

HOUSE BILL NO. 418

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/13/02

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending the Alaska Corporations Code as it relates to delivery of annual**
2 **reports, notice of shareholders' meetings, proxy statements, and other information to**
3 **shareholders, and providing for electronic proxy voting."**

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

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

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

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

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

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

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

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

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

22 (A) the posting; or

23 (B) the giving of separate notice; or

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

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

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

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

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

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

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

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

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

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

28 (iii) state that the corporation will begin sending
29 individual copies to a shareholder within 30 days after the shareholder
30 notifies the corporation that the shareholder wishes to receive a
31 separate copy of the annual report, proxy statement, or other

1 information; and

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

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

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

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

23 (c) A corporation is not required to send notice of a shareholders' meeting, an
24 annual report, or a proxy statement to a shareholder until the shareholder provides the
25 corporation with written notice of the shareholder's current address if materials set out
26 in (1) or (2) of this subsection have been sent by first class mail during the
27 immediately preceding 12 months to the shareholder's address and have been returned
28 as undeliverable:

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

31 (2) at least two payments of dividends or interest on securities or

1 dividend reinvestment confirmations.

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

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

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

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

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

20 * **Sec. 5.** AS 10.06.421 is amended by adding a new subsection to read:

21 (g) In this section, "signed," as it relates to proxy appointments only, means
22 bearing the signature or authorization described in AS 10.06.420(c).

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

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

26 (1) by mail;

27 (2) in person;

28 (3) by a posting on an electronic network together with a separate
29 notice of the specific posting to the shareholder; or

30 (4) by electronic transmission if the corporation has received a writing
31 or electronic transmission, including information demonstrating that the electronic

1 transmission was authorized by the shareholder, from the shareholder authorizing
2 delivery of annual reports by electronic transmission.

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

4 (33) "proxy" means a written authorization **or an electronic**
5 **transmission** signed by a shareholder or the shareholder's attorney-in-fact giving
6 another person power to vote with respect to the shares of the shareholder; "signed"
7 for the purpose of this paragraph, means the placing of the shareholder's name on the
8 proxy by manual signature by the shareholder or the shareholder's attorney-in-fact;

9 * **Sec. 8.** AS 10.06.990 is amended by adding a new paragraph to read:

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