of rights, preferences, privileges, and restrictions
12 relating solely to that class or series. Articles of amendment shall
13 be filed within 60 days of the acquisition of the shares in accordance
14 with the requirements of AS 10.06.512 - 10.06.514. Approval by the
15 outstanding shares is not required to adopt such articles of amend-
16 ment.

17 Sec. 10.06.390. CAPITALIZATION OF RETAINED EARNINGS. The paid-
18 in capital of a corporation may be increased by resolution of the
19 board directing that all or a part of the retained earnings of the
20 corporation be transferred to the paid-in capital account.

21 ARTICLE 5. SHAREHOLDERS.

22 Sec. 10.06.405. MEETINGS OF SHAREHOLDERS. (a) Meetings of
23 shareholders shall be held at a place inside or outside this state as
24 provided in the bylaws. In the absence of a provision in the bylaws,
25 meetings shall be held at the registered office of the corporation.

26 (b) An annual meeting of the shareholders shall be held at the
27 time as provided in the bylaws. If the annual meeting is not held
28 within any 13-month period, the superior court may on the application
29 of a shareholder summarily order a meeting to be held.

Chapter 166

1 (c) Special meetings of the shareholders may be called by the
2 board, the chairman of the board, the president, the holders of not
3 less than one-tenth of all the shares entitled to vote at the meeting,
4 or other persons as may be authorized in the articles of incorporation
5 or the bylaws.

6 Sec. 10.06.408. CLOSING OF TRANSFER BOOKS AND FIXING RECORD
7 DATE. (a) To determine the shareholders entitled to notice of or to
8 vote at a meeting of shareholders or an adjournment of a meeting, or
9 to determine the shareholders entitled to receive payment of a divi-
10 dend, or to determine the shareholders for any other proper purpose,
11 the board of a corporation may provide that the stock transfer books
12 shall be closed for a stated period not exceeding 70 days. If the
13 stock transfer books are closed to determine shareholders entitled to
14 notice of or to vote at a meeting of shareholders, they shall be
15 closed for at least 20 days immediately preceding the meeting.

16 (b) Instead of closing the stock transfer books, the bylaws or,
17 in the absence of an applicable bylaw, the board may fix a date as the
18 record date for the determination of shareholders. This record date
19 may not be more than 60 days and, in case of a meeting of share-
20 holders, not less than 20 days before the date on which the particular
21 action requiring the determination of shareholders is to be taken. If
22 the stock transfer books are not closed and a record date is not fixed
23 for the determination of shareholders entitled to notice of or to vote
24 at a meeting of shareholders or for the determination of shareholders
25 entitled to receive payment of a dividend, the date on which notice of
26 the meeting is mailed or the date on which the resolution of the board
27 declaring the dividend is adopted, is the record date for the deter-
28 mination of shareholders. When a determination of shareholders enti-
29 tled to vote at a meeting of shareholders has been made as provided in
S

1 this section, the determination applies to an adjournment of the
2 meeting of shareholders.

3 Sec. 10.06.410. NOTICE OF SHAREHOLDERS' MEETINGS. Written or
4 printed notice stating the place, day and hour of the meeting and, in
5 the case of a special meeting, the purpose for which the meeting is
6 called, shall be delivered not less than 20 or more than 60 days
7 before the date of the meeting, either personally or by mail, by or at
8 the direction of the president, the secretary, the officer, or persons
9 calling the meeting, to each shareholder of record entitled to vote at
10 the meeting. If mailed, the notice is considered delivered when
11 deposited with postage prepaid in the United States mail addressed to
12 the shareholder at the address of the shareholder as it appears on the
13 stock transfer books of the corporation, or, if the shareholder has
14 filed with the secretary of the corporation a written request that
15 notice be mailed to a different address, the corporation shall mail
16 the notice to the new address. An affidavit of the secretary or other
17 person giving the notice or of a transfer agent of the corporation
18 that the notice required by this section has been given, is prima
19 facie evidence of the facts stated in the affidavit.

20 Sec. 10.06.413. VOTING LIST; LIABILITY. (a) At least 20 days
21 before each meeting of shareholders, the officer or agent having
22 charge of the stock transfer books for shares of a corporation shall
23 make a list of the shareholders entitled to vote at the meeting or an
24 adjournment of the meeting arranged in alphabetical order, with the
25 address of and the number of shares held by each shareholder. The
26 list shall be kept on file at the registered office of the corporation
27 and is subject to inspection by a shareholder or the agent or attorney
28 of a shareholder at any time during usual business hours for a period
29 of 20 days before the meeting. The list shall also be produced and
S

Chapter 166

1 kept open at the time and place of the meeting and shall be subject to
2 the inspection of a shareholder during the meeting. The original
3 stock transfer books are prima facie evidence as to the shareholders
4 who are entitled to examine the list or transfer books or to vote at a
5 meeting of shareholders.

6 (b) Failure to comply with the requirements of this section does
7 not affect the validity of the action taken at the meeting.

8 (c) An officer or agent having charge of the stock transfer
9 books who fails to prepare the list of shareholders, keep it on file
10 for a period of 20 days, or produce and keep it open for inspection at
11 the meeting, as provided in this section, is liable for a penalty of
12 \$5,000 and shall pay this sum to a shareholder who makes a written
13 request for performance of the duties imposed by this section.

14 Sec. 10.06.415. QUORUM OF SHAREHOLDERS. (a) Unless otherwise
15 provided in the articles of incorporation, a majority of the shares
16 entitled to vote, represented in person or by proxy, constitutes a
17 quorum at a meeting of shareholders, but in no event may a quorum
18 consist of less than one-third of the shares entitled to vote at the
19 meeting. If a quorum is present, the affirmative vote of the majority
20 of shares represented at the meeting and entitled to vote on the
21 subject matter is the act of the shareholders, unless the vote of a
22 greater number or voting by classes is required by this chapter, the
23 articles of incorporation, or the bylaws.

24 (b) Shareholders present at a meeting at which a quorum is
25 present may continue to transact business until adjournment, notwith-
26 standing the withdrawal of enough shareholders to leave less than a
27 quorum, if any action taken other than adjournment is approved by at
28 least a majority of shares required to constitute a quorum.

29 S Sec. 10.06.418. PROXIES. (a) Each person entitled to vote

1 shares may authorize another person or persons to act by proxy with
2 respect to the shares. A proxy purporting to be executed in accord-
3 dance with the provisions of this chapter is presumed valid.

4 (b) A proxy is not valid after the expiration of 11 months from
5 the date of the proxy unless it qualifies as an irrevocable proxy
6 under (e) of this section. A proxy continues in full force and effect
7 until revoked by the person executing it, except as provided in this
8 section. A person may revoke a proxy by a writing delivered to the
9 corporation stating that the proxy is revoked, by a subsequent proxy
0 executed by the person executing the prior proxy and presented to the
1 meeting, or by attendance at the meeting and voting in person by the
2 person executing the proxy. The dates contained on the forms of proxy
3 presumptively determine the order of execution, regardless of the
4 postmark dates on the envelopes in which the proxies are mailed.

5 (c) A proxy is not revoked by the death or incapacity of the
6 maker unless, before the vote is counted, written notice of the death
7 or incapacity is received by the corporation.

8 (d) Except as provided otherwise by written agreement of the
9 parties, the record holder of shares held by a person as pledgee or
0 otherwise as security or that belong to another shall, upon demand and
1 payment of necessary expenses, issue a proxy to vote to the pledgor or
2 to the owner of the shares.

3 (e) Notwithstanding (c) of this section, a proxy that states
4 that it is irrevocable is irrevocable for the period specified in the
5 proxy when it is held by the following or a nominee of the following:

6 (1) a pledgee;

7 (2) a person who has purchased, agreed to purchase, or
8 holds an option to purchase the shares or a person who has sold a
9 portion of the shares of the person in the corporation to the maker of

Chapter 166

1 the proxy;

2 (3) a person who has contracted to perform services as an
3 employee of the corporation, if a proxy is required by the contract of
4 employment and if the proxy states that it was given in consideration
5 of the contract of employment, the name of the employee, and the
6 period of employment contracted for;

7 (4) a person designated by or under an agreement under
8 AS 10.06.425(b); or

9 (5) a beneficiary of a trust with respect to shares held by
10 the trust.

11 (f) Notwithstanding the period of irrevocability specified in a
12 proxy, the proxy becomes revocable when the pledge is redeemed, the
13 option or agreement to purchase is terminated or the seller no longer
14 owns any shares of the corporation or dies, the period of employment
15 provided for in the contract of employment has terminated, the agree-
16 ment under AS 10.06.425(b) has terminated, or the person ceases to be
17 a beneficiary of the trust. In addition, a proxy may be made irrevoc-
18 able if it is given to secure the performance of a duty or to protect
19 a title, either legal or equitable, until the happening of events
20 that, by its terms, discharge the obligations secured by it.

21 (g) Notwithstanding a provision making a proxy irrevocable, a
22 proxy may be revoked by a transferee of shares without knowledge of
23 the existence of the provision unless the existence of the proxy and
24 its irrevocability appears on the certificate representing the shares.

25 Sec. 10.06.420. VOTING OF SHARES. (a) An outstanding share,
26 regardless of class, is entitled to one vote on each matter submitted
27 to a vote at a meeting of shareholders, except as may be otherwise
28 provided in the articles of incorporation. If the articles provide
29 for more or less than one vote for any share, on any matter, every
S

1 reference in this chapter to a majority or other proportion of shares
2 shall refer to a majority or other proportion of the votes entitled to
3 be cast.

4 (b) Shares held by the corporation, or shares held by another
5 corporation if a majority of the shares entitled to vote for the elec-
6 tion of directors of the other corporation is held by the corporation,
7 may not be voted at a meeting or counted in determining the total
8 number of outstanding shares at a given time.

9 (c) A shareholder may vote either in person or by proxy executed
10 in writing by the shareholder or by the authorized attorney-in-fact of
11 the shareholder.

12 (d) Unless the articles of incorporation provide otherwise, at
13 an election for directors each shareholder entitled to vote at the
14 election may vote, in person or by proxy, the number of shares owned
15 by the shareholder for as many persons as there are directors to be
16 elected and for whose election the shareholder has a right to vote, or
17 to cumulate votes by giving one candidate votes equal to the number of
18 directors multiplied by the number of shares of the shareholder, or by
19 distributing votes on the same principle among any number of candi-
20 dates. The rights created by this subsection may not be limited by
21 amendment to the articles when the votes cast against the amendment
22 would be sufficient to elect one director if voted cumulatively at an
23 election of the entire board.

24 (e) Shares standing in the name of another corporation, other
25 than a subsidiary, may be voted by the officer, agent, or proxy as the
26 bylaws of the other corporation may prescribe, or, in the absence of a
27 provision, as the board of the other corporation may determine. In
28 this subsection, "subsidiary" means a corporation in which the speci-
29 fied corporation owns more than 25 percent of the voting power

Chapter 166

1 directly or indirectly through one or more other subsidiaries of the
2 specified corporation.

3 (f) Shares held by an administrator, executor, guardian, or
4 conservator may be voted by that person, either in person or by proxy,
5 without a transfer of the shares into the name of that person. Shares
6 standing in the name of a trustee may be voted by the trustee, either
7 in person or by proxy, but a trustee is not entitled to vote shares
8 held by the trustee without a transfer of the shares into the name of
9 the trustee.

10 (g) Shares standing in the name of a receiver may be voted by
11 the receiver, and shares held by or under the control of a receiver
12 may be voted by the receiver without a transfer of the shares into the
13 name of the receiver if authority to transfer the shares is contained
14 in an appropriate court order by which the receiver was appointed.

15 (h) A shareholder whose shares are pledged is entitled to vote
16 the shares until the shares have been transferred into the name of the
17 pledgee, and thereafter the pledgee is entitled to vote the shares so
18 transferred.

19 (i) Beginning on the date on which written notice of redemption
20 of redeemable shares has been mailed to the holders of the shares and
21 a sum sufficient to redeem the shares has been deposited with a bank
22 or trust company with irrevocable instruction and authority to pay the
23 redemption price to the holders of the shares upon surrender of the
24 certificates for the shares, the shares may not vote on any matter and
25 are not considered to be outstanding shares.

26 Sec. 10.06.423. ACTIONS TAKEN WITHOUT MEETING: WRITTEN CONSENT;
27 REVOCATION OF CONSENT. (a) Unless prohibited by the articles or the
28 bylaws, whenever under this chapter shareholders are required or per-
29 mitted to take action by vote, the action may be taken without a
S

1 meeting by written consents, identical in content, setting out the
2 action taken, signed by the holders of all outstanding shares entitled
3 to vote on the action.

4 (b) A shareholder giving a written consent, or the shareholder's
5 proxy holder, or a transferee of the shares or a personal representa-
6 tive or proxy holder of the shareholder, may only revoke the consent
7 by a writing received by the corporation before the time that written
8 consents of the shares required to authorize the proposed action have
9 been filed with the secretary of the corporation. The revocation is
0 effective upon receipt by the secretary of the corporation.

1 Sec. 10.06.425. VOTING TRUSTS AND AGREEMENTS AMONG SHAREHOLDERS.

2 (a) Any number of shareholders of a corporation may create a voting
3 trust for the purpose of conferring upon a trustee or trustees the
4 right to vote or otherwise represent their shares, for a period not to
5 exceed 10 years, by entering into a written voting trust agreement
6 specifying the terms and conditions of the voting trust, by depositing
7 a copy of the agreement with the corporation at its registered office,
8 and by transferring their shares to the trustee or trustees for the
9 purpose of the agreement. The trustee or trustees shall keep a record
0 of the holders of voting trust certificates evidencing a beneficial
1 interest in the voting trust, giving the names and addresses of all
2 the holders and the number and class of the shares for which the
3 voting trust certificates are issued, and shall deposit a copy of the
4 record with the corporation at its registered office. The copies of
5 the voting trust agreement and the record deposited with the corpo-
6 ration are subject to the same right of examination by a shareholder
7 of the corporation, in person or by agent or attorney, as are the
8 books and records of the corporation under AS 10.06.430, and the
9 copies of the agreement and the record are subject to examination by a

Chapter 166

holder of record of voting trust certificates, either in person or by agent or attorney, at a reasonable time for a proper purpose.

(b) This section does not invalidate a voting or other agreement among shareholders or an irrevocable proxy complying with AS 10.06.418(e) not otherwise illegal.

Sec. 10.06.428. SHAREHOLDERS' PREEMPTIVE RIGHTS. (a) Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

(b) Unless otherwise provided in the articles of incorporation,

(1) there is no preemptive right

(A) to acquire any shares issued to directors, officers, or employees if approved by the outstanding shares or if authorized by and consistent with a plan previously approved by the outstanding shares; or

(B) to acquire shares sold for consideration other than for cash;

(2) holders of shares of a class that is preferred or limited as to dividends or assets are not entitled to a preemptive right;

(3) holders of shares of common stock are not entitled to a preemptive right to shares of a class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock;

(4) holders of common stock without voting power are not entitled to a preemptive right to shares of common stock with voting power;

1 (5) a preemptive right is only an opportunity to acquire
2 shares or other securities under the terms and conditions as the board
3 may fix for the purpose of providing a fair and reasonable opportunity
4 for the exercise of the preemptive right.

5 Sec. 10.06.430. BOOKS AND RECORDS. (a) A corporation organized
6 under this chapter shall keep correct and complete books and records
7 of account, minutes of proceedings of its shareholders, board, and
8 committees of the board, and a record of its shareholders, containing
9 the names and addresses of all shareholders and the number and class
10 of the shares held by each. The books, records, and minutes may be in
11 written form or in any other form capable of being converted into
12 written form within a reasonable time.

13 (b) A corporation organized under this chapter shall make its
14 books and records, or certified copies of them, reasonably available
15 for inspection and copying at the registered office or principal place
16 of business in the state by the department or by a shareholder of the
17 corporation. Shareholder inspection shall be upon written demand
18 stating the purpose of the inspection. The inspection may be in
19 person or by agent or attorney, at a reasonable time and for a proper
20 purpose. Only books and records of account, minutes, and the record
21 of shareholders relevant to the stated purpose of the inspection may
22 be inspected or copied.

23 (c) An officer or agent who, or a corporation that, refuses to
24 allow a shareholder, or the agent or attorney of the shareholder, to
25 examine and make copies from its books and record of account, minutes,
26 and record of shareholders, for a proper purpose, is liable to the
27 shareholder for a penalty in the amount of 10 percent of the value of
28 the shares owned by the shareholder or \$5,000, whichever is greater,
29 in addition to other damages or remedy given the shareholder by law.
S

Chapter 166

1 It is a defense to an action for penalties under this section that the
2 person suing has within two years sold or offered for sale a list of
3 shareholders of the corporation or any other corporation or has aided
4 or abetted a person in procuring a list of shareholders for this
5 purpose, or has improperly used information secured through a prior
6 examination of the books and records of account, or minutes, or record
7 of shareholders of the corporation or any other corporation, or was
8 not acting in good faith or for a proper purpose in making the per-
9 son's demand.

10 (d) Nothing in this chapter impairs the power of a court, upon
11 proof by a shareholder of a demand properly made and for a proper
12 purpose, to compel the production for examination by the shareholder
13 of the books and records of account, minutes, and record of share-
14 holders of a corporation.

15 Sec. 10.06.433. ANNUAL REPORT TO SHAREHOLDERS: CONTENT; FINAN-
16 CIAL STATEMENT ON REQUEST. (a) The board shall send an annual report
17 to the shareholders not later than 180 days after the close of the
18 fiscal year or the date on which notice of the annual meeting in the
19 next fiscal year is sent under AS 10.06.410, whichever is first,
20 unless in the case of a corporation with less than 100 holders of
21 record of its shares, as determined under AS 10.06.408, this require-
22 ment is expressly waived in the articles of incorporation. The annual
23 report shall contain a balance sheet as of the end of the fiscal year
24 and an income statement and statement of changes in financial position
25 for the fiscal year, accompanied by a report on the fiscal year by
26 independent accountants or, if there is no such report, the certifi-
27 cate of an authorized officer of the corporation that the statements
28 were prepared without audit from the books and records of the corpo-
29 ration.
S

1 (b) In addition to the financial statement required by (a) of
2 this section, unless a corporation has a nonexempt class of securities
3 registered under Section 12 of the Securities Exchange Act of 1934 or
4 files reports under Sections 7(c), 8(c), and 28 of the Alaska Native
5 Claims Settlement Act, the annual report of a corporation having 100
6 or more holders of record of its shares shall also briefly describe

7 (1) all transactions, excluding compensation of officers
8 and directors, during the previous fiscal year involving an amount in
9 excess of \$40,000, other than contracts let at competitive bid or
10 services rendered at prices regulated by law, to which the corporation
11 or its parent or subsidiary was a party, and in which a director or
12 officer of the corporation or of a subsidiary or, if known to the
13 corporation, its parent, or subsidiary, a holder of more than 10 per-
14 cent of the outstanding voting shares of the corporation had a direct
15 or indirect material interest; the report shall include the name of
16 the person, the person's relationship to the corporation, the nature
17 of the person's interest in the transaction and, if practicable, the
18 amount of the interest; in the case of a transaction with a partner-
19 ship of which the person is a partner, only the interest of the part-
20 nership need be stated; a report is not required in the case of trans-
21 actions approved by the shareholders under AS 10.06.478;

22 (2) the amount and circumstances of indemnifications or
23 advances aggregating more than \$10,000 paid during the fiscal year to
24 an officer or director of the corporation under AS 10.06.490; a report
25 is not required in the case of indemnification approved by the share-
26 holders under AS 10.06.490(d)(3).

(c) A shareholder or shareholders holding at least five percent
of the outstanding shares of a class of a corporation may make a
written request to the corporation for an income statement of the

Chapter 166

1 corporation for the three-month, six-month, or nine-month period of
2 the current fiscal year ended more than 30 days before the date of the
3 request and a balance sheet of the corporation as of the end of the
4 period and, in addition, if an annual report for the last fiscal year
5 has not been sent to shareholders, the statements required by (a) of
6 this section for the last fiscal year. The statement shall be de-
7 livered or mailed to the person making the request within 30 days of
8 the request. A copy of the statements shall be kept on file in the
9 principal office of the corporation for 12 months and they shall be
10 exhibited at all reasonable times to a shareholder demanding an exam-
11 ination of the statements or a copy of the statements shall be mailed
12 to that shareholder.

13 (d) A corporation shall, upon the written request of a share-
14 holder, mail to the shareholder a copy of the last annual, semiannual
15 or quarterly income statement that it has prepared and a balance sheet
16 as of the end of the period.

17 (e) The quarterly income statements and balance sheets referred
18 to in this section shall be accompanied by any report on those state-
19 ments by independent accountants engaged by the corporation or the
20 certificate of an authorized officer of the corporation that the
21 financial statements were prepared without audit from the books and
22 records of the corporation.

23 (f) A corporation that neglects, fails, or refuses to prepare or
24 submit the financial statements required by this section is subject to
25 a penalty of \$25 for each day that the failure or refusal continues,
26 beginning 30 days after receipt of written request that the duty be
27 performed from one entitled to make the request, up to a maximum of
28 \$1,500. The penalty shall be paid to the shareholder or shareholders
29 jointly making the request for performance of the duty or duties

1 imposed by this section. In addition to this penalty, the court may
2 enforce the duty of making and mailing or delivering the information
3 and financial statements required by this section and, for good cause
4 shown, may extend the time limits under this section.

5 (g) This section applies to a domestic corporation and a foreign
6 corporation having its principal executive office in this state or
7 customarily holding meetings of its board in this state.

8 Sec. 10.06.435. SHAREHOLDERS' DERIVATIVE ACTION. (a) An action
9 may be brought in the right of a domestic or foreign corporation to
10 procure a judgment in its favor by a holder of shares of the corpo-
11 ration of voting trust certificates of the corporation, or of a bene-
12 ficial interest in shares or certificates of the corporation.

3 (b) In a derivative action, the complaint shall be verified and
4 shall allege that plaintiff was a shareholder, of record or benefi-
5 cially, or the holder of voting trust certificates at the time or
6 during any part of the transaction of which the plaintiff complains or
7 that the plaintiff's shares or voting trust certificates devolved upon
8 the plaintiff by operation of law from a holder who was a holder at
9 the time or during any part of the transaction complained of. A
10 shareholder who does not meet the requirements of this section may be
11 allowed in the discretion of the court to maintain the action on a
12 preliminary showing to and determination by the court, by motion and
after a hearing at which the court considers evidence, by affidavit or
testimony, as it considers material, that

(1) there is a strong prima facie case in favor of the
claim asserted on behalf of the corporation;

(2) no other similar action has been or is likely to be
instituted;

(3) the plaintiff acquired the shares before there was

Chapter 166

1 disclosure to the public or to the plaintiff of the wrongdoing of
2 which the plaintiff complains;

3 (4) unless the action can be maintained the defendant may
4 retain a gain derived from the defendant's wilful breach of a fiduc-
5 iary duty; and

6 (5) the requested relief will not result in unjust enrich-
7 ment of the corporation or a shareholder of the corporation.

8 (c) Unless excused on grounds that a majority of the directors
9 is implicated in or under the direct or indirect control of a person
10 who is implicated in the injury to the corporation, before an action
11 in the right of a domestic or foreign corporation is instituted a
12 plaintiff who has standing under (b) of this section shall make a
13 formal demand upon the board to secure the action the plaintiff de-
14 sires.

15 (d) If a shareholder fails to make a formal demand under (c) of
16 this section the complaint shall state with particularity the facts
17 establishing excuse under (c) of this section. In a motion to dismiss
18 for failure to make demand on the board the shareholder shall have the
19 burden to establish excuse.

20 (e) In a case in which demand on the board is made under (c) of
21 this section, a decision by the board that, in its business judgment,
22 the litigation would not be in the best interest of the corporation
23 terminates the right created by (a) of this section.

24 (f) In a case in which demand on the board is excused under (c)
25 of this section or the decision of the board under (e) of this section
26 is rejected by the court as inconsistent with the directors' duties of
27 care and loyalty to the corporation, a plaintiff who has standing
28 under (b) of this section shall have the right to commence or continue
29 the action created by (a) of this section. Notwithstanding (c) or (e)
S

1 of this section, disinterested, noninvolved directors acting as the
2 board or a duly charged board committee may petition the court to
3 dismiss the plaintiff's action on grounds that in their independent,
4 informed business judgment the action is not in the best interests of
5 the corporation. The petitioners shall have the burden of establish-
6 ing to the satisfaction of the court their disinterest, independence
7 from any direct or indirect control of defendants in the action, and
8 the informed basis on which they have exercised their asserted busi-
9 ness judgment. If the court is satisfied that the petitions are
10 disinterested, independent, and informed it shall then exercise an
11 independent appraisal of the plaintiff's action to determine whether,
12 considering the welfare of the corporation and relevant issues of
13 public policy, it should dismiss the action.

14 (g) A shareholder action otherwise in conformity with this
15 section shall not be dismissed because the alleged injury or wrong to
16 the corporation has been ratified by the outstanding shares. A court
17 may consider the fact of ratification in framing any order for relief
18 to which it considers the corporation entitled.

19 (h) In an action instituted or maintained in the right of a
20 corporation by the holder or holders of record of less than five
21 percent of the outstanding shares of any class of the corporation or
22 of voting trust certificates for these shares, the corporation in
23 whose right the action is brought or the defendants may at any time
24 before final judgment move the court to require the plaintiff to give
25 security for the reasonable expense, including attorney fees, that may
26 be incurred by the moving party. The amount of the security may be
27 increased or decreased from time to time in the discretion of the
28 court upon a showing that the security has become inadequate or exces-
29 sive. The corporation or other defendants may have recourse to the

Chapter 166

1 security in an amount as the court may determine upon the termination
2 of the derivative action, whether or not the court finds the action
3 was brought without reasonable cause.

4 (i) A derivative action may not be discontinued, abandoned, com-
5 promised or settled without the approval of the court having juris-
6 diction of the action. If the court determines that the interests of
7 the shareholders or any class or classes of shareholders will be sub-
8 stantially affected by a discontinuance, abandonment, compromise, or
9 settlement, the court in its discretion may direct that notice, by
10 publication or otherwise, shall be given to the shareholders or class
11 or classes of shareholders whose interests will be affected. If the
12 court directs notice to be given, it shall determine which of the
13 parties to the action shall bear the expense of giving the notice in
14 an amount the court determines to be reasonable in the circumstances.
15 The amount shall be awarded as special costs of the action.

16 (j) If the derivative action is successful, in whole or in part,
17 or if anything is received as a result of the judgment, compromise, or
18 settlement of that action, the court may award to the plaintiff or
19 plaintiffs reasonable expenses, including reasonable attorney fees,
20 and shall direct an accounting to the corporation for the remainder of
21 the proceeds. This subsection does not apply to a judgment rendered
22 only for the benefit of injured shareholders and limited to a recovery
23 of the loss or damage sustained by them.

24 Sec. 10.06.438. LIABILITY OF SHAREHOLDERS AND SUBSCRIBERS. (a)
25 A holder or subscriber to shares of a corporation is under no obliga-
26 tion to the corporation or its creditors as holder or subscriber with
27 respect to the shares other than the obligation to pay the corporation
28 the full consideration for which the shares were issued or to be
29 issued.

1 (b) An assignee or transferee of shares, or of a subscription
2 for shares, in good faith and without knowledge or notice that the
3 full consideration has not been paid, is not personally liable to the
4 corporation or its creditors for any unpaid portion of the considera-
5 tion.

6 (c) An executor, administrator, conservator, guardian, trustee,
7 assignee for the benefit of creditors, or receiver is not personally
8 liable to the corporation or its creditors for any unpaid portion of
9 the consideration.

10 (d) A pledgee or other holder of shares as collateral security
11 is not personally liable as a shareholder.

12 ARTICLE 6. DIRECTORS AND OFFICERS.

13 Sec. 10.06.450. BOARD OF DIRECTORS; DUTY OF CARE; RIGHT OF
14 INSPECTION; FAILURE TO DISSENT. (a) All corporate powers shall be
15 exercised by or under the authority of, and the business and affairs
16 of a corporation shall be managed under the direction of, a board of
17 directors except as may be otherwise provided in this chapter. If a
18 provision is made under AS 10.06.468 or in the articles, the powers,
19 duties, privileges, and liabilities conferred or imposed upon the
20 board by this chapter shall be exercised, performed, extended and
21 assumed to the extent and by the person or persons to whom they are
22 delegated as provided in AS 10.06.468 or in the articles. Directors
23 need not be residents of this state or shareholders of the corporation
24 unless required by the articles or bylaws. The articles or bylaws may
25 prescribe other qualifications for directors. The board may fix the
26 compensation of directors unless otherwise provided in the articles.

27 (b) A director shall perform the duties of a director, including
28 duties as a member of a committee of the board on which the director
29 may serve, in good faith, in a manner the director reasonably believes

Chapter 166

1 to be in the best interests of the corporation, and with the care,
2 including reasonable inquiry, that an ordinarily prudent person in a
3 like position would use under similar circumstances. Except as pro-
4 vided in (c) of this section, a director is entitled to rely on infor-
5 mation, opinions, reports or statements, including financial state-
6 ments and other financial data, in each case prepared or presented by

7 (1) one or more officers or employees of the corporation
8 whom the director reasonably believes to be reliable and competent in
9 the matters presented;

10 (2) counsel, public accountants, or other persons as to
11 matters that the director reasonably believes to be within the per-
12 son's professional or expert competence; or

13 (3) a committee of the board upon which the director does
14 not serve, designated in accordance with a provision of the articles
15 or the bylaws, as to matters within the authority of the committee if
16 the director reasonably believes the committee to merit confidence.

17 (c) A director is not considered to be acting in good faith if
18 the director knows, or as a reasonable person ought to know, that, as
19 to the matter in question, reliance under (b) of this section is
20 unwarranted.

21 (d) A director has the absolute right at a reasonable time to
22 inspect and copy all books, records, and documents of every kind and
23 to inspect the physical properties of the corporation or a domestic or
24 foreign subsidiary of the corporation. Inspection by a director may
25 be made in person or by agent or attorney and the right of inspection
26 includes the right to copy and make contracts. This section applies
27 to a director of a foreign corporation having its principal executive
28 office in this state or customarily holding meetings of its board in
29 this state.
S

1 (e) A director of a corporation who is present at a meeting of
2 its board at which action on a corporate matter is taken is presumed
3 to have assented to the action taken unless the director's dissent is
4 entered in the minutes of the meeting or unless the director files a
5 written dissent to the action with the secretary of the meeting before
6 adjournment or forwards the dissent by certified mail to the secretary
7 of the corporation immediately after adjournment. The right to dis-
8 sent does not apply to a director who voted in favor of the action.

9 Sec. 10.06.453. NUMBER AND ELECTION OF DIRECTORS. (a) The
10 number of directors constituting the entire board may not be less than
11 three. If all of the shares of a corporation are owned beneficially
12 and of record by less than three shareholders, the number of directors
13 may be less than three but not less than the number of shareholders.
14 Subject to the limitation of this section, the number of directors may
15 be fixed by the articles of incorporation, the bylaws of the corpora-
16 tion, or by the action of the board or shareholders under the specific
17 provisions of an article or a bylaw adopted by approval of the out-
18 standing shares. If the number of directors is not otherwise set, the
19 number of directors is three. As used in AS 10.06.450 - 10.06.490,
20 "entire board" means the total number of directors that the corpora-
21 tion has if there are no vacancies.

2 (b) The number of directors may be increased or decreased by
3 amendment of the articles or the bylaws or by action of the board or
4 the shareholders under the specific provisions of an article or a
5 bylaw adopted by approval of the outstanding shares, subject to the
6 following limitations:

7 (1) If the board is authorized by the articles or the
8 bylaws to change the number of directors, whether by amending the
9 bylaws or by taking action under the specific provision of an article

Chapter 166

1 or a bylaw adopted by approval of the outstanding shares, the amend-
2 ment or action shall require the vote of a majority of the entire
3 board.

4 (2) A decrease in the number of directors may not shorten
5 the term of an incumbent director.

6 (c) The articles may provide for the election of one or more
7 directors by the holders of the shares of a class or series voting as
8 a class or series.

9 (d) The names and addresses of the members of the first board
10 may be stated in the articles. The members of the first board hold
11 office until the first annual meeting of shareholders, and until their
12 successors have been elected and qualified.

13 (e) At the first annual meeting of shareholders and at each
14 subsequent annual meeting the shareholders shall elect directors to
15 hold office until the next succeeding annual meeting, except in the
16 case of the classification of directors as permitted by AS 10.06.455.
17 A director, including a director elected to fill a vacancy, shall hold
18 office until the expiration of the term for which elected and until a
19 successor has been elected and qualified.

20 Sec. 10.06.455. CLASSIFICATION OF DIRECTORS. (a) If the board
21 consists of nine or more members, the articles of incorporation may
22 provide that instead of electing all the directors annually the direc-
23 tors be divided into either two or three classes, each class to be as
24 nearly equal in number as possible, with the term of office of direc-
25 tors of the first class to expire at the first annual meeting of
26 shareholders after their election, that of the second class to expire
27 at the second annual meeting after their election, and that of the
28 third class, if any, to expire at the third annual meeting after their
29 election. At each annual meeting after the classification the number
S

of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, or until the third succeeding annual meeting if there are three classes. A classification of directors is not effective before the first annual meeting of shareholders.

(b) Unless cumulative voting rights under AS 10.06.420(d) have been eliminated by the articles of incorporation, an amendment of the articles that would establish or require classification of the board under (a) of this section may not be adopted if the votes cast against the amendment would be sufficient to elect a director if voted cumulatively at an election of the entire board.

Sec. 10.06.458. VACANCIES ON THE BOARD. The board may declare vacant the office of a director who has been declared of unsound mind by a court order.

Sec. 10.06.460. REMOVAL OF DIRECTOR WITHOUT CAUSE. (a) At a regular or special meeting for which notice is given under AS 10.06.-410 and this section, any or all of the directors may be removed without reason if the removal is approved by the outstanding shares, subject to the following:

(1) in the case of a corporation with 500 or more holders of record entitled to vote on the removal and election of directors, as determined under AS 10.06.408, written or printed notice of intention to seek removal under this section shall be delivered either personally or by mail to each shareholder of record entitled to vote at the meeting and if notice of intention to seek removal under this section is

(A) delivered to the president or secretary of the corporation at least 75 days before the date of the annual

Chapter 166

1 meeting it shall be included on the notice stating the place,
2 day, and hour of the annual meeting without cost to the share-
3 holder seeking removal; or

4 (B) not timely under (A) of this paragraph the share-
5 holder seeking removal may, at the expense of that shareholder,
6 deliver either personally or by mail the notice required by (1)
7 of this subsection at any time up to 20 days before the date set
8 for the annual meeting; if mailed, notice is considered delivered
9 when deposited with postage prepaid in the United States mail ad-
10 dressed to the shareholder at the address appearing on the stock
11 transfer books of the corporation;

12 (2) unless cumulative voting rights under AS 10.06.420(d)
13 have been eliminated by the articles of incorporation, a director may
14 not be removed, unless the entire board is removed, if the votes cast
15 against removal would be sufficient to elect a director if voted
16 cumulatively at an election at which the same total number of votes
17 were cast; and

18 (3) if by provision in the articles of incorporation the
19 holders of the shares of a class or series, voting as a class or
20 series, are entitled to elect one or more directors, a director elec-
21 ted in that manner may be removed only by the applicable vote of the
22 holders of the shares of that class or series.

23 (b) Except as provided in this section and AS 10.06.458, 10.06.-
24 463, and 10.06.465(c), a director may not be removed before the ex-
25 piration of the term of office of the director.

26 Sec. 10.06.463. REMOVAL OF DIRECTOR BY SUPERIOR COURT. The
27 superior court may, at the suit of the board or the shareholders
28 holding at least 10 percent of the number of outstanding shares of any
29 class, remove from office a director for fraudulent or dishonest acts,
S

1 gross neglect of duty, or gross abuse of authority or discretion with
2 reference to the corporation and may bar from reelection a director
3 removed in that manner for a period prescribed by the court. The
4 corporation shall be made a party to the suit.

5 Sec. 10.06.465. VACANCIES AND RESIGNATION; SPECIAL MEETING OF
6 SHAREHOLDERS. (a) Unless otherwise provided in the articles or
7 bylaws of the corporation and except for a vacancy created by the
8 removal of a director, vacancies on the board may be filled by a
9 majority of the directors then in office, whether or not less than a
10 quorum, or by a sole remaining director. Unless the articles or a
11 bylaw adopted with approval of the outstanding shares provide that the
12 board may fill vacancies occurring in the board by reason of removal
13 of directors, the vacancies may be filled only by approval of the
14 shareholders.

15 (b) The shareholders may elect a director to fill a vacancy not
16 filled by the directors. An election by written consent to fill a
17 vacancy requires the consent of a majority of the outstanding shares
18 entitled to vote.

19 (c) If, after the filling of a vacancy by the directors, the
20 directors who have been elected by the shareholders constitute less
21 than a majority of the directors, a holder or holders of an aggregate
22 of 10 percent or more of the shares outstanding at the time may call a
23 special meeting of shareholders under AS 10.06.405 to elect the entire
24 board. The term of office of a director terminates upon the election
25 and qualification of a successor.

26 (d) A director may resign effective upon giving written notice
27 to the chairman of the board, the president, the secretary, or the
28 board of directors of the corporation, unless the notice specifies a
29 later time for the effectiveness of the resignation. Notwithstanding

Chapter 166

1 the effectiveness of the resignation, under AS 10.06.453(d) a director
2 holds office until a successor has been elected and qualified. If the
3 resignation is effective at a future time, a successor may be elected
4 to take office when the resignation becomes effective.

5 Sec. 10.06.468. EXECUTIVE AND OTHER BOARD COMMITTEES. (a) If
6 authorized by the articles or the bylaws of the corporation, the
7 board, by resolution adopted by a majority of the entire board, may
8 designate from among its members an executive committee and other
9 committees of the board. Unless the number of directors fixed in
10 accordance with AS 10.06.453 is less than three, each committee shall
11 have at least two members, who serve at the pleasure of the board of
12 directors. Each committee, to the extent provided in the resolution
13 or the articles or bylaws of the corporation, has the authority of the
14 board, except that a committee may not

15 (1) declare dividends or distributions;

16 (2) approve or recommend to shareholders actions or pro-
17 posals required by this chapter to be approved by shareholders;

18 (3) designate candidates for the office of director, for
19 purposes of proxy solicitation or otherwise, or fill vacancies on the
20 board or any committee of the board;

21 (4) amend the bylaws;

22 (5) approve a plan or merger not requiring shareholder
23 approval;

24 (6) capitalize retained earnings;

25 (7) authorize or approve the reacquisition of shares unless
26 under a general formula or method specified by the board;

27 (8) authorize or approve the issuance or sale of, or a
28 contract to issue or sell, shares or designate the terms of a series
29 of a class of shares, unless the board, having acted regarding general
S

1 authorization for the issuance or sale of shares, a contract to issue
2 or sell, or the designation of a series, authorizes a committee, under
3 a general formula or method specified by the board by resolution or by
4 adoption of a stock option or other plan, to fix the terms of a con-
5 tract for the sale of the shares and to fix the terms upon which the
6 shares may be issued or sold, including, without limitation, the
7 price, the dividend rate, provisions for redemption, sinking fund,
8 conversion, voting or preferential rights, and provisions for other
9 features of a class of shares, or a series of a class of shares, with
10 full power in the committee to adopt a final resolution setting out
11 all the terms of a series for filing with the commissioner under this
12 chapter; or

13 (9) authorize, approve, or ratify contracts or other trans-
14 actions between the corporation and one or more of its directors, or
15 between the corporation and a corporation, firm, or association in
16 which one or more of its directors has a material financial interest
17 under AS 10.06.478.

18 (b) The designation of a committee, the delegation to the com-
19 mittee of authority, or action by the committee under that authority
20 does not alone constitute compliance by a member of the board or the
21 committee in question with the responsibility to act in good faith, in
22 a manner the member reasonably believes to be in the best interests of
23 the corporation, and with the care, including reasonable inquiry, as
24 an ordinarily prudent person in a like position would use under simi-
25 lar circumstances.

26 Sec. 10.06.470. MEETINGS: CALL, PLACE, NOTICE, AND WAIVER. (a)
27 A regular or special meeting of the board or a committee of the board
28 may be called by the chairman of the board, the president, a vice-
29 president, the secretary, or two directors and may be held at any

Chapter 166

1 place inside or outside this state.

2 (b) A regular meeting of the board or a committee designated by
3 the board may be held without notice if the time and place of the
4 meeting is fixed by the bylaws or the board. A special meeting of the
5 board or a committee designated by the board shall be held upon either
6 notice in writing sent 20 days before the meeting or notice by elec-
7 tronic means, personal messenger, or comparable person-to-person
8 communication given at least 72 hours before the meeting. In the case
9 of a special meeting the notice shall include disclosure of the busi-
10 ness to be transacted and the purpose of the meeting.

11 (c) Notice of a meeting need not be given to a director who
12 signs a waiver of notice, whether before or after the meeting, or who
13 attends the meeting without protesting before the meeting or at its
14 commencement the lack of notice.

15 Sec. 10.06.473. QUORUM OF DIRECTORS. (a) A majority of the
16 number of directors fixed by the articles or bylaws of a corporation
17 constitutes a quorum for the transaction of business unless a greater
18 number is required by the articles or bylaws. The act of the majority
19 of the directors present at a meeting at which a quorum is present is
20 the act of the board, unless the act of a greater number is required
21 by the articles or the bylaws.

22 (b) The provisions of this section apply with equal force to
23 committees of the board established under AS 10.06.468 and action by
24 committees.

25 Sec. 10.06.475. INFORMAL ACTION BY DIRECTORS. (a) Unless pro-
26 hibited by the articles or bylaws of the corporation, the board of a
27 corporation or a committee designated by the board can validly conduct
28 a meeting by communicating simultaneously with each other by means of
29 conference telephones or similar communications equipment.

1 (b) Unless prohibited by the articles or bylaws of the corpora-
2 tion, action required or permitted to be taken by the board or a com-
3 mittee designated by the board may be taken without a meeting on
4 written consents, identical in content, setting out the action taken
5 and signed by all the members of the board or the committee. The
6 written consents shall be filed with the minutes. The consents have
7 the same effect as a unanimous vote.

8 Sec. 10.06.478. DIRECTOR CONFLICTS OF INTEREST. (a) A contract
9 or other transaction between a corporation and one or more of the
10 directors of the corporation, or between a corporation and a corpora-
11 tion, firm, or association in which one or more of the directors of
12 the corporation has a material financial interest, is neither void nor
13 voidable because the director or directors or the other corporation,
14 firm, or association are parties or because the director or directors
15 are present at the meeting of the board that authorizes, approves, or
16 ratifies the contract or transaction, if the material facts as to the
17 transaction and as to the director's interest are fully disclosed or
18 known to the

19 (1) shareholders and the contract or transaction is ap-
20 proved by the shareholders in good faith, with the shares owned by the
21 interested director or directors not being entitled to vote; or

22 (2) board, and the board authorizes, approves, or ratifies
23 the contract or transaction in good faith by a sufficient vote without
24 counting the vote of the interested director or directors, and the
25 person asserting the validity of the contract or transaction sustains
26 the burden of proving that the contract or transaction was just and
27 reasonable as to the corporation at the time it was authorized, ap-
28 proved, or ratified.

9 (b) A common directorship does not alone constitute a material
3

Chapter 166

1 financial interest within the meaning of this section. A director is
2 not interested within the meaning of this section in a resolution
3 fixing the compensation of another director as a director, officer, or
4 employee of the corporation, notwithstanding the fact that the first
5 director is also receiving compensation from the corporation.

6 (c) A contract or other transaction between a corporation and a
7 corporation or association of which one or more directors of the cor-
8 poration are directors is neither void nor voidable because the direc-
9 tor or directors are present at the meeting of the board that author-
10 izes, approves, or ratifies the contract or transaction, if the mate-
11 rial facts of the transaction and the director's other directorship
12 are fully disclosed or known to the board and the board authorizes,
13 approves, or ratifies the contract or transaction in good faith by a
14 sufficient vote without counting the vote of the common director or
15 directors or the contract or transaction is approved by the share-
16 holders in good faith. This subsection does not apply to contracts or
17 transactions covered by (a) of this section.

18 (d) Interested or common directors may be counted in determining
19 the presence of a quorum at a meeting of the board that authorizes,
20 approves, or ratifies a contract or transaction.

21 (e) Nothing in this section affects the prohibitions or re-
22 straints imposed by AS 45.50.

23 Sec. 10.06.480. LIABILITY OF DIRECTORS. (a) In addition to
24 other liabilities, a director is liable in the following circumstances
25 unless the director complies with the standard provided in AS 10.06.-
26 450(b) for the performance of the duties of directors:

27 (1) A director who votes for or assents to a distribution
28 to the corporation's shareholders contrary to the provisions of
29 AS 10.06.358, 10.06.360, 10.06.363, or 10.06.365 or contrary to a
S

1 restriction in the articles of incorporation, is liable to the corpo-
2 ration, jointly and severally with all other directors voting for or
3 assenting to the distribution, for the amount of the distribution that
4 is paid or the value of the assets that are distributed in excess of
5 the amount of the distribution that could have been paid or distribut-
6 ed without violation of AS 10.06.405 - 10.06.438 or the restrictions
7 of the articles of incorporation.

8 (2) A director who votes for or assents to a distribution
9 to the corporation's shareholders during the liquidation of the corpo-
10 ration without the payment and discharge of, or making adequate pro-
11 vision for, all known debts, obligations, and liabilities of the
12 corporation is liable to the corporation, jointly and severally with
13 all other directors voting for or assenting to distribution, for the
14 value of the assets that are distributed, to the extent that the
15 debts, obligations, and liabilities of the corporation are not there-
16 after paid and discharged.

17 (3) A director who votes for or assents to a loan of assets
18 of the corporation to an officer or employee or a loan secured by the
19 corporation's shares contrary to the provisions of AS 10.06.485 or
20 contrary to a restriction in the articles of incorporation, is liable
21 to the corporation, jointly and severally with all other directors
22 voting for or assenting to the loan, for the amount of the loan that
23 is in excess of a loan that could have been extended without a viola-
24 tion of AS 10.06.485 or the restriction in the articles of incorpora-
25 tion.

26 (b) A director against whom a claim is asserted under this
27 section for the distribution of assets of the corporation is entitled
28 to contribution from shareholders who accepted or received the assets,
29 knowing the distribution to have been made in violation of this
30 ;

Chapter 166

1 chapter, in proportion to the amounts received by them. A director
2 against whom a claim is asserted under this section for the extension
3 of a loan is entitled to contribution from the person receiving the
4 loan.

5 (c) A director against whom a claim is asserted under this
6 section is entitled to contribution from other directors who voted for
7 or assented to the action upon which the claim is asserted.

8 Sec. 10.06.483. OFFICERS: TENURE, RESIGNATION, AGENCY, DUTY OF
9 CARE. (a) A corporation shall have a president, a secretary, a trea-
10 surer and other officers with titles and duties as stated in the
11 bylaws of the corporation or determined by the board and as may be
12 necessary to enable the corporation to sign instruments and share
13 certificates. Any two or more offices may be held by the same person,
14 except the offices of president and secretary. When all of the issued
15 and outstanding stock of the corporation is owned by one person, the
16 person may hold all or any combination of offices.

17 (b) Except as otherwise provided in the articles or bylaws of
18 the corporation, officers shall be chosen by the board and serve at
19 the pleasure of the board, subject to the rights, if any, of an offi-
20 cer under a contract of employment. An officer may resign at any time
21 upon written notice to the corporation without prejudice to the
22 rights, if any, of the corporation under a contract to which the
23 officer is a party.

24 (c) All officers as between themselves and the corporation have
25 the authority and shall perform the duties in the management of the
26 corporation as provided in the bylaws of the corporation or, to the
27 extent not provided in the bylaws, as provided by the board.

28 (d) Subject to the provisions of AS 10.06.020(a), a note, mort-
29 gage, evidence of indebtedness, contract, share certificate,
S

1 conveyance, or other instrument in writing, and an assignment or
2 endorsement of these, executed or entered into between the corporation
3 and another person, if signed by two individuals, one of whom is the
4 chairman of the board, the president, or a vice-president and the
5 other of whom is the secretary, an assistant secretary, the treasurer,
6 or an assistant treasurer of the corporation, is not invalidated as to
7 the corporation by a lack of authority of the signing officers in the
8 absence of actual knowledge on the part of the other person that the
9 signing officers had no authority to execute the instrument.

10 (e) An officer shall perform the duties of an officer in good
11 faith and with that degree of care, including reasonable inquiry, that
12 an ordinarily prudent person in a like position would use under simi-
13 lar circumstances.

14 Sec. 10.06.485. LOANS TO DIRECTORS, OFFICERS, AND EMPLOYEES.

15 (a) A loan may not be extended to an officer or employee without
16 authorization by the board. A loan may not be extended to a director
17 without the approval of two-thirds of the voting shares. An employee
18 or officer who is also a director is considered a director for pur-
19 poses of this section. A shareholder is not disqualified from voting
20 on a loan to a shareholder as a director because of personal interest.

21 (b) A loan to a director, officer, or employee and a loan se-
22 cured by the shares of the corporation may not be made unless the loan
3 would be permissible as a distribution under AS 10.06.358 - 10.06.365.
4 A loan under this subsection impairs the retained earnings or paid-in
5 capital accounts to the extent of the loan.

6 (c) For purposes of this section, a loan may consist of cash,
7 securities, or personal or real property.

8 (d) If a corporation acts as a guarantor on a loan to a direc-
9 tor, officer, or employee, the guarantee is treated as a loan under

Chapter 166

1 this section.

2 (e) A director, officer, or employee of an affiliate corporation
3 is a director, officer, or employee of the lending corporation for
4 purposes of this section.

5 (f) A loan is to be judged by the duties of directors and offi-
6 cers to act in good faith in a manner reasonably believed to be in the
7 best interests of the corporation and with the care, including reason-
8 able inquiry, that an ordinarily prudent person in a like position
9 would use under similar circumstances.

10 Sec. 10.06.490. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOY-
11 EES, AND AGENTS: INSURANCE. (a) A corporation may indemnify a
12 person who was, is, or is threatened to be made a party to a com-
13 pleted, pending, or threatened action or proceeding, whether civil,
14 criminal, administrative, or investigative, other than an action by or
15 in the right of the corporation, by reason of the fact that the person
16 is or was a director, officer, employee, or agent of the corporation,
17 or is or was serving at the request of the corporation as a director,
18 officer, employee, or agent of another corporation, partnership, joint
19 venture, trust, or other enterprise. Indemnification may include
20 reimbursement of expenses, attorney fees, judgments, fines, and
21 amounts paid in settlement actually and reasonably incurred by the
22 person in connection with the action or proceeding if the person acted
23 in good faith and in a manner the person reasonably believed to be in
24 or not opposed to the best interests of the corporation, and, with
25 respect to a criminal action or proceeding, the person had no reason-
26 able cause to believe the conduct was unlawful. The termination of an
27 action or proceeding by judgment, order, settlement, conviction, or
28 upon a plea of nolo contendere or its equivalent, does not create a
29 presumption that the person did not act in good faith and in a manner
S

1 which the person reasonably believed to be in or not opposed to the
2 best interests of the corporation, and, with respect to a criminal
3 action or proceeding, the person had reasonable cause to believe that
4 the conduct was unlawful.

5 (b) A corporation may indemnify a person who was, is, or is
6 threatened to be made a party to a completed, pending, or threatened
7 action by or in the right of the corporation to procure a judgment in
8 its favor by reason of the fact that the person is or was a director,
9 officer, employee, or agent of the corporation, or is or was serving
10 at the request of the corporation as a director, officer, employee, or
11 agent of another corporation, partnership, joint venture, trust, or
12 other enterprise. Indemnification may include reimbursement for
13 expenses and attorney fees actually and reasonably incurred by the
14 person in connection with the defense or settlement of the action if
15 the person acted in good faith and in a manner the person reasonably
16 believed to be in or not opposed to the best interests of the corpo-
17 ration. Indemnification may not be made in respect of any claim,
18 issue, or matter as to which the person has been adjudged to be liable
19 for negligence or misconduct in the performance of the person's duty
20 to the corporation except to the extent that the court in which the
21 action was brought determines upon application that, despite the
22 adjudication of liability, in view of all the circumstances of the
23 case, the person is fairly and reasonably entitled to indemnity for
24 expenses that the court considers proper.

25 (c) To the extent that a director, officer, employee, or agent
26 of a corporation has been successful on the merits or otherwise in
27 defense of an action or proceeding referred to in (a) or (b) of this
28 section, or in defense of a claim, issue, or matter in the action or
29 proceeding, the director, officer, employee, or agent shall be

Chapter 166

1 indemnified against expenses and attorney fees actually and reasonably
2 incurred in connection with the defense.

3 (d) Unless otherwise ordered by a court, indemnification under
4 (a) or (b) of this section may only be made by a corporation upon a
5 determination that indemnification of the director, officer, employee,
6 or agent is proper in the circumstances because the director, officer,
7 employee, or agent has met the applicable standard of conduct set out
8 in (a) and (b) of this section. The determination shall be made by

9 (1) the board by a majority vote of a quorum consisting of
10 directors who were not parties to the action or proceeding; or

11 (2) independent legal counsel in a written opinion if a
12 quorum under (1) of this subsection is

13 (A) not obtainable; or

14 (B) obtainable but a majority of disinterested direc-
15 tors so directs; or

16 (3) approval of the outstanding shares.

17 (e) The corporation may pay or reimburse the reasonable expenses
18 incurred in defending a civil or criminal action or proceeding in
19 advance of the final disposition in the manner provided in (d) of this
20 section if

21 (1) in the case of a director or officer, the director or
22 officer furnishes the corporation with a written affirmation of a good
23 faith belief that the standard of conduct described in AS 10.06.450(b)
24 or 10.06.483(e) has been met;

25 (2) the director, officer, employee, or agent furnishes the
26 corporation a written unlimited general undertaking, executed person-
27 ally or on behalf of the individual, to repay the advance if it is
28 ultimately determined that an applicable standard of conduct was not
29 met; and

1 (3) a determination is made that the facts then known to
2 those making the determination would not preclude indemnification
3 under this chapter.

4 (f) The indemnification provided by this section is not exclu-
5 sive of any other rights to which a person seeking indemnification may
6 be entitled under a bylaw, agreement, vote of shareholders or disin-
7 terested directors, or otherwise, both as to action in the official
8 capacity of the person and as to action in another capacity while
9 holding the office. The right to indemnification continues as to a
10 person who has ceased to be a director, officer, employee, or agent,
11 and inures to the benefit of the heirs, executors, and administrators
12 of the person.

13 (g) A corporation may purchase and maintain insurance on behalf
14 of a person who is or was a director, officer, employee, or agent of
15 the corporation, or is or was serving at the request of the corpo-
16 ration as a director, officer, employee, or agent of another corpo-
17 ration, partnership, joint venture, trust, or other enterprise against
18 any liability asserted against the person and incurred by the person
19 in that capacity, or arising out of that status, whether or not the
20 corporation has the power to indemnify the person against the liabil-
21 ity under the provisions of this section.

22 ARTICLE 7. AMENDMENTS AND CHANGES.

23 Sec. 10.06.502. AUTHORIZATION: PERMITTED AND PROHIBITED AMEND-
24 MENTS. (a) By complying with the provisions of this chapter a corpo-
25 ration may amend its articles of incorporation from time to time and
26 in as many respects as desired if its articles as amended contain only
27 provisions that would be lawful to insert in original articles filed
28 at the time of the filing of the amendment.

29 (b) In particular, and without limitation upon the general power
S

Chapter 166

1 of amendment, a corporation may amend its articles of incorporation to

2 (1) change its corporate name;

3 (2) extend a limitation upon its period of duration;

4 (3) change, enlarge, or diminish a limitation upon its
5 corporate purpose;

6 (4) increase or decrease the aggregate number of shares, or
7 shares of a class, that the corporation has authority to issue;

8 (5) exchange, classify, reclassify, or cancel all or part
9 of its shares, whether issued or unissued;

10 (6) change the designation of all or a part of its shares,
11 whether issued or unissued, and to change the preferences, limita-
12 tions, and the relative rights of all or part of its shares, whether
13 issued or unissued;

14 (7) change shares of a class, whether issued or unissued,
15 into a different number of shares of the same class or into the same
16 or a different number of shares of other classes;

17 (8) create new classes of shares having rights and pref-
18 erences either prior and superior or subordinate and inferior to the
19 shares of a class then authorized, whether issued or unissued;

20 (9) cancel or otherwise affect the right of the holders of
21 the shares of a class to receive dividends that have accrued but have
22 not been declared;

23 (10) divide a preferred or special class of shares, whether
24 issued or unissued, into series and fix and determine the designation
25 of the series and the variations in the relative rights and prefer-
26 ences as between the shares of the series;

27 (11) authorize the board to establish, out of authorized but
28 unissued shares, series of a preferred or special class of shares and
29 fix and determine the relative rights and preferences of the shares of
S

1 the series;

2 (12) authorize the board to fix and determine the relative
3 rights and preferences of the authorized but unissued shares of series
4 in which either the relative rights and preferences have not been
5 fixed and determined or the relative rights and preferences are to be
6 changed;

7 (13) revoke, diminish, or enlarge the authority of the board
8 to establish series out of authorized but unissued shares of a pre-
9 ferred or special class and fix and determine the relative rights and
10 preferences of the shares of that series; and

11 (14) limit, deny, or grant to shareholders of a class the
12 preemptive right to acquire additional shares of the corporation,
13 whether then or thereafter authorized.

14 (c) A corporation may not amend its articles of incorporation to
15 alter a statement that may appear in the original articles of the
16 names and addresses of the first directors, or the name and address of
17 the initial agent, except to correct an error in the statement or to
18 delete either after the corporation has filed a notice under AS 10.-
19 06.165 or 10.06.813.

20 Sec. 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.

21 (a) A corporation shall amend its articles of incorporation in the
22 following manner:

23 (1) If shares have not been issued, the board shall adopt a
24 resolution setting out the proposed amendment or amendments.

25 (2) Subject to AS 10.06.506, if shares have been issued, an
26 amendment shall be approved by the board and the outstanding shares.
27 Approval may be initiated by the shareholders either before or after
28 consideration by the board. If the board adopts a resolution setting
29 out a proposed amendment, the board shall direct that the amendment be

Chapter 166

1 submitted to a vote at a meeting of shareholders that may be either
2 the annual or a special meeting. If approval of the outstanding
3 shares is obtained before action by the board, the board shall con-
4 sider and either approve or reject the amendment at the next regular
5 or special meeting.

6 (3) Unless the articles of incorporation provide otherwise,
7 a corporation's board of directors may adopt one or more of the fol-
8 lowing amendments to the articles of incorporation without shareholder
9 action:

10 (A) to delete the names and addresses of the initial
11 directors;

12 (B) to delete the name and address of the initial
13 registered agent or registered office, if a statement of change
14 is on file with the commissioner; or

15 (C) to change each issued and unissued authorized
16 share of an outstanding class into a greater number of whole
17 shares if the corporation has only shares of that class outstand-
18 ing.

19 (b) A proposed amendment may be contained in restated articles
20 of incorporation that contain

21 (1) a statement that except for the designated amendment
22 the restated articles correctly set out without change the provisions
23 of the articles being amended; and

24 (2) a statement that the restated articles together with
25 the designated amendment supersede the original articles and all
26 amendments to the original articles.

27 (c) Written notice setting out the proposed amendment or amend-
28 ments or a summary of the changes to be made shall be given to each
29 shareholder of record entitled to vote thereon within the time and in
S

1 the manner provided in this chapter for the giving of notice of meet-
2 ings of shareholders. If the amendment is to be considered at an
3 annual meeting, the proposed amendment or summary may be included in
4 the notice of the annual meeting.

5 Sec. 10.06.506. CLASS VOTING ON AMENDMENTS. (a) The holders of
6 the outstanding shares of a class may vote as a class upon a proposed
7 amendment, whether or not the holders are entitled to vote on the
8 amendment by the provisions of the articles of incorporation, if the
9 amendment

10 (1) increases or decreases the aggregate number of autho-
11 rized shares of the class;

12 (2) exchanges, reclassifies, or cancels all or part of the
13 shares of the class;

14 (3) exchanges or creates a right of exchange of all or part
15 of the shares of another class into the shares of the class;

16 (4) changes the designations, preferences, limitations, or
17 relative rights of the shares of the class;

18 (5) changes the shares of the class into the same or a
19 different number of shares of the same class or another class;

20 (6) creates a new class of shares having rights and pref-
21 erences prior and superior to the shares of the class, or increases
22 the rights and preferences or the number of authorized shares of a
23 class having rights and preferences prior or superior to the shares of
24 the class;

25 (7) divides the shares of a preferred or special class into
26 series and fixes and determines the designation of the series and the
27 variations in the relative rights and preferences between the shares
28 of the series or authorizes the board to do so;

29 (8) limits or denies the existing preemptive rights of the

Chapter 166

1 shares of the class;

2 (9) cancels or otherwise affects dividends on the shares of
3 the class that are accrued but not declared.

4 (b) If the holders of the outstanding shares of a class are
5 entitled to vote as a class under (a) of this section, the amendment
6 is not approved unless it receives a majority vote of the outstanding
7 shares of that class and approval of the outstanding shares.

8 Sec. 10.06.508. GREATER VOTING REQUIREMENTS. If the articles of
9 incorporation require the vote of a larger proportion or of all of the
10 shares of a class or series, or of a larger proportion or of all the
11 directors, than is otherwise required by this chapter, the provision
12 in the articles requiring the greater vote may not be altered, amend-
13 ed, or repealed except by that greater vote unless otherwise provided
14 in the articles.

15 Sec. 10.06.510. ARTICLES OF AMENDMENT. The articles of amend-
16 ment shall be executed by the corporation by its president or vice-
17 president and by its secretary or an assistant secretary, and verified
18 by one of the officers signing the articles of amendment, and shall
19 set out the

20 (1) name of the corporation;

21 (2) amendment adopted;

22 (3) date of the approval of the amendment by the board and
23 outstanding shares, or by the board if shares have not been issued;

24 (4) number of shares outstanding and the number of shares
25 entitled to vote, and if the shares of a class are entitled to vote as
26 a class, the designation and number of outstanding shares of each
27 class entitled to vote;

28 (5) number of shares voted for and against the amendment
29 and, if the shares of a class are entitled to vote as a class, the
S

1 number of shares of each class voted for and against the amendment, or
2 if shares have not been issued, a statement to that effect; and

3 (6) manner in which an exchange, reclassification, or
4 cancellation of issued shares is to be carried out if the amendment
5 provides for an exchange, reclassification, or cancellation of issued
6 shares and is not set out in the amendment.

7 Sec. 10.06.512. FILING OF ARTICLES OF AMENDMENT. An original
8 and an exact copy of the articles of amendment shall be delivered to
9 the commissioner for processing according to AS 10.06.910 and for
10 issuance of a certificate of amendment.

11 Sec. 10.06.514. EFFECT OF CERTIFICATE OF AMENDMENT. (a) An
12 amendment is effective upon the issuance of a certificate of amendment
13 by the commissioner, or on a later date, not more than 30 days after
14 the filing of the certificate with the commissioner, as provided in
15 the articles of amendment.

16 (b) An amendment may not affect an existing cause of action in
17 favor of or against the corporation, or a pending suit to which the
18 corporation is a party, or the existing rights of persons other than
19 shareholders. If the corporate name is changed by amendment, a suit
20 brought by or against the corporation under its former name does not
21 abate.

22 Sec. 10.06.516. RESTATED ARTICLES OF INCORPORATION. A domestic
23 corporation may, by resolution adopted by the board, restate its
24 articles of incorporation as amended up to that time. Upon the adop-
25 tion of the resolution, restated articles shall be executed by the
26 corporation by its president or a vice-president and by its secretary
27 or assistant secretary and verified by one of the officers signing the
28 articles and shall set out all of the operative provisions of the
29 articles as amended up to that time together with a statement that the

Chapter 166

1 restated articles correctly set out without change the corresponding
2 provisions of the articles as amended up to that time and that the
3 restated articles supersede the original articles and all amendments
4 to them.

5 Sec. 10.06.518. FILING OF RESTATED ARTICLES OF INCORPORATION.
6 An original and an exact copy of the restated articles of incorpo-
7 ration shall be delivered to the commissioner for processing according
8 to AS 10.06.910 and for issuance of a restated certificate of incorpo-
9 ration.

10 Sec. 10.06.520. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF
11 INCORPORATION. Upon the issuance of a restated certificate of incor-
12 poration, the restated articles of incorporation become effective and
13 supersede the original articles and all amendments.

14 Sec. 10.06.522. AMENDMENT OF ARTICLES OF INCORPORATION IN RE-
15 ORGANIZATION PROCEEDINGS. (a) If a plan of reorganization of a cor-
16 poration has been confirmed by decree or order of a court in pro-
17 ceedings for the reorganization of the corporation under an applicabl
18 statute of the United States relating to reorganization of corpora
19 tions, the articles of the corporation may be amended as necessary i
20 the manner provided in (c) of this section, in order to carry out th
21 plan and put it into effect, only if the articles as amended contai
22 provisions that might be lawfully contained in original articles a
23 the time of the making of the amendment.

24 (b) In particular, and without limitation upon the general powe
25 of amendment, the articles of incorporation may be amended to

26 (1) change the corporate name, period of duration, or co:
27 porate purposes of the corporation;

28 (2) repeal, alter, or amend the bylaws of the corporation

29 (3) change the aggregate number of shares or shares of
S

1 class that the corporation has authority to issue;

2 (4) change the preferences, limitation, and relative rights
3 of all or part of the shares of the corporation, and classify, re-
4 classify, or cancel all or part of the shares, whether issued or un-
5 issued;

6 (5) authorize the issuance of bonds, debentures, or other
7 obligations of the corporation, whether or not convertible into shares
8 of a class or bearing warrants or other evidences of optional rights
9 to purchase or subscribe for shares of a class, and fix the terms and
10 conditions of the bonds, debentures, or other obligations; and

11 (6) constitute or reconstitute and classify or reclassify
12 the board of the corporation, and appoint directors and officers in
13 place of or in addition to all or any of the directors or officers
14 then in office.

15 (c) Articles of amendment approved by decree or order of a court
16 shall be executed and verified by the person or persons the court
17 designates or appoints for the purpose, and shall set out the name of
18 the corporation, the amendments of the articles approved by the court,
19 the date of the decree or order approving the articles of amendment,
20 the title of the proceedings in which the decree or order was entered,
21 and a statement that the decree or order was entered by a court having
22 jurisdiction of the proceedings for the reorganization of the corpo-
23 ration under an applicable statute of the United States.

4 Sec. 10.06.524. FILING OF AMENDMENT OF ARTICLES IN REORGANIZA-
5 TION PROCEEDINGS. An original and an exact copy of the articles of
6 amendment in reorganization proceedings shall be delivered to the
7 commissioner for processing according to AS 10.06.910 and for issuance
8 of a certificate of amendment.

9 Sec. 10.06.526. EFFECT OF ISSUANCE OF CERTIFICATE OF AMENDMENT

Chapter 166

1 IN REORGANIZATION PROCEEDINGS. An amendment becomes effective upon
2 the issuance of a certificate of amendment in reorganization proceed-
3 ings, and the articles are considered to be amended without action by
4 the directors or shareholders of the corporation and with the same
5 effect as if the amendments had been adopted by unanimous action of
6 the directors and shareholders of the corporation.

7 ARTICLE 8. ORGANIC CHANGE.

8 Sec. 10.06.530. MERGER. Two or more domestic corporations may
9 merge into one of such corporations under a plan of merger approved in
10 the manner provided in AS 10.06.530 - 10.06.582.

11 Sec. 10.06.532. PROCEDURE FOR MERGER. A plan of merger approved
12 by a resolution of the board of each corporation shall be proposed
13 setting out

14 (1) the names of the corporations proposing to merge and
15 the name of the surviving corporation into which they propose to
16 merge;

17 (2) the terms and conditions of the proposed merger;

18 (3) the manner and basis of converting the shares of each
19 merging corporation into shares or other securities or obligations of
20 the surviving corporation;

21 (4) a statement of changes in the articles of incorporatio
22 of the surviving corporation caused by the merger; and

23 (5) other provisions of the merger considered necessary or
24 desirable.

25 Sec. 10.06.534. CONSOLIDATION. Two or more domestic corpora
26 tions may consolidate into a new domestic corporation under a plan of
27 consolidation approved in the manner provided in AS 10.06.530
28 10.06.582.

29 S Sec. 10.06.536. PROCEDURE FOR CONSOLIDATION. A plan
CSHB 322(Jud)(efd am S) -80-

1 consolidation approved by a resolution of the board of each
2 corporation shall be proposed setting out

3 (1) the names of the corporations proposing to consolidate
4 and the name of the new corporation into which they propose to consol-
5 idate;

6 (2) the terms and conditions of the proposed consolidation;

7 (3) the manner and basis of converting the shares of each
8 corporation into shares or other securities or obligations of the new
9 corporation;

10 (4) the statements with respect to the new corporation
11 required to be set out in the articles of incorporation for corpora-
12 tions organized under this chapter; and

13 (5) other provisions of the consolidation considered neces-
14 sary or desirable.

15 Sec. 10.06.538. SHARE EXCHANGE. All of the issued or outstand-
16 ing shares of one or more classes of a domestic corporation may be
17 acquired through the exchange of all of the issued or outstanding
18 shares of the class or classes by another domestic or foreign corpo-
19 ration under a plan of exchange approved in the manner provided in
20 AS 10.06.530 - 10.06.582.

1 Sec. 10.06.540. PROCEDURE FOR SHARE EXCHANGE. (a) A plan of
2 exchange approved by a resolution of the board of each corporation
3 shall be proposed setting out

4 (1) the name of the corporation the shares of which are
5 proposed to be acquired by exchange and the name of the acquiring
6 corporation;

7 (2) the terms and conditions of the proposed exchange;

8 (3) the manner and basis of exchanging the shares to be
9 acquired for shares, obligations, or other securities of the acquiring

Chapter 166

1 corporation or another corporation, or, in whole or in part, for cash
2 or other property;

3 (4) other provisions of the proposed exchange considered
4 necessary or desirable.

5 (b) The procedure authorized by this section does not limit the
6 power of a corporation to acquire all or part of the shares of any
7 class or classes of a corporation through voluntary exchange or other-
8 wise by agreement with the shareholders.

9 Sec. 10.06.542. DISPARATE TREATMENT OF SHARES OF THE SAME CLASS
10 OR SERIES PROHIBITED: EXCEPTIONS. (a) Except as provided in (b) of
11 this section all shares of the same class or series shall be treated
12 equally with respect to a distribution of shares, cash, property,
13 rights, or securities in any plan of merger, consolidation, or share
14 exchange.

15 (b) Disparate treatment of shares of the same class or series
16 may be proposed in a plan of merger, consolidation, or share exchange
17 if

18 (1) disparate treatment is necessary to preserve a sub-
19 chapter S election under the Internal Revenue Code of 1954;

20 (2) there is a sound business reason for disparate treat-
21 ment and proponents of the plan prove it is consistent with fiduciary
22 duties owed to all shareholders; or

23 (3) there is unanimous consent of all shareholders.

24 Sec. 10.06.544. NOTICE TO AND APPROVAL BY SHAREHOLDERS. Upon
25 approval by the board of each corporation of a plan of merger, con-
26 solidation, or exchange, each board shall, by resolution, direct tha
27 the plan be submitted for approval, at either an annual or specia
28 meeting, by the outstanding shares of each corporation. Write
29 notice shall be given to each shareholder of record, whether or nc
S

1 the share or shares of the shareholder have voting rights under the
2 articles of the corporation, not less than 20 days before the meeting,
3 in the manner provided in this chapter for the giving of notice of
4 meetings of shareholders. Whether the meeting is an annual or special
5 meeting, the notice shall state that the purpose or one of the pur-
6 poses of the meeting is to consider the proposed plan of merger,
7 consolidation, or exchange. A copy or summary of the plan of merger,
8 consolidation, or exchange, as well as a copy of AS 10.06.574 and
9 10.06.576, concerning the rights of a dissenting shareholder, shall be
10 included with the notice.

11 Sec. 10.06.546. MANNER OF APPROVAL BY SHAREHOLDERS. At each
12 meeting for which notice is given under AS 10.06.544 a vote of the
13 shareholders shall be taken on the proposed plan of merger, consolida-
14 tion, or exchange. Each outstanding share of each corporation may
15 vote on the proposed plan whether or not the share has voting rights
16 under the articles of the corporation. The plan is approved if it
17 receives the affirmative vote of at least two-thirds of the outstand-
18 ing shares of each corporation. If a class of shares of a corporation
19 is entitled to vote on the plan as a class, the plan is approved if it
20 receives the affirmative vote of at least two-thirds of the outstand-
21 ing shares of each class of shares entitled to vote on the plan as a
22 class and the affirmative vote of at least two-thirds of the total
23 shares entitled to vote on the plan. A class of shares of a corpo-
24 ration is entitled to vote as a class if a plan contains a provision
25 that, if contained in a proposed amendment to the articles of incorpo-
26 ration, would entitle the class of shares to vote as a class and, in
27 the case of an exchange, if the class is included in the exchange.

28 Sec. 10.06.548. ABANDONMENT OF PLAN OF MERGER, CONSOLIDATION, OR
29 EXCHANGE. After approval of the outstanding shares of each

Chapter 166

1 corporation under AS 10.06.546 and before the filing of the articles
2 of merger, consolidation, or exchange, the merger, consolidation, or
3 exchange may be abandoned under provisions set out in the plan.

4 Sec. 10.06.550. ARTICLES OF MERGER, CONSOLIDATION, OR EXCHANGE.
5 After approval, articles of merger, articles of consolidation, or
6 articles of exchange shall be executed by each corporation by its
7 president or a vice-president and by its secretary or an assistant
8 secretary, and verified by one of the officers of each corporation
9 signing the articles, and shall set out the

10 (1) plan of merger, consolidation, or exchange;

11 (2) number of shares outstanding of each corporation, and,
12 if the shares of a class were entitled to vote as a class, the desig-
13 nation and number of outstanding shares of the class; and

14 (3) number of shares voted for and against the plan, and,
15 if the shares of a class were entitled to vote as a class, the number
16 of shares of the class voted for and against the plan.

17 Sec. 10.06.552. FILING OF ARTICLES OF MERGER, CONSOLIDATION, OR
18 EXCHANGE. An original and an exact copy of the articles of merger,
19 consolidation, or exchange shall be delivered to the commissioner for
20 processing according to AS 10.06.910 and for the issuance of a certifi-
21 cate of merger, consolidation, or exchange.

22 Sec. 10.06.554. MERGER OF SUBSIDIARY CORPORATION. A corporation
23 owning at least 90 percent of the outstanding shares of each class of
24 another corporation may merge the other corporation into itself with-
25 out approval by a vote of the shareholders of either corporation.

26 Sec. 10.06.556. PROCEDURE FOR MERGER OF SUBSIDIARY CORPORATION.
27 (a) The board of a proposed surviving corporation shall, by resolu-
28 tion, approve a plan of merger setting out

29 (1) the name of the subsidiary corporation and the name of
6

1 the corporation owning at least 90 percent of its shares;

2 (2) subject to AS 10.06.542, the manner and basis of con-
3 verting the shares of the subsidiary corporation into shares, obliga-
4 tions, or other securities of the surviving or other corporation or,
5 in whole or in part, into cash or other property.

6 (b) A copy of a plan of merger shall be mailed to each share-
7 holder of record of the subsidiary corporation.

8 (c) Articles of merger shall be executed by the surviving corpo-
9 ration by its president or a vice-president and by its secretary or an
10 assistant secretary, and verified by one of its officers signing the
11 articles, and shall set out the

12 (1) plan of merger;

13 (2) number of outstanding shares of each class of the
14 subsidiary corporation and the number of those shares of each class
15 owned by the surviving corporation; and

16 (3) date of the mailing to shareholders of the subsidiary
17 corporation of the plan of merger.

18 Sec. 10.06.558. FILING OF ARTICLES OF MERGER OF SUBSIDIARY COR-
19 PORATION. An original and an exact copy of the articles of merger of
20 a subsidiary corporation shall be delivered to the commissioner for
21 processing according to AS 10.06.910 and for the issuance of a certifi-
22 cate of merger.

23 Sec. 10.06.560. EFFECT OF MERGER, CONSOLIDATION, OR EXCHANGE.

24 (a) A merger, consolidation, or exchange is effective upon the issu-
25 ance of a certificate of merger, consolidation, or exchange by the
26 commissioner, or on a later date, not more than 30 days after the
27 filing of the certificate with the commissioner, as provided in the
28 plan.

29 (b) When a merger or consolidation becomes effective,

Chapter 166

1 (1) the corporations that are parties to the plan of merger
2 or consolidation shall be a single corporation, that, in the case of a
3 merger, shall be that corporation designated in the plan of merger as
4 the surviving corporation, and, in the case of a consolidation, shall
5 be the new corporation provided for in the plan of consolidation;

6 (2) the separate existence of all corporations that are
7 parties to the plan of merger or consolidation, except the surviving
8 or new corporation, ceases;

9 (3) a surviving or new corporation has all the rights,
10 privileges, immunities, and powers and is subject to all the duties
11 and liabilities of a corporation organized under this chapter;

12 (4) the surviving or new corporation possesses all the
13 public and private rights, privileges, immunities, and franchises of
14 each of the merging or consolidating corporations; all property, real,
15 personal, and mixed, and all debts due on whatever account, including
16 subscriptions to shares, and all other choses in action, and every
17 other interest of, belonging to, or due to each of the merged or con-
18 solidated corporations, shall be transferred to and vested in the
19 surviving or new corporation without further act; and the title to
20 real estate, or an interest in real estate, vested in any of the
21 corporations may not revert or be in any way impaired by reason of a
22 merger or consolidation;

23 (5) a surviving or new corporation is responsible and
24 liable for all the liabilities and obligations of each of the merged
25 or consolidated corporations; a claim existing or action or proceeding
26 pending by or against the merged or consolidated corporations may be
27 prosecuted as if the merger or consolidation has not taken place, or
28 the surviving or new corporation may be substituted in its place; and
29 the rights of creditors or any liens upon the property of the merged
S

1 or consolidated corporations may not be impaired by the merger or
2 consolidation;

3 (6) in the case of a merger, the articles of incorporation
4 of the surviving corporation are considered to be amended to the
5 extent that changes in its articles are stated in the plan of merger;
6 and, in the case of a consolidation, the statements set out in the
7 articles of consolidation that are required or permitted to be set out
8 in the articles of incorporation of corporations organized under this
9 chapter are considered to be the original articles of the new corpo-
10 ration.

11 (c) When a merger, consolidation, or exchange becomes effective,
12 the shares of the corporation or corporations party to the plan that
13 are to be converted or exchanged under the terms of the plan cease to
14 exist, in the case of a merger or consolidation, or are considered to
15 be exchanged, in the case of an exchange, and the holders of the
16 shares are entitled only to the shares, obligations, other securities,
17 cash, or other property into which the shares have been converted or
18 for which they have been exchanged, in accordance with the plan,
19 subject to the rights under AS 10.06.574.

20 Sec. 10.06.562. MERGER, CONSOLIDATION, OR EXCHANGE OF SHARES
21 BETWEEN DOMESTIC AND FOREIGN CORPORATION. One or more foreign corpo-
22 rations and one or more domestic corporations may be merged or consol-
23 idated, or participate in an exchange, if the merger, consolidation,
24 or exchange is permitted by the laws of the state under which each
25 foreign corporation is organized and

26 (1) each domestic corporation complies with the provisions
27 of this chapter with respect to the merger, consolidation, or exchange
28 of domestic corporations and each foreign corporation complies with
29 the applicable provisions of the laws of the state under which it is
S

Chapter 166

1 organized; and

2 (2) if the surviving or new corporation is to be governed
3 by the laws of another state, it complies with the provisions of this
4 chapter concerning foreign corporations if it is to transact business
5 in this state and it files with the commissioner an

6 (A) agreement that the surviving or new foreign corpo-
7 ration may be served with process in this state in a proceeding
8 for the enforcement of an obligation of a domestic corporation
9 that is a party to the merger or consolidation and in a proceed-
10 ing for the enforcement of the rights of a dissenting shareholder
11 of a domestic corporation against the surviving or new corpora-
12 tion;

13 (B) irrevocable appointment of the commissioner as the
14 agent of the surviving or new corporation to accept service of
15 process in a proceeding described in (A) of this paragraph; and

16 (C) agreement that it will promptly pay to the dis-
17 sentering shareholders of a domestic corporation the amount to
18 which they are entitled under provisions of this chapter with
19 respect to the rights of dissenting shareholders.

20 Sec. 10.06.564. REORGANIZATION: DISCLOSURE OF ALIEN AFFILIATES.
21 Not less than 20 days before the consummation of an organic change
22 under AS 10.06.530 - 10.06.562, the surviving or new corporation shall
23 deliver to the commissioner

24 (1) a list of the names and addresses of each alien affil-
25 iate of the surviving or new corporation;

26 (2) the percentage of outstanding shares controlled by each
27 alien affiliate; and

28 (3) a specific description of the nature of the relation-
29 ship between the surviving or new corporation and its alien affiliate.

1 Sec. 10.06.566. SALE OF ASSETS IN REGULAR COURSE OF BUSINESS;
2 MORTGAGE OR PLEDGE OF ASSETS. The board of the corporation, without
3 the approval of the shareholders or outstanding shares of the corpora-
4 tion, may authorize the sale, lease, exchange, or other disposition of
5 all, or substantially all, the property and assets of a corporation in
6 the usual and regular course of its business and the mortgage or
7 pledge of any or all property and assets of a corporation whether or
8 not in the usual and regular course of business, upon terms and condi-
9 tions and for consideration, that may consist in whole or in part of
10 cash or other property, including shares, obligations, or other secu-
11 rities of another domestic or foreign corporation.

12 Sec. 10.06.568. SALE OF ASSETS NOT IN REGULAR COURSE OF BUSI-
13 NESS. (a) A sale, lease, exchange, or other disposition of all, or
14 substantially all, of the property and assets, with or without the
15 good will, of a corporation, if not in the usual and regular course of
16 its business, may be made upon terms and conditions and for considera-
17 tion, that may consist in whole or in part of cash or other property,
18 including shares, obligations or other securities of another foreign
19 or domestic corporation, as authorized in (b) of this section.

20 (b) A sale, lease, exchange, or other disposition shall be
21 recommended to the shareholders by resolution approved by the board
22 and submitted to a vote of the shareholders at a regular or special
23 meeting. Written notice shall be given to each shareholder of record
24 of the corporation, whether or not the shares have voting rights under
25 the articles of the corporation, not less than 20 days before the
26 meeting, in the manner provided in this chapter for the giving of
27 notice of meetings of shareholders. Whether the meeting is an annual
28 or special meeting the notice shall state that the purpose or one of
29 the purposes of the meeting is to consider the proposed sale, lease,

Chapter 166

1 exchange, or other disposition, and include a copy of AS 10.06.574 -
2 10.06.576, concerning the rights of a dissenting shareholder.

3 Sec. 10.06.570. APPROVAL OF TRANSACTION BY SHAREHOLDERS. (a)
4 At a meeting for which notice is given under AS 10.06.568(b) a vote of
5 the shareholders shall be taken on the recommended sale, lease, ex-
6 change, or other disposition and the shareholders may fix, or may
7 authorize the board to fix, the terms and conditions and the consid-
8 eration to be received by the corporation. The transaction is ap-
9 proved if the recommendation of the board receives the affirmative
10 vote of at least two- thirds of the outstanding shares of the corpo-
11 ration, unless a class of shares is entitled to vote as a class, in
12 which event the transaction shall be approved upon receiving the
13 affirmative vote of at least two-thirds of the outstanding shares of
14 each class of shares entitled to vote as a class and of the total
15 shares entitled to vote.

16 (b) If the buyer in a sale of assets under AS 10.06.568 is in
17 control of or under common control with the seller, the principal
18 terms of the sale must be approved by at least 90 percent of the
19 outstanding shares of the seller unless the sale is to a domestic or
20 foreign corporation in consideration for the nonredeemable common
21 shares of the purchasing corporation or its parent.

22 Sec. 10.06.572. ABANDONMENT OF TRANSACTION BY BOARD. The board
23 in its discretion may abandon a sale, lease, exchange, or other dispo-
24 sition of assets after approval by the shares without further action
25 or approval by the shares, subject to the rights of third parties
26 under contracts relating to the sale, lease, exchange, or other dispo-
27 sition.

28 Sec. 10.06.574. RIGHT OF SHAREHOLDERS TO DISSENT. (a) A share-
29 holder may dissent from the following corporate actions:
S

1 (1) a plan of merger, consolidation, or exchange to which
2 the corporation is a party; or

3 (2) a sale or exchange of all or substantially all of the
4 property and assets of the corporation not made in the usual and
5 regular course of its business, including a sale in dissolution, but
6 not including a sale under a court order or a sale for cash on terms
7 requiring that all or substantially all of the net proceeds of the
8 sale be distributed to the shareholders in accordance with their
9 respective interests within one year after the date of sale.

10 (b) The rights of a shareholder who dissents as to less than all
11 of the shares registered in the name of the shareholder shall be
12 determined as if the shares as to which the shareholder dissents and
13 the other shares of the shareholder are registered in the names of
14 different shareholders.

15 (c) This section does not apply to the shareholders of the sur-
16 viving corporation in a merger if a vote of shareholders of the sur-
17 viving corporation is not necessary to authorize the merger.

18 (d) This section does not apply to the holders of shares of a
19 class or series if the shares of the class or series were registered
20 on a national securities exchange on the date fixed to determine the
21 shareholders entitled to vote at the meeting of shareholders at which
22 the plan of merger, consolidation, or exchange or the proposed sale or
23 exchange of property and assets is to be acted upon unless the arti-
24 cles of the corporation provide otherwise.

25 Sec. 10.06.576. RIGHTS OF DISSENTING SHAREHOLDERS: PROCEDURE TO
26 ENFORCE SHAREHOLDER'S RIGHT TO RECEIVE PAYMENT FOR SHARES; WITHDRAWAL
27 OF DEMAND. (a) A shareholder electing to exercise a right to dissent
28 shall file with the corporation, before or at the meeting of share-
29 holders at which the proposed corporate action is submitted to a vote,

Chapter 166

1 a written objection to the proposed corporate action. The objection
2 must include a notice of election to dissent, the shareholder's name
3 and residence address, the number and classes of shares as to which
4 the shareholder dissents, and a demand for payment of the fair value
5 of the shares if the action is taken. A shareholder to whom the
6 corporation did not give notice of the meeting in accordance with this
7 chapter is not required to make the objection provided in this sec-
8 tion.

9 (b) Within 10 days after the shareholders' vote authorizing the
10 action, the corporation shall give written notice of the authoriza-
11 tion to each shareholder who filed written objection or from whom
12 written objection was not required. The corporation may consider that
13 a shareholder who voted for the proposed action has elected not to
14 enforce a right of dissent under this chapter, and need not give
15 notice to the shareholder.

16 (c) Within 20 days after notice has been given under (b) of this
17 section, a shareholder from whom written objection was not required
18 under (a) of this section and who elects to dissent shall file with
19 the corporation a written notice of the election, stating the share-
20 holder's name and residence address, the number and classes of shares
21 as to which the shareholder dissents, and a demand for payment of the
22 fair value of the shares. A shareholder who elects to dissent from a
23 merger under AS 10.06.532, a consolidation under AS 10.06.534, a share
24 exchange under AS 10.06.540, a transaction authorized under AS 10.06.-
25 562, or a sale of assets under AS 10.06.568 shall file a written
26 notice of the election to dissent within 20 days after the merger
27 plan, consolidation plan, share exchange plan, or sale of assets
28 resolution has been mailed to the shareholder.

29 (d) A merger, consolidation, or exchange is considered completed

1 within the meaning of this chapter on the effective date determined in
2 accordance with AS 10.06.560; a transaction under AS 10.06.568 is
3 completed within the meaning of this chapter when the corporation has
4 received the consideration specified in the board resolution that was
5 submitted to the shareholders in accordance with that section.

6 (e) Upon completion of the corporation action, the shareholder
7 shall cease to have the rights of a shareholder except the right to be
8 paid the fair value of the shares as to which the dissenter's rights
9 were perfected under this chapter. A notice of election may be with-
10 drawn by the shareholder at any time before an acceptance under
11 AS 10.06.578(f), but in no case later than 60 days from the date of
12 completion of the corporate action, except that the time for with-
13 drawing a notice of election shall be extended for 60 days from the
14 date an offer is made, if the corporation fails to make a timely offer
15 under AS 10.06.578. After the time for withdrawal has expired, with-
16 drawal of a notice of election requires the written consent of the
17 corporation. In order to be effective, withdrawal of a notice of
18 election must be accompanied by the return to the corporation of an
19 advance payment made to the shareholder as provided in AS 10.06.578.
20 If a notice of election is withdrawn, if the corporate action is
21 rescinded, if a court determines that the shareholder is not entitled
22 to the right to dissent, or if the shareholder otherwise loses the
23 right to dissent, the shareholder shall not have the right to receive
24 payment for the shares and shall be reinstated to all rights as a
25 shareholder that were effective on the date of the completion of the
26 corporate action. The rights to which the shareholder is reinstated
27 include intervening preemptive rights and the right to payment of an
28 intervening dividend or other distribution. If an intervening right
29 has expired or if a dividend or distribution that is not in cash has

Chapter 166

1 been completed, the corporation may elect to pay the shareholder the
2 fair value of the shares in cash at the value, as determined by the
3 board, at the time of the expiration or completion. The election to
4 pay the value in cash shall be without prejudice to a corporate pro-
5 ceeding that has occurred in the interim.

6 (f) At the time of filing the notice of election to dissent, or
7 within 30 days after the shareholder has filed the notice, the share-
8 holder shall submit to the corporation, or to its transfer agent, the
9 certificates representing the shares for which payment is claimed.
10 The corporation or its transfer agent shall note conspicuously on the
11 certificates that a notice of election has been filed, and shall
12 return the certificates to the shareholder or to the person who sub-
13 mitted them on the shareholder's behalf. Unless a court, for good
14 cause shown, otherwise directs, a shareholder who fails to comply with
15 this subsection loses the right to dissent granted by this chapter, if
16 the corporation gives written notice that the right to dissent will be
17 lost to the shareholder within 45 days from the date that the share-
18 holder filed the notice of election to dissent. If the corporation
19 fails to exercise this notice option in a timely manner, the share-
20 holder retains the right to dissent granted by this chapter.

21 (g) When a certificate bearing a notation affixed under (f) of
22 this section is transferred, the new certificate must bear a similar
23 notation and the name of the original dissenting holder of the shares.
24 A transferee of a new certificate acquires only the rights in the
25 corporation that the original dissenting shareholder had at the time
26 of transfer.

27 Sec. 10.06.578. OFFER AND PAYMENT TO DISSENTING SHAREHOLDERS;
28 CIRCUMSTANCES WHERE PROHIBITED. (a) Within 15 days after the ex-
29 piration of the period within which shareholders may file their notice
S

1 of election to dissent under AS 10.06.576, or within 15 days after the
2 proposed corporate action is completed, whichever is later, the corpo-
3 ration or, in the case of a merger or consolidation, the surviving or
4 new corporation, shall make a written offer by certified mail to each
5 shareholder who has filed the notice of election, to pay the amount
6 the corporation estimates to be the fair value of the shares. The
7 offer shall be made at the same price for each share to all dissenting
8 shareholders of the same class, or if divided into series, of the same
9 series.

10 (b) The offer required by (a) of this section shall be accom-
11 panied by a

12 (1) balance sheet of the corporation whose shares the
13 dissenting shareholder holds; the date of the balance sheet shall be
14 that of the most recent balance sheet produced in the 12 months before
15 the offer;

16 (2) profit and loss statement or statements for at least 12
17 months preceding the date of the balance sheet; if the corporation was
18 not in existence during the entire 12-month period preceding the
19 balance sheet required by (1) of this section, then a profit and loss
20 statement for that portion of the 12-month period preceding the bal-
21 ance sheet during which the corporation was in existence;

22 (3) statement of the total number of shares with respect to
23 which notices of election to dissent have been received and the total
24 number of holders of these shares; and

25 (4) copy of this section and AS 10.06.580.

26 (c) If the corporate action has been completed the offer re-
27 quired by (a) of this section shall also be accompanied by

28 (1) advance payment to each shareholder who submitted the
29 share certificates to the corporation as provided in AS 10.06.576(f),
S

Chapter 166

1 of the amount offered under (a) of this section; or

2 (2) a statement to a shareholder who has not submitted the
3 share certificates that advance payment of the amount offered under
4 (a) of this section will be made by the corporation promptly upon
5 submission of the certificates.

6 (d) If the corporate action has not been completed when the
7 offer required by (a) of this section is made, the advance payment or
8 statement about the advance payment shall be sent to each shareholder
9 entitled to the payment or notice, after completion of the corporate
10 action.

11 (e) The advance payment or statement about the advance payment
12 shall include advice to the shareholder that acceptance of the payment
13 does not constitute a waiver of the shareholder's right to dissent.

14 (f) The corporation may consider that a shareholder who fails to
15 make written objection to the amount tendered under (c)(1) of this
16 section or to submit shares in response to the statement sent under
17 (c)(2) of this section within 30 days of the date the statement was
18 mailed has agreed that the amount offered represents the fair value of
19 the shares. The shareholder shall have no interest in the shares or
20 the outcome of litigation begun under AS 10.06.580.

21 (g) Notwithstanding the other provisions of this section, if the
22 payments otherwise required by (c) and (d) of this section or de-
23 termined in accordance with AS 10.06.580 would be distributions in
24 violation of AS 10.06.358 - 10.06.365, or 10.06.375, the corporation
25 may not make a distribution to a dissenting shareholder. In that
26 event, a corporation that would otherwise have the payment obligation
27 under (c) and (d) of this section or AS 10.06.580 shall, in addition
28 to complying with (a) and (b) of this section, give written notice
29 within the time limits of (a) and (b) of this section to dissenting

1 shareholders of its inability to make payment. The notice shall
2 include

3 (1) an explanation why the corporation is unable to make
4 the payments otherwise required by this section;

5 (2) a statement that a dissenting shareholder has an option
6 to

7 (A) withdraw the shareholder's notice of election to
8 dissent, and that the corporation will consider that the with-
9 drawal was made with the written consent of the corporation; or

10 (B) retain the status of a dissenter, and, if the
11 corporation is liquidated, be subordinated to the rights of the
12 creditors of the corporation, but have rights superior to the
13 nondissenting shareholders, but if the corporation is not liq-
14 uidated, retain the right to be paid under (c) and (d) of this
15 section or AS 10.06.580 and the corporation must satisfy the
16 obligation when the restrictions on distributions do not apply;
17 and

18 (3) a statement that if the corporation does not receive
19 the written election provided under (2) of this subsection within 60
20 days after notice given as required by this section, the corporation
21 will consider that the shareholder has withdrawn the notice of elec-
22 tion under (2)(A) of this subsection.

23 Sec. 10.06.580. ACTION TO DETERMINE VALUE OF SHARES UPON FAILURE
24 TO ACCEPT CORPORATE OFFER. (a) If the corporation fails to make the
25 offer required by AS 10.06.578(a) or the shareholder rejects the offer
26 within the 30-day period specified in AS 10.06.578(f)

27 (1) the corporation shall, within 20 days after the ex-
28 piration of the 30-day period specified in AS 10.06.578(f), file a
29 petition in the court of the judicial district where the registered

Chapter 166

1 office of the corporation is located, requesting that the fair value
2 of the shares be determined; if, in the case of a merger or consolida-
3 tion, the surviving or new corporation is a foreign corporation with-
4 out a registered office in the state, the petition shall be filed in
5 the judicial district where the registered office of the domestic
6 corporation was last located; or

7 (2) if the corporation fails to institute a proceeding as
8 provided in this section, a dissenting shareholder may institute a
9 proceeding in the name of the corporation; if a dissenting shareholder
10 does not institute a proceeding within 30 days after the expiration of
11 the 20-day period granted the corporation under (1) of this subsec-
12 tion, the dissenter loses the dissenter's rights unless the superior
13 court, for good cause shown, otherwise directs.

14 (b) All dissenting shareholders who have rejected the corporate
15 offer extended under AS 10.06.578(a), wherever residing, shall be made
16 parties to the proceeding as an action against their shares quasi in
17 rem. The corporation shall serve a copy of the complaint in the
18 proceeding on each dissenting shareholder who is a resident of this
19 state in the manner provided by the Alaska Rules of Civil Procedure,
20 and on each nonresident dissenting shareholder either by certified
21 mail and publication, or in another manner permitted by law. The
22 jurisdiction of the court shall be plenary and exclusive. A dissent-
23 ing shareholder who is a party to the proceeding is entitled to judg-
24 ment against the corporation for the amount determined under (c) of
25 this section to be the fair value of the shares of that shareholder.

26 (c) The court shall determine whether a dissenting shareholder
27 who is a party to the court action is entitled to receive payment for
28 the shareholder's shares. If the corporation does not request a
29 determination, or if the court finds that a dissenting shareholder is
S

1 entitled to a determination, the court shall establish the value of
2 the shares; for the purposes of this section, the value shall be the
3 fair value at the close of business on the day before the date on
4 which the vote was taken approving the proposed corporate action. In
5 fixing the fair value of the shares, the court shall consider the
6 nature of the transaction giving rise to the right to dissent under
7 AS 10.06.576, its effects on the corporation and its shareholders, the
8 concepts and methods customary in the relevant securities and finan-
9 cial markets for determining the fair value of shares of a corporation
10 engaging in a similar transaction under comparable circumstances, and
11 other relevant factors. The court may appoint one or more persons as
12 appraisers to receive evidence and recommend a decision on the ques-
13 tion of fair value of the shares. The appraisers have the power and
14 authority specified in the order of appointment or as amended.

15 (d) The judgment must include an allowance for interest at the
16 rate the court finds to be fair and equitable, from the date on which
17 the proposed corporate action vote was taken to the date of payment.
18 In determining the rate of interest, the court shall consider all
19 relevant factors, including the rate of interest that the corporation
20 would have had to pay to borrow money during the pendency of the
1 proceeding. If the court finds that the refusal of a shareholder to
2 accept the corporate offer of payment for the shares is arbitrary,
3 vexatious, or otherwise in bad faith, the court shall deny interest to
4 the shareholder.

5 (e) A party to the proceeding shall bear its own costs and
6 expenses, including the fees and expenses of its counsel and of any
7 experts employed by it. Notwithstanding the foregoing, the court may,
8 in its discretion, apportion and assess all or part of the costs,
9 expenses, and fees incurred by the corporation against one or more of

Chapter 166

1 the dissenting shareholders who are parties to the proceeding, if the
2 court finds that a refusal to accept the corporate offer was arbitrary,
3 vexatious, or otherwise in bad faith. The court may, in its
4 discretion, apportion and assess all or a part of the costs, expenses,
5 and fees incurred by one or more of the dissenting shareholders who
6 are parties to the proceeding against the corporation if the court
7 finds that

8 (1) the fair value of the shares materially exceeds the
9 amount that the corporation offered to pay;

10 (2) an offer or required advance payment was not made by
11 the corporation as provided in AS 10.06.578;

12 (3) the corporation failed to institute the special proceeding
13 within the period specified under (a) of this section; or

14 (4) the action of the corporation in complying with its
15 obligations as provided in this chapter was arbitrary, vexatious, or
16 otherwise in bad faith.

17 (f) Unless prohibited by AS 10.06.578(g), within 60 days after
18 the final determination of the proceeding, the corporation shall pay
19 to each dissenting shareholder who is a party the amount determined
20 under (e) of this section in exchange for the surrender of the certificate
21 representing the dissenter's shares. Upon payment of the judgment,
22 the dissenting shareholder ceases to have an interest in the
23 shares.

24 Sec. 10.06.582. STATUS OF SHARES ACQUIRED FROM DISSENTING SHARE-
25 HOLDERS. Shares acquired by a corporation under AS 10.06.578 and
26 10.06.580 shall be held and disposed of by the corporation as other
27 shares reacquired under AS 10.06.388, except that, in the case of a
28 merger or consolidation, they shall be held and disposed of as the
29 plan of merger or consolidation may otherwise provide.
S

ARTICLE 9. DISSOLUTION.

1
2 Sec. 10.06.605. VOLUNTARY DISSOLUTION BY VOTE, WRITTEN CONSENT
3 OF SHARES, OR ELECTION OF THE BOARD. (a) A corporation may elect
4 voluntarily to wind up and dissolve by

5 (1) the vote of shareholders taken at a special or annual
6 meeting with notice under AS 10.06.410 to each shareholder entitled to
7 vote at the meeting and stating that the purpose, or one of the pur-
8 poses, of the meeting is to consider approval of voluntary dissolution
9 of the corporation; at the meeting the election to voluntarily dis-
10 solve is adopted upon receiving the affirmative votes of two-thirds or
11 more of the shares of the corporation entitled to vote, unless any
12 class of shares is entitled to vote as a class, in which case the
13 election is adopted upon receiving the affirmative vote of two-thirds
14 or more of the shares of each class entitled to vote as a class and of
15 two-thirds or more of the shares entitled to vote; or

16 (2) written consent of the shares taken without a meeting
17 (AS 10.06.423).

18 (b) The following corporations may elect by approval of the
19 board to wind up and dissolve a corporation that has:

- 20 (1) been adjudicated bankrupt;
- 21 (2) disposed of all of its assets and has not conducted any
22 business for a period of five years immediately preceding the adoption
23 of the resolution to dissolve the corporation; and
- 24 (3) issued no shares.

25 Sec. 10.06.608. CERTIFICATE OF ELECTION: CONTENTS, SIGNING,
26 VERIFICATION AND FILING. (a) A corporation that has elected to wind
27 up and dissolve shall immediately file a certificate evidencing the
28 election as provided in this section.

29 (b) The certificate shall be an officers' certificate or shall

Chapter 166

1 be signed and verified by at least a majority of the directors then in
2 office, by one or more shareholders authorized to do so by the share-
3 holders holding shares representing 50 percent or more of the voting
4 power, or by the officer or shareholder designated in the written
5 consent and shall set out

6 (1) the name of the corporation, the names and addresses of
7 its officers under AS 10.06.483, the names and addresses of its direc-
8 tors, and the statement that the corporation has elected to wind up
9 and dissolve;

10 (2) the number of shares voting for the election if the
11 election was made by the vote of shareholders and a statement that the
12 election was made by shareholders representing at least two-thirds of
13 the voting power under AS 10.06.605(a)(1);

14 (3) a copy of the written consent signed by all share-
15 holders of the corporation if the election was made by the written
16 consent of the shares;

17 (4) circumstances showing the corporation to be within one
18 of the categories described in AS 10.06.605(b) if the election was
19 made by the board under that subsection.

20 (c) An original and an exact copy of the certificate conforming
21 to (b) of this section shall be delivered to the commissioner for
22 processing according to AS 10.06.910.

23 Sec. 10.06.610. CERTIFICATE OF REVOCATION OF ELECTION: CONTENTS,
24 SIGNING, VERIFICATION, AND FILING. (a) A voluntary election to wind
25 up and dissolve under AS 10.06.605 may be revoked before distribution
26 of assets by an election to revoke made in the same manner as an elec-
27 tion under AS 10.06.605. A certificate evidencing the election to
28 revoke shall be signed, verified, and filed in the manner prescribed
29 in AS 10.06.608.
S

1 (b) The certificate shall set out

2 (1) that the corporation has revoked its election to wind
3 up and dissolve;

4 (2) that no assets have been distributed as a result of the
5 election;

6 (3) the number of shares voting for the revocation and the
7 total number of outstanding shares the holders of which were entitled
8 to vote on the revocation, if the election to revoke was made by the
9 vote of shareholders;

10 (4) a copy of the written consent signed by all share-
11 holders of the corporation if the election to revoke was made by the
12 written consent of the shares;

13 (5) the resolution of the board if the election to revoke
14 was made by the board.

15 Sec. 10.06.613. EFFECT OF CERTIFICATE OF REVOCATION OF ELECTION.
16 Revocation of a voluntary dissolution proceeding is effective upon
17 compliance with AS 10.06.610 and the corporation may again carry on
18 its business.

19 Sec. 10.06.615. COMMENCEMENT AND CONDUCT OF VOLUNTARY PROCEED-
20 INGS FOR WINDING UP; CESSATION OF BUSINESS; NOTICE. (a) Voluntary
21 proceedings for winding up the corporation commence upon the resolu-
22 tion of shareholders or directors of the corporation electing to wind
23 up and dissolve, or upon the filing with the corporation of a written
24 consent of the shareholders.

25 (b) If a voluntary proceeding for winding up has commenced, the
26 board shall continue to act as a board and has powers as provided in
27 (c) of this section to wind up and settle its affairs, both before and
28 after the filing of the certificate of dissolution.

19 S (c) If a voluntary proceeding for winding up has commenced, the

Chapter 166

1 corporation shall cease to carry on business except to the extent
2 necessary for the beneficial winding up of its business and except
3 during the period the board considers necessary to preserve the corpo-
4 ration's goodwill or going-concern value pending a sale of its busi-
5 ness or assets, in whole or in part. The board shall give written
6 notice of the commencement of the proceeding for voluntary winding up
7 by mail to all shareholders and all known creditors and claimants
8 whose addresses appear on the records of the corporation. It is
9 unnecessary to give notice to shareholders who voted in favor of
10 winding up and dissolving the corporation.

11 Sec. 10.06.618. JUDICIAL SUPERVISION OF WINDING UP; PETITION AND
12 NOTICE; ORDER PROTECTING SHAREHOLDERS AND CREDITORS. If a corporation
13 is in the process of voluntary winding up, a court, upon the petition
14 of the corporation, a five-percent shareholder, or three or more
15 creditors, and upon notice to the corporation and to other persons
16 interested in the corporation as shareholders and creditors as the
17 court may order, may take jurisdiction over the voluntary winding-up
18 proceeding if it appears necessary for the protection of any parties
19 in interest. The court, if it assumes jurisdiction, may make orders
20 as to any and all matters concerning the winding up of the affairs of
21 the corporation and for the protection of its shareholders and credi-
22 tors of the corporation.

23 Sec. 10.06.620. ARTICLES OF DISSOLUTION: CONTENTS. If a corpo-
24 ration has been completely wound up without court proceedings, a
25 majority of the directors then in office shall sign and verify arti-
26 cles of dissolution stating that

- 27 (1) the corporation has been completely wound up;
- 28 (2) its known debts and liabilities have been actually
29 paid, or adequately provided for under AS 10.06.668, or paid or

1 adequately provided for as far as the assets of the corporation
2 permit, or that it has incurred no known debts or liabilities; if
3 there are known debts or liabilities for which adequate provision for
4 payment has been made, the articles of dissolution shall state what
5 provision has been made, setting out the name and address of the
6 corporation, person, or governmental agency that has assumed or
7 guaranteed payment, or the name and address of the depository with
8 which deposit has been made and such other information as may be
9 necessary to enable the creditor or other person to whom payment is to
10 be made to appear and claim payment of the debt or liability;

11 (3) its known assets have been distributed to shareholders,
12 or, if there are no shareholders, to persons entitled to the assets,
13 or wholly applied or deposited on account of its debts and liabilities
14 or that it acquired no known assets;

15 (4) the corporation is dissolved.

16 Sec. 10.06.623. FILING OF ARTICLES OF DISSOLUTION. An original
17 and an exact copy of the articles of dissolution shall be delivered to
18 the commissioner for processing according to AS 10.06.910 and for
19 issuance of a certificate of dissolution.

20 Sec. 10.06.625. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the
21 issuance of a certificate of dissolution, the existence of the corpo-
22 ration ceases, except for the purpose of suits, other proceedings, and
23 appropriate corporate action by shareholders, directors, and officers
24 as provided in this chapter.

25 Sec. 10.06.628. INVOLUNTARY DISSOLUTION BY VERIFIED COMPLAINT;
26 FILING; INTERVENTION BY SHAREHOLDER OR CREDITOR. (a) A verified
27 complaint for involuntary dissolution of a corporation on any of the
28 grounds specified in (b) of this section may be filed in the superior
29 court by the following persons:

Chapter 166

1 (1) one-half or more of the directors in office;

2 (2) a shareholder or shareholders who hold shares repre-
3 senting not less than 33-1/3 percent of the total number of outstand-
4 ing shares, assuming conversion of preferred shares convertible into
5 common shares, or of the outstanding common shares, or of the equity
6 of the corporation, exclusive of shares owned by persons who have
7 personally participated in any of the transactions enumerated in
8 (b)(4) of this section;

9 (3) a shareholder if the ground for dissolution is that the
10 period for which the corporation was formed has terminated without
11 extension; or

12 (4) another person expressly authorized to do so in the
13 articles.

14 (b) The grounds for involuntary dissolution are:

15 (1) the corporation has abandoned its business for more
16 than one year;

17 (2) the corporation has an even number of directors who are
18 equally divided and cannot agree as to the management of its affairs,
19 so that its business can no longer be conducted to advantage or so
20 that there is danger that its property and business will be impaired
21 or lost, and the holders of the voting shares of the corporation are
22 so divided into factions that they cannot elect a board consisting of
23 an uneven number;

24 (3) there is internal dissension and two or more factions
25 of shareholders in the corporation are so deadlocked that its business
26 can no longer be conducted with advantage to its shareholders, or the
27 shareholders have failed at two consecutive annual meetings at which
28 all voting power was exercised to elect successors to directors whose
29 terms have expired or would have expired upon election of their
S

1 successors;

2 (4) those in control of the corporation have been guilty of
3 or have knowingly countenanced persistent and pervasive fraud, mis-
4 management or abuse of authority or persistent unfairness toward
5 shareholders, or the property of the corporation is being misapplied
6 or wasted by its directors or officers;

7 (5) in the case of any corporation with 35 or fewer share-
8 holders of record, liquidation is reasonably necessary for the protec-
9 tion of the rights or interests of the complaining shareholder or
10 shareholders; or

11 (6) the period for which the corporation was formed has
12 terminated without extension.

13 (c) Before the trial of the action a shareholder or creditor of
14 the corporation may intervene.

15 (d) For purposes of this section, "shareholder" includes a bene-
16 ficial owner of shares who has entered into an agreement under AS 10.-
17 06.425.

18 Sec. 10.06.630. AVOIDING DISSOLUTION BY VERIFIED COMPLAINT;
19 PURCHASE OF PLAINTIFF'S SHARES; DETERMINATION OF FAIR VALUE; STAY;
20 APPRAISAL; AWARD; APPEAL. (a) Subject to a contrary provision in the
21 articles of incorporation, in a suit for involuntary dissolution under
22 AS 10.06.628 the corporation or, if it does not elect to purchase, the
23 holders of 50 percent or more of the voting power of the corporation,
24 the "purchasing parties" may avoid the dissolution of the corporation
25 and the appointment of a receiver by purchasing for cash the shares
26 owned by the plaintiffs, the "moving parties" at their fair value.
27 The fair value shall be determined on the basis of the liquidation
28 value, taking into account the possibility of sale of the entire
29 business as a going concern in a liquidation. The election of the
S

1 corporation to purchase may be made by the approval of the outstanding
2 shares excluding shares held by the moving parties.

3 (b) If the purchasing parties elect to purchase the shares owned
4 by the moving parties, and are unable to agree with the moving parties
5 upon the fair value of the shares, and give bond with sufficient
6 security to pay the estimated reasonable expenses, including attorney
7 fees, of the moving parties if the expenses are recoverable under (c)
8 of this section, the court upon application of the purchasing parties
9 shall stay the winding up and dissolution proceeding and shall proceed
10 to ascertain and fix the fair value of the shares owned by the moving
11 parties.

12 (c) The court shall appoint three disinterested appraisers to
13 appraise the fair value of the shares owned by the moving parties, and
14 shall make an order referring the matter to the appraisers for the
15 purpose of ascertaining the value of the shares. The order shall
16 prescribe the time and manner of producing evidence if evidence is
17 required. The award of the appraisers or of a majority of the ap-
18 praisers, when confirmed by the court, is final and conclusive upon
19 all parties. The court shall enter a decree that provides in the
20 alternative for winding up and dissolution of the corporation unless
21 payment is made for the shares within the time specified by the de-
22 cree. If the purchasing parties do not make payment for the shares
23 within the time specified, judgment shall be entered against the
24 purchasing parties and the surety or sureties on the bond for the
25 amount of the expenses, including attorney fees, of the moving
26 parties. A shareholder aggrieved by the action of the court may
27 appeal.

28 (d) If the purchasing parties desire to prevent the winding up
29 and dissolution, they shall pay to the moving parties the value of
S

1 their shares as provided under this section less an allowance for the
2 costs of the appraisal as the court shall determine. In the case of
3 an appeal, the purchasing parties shall pay to the moving parties the
4 value of the shares and costs of appraisal as fixed on appeal. On
5 receiving payment or the tender of payment as determined by the court,
6 the moving parties shall transfer their shares to the purchasing parties.
7

8 (e) For the purposes of this section, "shareholder" includes a
9 beneficial owner of shares who has entered into an agreement under
10 AS 10.06.425.

11 Sec. 10.06.633. INVOLUNTARY DISSOLUTION BY THE COMMISSIONER:
12 GROUNDS, PROCEDURE, REINSTATEMENT. (a) A corporation may be dis-
13 solved involuntarily by the commissioner if

14 (1) the corporation is delinquent six months in filing its
15 biennial report or in paying a license filing fee or penalty;

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

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

21 (4) the corporation has failed for two years to complete
22 dissolution under a certificate of election under AS 10.06.608 to dis-
23 solve;

24 (5) a vacancy on the board of the corporation is not filled
25 within six months or the next annual meeting, whichever occurs first;

26 (6) a misrepresentation of material facts has been made in
27 the application, report, affidavit, or other document submitted under
28 this chapter;

29 (7) the corporation is 90 days delinquent in filing notice
S

Chapter 166

1 of change of an officer, director, alien affiliate, or five percent
2 shareholder, as required by this chapter; or

3 (8) the corporation is controlled by a person who wilfully
4 fails to comply with AS 10.06.155 within 30 days after receipt by the
5 corporation or its registered agent of notice of noncompliance sent by
6 the department by certified mail.

7 (b) A corporation may not be dissolved under this section unless
8 the commissioner has given the corporation written notice of its
9 delinquency, failure, or noncompliance by certified mail addressed to
10 its registered office, registered agent, president, or secretary at
11 the last known address as shown by the records of the commissioner.
12 If the corporation fails, within 60 days after the notice is sent by
13 certified mail, to contest the alleged neglect, omission, delinquency,
14 or noncompliance by a written request for a hearing before the commis-
15 sioner or fails to correct the asserted neglect, omission, delin-
16 quency, or noncompliance it may be dissolved under (d) of this sec-
17 tion.

18 (c) If, following a hearing, the commissioner determines the
19 presence of neglect, omission, delinquency, or noncompliance providing
20 grounds for involuntary dissolution under this section, the corpora-
21 tion may appeal to the superior court by filing with the clerk of the
22 court a notice of appeal setting out a copy of the notice given by the
23 commissioner under (b) of this section together with a copy of a
24 timely demand for a hearing by the corporation, and a copy of an
25 affirmation by the commissioner of an intention to dissolve under (d)
26 of this section. The matter shall be tried de novo by the superior
27 court, and the court shall either sustain the commissioner or direct
28 the commissioner to take action the court considers proper.

29 (d) If a corporation has given cause for involuntary dissolution
S

1 and has failed to correct the neglect, omission, delinquency, or non-
2 compliance as provided in this section, and there has been no order of
3 the superior court, the commissioner shall dissolve the corporation by
4 issuing a certificate of involuntary dissolution containing a state-
5 ment that the corporation has been dissolved, the date, and the reason
6 for which it was dissolved. The original certificate of dissolution
7 shall be placed in the department files and a copy of it mailed to the
8 corporation at its registered office or in care of its registered
9 agent, president, or secretary at the last known address, as shown by
10 the records of the commissioner. Upon the issuance of the certificate
11 of involuntary dissolution the existence of the corporation ceases,
12 except as otherwise provided in this section, and its name shall be
13 available to and may be adopted by another corporation no less than
14 six months after the dissolution.

15 (e) A corporation dissolved under this section may be reinstated
16 within two years from the date of the certificate of involuntary dis-
17 solution if it is established to the satisfaction of the commissioner
18 that in fact there was no cause for the dissolution, or if the ne-
19 glect, omission, delinquency, or noncompliance resulting in disso-
20 lution has been corrected and payment made of double the amount delin-
21 quent along with the amount the corporation would have paid had it not
22 been dissolved during the two-year period. Reinstatement may not be
23 authorized if the same or a deceptively similar corporate, reserved,
24 or registered name is currently on file with the commissioner, unless
25 the corporation being reinstated amends its articles of incorporation
26 to change its name to conform with the provisions of this chapter.

(f) Nothing in this section relieves a corporation reinstated
under this section from penalty or forfeiture of its powers in a case
of failure to pay subsequently accruing licenses and taxes imposed by

Chapter 166

1 a law of the state.

2 (g) An action arising out of a contract assigned by a corpora-
3 tion dissolved under this section may be brought in the name of the
4 assignee. The fact of assignment and of purchase by the plaintiff
5 shall be set out in the complaint or other process. The defense may
6 avail itself of any defense the defense might have availed itself of
7 in a suit upon the claim by the corporation had it not been dissolved
8 under this section.

9 (h) Service of process on a corporation dissolved under this
10 section shall be made in the same manner prescribed by law as if the
11 corporation had not been dissolved.

12 Sec. 10.06.635. COMMISSIONER'S AUTHORITY TO BRING ACTION FOR
13 INVOLUNTARY DISSOLUTION; GROUNDS; RELIEF. (a) In addition to other
14 remedies provided by law, a corporation may be dissolved involuntarily
15 by a decree of the superior court in an action filed by the commis-
16 sioner when it is established that the corporation has

17 (1) procured its certificate of incorporation through
18 fraud;

19 (2) continued to exceed or abuse the authority conferred
20 upon it by law;

21 (3) seriously violated a statute regulating corporations;
22 or

23 (4) violated a provision of law by an act or default that
24 under the law is a ground for forfeiture of corporate existence.

25 (b) The court may order dissolution or other or partial relief
26 as it considers just and expedient. The court also may appoint a
27 receiver under AS 10.06.643 for winding up the affairs of the corpora-
28 tion or may order that the corporation be wound up by its board sub-
29 ject to the supervision of the court.

1 Sec. 10.06.638. JURISDICTION AND PROCESS FOR COMMISSIONER'S
2 ACTION. (a) An action for the involuntary dissolution of a corpo-
3 ration under AS 10.06.633 shall be commenced by the commissioner in
4 the superior court.

5 (b) Summons shall issue and be served as in civil actions. If
6 no registered agent or office is found to serve, the commissioner
7 shall publish notice as in civil cases in a newspaper published in the
8 judicial district where the registered office of the corporation is
9 situated, containing a notice of the pendency of the action, the title
0 of the court, the title of the action, and the date on or after which
1 default may be entered. The commissioner may include in one notice
2 the names of any number of corporations against which actions are
3 pending in the same court.

4 (c) The commissioner shall mail a copy of the notice to an
5 office of the corporation, if one is known, within 10 days after the
6 first publication of the notice.

7 (d) Notice shall be published at least once each week for two
8 successive weeks, and the first publication may begin after the sum-
9 mons has been returned.

1 (e) Unless a corporation is served with summons, a default may
2 not be taken against the corporation earlier than 30 days after the
3 first publication of notice.

4 Sec. 10.06.640. APPOINTMENT OF PROVISIONAL DIRECTOR: DEADLOCK.
5 (a) If the ground for the complaint for involuntary dissolution of
6 the corporation is a deadlock in the board as set out in AS 10.06.-
7 628(b)(2), the court may appoint a provisional director.

8 (b) A provisional director shall be an impartial person, who is
9 neither a shareholder nor a creditor of the corporation, nor related
0 according to the common law by consanguinity or affinity within the

Chapter 166

1 third degree to a director of the corporation or to a judge of the
2 court by which the provisional director is appointed. A provisional
3 director has all the rights and powers of a director until the dead-
4 lock in the board is broken or until the provisional director is
5 removed by order of the court or by approval of the outstanding
6 shares.

7 (c) Unless otherwise agreed the compensation of the provisional
8 director shall be fixed by the court.

9 Sec. 10.06.643. APPOINTMENT OF RECEIVER: APPLICATION, HEARING
10 AND NOTICE, SECURITY, QUALIFICATIONS, POWERS, COMPENSATION. (a) If,
11 at the time of the filing of a complaint for involuntary dissolution
12 under AS 10.06.628 or at any time after the filing, the court has
13 reasonable grounds to believe that unless a receiver of the corpora-
14 tion is appointed the interests of the corporation and its share-
15 holders will suffer pending the hearing and determination of the
16 complaint, upon the application of the plaintiff and after a hearing
17 upon notice to the corporation as the court may direct, the court may
18 appoint a receiver to take over and manage the business and affairs of
19 the corporation and to preserve its property pending the hearing and
20 determination of the complaint for dissolution.

21 (b) A receiver shall be a citizen of the United States or a cor-
22 poration authorized to act as receiver. A corporate receiver may be a
23 domestic corporation or a foreign corporation authorized to transact
24 business in the state. A receiver shall give bond and provide sure-
25 ties as the court may require.

26 (c) The compensation of the receiver shall be paid out of the
27 assets of the corporation and unless otherwise agreed shall be fixed
28 by the court.

29 S Sec. 10.06.645. DECREE FOR WINDING UP AND DISSOLUTION: FURTHER

JUDICIAL RELIEF. After hearing, the court may decree a winding up and dissolution of the corporation as provided in AS 10.06.625 or, with or without winding up and dissolution, may make orders and decrees and issue injunctions in the case as justice and equity may require.

Sec. 10.06.648. COMMENCEMENT AND CONDUCT OF INVOLUNTARY PROCEEDINGS FOR WINDING UP; CESSATION OF BUSINESS; NOTICE. (a) Involuntary proceedings for winding up commence when an order for winding up is entered under AS 10.06.635(b) or 10.06.645.

(b) If an involuntary proceeding for winding up has commenced, the board shall conduct the winding up of the affairs of the corporation, subject to the supervision of the court, unless other persons are appointed by the court to conduct the winding up. The directors or other persons may, subject to any restrictions imposed by the court, exercise all their powers through the executive officers of the corporation without an order of the court.

(c) If an involuntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up of the business and except during a period board may consider necessary to preserve the corporation's goodwill or going-concern value pending a sale of its business or assets, in whole or in part. The directors shall mail written notice of the commencement of the proceeding for involuntary winding up to all shareholders and to all known creditors and claimants whose addresses appear on the records of the corporation, unless the order for winding up has been stayed by appeal or otherwise or the proceeding or the execution of the order has been enjoined.

Sec. 10.06.650. JURISDICTION OF COURT. If an involuntary proceeding for winding up has been commenced, the jurisdiction of the court includes

Chapter 166

1 (1) the determination of the validity of all claims and
2 demands against the corporation, whether due or not yet due, contin-
3 gent, unliquidated, or sounding only in damages, and the barring from
4 participation of creditors and claimants failing to make and present
5 claims and proof as required by an order;

6 (2) the determination or compromise of all claims against
7 the corporation or any of its property, and the determination of the
8 amount of money or assets required to be retained to pay or provide
9 for the payment of claims;

10 (3) the determination of the rights of shareholders in and
11 to the assets of the corporation;

12 (4) the supervision of the presentation and filing of
13 intermediate and final accounts of the directors or other persons
14 appointed to conduct the winding up and hearing thereon, the allow-
15 ance, disallowance or settlement of the accounts, and the discharge of
16 the directors or the other persons from their duties and liabilities;

17 (5) the appointment of a master to hear and determine any
18 or all matters, with the power or authority the court considers prop-
19 er;

20 (6) the filling of vacancies on the board that the direc-
21 tors or shareholders are unable to fill;

22 (7) the removal of a director if it appears that the direc-
23 tor has been guilty of dishonesty, misconduct, neglect, or abuse of
24 trust in conducting the winding up or if the director is unable to
25 act; the court may order an election to fill the vacancy, and may
26 enjoin, for the time it considers proper, the reelection of the re-
27 moved director; the court, in place of ordering an election, may
28 appoint a director to fill the vacancy caused by the removal; a direc-
29 tor appointed by the court serves until the next annual meeting of
S

1 shareholders or until a successor is elected or appointed;

2 (8) staying the prosecution of a suit, proceeding, or
3 action against the corporation and requiring the parties to present
4 and prove their claims in the manner required of other creditors;

5 (9) the determination of whether adequate provision has
6 been made for payment or satisfaction of all debts and liabilities not
7 actually paid;

8 (10) the making of orders for the withdrawal or termination
9 of proceedings to wind up and dissolve, subject to conditions for the
10 protection of shareholders and creditors;

11 (11) the making of an order, after the allowance or settle-
12 ment of the final accounts of the directors or other persons, that the
13 corporation is legally wound up and is dissolved;

4 (12) the making of orders for the bringing in of new parties
5 as the court considers proper.

6 Sec. 10.06.653. CLAIMS AGAINST CORPORATION; COURT AND NON-COURT
7 DIRECTED WINDING UP; PRESENTATION; NOTICE; PAYMENT; SECURED CLAIMS;
8 REJECTED CLAIMS. (a) In a court-directed winding up of a corporation
9 under AS 10.06.618, 10.06.628, 10.06.635, and 10.06.645, creditors and
0 claimants may be barred from participation in a distribution of the
1 general assets of the corporation if they fail to make and present
2 claims and proofs within the time the court may order. The time in
3 which to present claims may not be less than four nor more than six
4 months after the first publication of notice to creditors unless it
5 appears by affidavit that there are no claims, in which case the time
6 may not be less than three months. If it is shown that a claimant did
7 not receive notice because of absence from the state or other cause,
8 the court may allow a claim to be filed or presented at any time
9 before distribution is completed.

Chapter 166

1 (b) Notice to creditors in a court-directed winding up shall be
2 published not less than once a week for three consecutive weeks in a
3 newspaper of general circulation, published in the judicial district
4 in which the proceeding is pending or, if a newspaper is not published
5 in that judicial district, in a newspaper designated by the court.
6 The notice shall direct creditors and claimants to make claims and
7 proofs to the person, at the place, and within the time specified in
8 the notice. A copy of the notice shall be mailed to the last known
9 address of each person shown as a creditor or claimant on the books of
10 the corporation.

11 (c) A holder of a secured claim in a court-directed winding up
12 may prove for the whole debt in order to secure payment of a defi-
13 ciency. If a holder fails to present a claim, the holder is barred
14 only as to any right against the general assets for a deficiency in
15 the amount realized on the holder's security.

16 (d) Before a distribution in a court-directed winding up is
17 made, the amount of an unmatured, contingent, or disputed claim
18 against the corporation that has been presented and has not been
19 disallowed, or the part of a claim to which the holder would be enti-
20 tled if the claim were due, established, or absolute, shall, if pres-
21 ently reduced to cash, be paid to the commissioner of revenue. The
22 amount shall be paid to the party entitled to the amount when the
23 party becomes entitled or, if the party fails to establish a claim,
24 the amount shall be distributed with the other assets of the corpo-
25 ration; the court may make other provision for payment of a claim, as
26 it considers adequate. A creditor who has a claim that has been
27 allowed but is not yet due is entitled to the present value of the
28 claim upon distribution.

29 (e) Assets of the corporation subject to claims under this
S

1 section and not reduced to cash shall be held pending distribution as
2 creditors and claimants agree or as the court directs.

3 (f) If the ownership of shares of stock is in dispute, if the
4 existence of a claim of a creditor or shareholder is contingent or
5 contested, or if the amount of a claim of a creditor or shareholder is
6 contingent, contested, or not determined, the maximum amount of the
7 claims shall be reduced to cash and deposited with the commissioner
8 of revenue. Amounts deposited with the commissioner of revenue under
9 this subsection shall be paid to the creditor, shareholder, or the
10 legal representative of the shareholder or creditor as the disputing
11 parties may agree or a court may direct.

12 (g) Suits against the corporation on claims that have been
13 rejected under (d) or (f) of this section shall be commenced within 30
14 days after written notice of rejection is given to the claimant.

15 Sec. 10.06.655. ORDER DECLARING CORPORATION WOUND UP AND DIS-
16 SOLVED; DECLARATIONS; EFFECT; ADDITIONAL ORDERS; DISCHARGE OF DIREC-
17 TORS. (a) Upon the final settlement of the accounts of the directors
18 or other persons appointed under AS 10.06.648 and the determination
19 that the corporation's affairs are in a condition for it to be dis-
20 solved, the court shall make an order declaring the corporation legal-
21 ly wound up and dissolved. The order shall declare that the

22 (1) corporation has been legally wound up, that any tax or
23 penalty due under AS 10.06.805 - 10.06.870 has been paid or secured
24 and that the other known debts and liabilities of the corporation have
25 been paid or adequately provided for, or that taxes, penalties, debts,
26 and liabilities have been paid as far as its assets permit; if ade-
27 quate provision has been made for the payment of all known debts or
28 liabilities, the order shall state what provision has been made,
29 setting out the name and address of the corporation, person, or

Chapter 166

1 governmental agency that has assumed or guaranteed the payment, or the
2 name and address of the depository with which deposit has been made or
3 other information as may be necessary to enable the creditor or other
4 person to whom payment is to be made to appear and claim payment of
5 the debt or liability;

6 (2) known assets of the corporation have been distributed
7 to the persons entitled to the assets or that it acquired no known
8 assets;

9 (3) accounts of directors or other persons appointed under
10 AS 10.06.648 have been settled and that they are discharged from their
11 duties and liabilities to creditors and shareholders;

12 (4) corporation is dissolved.

13 (b) The court may make additional orders and grant further
14 relief as it considers proper upon the evidence submitted.

15 (c) Upon the making of the order declaring the corporation dis-
16 solved, corporate existence ceases except for the purposes of further
17 winding up if needed. The directors or other persons appointed under
18 AS 10.06.648 shall be discharged from their duties and liabilities,
19 except as needed to complete the winding up.

20 Sec. 10.06.658. FILING OF DECREE OF DISSOLUTION. The clerk of
21 the court shall file with the commissioner a certified copy of a court
22 decree dissolving a corporation. A fee may not be charged for the
23 filing of a decree of dissolution.

24 Sec. 10.06.660. POWERS AND DUTIES OF DIRECTORS IN DISSOLUTION
25 PROCEEDINGS. The powers and duties of the directors or other persons
26 appointed by the court under AS 10.06.648 and officers after commence-
27 ment of a dissolution proceeding include, but are not limited to, the
28 following acts in the name and on behalf of the corporation:

29 S (1) to elect officers and to employ agents and attorneys to

1 liquidate or wind up the affairs of the corporation;

2 (2) to continue the conduct of the business insofar as
3 necessary for the disposal or winding up of the business;

4 (3) to carry out contracts and collect, pay, compromise,
5 and settle debts and claims for or against the corporation;

6 (4) to defend suits brought against the corporation;

7 (5) to sue, in the name of the corporation, for sums due or
8 owing to the corporation or to recover property of the corporation;

9 (6) to collect amounts remaining unpaid on subscriptions to
10 shares or to recover unlawful distributions;

11 (7) to sell at public or private sale, exchange, convey, or
12 otherwise dispose of all or any part of the assets of the corporation
13 for cash in an amount considered reasonable by the board with or
14 without compliance with the provisions of AS 10.06.568 and 10.06.570
15 and without dissenters' rights (AS 10.06.574 - 10.06.582) and upon
16 terms, conditions, and other considerations the board considers rea-
17 sonable or expedient;

18 (8) to execute bills of sale and deeds of conveyance in the
19 name of the corporation;

20 (9) in general to make contracts and to do any and all
21 things in the name of the corporation that may be proper or convenient
22 for the purposes of winding up, settling, and liquidating the affairs
23 of the corporation.

24 Sec. 10.06.663. PROCEEDING TO DETERMINE IDENTITY OF DIRECTORS OR
25 TO APPOINT DIRECTORS. If the identity of a director or the right of a
26 director to hold office is in doubt, if a director is dead or unable
27 to act, if a director fails or refuses to act, or if the director's
28 whereabouts cannot be ascertained, an interested person may petition
29 the superior court to determine the identity of the director or, if

Chapter 166

1 there are no directors, to appoint directors to wind up the affairs of
2 the corporation, after hearing upon such notice as the court may
3 direct.

4 Sec. 10.06.665. DISTRIBUTION OF CORPORATE ASSETS AMONG SHARE-
5 HOLDERS; WHEN TO BE MADE. After determining that all of the known
6 debts and liabilities of a corporation in the process of winding up
7 have been paid or adequately provided for, the board shall distribute
8 all the remaining corporate assets among the shareholders according to
9 their respective rights and preferences or, if there are no share-
10 holders, to the persons entitled to the assets. If the winding up is
11 by court proceeding or subject to court supervision, the distribution
12 may not be made until after the expiration of any period for the pres-
13 entation of claims that has been prescribed by order of the court.

14 Sec. 10.06.668. PROVISION FOR PAYMENT OF DEBT OR LIABILITY. The
15 payment of a debt or liability, whether the whereabouts of the credi-
16 tor is known or unknown, has been adequately provided for if

17 (1) payment of the debt or liability has been assumed or
18 guaranteed in good faith by one or more financially responsible corpo-
19 rations or other persons or by the United States government or an
20 agency of the United States, and the provision was determined in good
21 faith and with reasonable care by the board to be adequate at the time
22 of a distribution of the assets by the board under AS 10.06.605 -
23 10.06.678; or

24 (2) the amount of the debt or liability has been deposited
25 as provided in AS 10.06.653.

26 Sec. 10.06.670. DISTRIBUTION IN MONEY OR IN KIND; INSTALLMENTS.
27 Distribution of assets may be made in money, in property, or in secu-
28 rities and either in installments or as a whole, if the distribution
29 is done fairly and ratably and in conformity with the articles of

1 incorporation and the rights of the shareholders, and shall be made as
2 soon as reasonably consistent with the beneficial liquidation of the
3 corporate assets.

4 Sec. 10.06.673. PLAN OF DISTRIBUTION; ADOPTION; BINDING EFFECT;
5 NOTICE; PAYMENT TO DISSENTING SHAREHOLDERS; ABANDONMENT. (a) If a
6 corporation in the process of winding up has both preferred and common
7 shares outstanding, a plan of distribution of the shares, obligations,
8 or securities of another corporation, or of the assets of the corpora-
9 tion, other than money, that is not in accordance with the liquidation
10 rights of the preferred shares as specified in the articles of incor-
11 poration may be adopted if approved by the board and by approval of
12 the outstanding shares of each class. The plan may provide that the
13 distribution is in complete or partial satisfaction of the rights of
14 the preferred shareholders upon distribution and liquidation of the
15 assets.

16 (b) A plan of distribution approved under (a) of this section is
17 binding upon the shareholders except as provided in (c) of this sec-
18 tion. The board shall mail notice of the adoption of the plan within
19 20 days after its adoption to all holders of shares having a liquida-
20 tion preference.

21 (c) Shareholders having a liquidation preference who dissent
22 from the plan of distribution are entitled to be paid the amount of
23 their liquidation preference in cash if they file written demand for
24 payment with the corporation within 30 days after the date of mailing
25 of the notice of the adoption of the plan of distribution unless the
26 plan of distribution is abandoned. The demand shall state the number
27 and class of the shares held of record by the shareholder for which
28 the shareholder claims payment.

29 (d) If a demand for cash payment is filed under (c) of this

Chapter 166

1 section, the board in its discretion may abandon the plan without
2 further approval by the outstanding shares and the shareholders shall
3 be entitled to distribution according to their rights and liquidation
4 preferences in the process of winding up.

5 Sec. 10.06.675. RECOVERY OF AMOUNTS IMPROPERLY DISTRIBUTED. (a)
6 If a distribution of assets has been made in the process of winding up
7 a corporation without a court order and without prior payment or ade-
8 quate provision for payment of the debts and liabilities of the corpo-
9 ration, the amount improperly distributed to a shareholder may be re-
10 covered by the corporation. Shareholders who received an improper
11 distribution may be joined as a party in the same action.

12 (b) Suit may be brought in the name of the corporation to en-
13 force the liability under (a) of this section against a shareholder
14 receiving an improper distribution by a creditor of the corporation,
15 whether or not the creditor has reduced the claim of the creditor to
16 judgment.

17 (c) A shareholder who satisfies a liability under this section
18 has the right of ratable contribution from other distributees who are
19 similarly liable. A shareholder who has been compelled to return to
20 the corporation more than the shareholder's ratable share of the
21 amount needed to pay the debts and liabilities of the corporation may
22 require that the corporation recover from any or all of the other
23 distributees the proportion of the amounts received by them by the
24 improper distribution necessary to give contribution to shareholders
25 held liable under this section and to make the distribution of the
26 assets fair and ratable, according to the respective rights and pref-
27 erences of the shares, after payment or adequate provision for payment
28 of all the debts and liabilities of the corporation.

29 (d) In this section, "process of winding up" includes
S

1 proceedings under AS 10.06.605 - 10.06.678 and other distributions of
2 assets to shareholders made in contemplation of termination or aban-
3 donment of the corporate business.

4 Sec. 10.06.678. CONTINUED EXISTENCE OF DISSOLVED CORPORATIONS;
5 PURPOSES; ABATEMENT OF ACTIONS; DISTRIBUTION OF OMITTED ASSETS. (a)
6 A corporation that is dissolved voluntarily or involuntarily continues
7 to exist for the purpose of winding up its affairs, defending actions
8 against it, and enabling it to collect and discharge obligations,
9 dispose of and convey its property, and collect and divide its assets.
10 A dissolved corporation does not continue to exist for the purpose of
11 continuing business except so far as necessary for winding up the
12 business.

13 (b) An action or proceeding to which a corporation is a party
14 does not abate by the dissolution of the corporation or by reason of
15 proceedings for winding up and dissolution of the corporation. A
16 corporation that is dissolved voluntarily or involuntarily may not
17 commence a court action, except for a court action under AS 10.-
18 06.675.

19 (c) Assets inadvertently or otherwise omitted from the winding
20 up continue as assets of the dissolved corporation for the benefit of
21 persons entitled to the assets upon dissolution of the corporation and
22 on realization the assets shall be distributed to the persons enti-
23 tled.

24 (d) The directors of the corporation on the date of its dissolu-
25 tion or as determined under AS 10.06.663 shall exercise and enjoy the
26 powers necessary to act under the terms of this section.

27 ARTICLE 10. FOREIGN CORPORATIONS.

28 Sec. 10.06.705. ADMISSION OF FOREIGN CORPORATION. A foreign
29 corporation may not transact business in this state until it has been
S

Chapter 166

1 issued a certificate of authority by the commissioner. A foreign
2 corporation may not be issued a certificate of authority to transact
3 business in this state that a corporation organized under this chapter
4 is not permitted to transact. A foreign corporation may not be denied
5 a certificate of authority because the laws of the state or country
6 under which it is organized governing its organization and internal
7 affairs differ from the laws of this state.

8 Sec. 10.06.710. LIABILITY FOR TRANSACTING BUSINESS WITHOUT CER-
9 TIFICATE OF AUTHORITY. A foreign corporation that transacts business
10 in the state without a certificate of authority is liable to this
11 state, for the years or portions of years during which it transacts
12 business in the state without a certificate of authority, in an amount
13 equal to all fees and corporation taxes that would have been imposed
14 by this chapter on the corporation if it had applied for and received
15 a certificate of authority to transact business in this state as
16 required by this chapter and filed all reports required by this chap-
17 ter, plus all penalties imposed by this chapter for failure to pay the
18 fees and corporation taxes, plus a penalty of up to \$10,000 per calend-
19 ar year or portion of a calendar year for each year it transacts
20 business in this state without a certificate of authority. The attor-
21 ney general shall bring proceedings to recover amounts due the state
22 under this section.

23 Sec. 10.06.713. TRANSACTING BUSINESS WITHOUT CERTIFICATE OF
24 AUTHORITY AS A BAR TO RIGHT TO SUE. A foreign corporation transacting
25 business in this state without a certificate of authority may not
26 maintain an action, suit, or proceeding in a court of this state until
27 it obtains a certificate of authority. A successor or assignee of a
28 foreign corporation transacting business without a certificate of
29 authority may not maintain an action, suit, or proceeding in a court
S

1 of this state on a right, claim, or demand arising out of the trans-
2 action of business by the corporation in this state until a certifi-
3 cate of authority is obtained by the corporation or by a corporation
4 that has acquired all or substantially all of its assets.

5 Sec. 10.06.715. TRANACTING BUSINESS WITHOUT CERTIFICATE OF
6 AUTHORITY NOT AFFECTING CONTRACTS AND RIGHT TO DEFEND ACTION. The
7 failure of a foreign corporation to obtain a certificate of authority
8 to transact business in this state does not impair the validity of a
9 contract or act of the corporation, and does not prevent the corpora-
10 tion from defending an action, suit, or proceeding in a court of this
11 state.

12 Sec. 10.06.718. ACTIVITIES NOT CONSTITUTING TRANACTING BUSINESS
13 IN THIS STATE. Without excluding other activities that may not con-
14 stitute transacting business in this state, a foreign corporation is
15 not considered to be transacting business in this state, for the
16 purposes of this chapter, by reason of carrying on in this state any
17 one or more of the following activities:

18 (1) maintaining, defending, or settling an action, suit, or
19 administrative or arbitration proceeding, or the settlement of claims
20 or disputes;

21 (2) holding meetings of directors or shareholders of the
22 corporation, or carrying on other activities concerning the internal
23 affairs of the corporation;

24 (3) maintaining bank accounts;

25 (4) maintaining an office or agency for the transfer, ex-
26 change, and registration of securities of the corporation, or appoint-
27 ing and maintaining a trustee or depository for the securities of the
28 corporation;

29 (5) making sales through independent contractors;

Chapter 166

1 (6) soliciting or procuring orders by mail, through em-
2 ployees, agents, or otherwise, if the orders require acceptance out-
3 side the state before becoming binding contracts;

4 (7) creating, as borrower or lender, or acquiring indebted-
5 ness or mortgages or other security interests in real or personal
6 property;

7 (8) securing or collecting debts, or enforcing rights in
8 property securing debts;

9 (9) transacting business in interstate commerce;

10 (10) conducting an isolated transaction completed within a
11 period of 30 days not in the course of a number of repeated trans-
12 actions of like nature.

13 Sec. 10.06.720. CORPORATE NAME OF FOREIGN CORPORATION. A cer-
14 tificate of authority may not be issued to a foreign corporation
15 unless the corporate name of the corporation

16 (1) contains the word "corporation", "company", "incorpor-
17 ated", or "limited", or an abbreviation of one of these words, or, for
18 use in this state, adds at the end of its name one of these words or
19 an abbreviation of one of them;

20 (2) does not contain a word or phrase that indicates or
21 implies that it is organized for a purpose other than the purpose
22 contained in its articles of incorporation or that it is authorized or
23 empowered to conduct the business of banking or insurance;

24 (3) does not contain the word "city", "borough", or "vil-
25 lage" or otherwise imply that the corporation is a municipality, but
26 the name of a city, borough, or village may be used in the corporate
27 name;

28 (4) is not the same name as, or deceptively similar to, the
29 name of a domestic corporation existing under the laws of this state
S

1 or a foreign corporation authorized to transact business in this
2 state, or a name the exclusive right to which is reserved in the
3 manner provided in this title, or the name of a corporation that has
4 in effect a registration of its name as provided in this chapter.

5 Sec. 10.06.723. ASSUMED CORPORATE NAME. (a) If a foreign
6 corporation applying for a certificate of authority has a name that is
7 impermissible under any provision of AS 10.06.720, it shall select an
8 assumed name, acceptable under the provisions of AS 10.06.720, under
9 which it elects to do business in this state.

0 (b) The commissioner shall maintain records that cross-reference
1 the actual and assumed names of all foreign corporations authorized to
2 transact business in this state.

3 Sec. 10.06.725. CHANGE OF NAME BY FOREIGN CORPORATION. If a
4 foreign corporation authorized to transact business in this state
5 changes its name to one under which a certificate of authority would
6 not be granted to it, the certificate of authority of the corporation
7 is suspended and it may not transact business in this state until it
8 has changed its name to a name available to it under the laws of this
9 state.

0 Sec. 10.06.728. APPLICATION FOR CERTIFICATE OF AUTHORITY. To
1 receive a certificate of authority to transact business in this state,
2 a foreign corporation shall apply to the commissioner.

3 Sec. 10.06.730. CONTENTS OF APPLICATION. The application shall
4 set out

5 (1) the name of the corporation and the assumed name, if
6 any, or if the name of the corporation does not contain the word
7 "corporation", "company", "incorporated", or "limited" or an abbrevi-
8 ation of one of these words, the name of the corporation with the
9 word or abbreviation that it elects to use in this state; and the

Chapter 166

1 state or country under whose laws it is incorporated;

2 (2) the date of incorporation and the period of duration of
3 the incorporation;

4 (3) the address of the principal office of the corporation
5 in the state or country under whose laws it is incorporated;

6 (4) the address of the proposed registered office of the
7 corporation in this state, and the name of its proposed registered
8 agent in this state at that address;

9 (5) the purpose the corporation proposes to pursue in the
10 transaction of business in this state and the codes from the identi-
11 fication code established under AS 10.06.873 that most closely de-
12 scribe the activities in which the corporation will engage in this
13 state;

14 (6) the names and addresses of the directors and officers
15 of the corporation;

16 (7) a statement of the aggregate number of shares that the
17 corporation may issue, itemized by classes, par value of shares,
18 shares without par value, and series, if any, within a class;

19 (8) a statement of the aggregate number of issued shares
20 itemized by classes, par value of shares, shares without par value,
21 and series, if any, within a class;

22 (9) a statement expressed in dollars of the amount of
23 stated capital of the corporation;

24 (10) an estimate expressed in dollars of the

25 (A) value of all property to be owned by the corpo-
26 ration for the following year;

27 (B) value of the property of the corporation to be
28 located in this state during the following year;

29 (C) gross amount of all business that will be
S

1 transacted by the corporation during the following year; and

2 (D) gross amount of business that will be transacted
3 by the corporation at or from places of business in this state
4 during the following year;

5 (11) additional information necessary or appropriate to
6 enable the commissioner to determine whether the corporation is enti-
7 tled to a certificate of authority and to determine and assess the
8 fees and taxes prescribed in this chapter that are payable;

9 (12) the name and address of each alien affiliate, the per-
10 centage of outstanding shares controlled by each alien affiliate, and
11 a specific description of the nature of the relationship between the
12 foreign corporation and its alien affiliate; or, a statement that
13 there are no alien affiliates;

14 (13) the name and address of each person owning at least
15 five percent of the shares, or five percent of any class of shares,
16 and the percentage of the shares or class of shares owned by that
17 person.

18 Sec. 10.06.733. EXECUTION AND FILING OF APPLICATION FOR CERTIFI-
19 CATE OF AUTHORITY. The application of the corporation for a certifi-
20 cate of authority shall be on forms prescribed and furnished by the
21 commissioner. The application shall be executed by the president or
22 vice-president of the corporation and by its secretary or an assistant
23 secretary, and verified by one of the officers signing the applica-
24 tion. The original application and an exact copy of it shall be
25 delivered to the commissioner for processing according to AS 10.06.910
26 and for issuance of a certificate of authority.

27 Sec. 10.06.735. EFFECT OF CERTIFICATE OF AUTHORITY. Upon the
28 issuance of a certificate of authority by the commissioner, the corpo-
29 ration may transact business in this state for the purpose set out in

Chapter 166

1 its application, subject, however, to the right of this state to
2 suspend or revoke the authority as provided in this chapter.

3 Sec. 10.06.738. AMENDED CERTIFICATE OF AUTHORITY. (a) A for-
4 eign corporation authorized to transact business in this state shall
5 obtain an amended certificate of authority if it changes its corporate
6 name, or desires to pursue in this state other or additional purposes
7 than those set out in its earlier application for a certificate of
8 authority.

9 (b) The requirements for the form and contents of an application
10 for an amended certificate of authority, the manner of its execution,
11 the filing of the original application and an exact copy of it with
12 the commissioner, and the issuance and effect of an amended certifi-
13 cate of authority shall be the same as in the case of an original
14 application for a certificate of authority.

15 Sec. 10.06.740. POWERS OF FOREIGN CORPORATION. A foreign corpo-
16 ration that has received a certificate of authority enjoys, until a
17 certificate of revocation or of withdrawal has been issued as provided
18 in this chapter, the same, but no greater, rights and privileges as a
19 domestic corporation organized for the purposes set out in the appli-
20 cation under which the certificate of authority is issued and, except
21 as otherwise provided in this chapter, is subject to the duties,
22 restrictions, penalties, and liabilities now or hereafter imposed upon
23 a domestic corporation of like character.

24 Sec. 10.06.743. REVOCATION OF CERTIFICATE OF AUTHORITY. A cer-
25 tificate of authority of a foreign corporation to transact business in
26 this state may be revoked by the commissioner when

27 (1) the corporation fails to file its biennial report
28 within the time required by this chapter, or fails to pay fees, corpo-
29 ration taxes, or penalties prescribed in this chapter when they are
S

1 due and payable;

2 (2) the corporation fails to appoint and maintain a regis-
3 tered agent in this state;

4 (3) the corporation fails, after change of its registered
5 office or registered agent, to file with the commissioner a statement
6 of the change as required by this chapter;

7 (4) the corporation fails to file with the department an
8 amendment to its articles of merger within the time prescribed by this
9 chapter;

10 (5) a misrepresentation of a material matter has been made
11 in an application, report, affidavit, or other document submitted
12 under this chapter; or

13 (6) the corporation is a party to an illegal combination in
14 restraint of trade.

15 Sec. 10.06.745. LIMITATIONS ON REVOCATION OF CERTIFICATE OF
16 AUTHORITY. The commissioner may not revoke a certificate of authority
17 of a foreign corporation unless the

18 (1) commissioner has given the corporation at least 60 days
19 notice by certified mail addressed to its registered office in this
20 state; and

21 (2) corporation fails before revocation to file the bi-
22 ennial report, or pay the fees, corporation taxes, or penalties, or
23 file the required statement of change of registered agent or regis-
24 tered office, or file the articles of merger, or correct the misrep-
25 resentation.

26 Sec. 10.06.748. ISSUANCE OF CERTIFICATE OF REVOCATION. Upon
27 revoking a certificate of authority, the commissioner shall

28 (1) issue a certificate of revocation in duplicate;

29 (2) file one of the certificates in the commissioner's
30

Chapter 166

1 office; and

2 (3) mail one of the certificates of revocation to the
3 corporation at its registered office in this state under AS 10.06.-
4 753(1).

5 Sec. 10.06.750. EFFECT OF CERTIFICATE OF REVOCATION. Upon the
6 issuance of the certificate of revocation, the authority of the corpo-
7 ration to transact business in this state ceases.

8 Sec. 10.06.753. REGISTERED OFFICE AND REGISTERED AGENT OF FOR-
9 REIGN CORPORATION. A foreign corporation authorized to transact busi-
10 ness in this state shall have and continuously maintain in the state a
11 registered

12 (1) office that may be, but need not be, the same as its
13 place of business in this state; and

14 (2) agent, who may be either an individual resident in this
15 state whose business office is identical to the registered office, or
16 a domestic corporation, or a foreign corporation authorized to trans-
17 act business in this state, that has a business office identical to
18 the registered office.

19 Sec. 10.06.758. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT
20 OF FOREIGN CORPORATION. A foreign corporation authorized to transact
21 business in this state may change its registered office or change its
22 registered agent, or both, upon filing with the commissioner a state-
23 ment setting out

24 (1) the name of the corporation;

25 (2) the address of its registered office;

26 (3) the address of the new registered office if the address
27 of its registered office is to be changed;

28 (4) the name of its registered agent;

29 (5) the name of its new registered agent if its registered
S

1 agent is to be changed;

2 (6) that the address of its registered office and the add-
3 ress of the business office of its registered agent, as changed, will
4 be identical; and

5 (7) that the change is authorized by resolution adopted by
6 the board of directors.

7 Sec. 10.06.760. FILING OF STATEMENT OF CHANGE. A statement of
8 change under AS 10.06.758 shall be executed and verified by the corpo-
9 ration by its president or a vice-president, and delivered to the
10 commissioner. If the commissioner finds that the statement conforms
11 to the provisions of this chapter, the commissioner shall file the
12 statement in the office of the commissioner, and upon the filing, the
13 change of address of the registered office, or the appointment of a
14 new registered agent, or both, as the case may be, becomes effective.

15 Sec. 10.06.763. SERVICE OF PROCESS ON FOREIGN CORPORATION. The
16 registered agent appointed by a foreign corporation authorized to
17 transact business in this state shall be an agent of the corporation
18 upon whom process, notice, or demand required or permitted by law to
19 be served upon the corporation may be served.

20 Sec. 10.06.765. SERVICE ON COMMISSIONER. When a foreign corpo-
21 ration authorized to transact business in this state, or not autho-
22 rized to transact business in this state but doing so, fails to ap-
23 point or maintain a registered agent in this state, or when a regis-
24 tered agent cannot with reasonable diligence be found at the regis-
25 tered office, or when the certificate of authority of a foreign corpo-
26 ration is suspended or revoked, the commissioner is an agent upon whom
27 process, notice, or demand may be served. Service is made upon the
28 commissioner as provided in AS 10.06.175(b).

29 Sec. 10.06.768. RECORDS KEPT BY COMMISSIONER. The commissioner

Chapter 166

1 shall keep a record of all processes, notices, or demands served upon
2 the commissioner under AS 10.06.765 and shall record the time of
3 service and action taken by the commissioner with reference to the
4 service.

5 Sec. 10.06.770. PROCEDURE NOT EXCLUSIVE. AS 10.06.763 - 10.06.-
6 768 do not limit or affect the right to serve a process, notice, or
7 demand required or permitted by law to be served upon a corporation in
8 any other manner.

9 Sec. 10.06.775. ORGANIC CHANGE OF FOREIGN CORPORATION. If a
10 foreign corporation authorized to transact business in this state is a
11 party to an organic change permitted by the laws of the state or
12 country where it is incorporated, and the corporation is the surviving
13 corporation, it shall, within 30 days after the change becomes effec-
14 tive, file with the commissioner a copy of the articles of merger,
15 consolidation, exchange, or reorganization authenticated by the proper
16 office of the state or country under whose laws the organic change was
17 carried out. It is not necessary for the corporation to obtain a new
18 or amended certificate of authority to transact business in this state
19 unless the name of the corporation is changed or unless the corpora-
20 tion desires to pursue in this state other or additional purposes than
21 those that it is authorized to transact in this state.

22 Sec. 10.06.778. WITHDRAWAL OF FOREIGN CORPORATION. A foreign
23 corporation authorized to transact business in this state may withdraw
24 from this state upon obtaining from the commissioner a certificate of
25 withdrawal. To obtain a certificate of withdrawal, the foreign corpo-
26 ration shall deliver to the commissioner an application for with-
27 drawal.

28 Sec. 10.06.780. CONTENTS OF APPLICATION FOR WITHDRAWAL. An
29 application for withdrawal shall set out
S

1 (1) the name of the corporation and the state or country
2 where it is incorporated;

3 (2) that the corporation is not transacting business in
4 this state;

5 (3) that the corporation surrenders its authority to trans-
6 act business in this state;

7 (4) that the corporation revokes the authority of its
8 registered agent in this state to accept service of process and con-
9 sents that service of process in an action, suit, or proceeding based
10 upon a cause of action arising in this state during the time the
11 corporation was authorized to transact business in this state may be
12 made on the corporation by service on the commissioner;

13 (5) a post office address to which the commissioner may
14 mail a copy of a process against the corporation that may be served on
15 the commissioner;

16 (6) a statement of the aggregate number of shares that the
17 corporation may issue, itemized by classes, par value of shares,
18 shares without par value, and series, if any, within a class, as of
19 the date of the application;

20 (7) a statement of the aggregate number of issued shares,
21 itemized by classes, par value of shares, shares without par value,
22 and series, if any, within a class, as of the date of the application;

23 (8) a statement, expressed in dollars, of the amount of
24 stated capital of the corporation, as of the date of the application;

25 (9) additional information necessary or appropriate to
26 enable the commissioner to determine and assess unpaid fees or corpo-
27 rate taxes payable as prescribed in this chapter.

28 Sec. 10.06.783. FORM OF APPLICATION FOR WITHDRAWAL. An applica-
29 tion for withdrawal shall be made on forms prescribed and furnished by
S

Chapter 166

1 the commissioner and shall be executed by the corporation by its
2 president or a vice-president, and by its secretary or an assistant
3 secretary, and verified by one of the officers signing the applica-
4 tion, or, if the corporation is in the hands of a receiver or trustee,
5 the application shall be executed and verified on behalf of the corpo-
6 ration by the receiver or trustee.

7 Sec. 10.06.785. FILING OF APPLICATION FOR WITHDRAWAL. An origi-
8 nal and an exact copy of an application for withdrawal shall be de-
9 livered to the commissioner for processing according to AS 10.06.910
10 and for issuance of a certificate of withdrawal.

11 Sec. 10.06.788. EFFECT OF CERTIFICATE OF WITHDRAWAL. Upon the
12 issuance of a certificate of withdrawal, the authority of a corpora-
13 tion to transact business in this state ceases.

14 ARTICLE 11. REPORTS, FEES, AND PENALTIES.

15 Sec. 10.06.805. BIENNIAL REPORT OF DOMESTIC AND FOREIGN CORPORA-
16 TIONS. A domestic corporation and a foreign corporation authorized to
17 transact business in this state shall file a biennial report within
18 the time prescribed by this chapter.

19 Sec. 10.06.808. CONTENTS OF BIENNIAL REPORT. A biennial report
20 must set out

21 (1) the name of the corporation and the state or country
22 where it is incorporated;

23 (2) the address of the registered office of the corporation
24 in this state, and the name of its registered agent in this state at
25 that address, and, in the case of a foreign corporation, the address
26 of its principal office in the state or country where it is incorpo-
27 rated;

28 (3) a brief statement of the character of the business in
29 which the corporation is engaged in this state and the codes from the

1 identification code established under AS 10.06.843 which most closely
2 describe the activities in which the corporation is engaged in this
3 state;

4 (4) the names and addresses of the directors and officers
5 of the corporation;

6 (5) a statement of the aggregate number of shares that the
7 corporation has authority to issue, itemized by classes, par value of
8 shares, shares without par value, and series, if any, within a class;

9 (6) a statement of the aggregate number of issued shares
10 itemized by classes, par value of shares, shares without par value,
11 and series, if any, within a class;

12 (7) the name and address of each alien affiliate, the per-
13 centage of outstanding shares controlled by each alien affiliate, and
14 a specific description of the nature of the relationship between the
15 corporation and its alien affiliates, or that there is no alien affil-
16 iate;

17 (8) the name and address of each person owning at least
18 five percent of the shares, or five percent of any class of shares as
19 of September 30 of the second year of the biennial reporting period,
20 and the percentage of the shares or class of shares owned by that
21 person.

22 Sec. 10.06.811. FILING OF BIENNIAL REPORT. (a) A biennial
23 report of a domestic or foreign corporation shall be filed with the
24 department and is due before January 2 of the filing year. A domestic
25 corporation filing articles of incorporation and a foreign corporation
26 receiving a certificate of authority during an even-numbered year must
27 file the biennial report each even-numbered year. A corporation
28 filing with the department during an odd-numbered year must file the
29 biennial report each odd-numbered year. The biennial report is
S

Chapter 166

1 delinquent if not filed before February 1 of each odd or even year as
2 provided in this section. Delinquent returns are subject to the
3 penalty in AS 10.06.815.

4 (b) Proof to the satisfaction of the commissioner that on or
5 before February 1 the report was deposited in the United States mail
6 in a sealed envelope, properly addressed with postage prepaid, is
7 compliance with (a) of this section.

8 (c) The commissioner shall file the report if it conforms to the
9 requirements of this chapter. If the commissioner finds that the
10 report does not conform to the requirements of this chapter, the
11 report shall promptly be returned to the corporation for necessary
12 corrections. If the report is corrected to conform to the require-
13 ments of this chapter and returned to the commissioner in sufficient
14 time to be filed before April 1 of the year in which it is due, the
15 penalties for failure to file the report within the time provided in
16 AS 10.06.815 do not apply.

17 (d) Upon receipt of a form from the commissioner, a domestic or
18 foreign corporation must file a biennial report within six months
19 after original incorporation or authorization to transact business in
20 this state.

21 Sec. 10.06.813. FILING NOTICE OF CHANGE OF OFFICERS, DIRECTORS,
22 FIVE PERCENT SHAREHOLDERS, AND ALIEN AFFILIATES. (a) In the event of
23 a change of an officer, director, or alien affiliate of a corporation
24 during the first year of the biennial reporting period or a change in
25 a five percent shareholder before September 30 of the first year of
26 the biennial reporting period, the corporation shall file a notice of
27 change amending the biennial report of the corporation before the
28 following January 2.

29 (b) The notice shall be filed with the commissioner and shall
S

1 state the name and current mailing address of each director, officer,
2 five percent shareholder, or alien affiliate not included in the
3 corporation's last filed biennial report, and the name of the person
4 replaced and the office held. The notice shall be signed by the
5 president or vice-president of the corporation.

6 Sec. 10.06.815. PENALTY FOR FAILURE TO FILE BIENNIAL REPORT. A
7 domestic or foreign corporation that fails or refuses to file a biennial
8 report within the time set by this chapter is subject to a penalty
9 of 10 percent of the amount of the corporation tax assessed
10 against it for the period beginning January 1 of the year for which
11 the report should have been filed. The commissioner shall assess the
12 penalty at the time of the assessment of the corporation tax. If the
13 amount of the corporation tax as originally assessed is adjusted in
14 accordance with this chapter, the amount of the penalty shall also be
15 adjusted to 10 percent of the amount of the adjusted corporation tax.
16 The amount of the corporation tax and the amount of the penalty shall
17 be separately stated in a notice to the corporation.

18 Sec. 10.06.818. INTERROGATORIES BY COMMISSIONER; JUDICIAL PRO-
19 CEEDING TO CONTEST. (a) The commissioner may propound to a domestic
20 or foreign corporation and to an officer or director of a domestic or
21 foreign corporation interrogatories reasonably necessary and proper to
22 enable the commissioner to ascertain whether the corporation has
23 complied with the provisions of this chapter.

24 (b) Interrogatories shall be propounded by the commissioner or
25 the designee of the commissioner to

- 26 (1) a domestic corporation by complying with AS 10.06.175;
27 (2) a foreign corporation by complying with AS 10.06.763;
28 (3) an individual officer or director of a domestic or
29 foreign corporation by mailing by certified mail a copy of the
S

Chapter 166

1 interrogatories addressed to the person at the place of business of
2 the person in this state, or, if the person has no place of business
3 in this state, to the principal office or place of business of the
4 person.

5 (c) Interrogatories shall be answered within 30 days or within
6 the additional time fixed by the commissioner or by the superior
7 court. Answers shall be full and complete, in writing and under oath.
8 If the interrogatories are directed to an individual, they shall be
9 answered by that person, and if directed to a corporation they shall
10 be answered by the president, vice-president, secretary, or assistant
11 secretary of the corporation or, in the instance of a foreign corpo-
12 ration, the person or persons functioning as comparable officers in
13 accordance with the laws of the state of incorporation.

14 (d) A petition stating good cause to extend the date for answer,
15 to modify or set aside the interrogatories propounded by the commis-
16 sioner, or to enforce compliance with AS 10.06.820 may be filed in the
17 superior court before the expiration of the 30 days fixed in this
18 section for answer.

19 Sec. 10.06.820. CONFIDENTIALITY OF INFORMATION DISCLOSED BY
20 INTERROGATORIES. Interrogatories and answers propounded and obtained
21 under AS 10.06.818 are not open to public inspection and the commis-
22 sioner may not disclose facts or information obtained from the inter-
23 rogatories except as the official duty of the commissioner requires or
24 unless the interrogatories or the answers are required for evidence in
25 criminal proceedings or other action by the state.

26 Sec. 10.06.823. FAILURE TO ANSWER INTERROGATORIES. Unless
27 otherwise provided by an order of court issued in response to a peti-
28 tion filed under AS 10.06.818(d),

29 (1) a domestic or foreign corporation and each officer or
S

1 director of a domestic or foreign corporation that fails or refuses to
2 answer truthfully and fully interrogatories propounded by the commis-
3 sioner within the time prescribed by AS 10.06.818(c) is guilty of a
4 class A misdemeanor; and

5 (2) the commissioner need not file a document to which the
6 interrogatories relate until the interrogatories are properly answered
7 and need not file a document to which the interrogatories relate if
8 the answers disclose that the document does not conform to the pro-
9 visions of this chapter.

10 Sec. 10.06.825. PENALTIES IMPOSED UPON OFFICERS AND DIRECTORS.
11 An officer or director of a domestic or foreign corporation who signs
12 articles, or a statement, report, application, or other document filed
13 with the commissioner that is known to the officer or director to be
14 false in a material respect, is guilty of a class A misdemeanor.

15 Sec. 10.06.828. INCORPORATION OR FILING FEES. A domestic or
16 foreign corporation that is required to file articles of incorporation
17 or amendatory articles with the department, except corporate entities
18 organized under AS 10.20 and corporate entities organized under the
19 laws of the United States or the laws of a state or territory of the
20 United States or the laws of a foreign country for the same purposes
21 as those allowed under AS 10.20, shall pay to the commissioner a
22 filing fee established by the department by regulation. The filing
23 fee shall be uniform and fixed without reference to the amount of
24 authorized shares.

25 Sec. 10.06.830. FEES ON APPOINTMENT OR REVOCATION OF APPOINTMENT
26 OF PROCESS AGENT OR CHANGE OF AGENT'S ADDRESS. (a) A foreign corpo-
27 ration filing with the department a certificate of the appointment and
28 consent of an agent residing in this state, or a certificate of revoca-
29 tion of the appointment of a resident agent, shall pay to the

Chapter 166

1 commissioner a fee established by the department by regulation.

2 (b) For filing a statement of change of address of registered
3 agent under AS 10.06.170(a) or resignation under AS 10.06.170(b), the
4 agent shall pay to the commissioner a fee established by the depart-
5 ment by regulation.

6 Sec. 10.06.833. FEES AND PENALTIES PAYABLE ON WITHDRAWAL OF
7 FOREIGN CORPORATION. A registered foreign corporation may withdraw
8 from this state upon payment of all biennial corporation taxes and
9 penalties due at the time of desired withdrawal and by filing with the
10 department a certificate of withdrawal signed by its proper officers
11 and under its corporate seal. The fee for filing the certificate with
12 the commissioner shall be established by the department by regulation.

13 Sec. 10.06.835. FEES ON DISSOLUTION OF DOMESTIC CORPORATION. A
14 domestic corporation shall pay to the commissioner a fee established
15 by the department by regulation for filing the documents required by
16 this chapter for the dissolution of a domestic corporation.

17 Sec. 10.06.838. TAXES, PENALTIES, AND FEES ON FILING CERTIFICATE
18 OF DISSOLUTION OF FOREIGN CORPORATION. If a foreign corporation
19 desires to file a certificate of dissolution from the state of its
20 incorporation, it shall file the certificate, signed by the proper
21 state officer, under seal, upon payment of all biennial corporation
22 taxes and penalties due to this state at the time of dissolution. The
23 filing fee for the certificate of dissolution shall be established by
24 the department by regulation.

25 Sec. 10.06.840. FEES FOR CERTIFIED COPIES OF DOCUMENTS. The fee
26 for furnishing a certified copy of a document shall be established by
27 the department by regulation.

28 Sec. 10.06.843. OTHER FILING FEES. (a) The filing fee for a
29 document not otherwise provided in this chapter shall be established
S

1 by the department by regulation.

2 (b) The department may by regulation charge a corporation sub-
3 ject to this chapter a fixed fee in place of the fees specified in
4 this chapter, and for routine administrative services rendered to a
5 corporation by the department.

6 (c) Notwithstanding (b) of this section fees required under
7 AS 10.06.140 and AS 10.06.828 are not included in a fixed fee.

8 Sec. 10.06.845. BIENNIAL CORPORATION TAX; PENALTY FOR NONPAY-
9 MENT. (a) A domestic corporation and a foreign corporation doing
10 business in this state or having its articles of incorporation on file
11 with the department shall, before January 2 of each filing year, pay
12 to the commissioner a biennial corporation tax as follows: domestic
13 corporation, \$100; foreign corporation, \$200. A corporation that
14 fails to pay the biennial corporation tax before February 1 of the
15 filing year must pay to the commissioner a penalty of \$25 for each
16 year or part of a year of delinquency.

17 (b) Proof to the satisfaction of the commissioner that on or
18 before February 1 the tax or report was deposited in the United States
19 mail in a sealed envelope, properly addressed, with postage prepaid,
20 is compliance with (a) of this section.

21 (c) Corporate entities organized under AS 10.20 are not required
22 to pay the biennial corporation tax imposed by this section.

23 Sec. 10.06.848. FAILURE TO PAY TAX OR MAKE REPORT AS PRECLUDING
24 SUIT BY CORPORATION. (a) A domestic or foreign corporation may not
25 commence a suit, action, or proceeding in a court in this state with-
26 out alleging and proving at the time it commences the suit, action, or
27 proceeding that it has paid its biennial corporation tax last due and
28 has filed its biennial report for the last reporting period. A cer-
29 tificate of the payment of the biennial corporation tax and filing of
S

Chapter 166

1 the biennial report is prima facie evidence of the payment of the tax
2 and the filing of the biennial report. The commissioner shall issue
3 the certificate or a duplicate for a fee established by the department
4 by regulation.

5 (b) A corporation that is dissolved involuntarily may commence
6 an action under AS 10.06.675 without complying with (a) of this sec-
7 tion.

8 (c) A foreign or domestic corporation that satisfies (a) of this
9 section but is dissolved after commencing the suit, action, or pro-
10 ceeding may continue to maintain the action after the dissolution.

11 Sec. 10.06.850. COMMISSIONER TO INSTITUTE SUITS TO COMPEL PAY-
12 MENT. The commissioner may institute a suit in the name of the state
13 to enforce the payment of a biennial corporation tax. Corporate
14 entities organized under AS 10.20 and foreign corporations organized
15 under the laws of the United States or the laws of a state or ter-
16 ritory of the United States or the laws of a foreign country for the
17 same purposes as those allowed under AS 10.20 are exempt from the
18 payment of the biennial corporation tax.

19 Sec. 10.06.853. FAILURE TO PAY TAX AS EVIDENCE OF INSOLVENCY.
20 Failure of a corporation to pay the biennial corporation tax for a
21 period of one year after the date when payment first becomes due is
22 prima facie evidence of the inability of a corporation to meet matur-
23 ing debts and liabilities that may be shown under AS 10.06.360 by this
24 state, a private person, or a corporation.

25 Sec. 10.06.855. PAYMENTS TO BE MADE IN ADVANCE. Fees and char-
26 ges provided for in this chapter, including the biennial corporation
27 tax, may be paid in advance.

28 Sec. 10.06.858. ACCOUNTING FOR AND DISPOSITION OF TAXES AND FEES
29 PAID. (a) All fees and taxes paid under this chapter shall be
S

1 accounted for and deposited in the general fund.

2 (b) The commissioner of administration shall separately account
3 for all fees collected under this chapter that the department deposits
4 in the general fund. The annual estimated balance in the account may
5 be used by the legislature to make appropriations to the department to
6 carry out the purposes of this chapter.

7 Sec. 10.06.863. APPEAL FROM REVOCATION OF CERTIFICATE OF AUTHOR-
8 ITY. If the commissioner revokes a certificate of authority of a
9 foreign corporation to transact business in this state under this
0 chapter, the foreign corporation may appeal to the superior court by
1 filing with the clerk of the court a notice of appeal setting out a
2 copy of its certificate of authority and a copy of the notice of
3 revocation given by the commissioner. The matter shall be tried de
4 novo by the superior court, and the court shall either sustain the
5 action of the commissioner or direct the commissioner to take action
6 the court considers proper.

7 Sec. 10.06.865. CANCELLATION OF CERTIFICATES ISSUED AND FILINGS
8 ACCEPTED. The commissioner may, within one year after a filing, and
9 after written notice to the corporation or individual making the
0 filing, cancel a certificate issued or filing accepted under this
1 chapter, on any ground existing at the time of issuance or filing for
2 which the commissioner could have originally refused to issue the
3 certificate or accept the filing. The notice of cancellation shall
4 state the reason for the cancellation. A corporation or individual
5 may request a hearing before the commissioner within 90 days after
6 receipt of the notice. Cancellation becomes final if the corporation
7 or individual does not request a hearing within 90 days after receipt
8 of notice. Notice of cancellation shall be sent by certified mail
9 with return receipt requested. If the return receipt is not received

Chapter 166

1 by the department within a reasonable time and the department has made
2 diligent inquiry as to the address of the corporation, notice may be
3 made by publication in a newspaper of general circulation in the
4 vicinity of the registered office of the corporation or the address of
5 the individual who made the filing, and the cancellation becomes final
6 60 days after publication of the notice if the person or corporation
7 does not request a hearing.

8 Sec. 10.06.868. FORMS TO BE FURNISHED BY THE COMMISSIONER.
9 Reports required by this chapter to be filed with the department or
10 the commissioner shall be on forms prescribed and furnished by the
11 commissioner. Forms for other documents to be filed in the office of
12 the department or the commissioner shall be furnished by the commis-
13 sioner on request, but the use of those forms, unless required in this
14 chapter, is not mandatory.

15 Sec. 10.06.870. IDENTIFICATION CODE. The commissioner of com-
16 merce and economic development and the commissioner of revenue shall
17 jointly establish and adopt a coded list of business activities and
18 shall make the list available to the public.

19 ARTICLE 12. MISCELLANEOUS PROVISIONS.

20 Sec. 10.06.905. VOTING OF SHARES; QUORUM; STATUS OF DISQUALIFIED
21 SHARES. (a) If the articles of incorporation provide for more or
22 less than one vote for a share on a matter, a reference in this chap-
23 ter to a majority or other proportion of shares means a majority or
24 other proportion of the votes entitled to be cast on that matter. If
25 shares are disqualified from voting on a matter, they may not be
26 considered outstanding for the determination of a quorum at a meeting
27 to act upon or for the required vote to approve action upon that
28 matter.

29 (b) A requirement in this chapter for a vote of each class of
S

1 outstanding shares means a vote regardless of limitations or restric-
2 tions upon the voting rights of that class, unless expressly limited
3 to voting shares.

4 Sec. 10.06.910. PROCESSING OF WRITINGS FILED WITH THE COMMIS-
5 SIONER. If a writing delivered to the commissioner for filing con-
6 forms to law and all fees and corporation taxes prescribed in this
7 chapter have been paid, the commissioner shall

8 (1) endorse on each original and an exact copy the word
9 "filed" and the date of the filing;

0 (2) file the exact copy in the commissioner's office;

1 (3) return the original of the writing, together with any
2 writing issued by the commissioner attached to the original, to the
3 corporation or its representative.

4 Sec. 10.06.915. DISAPPROVAL OF WRITING BY COMMISSIONER: APPEAL.
5 If the commissioner fails to approve articles of incorporation, amend-
6 ment, merger, consolidation, exchange or dissolution, or any other
7 document required by this chapter to be approved by the commissioner,
8 the commissioner shall, within 10 days after the delivery of the
9 document to the commissioner, give written notice of disapproval to
0 the person or domestic or foreign corporation, delivering the docu-
1 ment, and specifying the reasons for disapproval. The person or
2 corporation may appeal from the disapproval to the superior court by
3 filing with the clerk of the court a notice of appeal setting out a
4 copy of the document sought to be filed and a copy of the written
5 disapproval. The matter shall be tried de novo by the superior court,
6 which shall either sustain the action of the commissioner or direct
7 the commissioner to take action the court considers proper.

8 Sec. 10.06.920. WRITINGS; CORRECTIONS. A writing relating to a
9 corporation filed by the commissioner under this chapter may be

Chapter 166

1 corrected if it contains an error apparent on the face or defect in
2 the execution of the writing, including the deletion of a matter not
3 permitted to be stated in the writing. A certificate, entitled "Cer-
4 tificate of Correction of...(correct title of writing and name of
5 corporation)", shall be signed, verified, or acknowledged in the same
6 manner as the original writing and shall be delivered to the commis-
7 sioner. The certificate shall set out the name of the corporation,
8 the date the writing to be corrected was filed by the commissioner,
9 the provision in the writing corrected or eliminated and, if the
10 execution was defective, the proper execution. The filing of the
11 certificate by the commissioner does not alter the effective time of
12 the writing being corrected and does not affect any right or liability
13 accrued or incurred before the filing. A corporate name may not be
14 changed or corrected under this section.

15 Sec. 10.06.925. WRITINGS AS EVIDENCE. (a) A writing filed by
16 the commissioner relating to a corporation and containing statements
17 of fact required or permitted by law and a certification by the com-
18 missioner of the absence of a filing shall be received in all courts,
19 public offices, and official bodies as prima facie evidence of these
20 facts and of the execution of the writing.

21 (b) If under the laws of a jurisdiction other than this state a
22 writing by an officer in that jurisdiction or a copy of a writing
23 certified or exemplified by the officer, may be received as prima
24 facie evidence of the incorporation, existence, or capacity of any
25 foreign corporation incorporated in that jurisdiction, the writing
26 when exemplified shall be received by all courts, public offices, and
27 official bodies of this state as prima facie evidence with the same
28 force as in another jurisdiction. The writing or certified copy of
29 the writing shall be received without being exemplified if it is

certified by the secretary of state or official performing the equivalent function as to corporate records of that jurisdiction.

Sec. 10.06.930. CORPORATE SEAL AS EVIDENCE. The presence of a corporate seal on a writing purporting to be executed by authority of a corporation shall be prima facie evidence that the writing was executed with the authority of the corporation.

Sec. 10.06.935. WAIVER OF NOTICE. If notice is required to be given to a shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles or bylaws of the corporation, a waiver of the notice in writing signed by the person entitled to notice, whether before or after the time stated for notice, is equivalent to the giving of notice.

ARTICLE 13. GENERAL PROVISIONS.

Sec. 10.06.950. POWERS OF COMMISSIONER. The commissioner has the power and authority reasonably necessary to enable the commissioner to administer this chapter and to perform the duties imposed upon the commissioner by this chapter.

Sec. 10.06.953. REGULATIONS. To the extent provided by explicit reference in this chapter, the department shall adopt regulations referred to in this chapter in accordance with the Administrative Procedure Act (AS 44.62).

Sec. 10.06.955. APPLICATION. (a) This chapter applies to a domestic corporation organized under former AS 10.05 (the Alaska Business Corporation Act), and to the extent provided in AS 10.06.010, 10.06.020, 10.06.160, 10.06.233, 10.06.433(g), 10.06.435, 10.06.-450(d), and 10.06.705 - 10.06.870 to a foreign corporation authorized to do or doing business in this state.

(b) The existence of a corporation formed or existing on the date of enactment of this chapter is not affected by the enactment of

Chapter 166

1 this chapter or by any change in the requirements for the formation of
2 corporations.

3 Sec. 10.06.958. PROVISIONS CONSTRUED AS RESTATEMENTS AND CONTIN-
4 UATIONS. If a provision of this chapter is substantially the same as
5 a statutory provision in former AS 10.05 existing on the effective
6 date of this chapter, it shall be construed as a restatement and
7 continuation, and not as a new enactment.

8 Sec. 10.06.960. CORPORATIONS ORGANIZED UNDER P.L. 92-203. (a)
9 A corporation organized under 43 U.S.C. 1601 - 1629a (Alaska Native
10 Claims Settlement Act) shall be incorporated under and is subject to
11 this chapter except

12 (1) each corporation shall issue without further considera-
13 tion the number of shares of common stock that may be necessary to
14 comply with the requirements of 43 U.S.C. 1601 - 1629a and all stock
15 so issued is considered fully paid and nonassessable when issued;

16 (2) unless otherwise provided in the articles of incorpora-
17 tion, the capital

18 (A) is considered the consideration for the initial
19 issuance of shares; and

20 (B) of a corporation organized under 43 U.S.C. 1601 -
21 1629a includes the

22 (i) land or interests in it conveyed to the
23 corporation by the United States under 43 U.S.C. 1601 -
24 1629a, except that which is required to be conveyed under
25 43 U.S.C. 1613(c)(1), (3), and (4), entered at its fair
26 value to the corporation upon receiving the conveyance of
27 it; and

28 (ii) money, when received under 43 U.S.C. 1605 and
29 43 U.S.C. 1608, that is retained by the corporation and that
S

1 is not immediately distributed or required to be distributed
2 under 43 U.S.C. 1606(j).

3 (b) Notwithstanding the provisions of AS 10.06.300 - 10.06.390,
4 payment from the money of a corporation organized under 43 U.S.C.
5 1601 - 1629a that is required by the language of 43 U.S.C. 1601 -
6 1629a to be distributed to shareholders or to other corporations so
7 organized is not a distribution to its shareholders as defined in
8 AS 10.06.990.

9 (c) Notwithstanding the provisions of AS 10.06.546, a plan of
10 merger, consolidation, or exchange in which each participating corpo-
11 ration either (1) was organized under 43 U.S.C. 1601 - 1629a (Alaska
12 Native Claims Settlement Act), within the same one of the 12 regions
13 of Alaska established under 43 U.S.C. 1601 - 1629a, or (2) resulted
14 from the prior merger, consolidation, or exchange of other similarly
15 organized corporations within the same region, is approved if it
16 receives the affirmative vote of the holders of at least a majority of
17 the outstanding shares of each corporation. If a class of shares of a
18 corporation specified in this subsection is entitled to vote as a
19 class, the plan of merger, consolidation, or exchange is approved if
20 it receives the affirmative vote of the holders of at least a majority
21 of the outstanding shares of each class of shares entitled to vote as
22 a class and of the total outstanding shares. Notwithstanding AS 10.-
23 06.574 - 10.06.582, a plan of merger, consolidation, or exchange
24 approved under this section before December 19, 1991, may not include
25 a right of shareholder to dissent.

26 (d) A director or officer of a corporation organized under
27 43 U.S.C. 1601 - 1629a is not personally liable to the contract credi-
28 tors specified in AS 10.06.490 except as otherwise provided by law.

29 Sec. 10.06.963. SEVERABILITY. If a provision of this chapter is
5

Chapter 166

1 held invalid, the invalidity does not affect other provisions of this
2 chapter that can be given effect without the invalid provision.

3 Sec. 10.06.965. RESERVATION OF POWER. The legislature reserves
4 the right to alter, amend, suspend, or repeal in whole or in part this
5 chapter at pleasure, or a certificate of incorporation or the author-
6 ity to do business in this state, of a domestic or foreign corpo-
7 ration, whether or not existing or authorized on the effective date of
8 this chapter.

9 Sec. 10.06.968. SIGNATURE. "Signature" includes a mark when the
10 signer cannot write. The signer's name shall be written near the mark
11 by a witness who shall write the witness' own name near the signer's
12 name. A signature by mark can be acknowledged or can serve as a
13 signature to a sworn statement.

14 Sec. 10.06.970. RULES OF CONSTRUCTION AND INTERPRETATION.
15 Unless a provision or the context otherwise requires, the following
16 general provisions and rules of construction govern this chapter:

17 (1) title, chapter, article, and section headings do not
18 affect the scope, meaning, or intent of the provisions of this chap-
19 ter;

20 (2) when, by the provisions of this chapter, a power is
21 granted to, or a duty imposed upon, a public officer, the power may be
22 exercised or the duty performed by a deputy of the officer or by a
23 person authorized, under law, by the officer, unless this chapter
24 expressly provides otherwise;

25 (3) when a notice, report, statement, or record is required
26 or authorized by this chapter, it shall be made in writing in a manner
27 reasonably calculated to communicate the notice, report, statement, or
28 record to the recipient;

29 (4) a reference in this chapter to mailing means first-
S

1 class mail, postage prepaid, unless certified mail is specified;
2 certified mail includes registered mail;

3 (5) subject to a specific accounting treatment required by
4 a particular section of this chapter,

5 (A) references in this chapter to financial state-
6 ments, balance sheets, income statements, and statements of
7 changes in financial position of a corporation and references to
8 assets, liabilities, earnings, retained earnings, and similar
9 accounting items of a corporation mean financial statements or
10 items prepared fairly and reasonably to present the purported
11 matters;

12 (B) financial statements prepared or determined in
13 accordance with generally accepted accounting principles then
14 applicable are fair and reasonable;

15 (C) references in this chapter to financial statements
16 mean, in the case of a corporation that has subsidiaries, consol-
17 idated statements of the corporation and its subsidiaries, and
18 all references to accounting items mean items determined on a
19 consolidated basis in accordance with consolidated financial
20 statements;

21 (6) a reference in this chapter to the time a notice is
22 given or sent means, unless otherwise expressly provided, the time a
23 written notice by mail is deposited in the United States mail, postage
24 prepaid; or the time any other written notice is personally delivered
25 to the recipient or is delivered to a common carrier for transmission,
26 or actually transmitted by electronic means to the recipient by the
27 person giving the notice; or the time an oral notice is communicated
28 in person or by electronic means to the recipient or to a person at
29 the office of the recipient whom the person giving the notice has
S

Chapter 166

1 reason to believe will promptly communicate it to the recipient;

2 (7) when reference is made to any portion of this chapter
3 or of any other law of this state, the reference applies to all amend-
4 ments and additions;

5 (8) "shall" is mandatory, "may" is permissive, and "may
6 not" is prohibitory;

7 (9) "oath" includes affirmation.

8 Sec. 10.06.990. DEFINITIONS. In this chapter, unless the con-
9 text otherwise requires,

10 (1) "acknowledged" means that a document is accompanied by
11 a certificate of its acknowledgement as provided in AS 09.63.010 -
12 09.63.130;

13 (2) "affiliate" means a person that directly or indirectly
14 through one or more intermediaries controls, or is controlled by, or
15 is under common control with, a corporation subject to this chapter;

16 (3) "alien" means

17 (A) an individual who is not a citizen or national of
18 the United States, or who is not lawfully admitted to the United
19 States for permanent residence, or paroled into the United States
20 under the Immigration and Nationality Act (8 U.S.C. 1101 - 1525,
21 as amended);

22 (B) a person, other than an individual, that was not
23 created or organized under the laws of the United States or of a
24 state, or whose principal place of business is not located in any
25 state; or

26 (C) a person, other than an individual, that was
27 created or organized under the laws of the United States or of a
28 state, or whose principal place of business is located in a
29 state, and that is controlled by a person described in (A) or (B)

1 of this paragraph;

2 (4) "approved by the board" or "approval of the board"
3 means approved or ratified by the vote of the board or by the vote of
4 a committee authorized to exercise the powers of the board, except as
5 to matters not within the competence of the committee under AS 10.06.-
6 468;

7 (5) "approved by the outstanding shares" or "approval of
8 the outstanding shares" means approved by the affirmative vote of a
9 majority of the outstanding shares entitled to vote; this approval
10 includes the affirmative vote of a majority of the outstanding shares
11 of each class or series entitled by the articles of incorporation or
12 this chapter to vote as a class or series on the subject matter and
13 also includes the affirmative vote of a greater proportion, including
14 all, of the outstanding shares of a class or series if a greater
15 proportion is required by the articles or this chapter;

16 (6) "approved by the shareholders" or "approval of the
17 shareholders" means approved or ratified by the affirmative vote of a
18 majority of the shares entitled to vote represented at a duly held
19 meeting at which a quorum is present or by the written consent of
20 shareholders (AS 10.06.423) or by the affirmative vote or written
21 consent of a greater proportion, including all, of the shares of a
22 class or series if a greater proportion is required by the articles of
23 incorporation or this chapter for all or any specified shareholder
24 action;

25 (7) "articles" or "articles of incorporation" means the
26 original or restated articles of incorporation and all amendments and
27 includes articles of merger;

28 (8) "authorized shares" means the shares of all classes
29 that the corporation may issue;

Chapter 166

1 (9) "board" means the board of directors of a domestic or
2 foreign corporation;

3 (10) "commissioner" means the commissioner of commerce and
4 economic development or a designee of the commissioner;

5 (11) "common shares" means shares that have no preference
6 over other shares with respect to distribution of assets on liquida-
7 tion or with respect to payment of dividends;

8 (12) "control" or "controlling interest" means

9 (A) owning directly or indirectly, or having the power
10 to vote, 25 percent or more of a class of voting securities of a
11 corporation subject to this chapter; or

12 (B) influencing or affecting in any substantive manner
13 the election of a majority of the directors or trustees of a
14 corporation subject to this chapter;

15 (13) "corporation" or "domestic corporation" means a corpo-
16 ration for profit subject to the provisions of this chapter, but does
17 not include a foreign corporation or a state or national bank;

18 (14) "corporation tax" means the biennial corporation tax
19 imposed under Alaska law on corporations;

20 (15) "department" means the Department of Commerce and Eco-
21 nomic Development;

22 (16) "director" means a natural person designated in the
23 articles of incorporation or elected by the incorporators as a direc-
24 tor and includes a natural person and successor of that person des-
25 ignated, elected, or appointed by any other name or title to act as a
26 director;

27 (17) "distribution to its shareholders" means the transfer
28 of cash or property by a corporation or its subsidiary to its share-
29 holders without consideration, whether by way of dividend or
S

1 otherwise, except a dividend in shares of the corporation, or the
2 purchase or redemption of its shares for cash or property; the time of
3 a distribution of a dividend is the date of the declaration of the
4 dividend and the time of a distribution by purchase or redemption of
5 shares is the date cash or property is transferred by the corporation,
6 whether or not under a contract of an earlier date; however, if a
7 negotiable debt security is issued in exchange for shares, the time of
8 the distribution is the date when the corporation acquires the shares
9 in the exchange; in the case of a sinking fund payment, cash or prop-
10 erty is transferred within the meaning of this paragraph at the time
11 that it is delivered to a trustee for the holders of preferred shares
12 to be used for the redemption of those shares or physically segregated
13 by the corporation in trust for that purpose;

14 (18) "filed", unless otherwise expressly provided, means
15 filed in the office of the commissioner of commerce and economic
16 development;

17 (19) "five percent shareholder" means a person owning at
18 least five percent of the shares or five percent of any class of
19 shares of a corporation;

20 (20) "foreign corporation" means a corporation for profit
21 organized under laws other than the laws of Alaska for a purpose for
22 which a corporation may be organized under this chapter;

23 (21) "independent accountant" means a certified public
24 accountant or a public accountant who is independent of the corpora-
25 tion as determined in accordance with generally accepted auditing
26 standards and who is engaged to audit financial statements of the
27 corporation or perform other accounting services;

28 (22) "liquidation price" or "liquidation preference" means
29 amounts payable for shares of a class upon voluntary or involuntary
S

Chapter 166

1 dissolution, winding up or distribution of the entire assets of the
2 corporation, including any cumulative dividends accrued and unpaid, in
3 priority to shares of another class or classes;

4 (23) "net assets" means the amount by which the total assets
5 of a corporation exceed the total debts of the corporation;

6 (24) "officers' certificate" means a certificate signed and
7 verified by the chairman of the board, the president or a vice-presi-
8 dent and by the secretary, the treasurer or an assistant secretary or
9 assistant treasurer;

10 (25) "on the certificate" means that a statement appears on
11 the face of a share certificate or on the reverse of the certificate
12 with a reference to the statement on the face;

13 (26) "organic change" means a merger, consolidation, share
14 exchange, or sale of assets other than in the regular course of busi-
15 ness;

16 (27) "parent" or "parent corporation" means an affiliate
17 controlling a specified corporation directly or indirectly through one
18 or more intermediaries;

19 (28) "paid-in capital" means the consideration actually
20 received by a corporation for issuance of its shares, plus any addi-
21 tional amount capitalized by its board under AS 10.06.390;

22 (29) "person" means an individual, a corporation, a partner-
23 ship, an association, a joint-stock company, an estate, a trust if the
24 interests of the beneficiaries are evidenced by a security, an unin-
25 corporated association, a government, a political subdivision of a
26 government, or a combination of these entities;

27 (30) "preferred shares" means shares other than common
28 shares;

29 (31) "proxy" means a written authorization signed by a
S

1 shareholder or the shareholder's attorney-in-fact giving another
2 person power to vote with respect to the shares of the shareholder;
3 "signed" for the purpose of this paragraph means the placing of the
4 shareholder's name on the proxy by manual signature by the shareholder
5 or the shareholder's attorney-in-fact;

6 (32) "proxy holder" means the person to whom a proxy is
7 given;

8 (33) "redemption price" means the amount in cash, property
9 or securities, or any combination of these, payable on shares of any
10 class or series upon the redemption of the shares; unless otherwise
11 expressly provided, the redemption price is payable in cash;

12 (34) "retained earnings" means the account of the corpo-
13 ration representing undistributed and uncapitalized net profits,
14 income, gains, and losses from the date of incorporation;

15 (35) "series of shares" means those shares within a class
16 that have the same rights, preferences, privileges, and restrictions
17 but that differ in one or more rights, preferences, privileges, or
18 restrictions from other shares within the same class;

19 (36) "shareholder" means a holder of record of a share in a
20 corporation;

21 (37) "shares" means the units into which the proprietary
22 interests in a corporation are divided;

23 (38) "state" means any of the United States, the District of
24 Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Is-
25 lands, Guam, the Virgin Islands, American Samoa, the Trust Territory
26 of the Pacific Islands, or any other territory or possession of the
27 United States;

28 (39) "subscriber" means one who subscribes for a share in a
29 corporation before or after incorporation;

Chapter 166

1 (40) "subsidiary" of a specified corporation means a corpo-
2 ration in which the specified corporation owns more than 50 percent of
3 the voting power directly or indirectly through one or more other
4 subsidiaries of the specified corporation;

5 (41) "surviving corporation" means a corporation into which
6 one or more other corporations are merged;

7 (42) "vacancy" when used with respect to the board means any
8 authorized position of director that is not then filled by a duly
9 elected director, whether caused by death, resignation, removal,
10 change in the authorized number of directors, or otherwise;

11 (43) "verified" means that a document has been certified to
12 be true as provided in AS 09.63.040;

13 (44) "vote" includes authorization by written consent sub-
14 ject to the provisions of AS 10.06.423 and 10.06.475;

15 (45) "voting power" means the power to vote for the election
16 of directors at the time a determination of voting power is made and
17 does not include the right to vote upon the happening of a condition
18 or event that has not yet occurred; when different classes of shares
19 are entitled to vote as separate classes for different members of the
20 board, the determination of percentage of voting power shall be made
21 on the basis of the percentage of the total number of authorized
22 directors that the shares in question have the power to elect in an
23 election at which all shares then entitled to vote for the election of
24 any directors are voted;

25 (46) "writing" includes any form of recorded message capable
26 of comprehension by ordinary visual means.

27 Sec. 10.06.995. SHORT TITLE. This chapter may be cited as the
28 Alaska Corporations Code.

29 * Sec. 2. AS 10.10.040 is amended to read:
S

1 Sec. 10.10.040. GENERAL POWERS. In furtherance of its purposes
2 and in addition to the powers now or hereafter conferred on business
3 corporations by AS 10.06.010 [AS 10.05.009], the corporation shall,
4 subject to the restrictions and limitations contained in this chapter
5 have the following powers:

6 (1) to elect, appoint, and employ officers, agents, and
7 employees; to make contracts and incur liabilities for a purpose [ANY
8 OF THE PURPOSES] of the corporation, except [; PROVIDED,] that the
9 corporation may not incur a secondary liability by way of guaranty or
10 endorsement of the obligations of a person, firm, corporation, joint-
11 stock company, association or trust, or in another [ANY OTHER] manner;

12 (2) to borrow money from its members and the Small Business
13 Administration and any other federal agency for a purpose [ANY OF THE
14 PURPOSES] of the corporation; to issue for those purposes its bonds,
15 debentures, notes or other evidences of indebtedness, whether secured
16 or unsecured, and to secure them by mortgage, pledge, deed of trust or
17 other lien on its property, franchises, rights, and privileges of
18 every kind and nature, or a [ANY] part of them or interest in them,
19 without securing stockholder or member approval;

20 (3) to make loans to a [ANY] person, firm, corporation,
21 joint-stock company, association or trust, and to establish and regu-
22 late the terms and conditions with respect to the loans and the char-
23 ges for interest and service connected with them, except [; PROVIDED,
24 HOWEVER,] that the corporation may not approve an application for a
25 loan unless and until the person applying for the loan shows that the
26 applicant has applied for the loan through ordinary banking channels
27 and that the loan has been refused by at least one bank or other
28 financial institution;

29 (4) to purchase, receive, hold, lease, or otherwise
S

Chapter 166

1 acquire, and to sell, convey, transfer, lease, or otherwise dispose of
2 real and personal property, together with the [SUCH] rights and privi-
3 leges that are [AS MAY BE] incidental and appurtenant to the property
4 and the use of it, including [, BUT NOT RESTRICTED TO ANY] real or
5 personal property acquired by the corporation from time to time in the
6 satisfaction of debts or enforcement of obligations;

7 (5) to acquire the good will, business, rights, real and
8 personal property and other assets, or a [ANY] part of them, or in-
9 terest in them, of any persons, firms, corporations, joint-stock
10 companies, associations or trusts, and to assume, undertake, or pay
11 the obligations, debts, and liabilities of the person, firm, corpora-
12 tion, joint-stock company, association or trust; to acquire improved
13 or unimproved real estate for the purpose of constructing industrial
14 plants or other business establishments thereon or for the purpose of
15 disposing of the real estate to others for the construction of indus-
16 trial plants or other business establishments; and to acquire, con-
17 struct or reconstruct, alter, repair, maintain, operate, sell, convey,
18 transfer, lease, or otherwise dispose of industrial plants or business
19 establishments;

20 (6) to acquire, subscribe for, own, hold, sell, assign,
21 transfer, mortgage, pledge or otherwise dispose of the stock, shares,
22 bonds, debentures, notes, or other securities and evidences of in-
23 terest in, or indebtedness of any person, firm, corporation, joint-
24 stock company, association or trust, and while the owner or holder of
25 them [THEREOF] to exercise all the rights, powers, and privileges of
26 ownership, including the right to vote on them [THEREON];

27 (7) to mortgage, pledge, or otherwise encumber any proper-
28 ty, right or thing of value, acquired under the powers contained in
29 (4), (5), and (6) of this section as security for the payment of a
S

1 [ANY] part of the purchase price of them [THEREOF];

2 (8) to cooperate with and avail itself of the facilities of
3 the United States Department of Commerce, the state Department of
4 Commerce and Economic Development, and any other state or federal
5 governmental agencies; and to cooperate with and assist, and otherwise
6 encourage organizations in the various communities of the state in the
7 promotion, assistance, and development of the business prosperity and
8 economic welfare of the [SUCH] communities or of the [THIS] state or
9 of a [ANY] part of the state;

10 (9) to do whatever is necessary or convenient to carry out
11 the powers expressly granted in this chapter.

12 * Sec. 3. AS 10.15.030 is amended to read:

13 Sec. 10.15.030. CHANGE OF REGISTERED OFFICE OR AGENT. A cooper-
14 ative may change its registered office or registered agent under [IN
15 ACCORDANCE WITH] the procedure set out in AS 10.06.165 [AS 10.05.051],
16 and a person who has been designated by a cooperative as its regis-
17 tered agent may resign under [IN ACCORDANCE WITH] the procedure set
18 out in AS 10.06.170 [AS 10.05.054].

19 * Sec. 4. AS 10.15.075 is amended to read:

20 Sec. 10.15.075. MANNER OF VOTING BY SHAREHOLDERS. AS 10.06.420
21 [AS 10.05.156 - 10.05.168] relating to voting of shares in business
22 corporations applies [APPLY] to shareholders of cooperatives and
23 shares of the capital stock of cooperatives other than membership
24 stock.

25 * Sec. 5. AS 10.20.452 is amended to read:

26 Sec. 10.20.452. CONTINUED EXISTENCE FOR CERTAIN PURPOSES. If a
27 dissolved corporation is the owner of real or personal property, or
28 claims an [ANY] interest in or lien upon [ANY] real or personal prop-
erty, the corporation through its board of directors continues to

Chapter 166

1 exist for five years after the date of dissolution for the purpose of
2 conveying, transferring, or releasing the real or personal property or
3 interest in or lien upon the [THAT] property. In addition, a dissolved
4 corporation through its board of directors continues to exist for the
5 purpose of being made a party in an [ANY] action or proceeding arising
6 before dissolution and involving the title to real or personal proper-
7 ty or an [ANY] interest in it. The action or proceeding may be in-
8 stituted and maintained in the same manner as before the dissolution
9 of the corporation. This section does not affect or suspend a [ANY]
10 statute of limitations applicable to a claim. For the purpose of
11 service of process, notice, or demand within the prescribed time
12 following dissolution, the commissioner is an agent of the dissolved
13 corporation upon whom service may be made in the manner prescribed in
14 AS 10.06.175(b) [AS 10.05.057(b)].

15 * Sec. 6. AS 10.05 is repealed.

16 * Sec. 7. APPLICATION OF PROVISIONS TO DOMESTIC AND FOREIGN CORPORA-
17 TIONS. (a) Except as otherwise expressly provided, the provisions of this
18 Act apply on and after the effective date of this Act to:

19 (1) a domestic corporation organized under the former Alaska
20 Business Corporations Act (AS 10.05) existing on the effective date of this
21 Act;

22 (2) a foreign corporation that is authorized to do or does
23 business in the state on or after the effective date of this Act;

24 (3) actions by a director, officer, or shareholder of a corpora-
25 tion described in (1) and (2) of this subsection on and after the effective
26 date of this Act.

27 (b) Except as otherwise expressly provided, a section of this Act
28 governing acts, contracts, or other transactions by a corporation or its
29 directors, officers, or shareholders applies only to acts, contracts, or
30 CSHB 322(Jud)(efd am S)

1 transactions occurring on or after the effective date of this Act and the
2 provisions of former AS 10.05 govern acts, contracts, or transactions
3 occurring before the effective date of this Act.

4 (c) Except as otherwise expressly provided, a vote or consent by the
5 directors or shareholders of a corporation before the effective date of
6 this Act in accordance with the provisions of former AS 10.05 is effective,
7 and if a certificate or document is required to be filed in a public office
8 of the state relating to the action, it may be filed after the effective
9 date of this Act in accordance with the provisions of former AS 10.05.

10 * Sec. 8. EXERCISE OF RESERVE POWER. It is the intent of the legisla-
11 ture in enacting AS 10.06.502(a) in sec. 1 of this Act to exercise to the
12 fullest extent the reserve power of the state over corporations and to
13 authorize any amendment of the articles permitted under AS 10.06.502(a)
14 regardless of whether a provision contained in the amendment was permissi-
15 ble at the time of the original incorporation of the corporation.

16 * Sec. 9. APPLICATION TO ARTICLES OF EXISTING CORPORATIONS. (a) The
17 provisions of AS 10.06.208 and 10.06.210 relating to the contents of arti-
18 cles of incorporation do not apply to domestic corporations existing on the
19 effective date of this Act unless and until an amendment of the articles is
20 filed stating that the corporation elects to be governed by all of the
21 provisions of the Alaska Corporations Code (AS 10.06) not otherwise applic-
22 able to it under this Act. If an amendment makes no change in the articles
23 of incorporation other than conforming the statement of purposes and powers
24 to AS 10.06.208(2) or 10.06.210(1)(F) or deletes references to par value or
25 location of principal office, it may be adopted by approval of the board of
26 directors of the corporation alone; otherwise, it shall be approved as
27 provided in AS 10.06.504 - 10.06.506, as enacted by sec. 1 of this Act.

28 (b) A corporation organized and existing under the provisions of
29 former AS 10.05 shall comply with AS 10.06.208 and 10.06.210, as enacted by
S

Chapter 166

1 sec. 1 of this Act, on or before the date five years after the effective
2 date of this Act.

3 * Sec. 10. AMENDMENT OF ARTICLES OF INCORPORATION. (a) The require-
4 ment of an affirmative vote of at least two-thirds of the shares entitled
5 to vote for the adoption of an amendment to the articles of incorporation
6 as provided in former AS 10.05.276 shall remain in force for corporations
7 existing before the effective date of this Act.

8 (b) Notwithstanding (a) of this section, an election to be governed
9 by the voting provisions of AS 10.06.504 - 10.06.506, as enacted by sec. 1
10 of this Act, may be made in the same manner as an amendment to the articles
11 of incorporation is made under those sections. An election under this
12 subsection requires the affirmative vote of at least two-thirds of the
13 shares entitled to vote under former AS 10.05.276(3).

14 * Sec. 11. INDEMNIFICATION BY A CORPORATION. AS 10.06.490, as enacted
15 by sec. 1 of this Act, governs a proposed indemnification by a corporation
16 after the effective date of this Act, whether the events upon which the
17 indemnification is based occurred before or after the effective date of
18 this Act. A statement relating to indemnification contained in the arti-
19 cles or bylaws of a corporation on the effective date of this Act may limit
20 the indemnification permitted by AS 10.06.490 unless the statement expres-
21 sly states that indemnification is limited.

22 * Sec. 12. DISTRIBUTIONS AND REACQUISITION OF SHARES. (a) AS 10.06.-
23 300 - 10.06.390, as enacted by sec. 1 of this Act, apply to a distribution
24 to shareholders made after the effective date of this Act by a corporation
25 existing on the effective date of this Act, but a distribution under a
26 contract for the purchase or redemption of shares entered into by the
27 corporation before the effective date of this Act may be made if permissi-
28 ble under AS 10.06.300 - 10.06.390 or under the provisions of former
29 AS 10.05 and other law in effect at the time the contract was formed.

1 (b) AS 10.06.388(a), as enacted by sec. 1 of this Act, applies only
2 to shares acquired on or after the effective date of this Act.

3 * Sec. 13. TENURE OF OFFICERS PRESERVED. If a person holds an office
4 under a law repealed by this Act, that person shall continue to hold the
5 office according to its former tenure if the office is continued by this
6 Act.

7 * Sec. 14. EXISTING ACTIONS. This Act does not affect a cause of
8 action, liability, penalty or special proceeding existing, incurred or
9 accrued on the effective date of this Act.

10 * Sec. 15. AS 10.06.015(a)(1), as enacted by sec. 1 of this Act, amends
11 Alaska Rule of Civil Procedure 19 by making all parties to a contract
12 covered by AS 10.06.015(a)(1) indispensable parties to an action under
13 AS 10.06.015(a)(1).

14 * Sec. 16. AS 10.06.378(c), as enacted by sec. 1 of this Act, amends
15 Alaska Rule of Civil Procedure 19 by allowing a shareholder sued under the
16 section to join certain other parties in a lawsuit against the shareholder
17 without using the criteria of Alaska Rule of Civil Procedure 19.

18 * Sec. 17. AS 10.06.435, as enacted by sec. 1 of this Act, amends
19 Alaska Rule of Civil Procedure 23.1 by changing the requirements for main-
20 taining a derivative action.

21 * Sec. 18. AS 10.06.435, as enacted by sec. 1 of this Act, amends
22 Alaska Rule of Civil Procedure 82 by changing the criteria for awarding
23 attorney fees to the plaintiff in a derivative action.

24 * Sec. 19. AS 10.06.463, as enacted by sec. 1 of this Act, amends
25 Alaska Rule of Civil Procedure 19 by requiring that a corporation be made a
26 party to an action to remove a director of the corporation.

27 * Sec. 20. AS 10.06.580(b), as enacted by sec. 1 of this Act, amends
28 Alaska Rule of Civil Procedure 4 by allowing a corporation in an action
29 brought under AS 10.06.580 to serve nonresident dissenting shareholders by
S

Chapter 166

1 certified mail and publication without satisfying the conditions under
2 which certified mail and publication can be used under Alaska Rule of Civil
3 Procedure 4.

4 * Sec. 21. AS 10.06.580(b), as enacted by sec. 1 of this Act, amends
5 Alaska Rule of Civil Procedure 19 by making all qualified dissenting share-
6 holders indispensable parties to an action covered by AS 10.06.580.

7 * Sec. 22. AS 10.06.580(e), as enacted by sec. 1 of this Act, amends
8 Alaska Rule of Civil Procedure 82 by changing the criteria for awarding
9 attorney fees in an action to determine the value of a dissenting share-
10 holder's interest in a corporation.

11 * Sec. 23. AS 10.06.628, as enacted by sec. 1 of this Act, amends
12 Alaska Rule of Civil Procedure 11 by requiring that a complaint for invol-
13 untary dissolution of a corporation under AS 10.06.628 be verified.

14 * Sec. 24. AS 10.06.628, as enacted by sec. 1 of this Act, amends
15 Alaska Rule of Civil Procedure 24 by allowing a shareholder or creditor of
16 a corporation to intervene in an action for involuntary dissolution of the
17 corporation under AS 10.06.628.

18 * Sec. 25. AS 10.06.630, as enacted by sec. 1 of this Act, amends
19 Alaska Rule of Civil Procedure 65 by changing the procedure for enjoining
20 dissolution proceedings under AS 10.06.630.

21 * Sec. 26. AS 10.06.633, as enacted by sec. 1 of this Act, amends
22 Alaska Rule of Appellate Procedure 204 by requiring that particular docu-
23 ments must be filed in the notice of appeal.

24 * Sec. 27. AS 10.06.633, as enacted by sec. 1 of this Act, amends
25 Alaska Rule of Appellate Procedure 609 by requiring that the appeal be
26 tried de novo by the superior court.

27 * Sec. 28. AS 10.06.638, as enacted by sec. 1 of this Act, amends
28 Alaska Rule of Civil Procedure 4 by changing (1) the requirements for
29 service by publication, and (2) how long a corporation has to respond to a
S

1 complaint in an involuntary dissolution proceeding before the commissioner
2 of commerce and economic development may take a default judgment against
3 the corporation.

4 * Sec. 29. AS 10.06.658, as enacted by sec. 1 of this Act, amends
5 Alaska Rule of Civil Procedure 73 by requiring the clerk of the superior
6 court to send a copy of an order dissolving a corporation to the commis-
7 sioner of commerce and economic development.

8 * Sec. 30. AS 10.06.675, as enacted by sec. 1 of this Act, amends
9 Alaska Rule of Civil Procedure 20 by allowing the corporation to join a
10 member who received an improper distribution in an action under AS 10.06.-
11 675 without regard to the criteria for joinder in Alaska Rule of Civil
12 Procedure 20.

13 * Sec. 31. AS 10.06.863, as enacted by sec. 1 of this Act, changes
14 Alaska Rule of Appellate Procedure 204 by requiring that certain documents
15 be filed in the notice of appeal.

16 * Sec. 32. AS 10.06.863, as enacted by sec. 1 of this Act, amends
17 Alaska Rule of Appellate Procedure 609 by requiring that the appeal be
18 tried de novo by the superior court.

19 * Sec. 33. AS 10.06.915, as enacted by sec. 1 of this Act, amends
20 Alaska Rule of Civil Procedure 10 by requiring that certain documents be
21 attached to a complaint that appeals the disapproval of a writing under
22 AS 10.06.915 by the commissioner of commerce and economic development.

23 * Sec. 34. AS 10.06.915, as enacted by sec. 1 of this Act, changes
24 Alaska Rule of Appellate Procedure 204 by requiring that certain documents
25 be filed in the notice of appeal.

26 * Sec. 35. AS 10.06.915, as enacted by sec. 1 of this Act, changes
27 Alaska Rule of Appellate Procedure 609 by requiring that the appeal be
28 tried de novo by the superior court.

29 * Sec. 36. AS 10.06.925, as enacted by sec. 1 of this Act, amends
S

Chapter 166

1 Alaska Rule of Evidence 803(8) by requiring the court to receive as evi-
2 dence certain public documents dealing with corporations.

3 * Sec. 37. This Act takes effect July 1, 1989.
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
S