

Offered: 5/5/89
Referred: Rules

6-0953H

Original sponsor: Rules/Legislative Council

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 204 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to corporations; and providing for
7 an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 10.06.010 is amended to read:
10 Sec. 10.06.010. GENERAL POWERS. Subject to the limitations in
11 its articles of incorporation, the provisions of this chapter and
12 other applicable law, a corporation has all the powers of a natural
13 person in carrying out its business activities, including, without
14 limitation, the power to
15 (1) have perpetual succession by its corporate name;
16 (2) sue and be sued in its corporate name;
17 (3) adopt a corporate seal and alter it, and use it by
18 having it or a facsimile of it impressed, affixed, or reproduced;
19 (4) buy, take, receive, lease, or otherwise acquire, own,
20 hold, improve, use, and otherwise deal in, real or personal property
21 or an interest in the property, wherever situated;
22 (5) sell, convey, mortgage, pledge, lease, exchange, trans-
23 fer, and otherwise dispose of all or a part of its property and as-
24 sets;
25 (6) lend money, if properly approved, to its employees,
26 [AND, IF PROPERLY APPROVED, TO ITS] officers, and directors, and
27 otherwise assist its employees, officers, and directors;
28 (7) buy, take, receive, subscribe for, or otherwise ac-
29 quire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or

1 otherwise dispose of, and otherwise use and deal in shares or other
2 interests in, or obligations of, other domestic or foreign corpora-
3 tions, associations, partnerships, or individuals, or direct or indi-
4 rect obligations of the United States or of any other government,
5 state, territory, governmental district or municipality or an instru-
6 mentality of these;

7 (8) make contracts and guarantees, incur liabilities,
8 borrow money at the rates of interest the corporation determines,
9 issue notes, bonds, and other obligations, and secure its obligations
10 by mortgage or pledge of all or any of its property, franchise and
11 income;

12 (9) lend money for its corporate purposes, invest and
13 reinvest its money, and take and hold real and personal property as
14 security for the payment of money loaned or invested;

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

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

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

23 (13) donate for the public welfare or for charitable, scien-
24 tific or educational purposes, and in time of war donate in aid of war
25 activities;

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

28 (15) pay pensions and establish pension plans, pension
29 trusts, profit-sharing plans, stock bonus plans, stock option plans

1 and other incentive plans for its directors, officers, and employees;
2 (16) cease its corporate activities and surrender its corpo-
3 rate franchise;
4 (17) have and exercise the powers of a limited or general
5 partner [PARTNERSHIP] or a joint venturer [ADVENTURER] in association
6 with one or more persons, corporations, partnerships, or associations;
7 (18) have and exercise all powers necessary or convenient to
8 carry out the purposes for which the corporation is organized.

9 * Sec. 2. AS 10.06.025(a) is amended to read:

10 (a) A contract or conveyance made in the name of the corporation
11 that is authorized or ratified by the board, or is done within the
12 scope of the authority, actual or apparent, conferred by the board or
13 within the agency power of the officers executing it, except as the
14 board's authority is limited by law [OTHER THAN THIS CHAPTER], binds
15 the corporation, and the corporation acquires rights under the con-
16 tract, whether the contract is executed or is wholly or in part execu-
17 tory.

18 * Sec. 3. AS 10.06.105(c) is amended to read:

19 (c) A person may not adopt a name that contains the word "corpo-
20 ration", "incorporated", or "limited", or an abbreviation of one of
21 these words, unless the person has been issued a certificate of incor-
22 poration, or, in the case of a foreign corporation, a certificate of
23 authority, by the commissioner. This subsection does not prohibit a
24 limited partnership from using the word "limited" or an abbreviation
25 of "limited" in its name.

26 * Sec. 4. AS 10.06.130 is amended to read:

27 Sec. 10.06.130. USE OF SAME OR DECEPTIVELY SIMILAR NAME. Incor-
28 poration, obtaining a certificate of authority by a foreign corpora-
29 tion, or registration [REGISTRATION] of a corporate name gives the

1 exclusive right to the use of the name. The person who has incorporated,
2 received a certificate of authority, or registered the corporate
3 name under this chapter may enjoin the use of the same or decep-
4 tively similar name and has a cause of action for damages against a
5 person who uses the same or deceptively similar name.

6 * Sec. 5. AS 10.06.230(a) is amended to read:

7 (a) Unless a provision is contained in the articles, the bylaws
8 shall state the number of directors of the corporation or state that
9 the number of directors may not be less than a stated number or more
10 than a stated number, with the exact number of the directors to be
11 fixed, within the limits specified, by approval of the board or the
12 shareholders in the manner provided in the bylaws. [THE STATED MAXI-
13 MUM NUMBER OF DIRECTORS MAY NOT BE GREATER THAN TWO TIMES THE STATED
14 MINIMUM NUMBER MINUS ONE AND THE NUMBER OF MINIMUM NUMBER OF DIRECTORS
15 MAY NOT BE LESS THAN THREE.] If the articles provide for the number
16 of directors, the number of directors may only be changed by an amend-
17 ment to the articles.

18 * Sec. 6. AS 10.06.343 is amended to read:

19 Sec. 10.06.343. STOCK RIGHTS AND OPTIONS. Subject to a pro-
20 vision in its articles, a corporation may create and issue, whether or
21 not in connection with the issuance and sale of any of its shares or
22 other securities, rights or options entitling the holders of the
23 rights or options [SHARES] to purchase from the corporation shares of
24 any class or classes. These rights or options shall be evidenced in
25 the manner the board approves and, subject to the provisions of the
26 articles, must [SHALL] set out the terms upon which, the time within
27 which, and the price at which the shares may be purchased from the
28 corporation upon the exercise of the right or option. If the rights
29 or options are to be issued to directors, officers, or employees of

1 the corporation or of a subsidiary of the corporation and not to the
2 shareholders generally, their issuance shall be authorized by the
3 approval of the outstanding shares or must [SHALL] be consistent with
4 a plan so approved or ratified. In the absence of fraud in the trans-
5 action, the judgment of the board as to the adequacy of the considera-
6 tion received for the rights or options is conclusive.

7 * Sec. 7. AS 10.06.348 is amended to read:

8 Sec. 10.06.348. CERTIFICATES REPRESENTING SHARES. Except as
9 otherwise provided under AS 10.06.349, the [THE] shares of a corpo-
10 ration shall be represented by certificates signed by the president or
11 vice-president and the secretary or an assistant secretary of the
12 corporation, and may be sealed with the seal of the corporation or a
13 facsimile of the seal. The signatures of the president or vice-
14 president and the secretary or assistant secretary upon a certificate
15 may be facsimiles if the certificate is countersigned by a transfer
16 agent or registered by a registrar, other than the corporation itself
17 or an employee of the corporation. If an officer who has signed or
18 whose facsimile signature has been placed on the certificate ceases to
19 be an officer before the certificate is issued, the certificate may be
20 issued by the corporation with the same effect as if the officer were
21 an officer at the date of its issue.

22 * Sec. 8. AS 10.06 is amended by adding a new section to read:

23 Sec. 10.06.349. SHARES WITHOUT CERTIFICATES. (a) Unless the
24 articles or bylaws provide otherwise, the board of directors may
25 authorize the issuance without certificates of some or all of the
26 corporation's classes or series of shares. The authorization does not
27 affect shares that are already represented by certificates until the
28 certificates are surrendered to the corporation.

29 (b) Within a reasonable time after the issuance or transfer of

1 shares without certificates, the corporation shall send the share-
2 holder a written statement giving the information required by AS 10.-
3 06.350 to be on certificates, and, if applicable, the information
4 required by AS 10.06.424(c) to be disclosed to the shareholder when
5 there is no certificate.

6 * Sec. 9. AS 10.06.353 is amended to read:

7 Sec. 10.06.353. FULL PAYMENT REQUIRED FOR CERTIFICATE. A share
8 with or without a certificate may not be issued [FOR A SHARE] until
9 the share is fully paid.

10 * Sec. 10. AS 10.06.355 is amended to read:

11 Sec. 10.06.355. ISSUANCE OF FRACTIONAL SHARES OR SCRIP. (a) A
12 corporation may issue a [CERTIFICATE FOR A] fractional share, and, by
13 action of its board, may issue, instead of a fractional certificate,
14 scrip in registered or bearer form that entitles the holder to receive
15 a [CERTIFICATE FOR A] full share upon the surrender of the scrip
16 aggregating a full share.

17 (b) A [CERTIFICATE FOR A] fractional share entitles the holder
18 to exercise voting rights, to receive dividends, and to participate in
19 the assets of the corporation in the event of liquidation. Unless
20 otherwise provided in the scrip, scrip does not entitle the holder to
21 exercise voting rights, to receive dividends, or to participate in the
22 assets of the corporation in the event of liquidation.

23 (c) The board may issue scrip subject to the condition that it
24 is void if not exchanged for [CERTIFICATES REPRESENTING] full shares
25 before a specified date, or subject to the condition that the shares
26 for which the scrip is exchangeable may be sold by the corporation and
27 the proceeds distributed to the holders of that scrip, or subject to
28 other conditions that [WHICH] the board considers advisable.

29 * Sec. 11. AS 10.06 is amended by adding a new section to read:

1 Sec. 10.06.356. SHARES HELD BY NOMINEES. (a) A corporation may
2 establish a procedure by which the beneficial owner of shares that are
3 registered in the name of a nominee is recognized by the corporation
4 as the shareholder.

5 (b) The procedure may set out

6 (1) the types of nominees to whom it applies;

7 (2) the rights or privileges that the corporation recog-
8 nizes in a beneficial owner;

9 (3) the manner in which the procedure is selected by the
10 nominee;

11 (4) the information that must be provided when the proce-
12 dure is selected;

13 (5) the period when selection of the procedure is effec-
14 tive; and

15 (6) other aspects of the rights and duties created.

16 * Sec. 12. AS 10.06.358(c) is amended to read:

17 (c) For the purposes of this chapter, the amount of a distribu-
18 tion payable in property shall be determined on the basis of the value
19 at which the property is carried on the corporation's financial state-
20 ments in accordance with this section [GENERALLY ACCEPTED ACCOUNTING
21 PRINCIPLES].

22 * Sec. 13. AS 10.06.358(d) is amended to read:

23 (d) Only a corporation that classifies its assets as current
24 assets and fixed assets in accordance with this section [UNDER GEN-
25 ERALLY ACCEPTED ACCOUNTING PRINCIPLES] is governed by (a)(2)(B) of
26 this section.

27 * Sec. 14. AS 10.06.358 is amended by adding new subsections to read:

28 (e) For the purposes of this section, the board of directors may
29 base a determination that a distribution is not prohibited either on

1 financial statements prepared in accordance with generally accepted
2 accounting principles or on the basis of accounting practices and
3 principles that are fair and reasonable in the circumstances.

4 (f) Financial statements and determinations prepared or arrived
5 at in accordance with generally accepted accounting principles are
6 fair and reasonable. The fair and reasonable quality of statements
7 and determinations prepared under other practices and principles shall
8 be proved by the corporation.

9 * Sec. 15. AS 10.06.385(b) is amended to read:

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

- 19 (1) the class or series of shares or part of any class of
20 series of shares to be redeemed;
- 21 (2) the date fixed for redemption;
- 22 (3) the redemption price; and
- 23 (4) the place at which the shareholders may obtain payment
24 of the redemption price upon surrender of their share certificates or
25 certificateless shares.

26 * Sec. 16. AS 10.06.385(d) is amended to read:

27 (d) On or before the date fixed for redemption of redeemable
28 shares, a corporation may deposit with a bank or trust company in this
29 state as a trust fund a sum sufficient to redeem the shares called on

1 the date fixed for redemption, with irrevocable instructions to the
2 bank or trust company to publish a notice of redemption, or to com-
3 plete the publication if begun, and to pay, on and after or before the
4 date fixed for redemption, the redemption price of the shares to
5 holders of the shares upon the surrender of their share certificates
6 or certificateless shares. From and after the date of the deposit
7 with the bank or trust company, although before the date fixed for
8 redemption, the shares called for redemption are redeemed and divi-
9 dends on those shares cease to accrue after the date fixed for redemp-
10 tion. The deposit constitutes full payment of the shares to their
11 holders and from and after the date of the deposit the shares are no
12 longer outstanding and the holders of the shares cease to be share-
13 holders with respect to the shares and have no rights with respect to
14 the shares except the right to receive from the bank or trust company
15 payment of the redemption price of the shares without interest, upon
16 surrender of the certificates for the shares or the certificateless
17 shares, and any right to convert the shares that may exist and con-
18 tinue for a period fixed by the terms of the shares.

19 * Sec. 17. AS 10.06.405 is amended by adding a new subsection to read:

20 (d) The failure of a corporation to hold an annual meeting at
21 the time stated in or fixed under its bylaws does not cause the corpo-
22 ration to forfeit its status, does not cause a dissolution of the
23 corporation, and does not affect the validity of corporate action.

24 * Sec. 18. AS 10.06.410 is amended to read:

25 Sec. 10.06.410. NOTICE OF SHAREHOLDERS' MEETINGS. Written or
26 printed notice stating the place, day, and hour of the meeting and, in
27 the case of a special meeting, the purpose for which the meeting is
28 called, shall be delivered not less than 20 or more than 60 days
29 before the date of the meeting, either personally or by mail, by or at

1 the direction of the president, the secretary, the officer, or persons
2 calling the meeting, to each shareholder of record entitled to vote at
3 the meeting. If mailed, the notice is considered delivered when
4 deposited with postage prepaid in the United States mail addressed to
5 the shareholder at the address of the shareholder as it appears on the
6 stock transfer books of the corporation, or, if the shareholder has
7 filed with the secretary of the corporation a written request that
8 notice be mailed to a different address, addressed to the shareholder
9 at [THE CORPORATION SHALL MAIL THE NOTICE TO] the new address. An
10 affidavit of the secretary or other person giving the notice or of a
11 transfer agent of the corporation that the notice required by this
12 section has been given, is prima facie evidence of the facts stated in
13 the affidavit.

14 * Sec. 19. AS 10.06.418(b) is amended to read:

15 (b) A proxy is not valid after the expiration of 11 months from
16 the date of the proxy unless it qualifies as an irrevocable proxy
17 under (e) of this section. A proxy continues in full force and effect
18 until revoked by the person executing it, except as provided in this
19 section. A person may revoke a proxy by a writing delivered to the
20 corporation stating that the proxy is revoked, by a subsequent proxy
21 executed by the person executing the prior proxy and delivered [PRE-
22 SENTED] to the corporation [MEETING], or by attendance at the meeting
23 and voting in person by the person executing the proxy. The dates
24 contained on the forms of proxy presumptively determine the order of
25 execution, regardless of the postmark dates on the envelopes in which
26 the proxies are mailed.

27 * Sec. 20. AS 10.06.418(e) is amended to read:

28 (a) Notwithstanding (c) of this section, a proxy that states
29 that it is irrevocable is irrevocable for the period specified in the

1 proxy when it is held by the following or a nominee of the following:

2 (1) a person to whom the shares are pledged for the perfor-
3 mance of an obligation or the payment of a debt [PLEDGEE];

4 (2) a person who has purchased, agreed to purchase, or
5 holds an option to purchase the shares or a person who has sold a
6 portion of the shares of the person in the corporation to the maker of
7 the proxy;

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

13 (4) a person designated by or under an agreement under
14 AS 10.06.425 [AS 10.06.425(b)]; or

15 (5) a beneficiary of a trust with respect to shares held by
16 the trust.

17 * Sec. 21. AS 10.06.418(f) is amended to read:

18 (f) Notwithstanding the period of irrevocability specified in a
19 proxy, the proxy becomes revocable when the pledge is redeemed, the
20 option or agreement to purchase is terminated or the seller no longer
21 owns any shares of the corporation or dies, the period of employment
22 provided for in the contract of employment has terminated, the agree-
23 ment under AS 10.06.425 [AS 10.06.425(b)] has terminated, or the
24 person ceases to be a beneficiary of the trust. In addition, a proxy
25 may be made irrevocable if it is given to secure the performance of a
26 duty or to protect a title, either legal or equitable, until the
27 happening of events that, by its terms, discharge the obligations
28 secured by it.

29 * Sec. 22. AS 10.06.418(g) is repealed and reenacted to read:

1 (g) Notwithstanding a provision in a proxy that makes the proxy
2 irrevocable, a proxy is revoked when the shares are transferred unless
3 the transferee knows about the provision or the proxy, or the irrevocability or notice of the proxy appears on a certificate representing
4 the shares.
5

6 * Sec. 23. AS 10.06.420(e) is repealed and reenacted to read:

7 (e) Except as prohibited in this subsection, shares standing in
8 the name of another corporation may be voted by the officer, agent, or
9 proxy as the bylaws of the other corporation may prescribe, or, in the
10 absence of a provision, as the board of the other corporation may
11 determine. The shares of a corporation may not be voted if they are
12 owned, directly or indirectly, by a second corporation, domestic or
13 foreign, and the first corporation owns, directly or indirectly, a
14 majority of the shares entitled to vote for the directors of the
15 second corporation.

16 * Sec. 24. AS 10.06.420(i) is amended to read:

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

25 * Sec. 25. AS 10.06 is amended by adding a new section to read:

26 Sec. 10.06.421. CORPORATION'S ACCEPTANCE OF CERTAIN DOCUMENTS.
27 (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if
28 acting in good faith, is entitled to accept the document and give it
29

1 effect as the act of the shareholder.

2 (b) If the name signed on a document does not correspond to the
3 name of its shareholder, the corporation, if acting in good faith, is
4 nevertheless entitled to accept the document and give it effect as the
5 act of the shareholder if

6 (1) the shareholder is an entity and the name signed pur-
7 ports to be that of an officer or agent of the entity;

8 (2) the name signed purports to be that of an administra-
9 tor, executor, guardian, or conservator representing the shareholder
10 and, if the corporation requests, evidence of fiduciary status accept-
11 able to the corporation has been presented with respect to the docu-
12 ment;

13 (3) the name signed purports to be that of a receiver or
14 trustee in bankruptcy of the shareholder and, if the corporation
15 requests, evidence of this status acceptable to the corporation has
16 been presented with respect to the document;

17 (4) the name signed purports to be that of a pledgee,
18 beneficial owner, or attorney-in-fact of the shareholder and, if the
19 corporation requests, evidence acceptable to the corporation or the
20 signatory's authority to sign for the shareholder has been presented
21 with respect to the document;

22 (5) two or more persons are the shareholder as cotenants or
23 fiduciaries, the name signed purports to be the name of at least one
24 of the coowners, and the person signing appears to be acting on behalf
25 of all the coowners.

26 (c) The corporation is entitled to reject a document if the
27 secretary or other officer or agent authorized to tabulate votes,
28 acting in good faith, has a reasonable basis to doubt the validity of
29 the signature on the document or the signatory's authority to sign for

1 the shareholder.

2 (d) The corporation and its officer or agent who accepts or
3 rejects a document in good faith and in accordance with the standards
4 of this section are not liable in damages to the shareholder for the
5 consequences of the acceptance or rejection.

6 (e) Corporate action based on the acceptance or rejection of a
7 document under this section is valid unless a court of competent
8 jurisdiction determines otherwise.

9 (f) In this section, "document" means vote, consent, waiver, or
10 proxy appointment.

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

12 Sec. 10.06.424. SHAREHOLDER AGREEMENTS. (a) The shareholders
13 of a corporation may enter into an agreement among all the sharehold-
14 ers to impose restrictions on the transfer or registration of shares
15 of the corporation to

16 (1) maintain the corporation's status, including election
17 of S corporation status under 26 U.S.C. (Internal Revenue Code), when
18 the status depends on the number or identity of its shareholders; in
19 this paragraph, "S corporation" has the meaning given in 26 U.S.C.
20 1361;

21 (2) preserve exemptions under federal or state securities
22 laws;

23 (3) ensure that shareholders will be able to control who
24 may participate in the corporation's business;

25 (4) ensure that shareholders who wish to retire will be
26 able to liquidate their investments without disrupting corporate af-
27 fairs;

28 (5) ensure that estates of deceased shareholders will be
29 able to liquidate the decedents' shares in the corporation;

1 (6) obligate the shareholder first to offer to the corpo-
2 ration or other persons, separately, consecutively, or simultaneously,
3 an opportunity to acquire the restricted shares;

4 (7) obligate the corporation or other persons, separately,
5 consecutively, or simultaneously, to acquire the restricted shares;

6 (8) require the corporation, the holder of any class of its
7 shares, or another person, to approve the transfer of restricted
8 shares, if the requirement is not manifestly unreasonable; and

9 (9) accomplish another reasonable purpose.

10 (b) The shareholders of a corporation may enter into an agree-
11 ment among all of the shareholders to provide for the selection of
12 directors and officers.

13 (c) The existence of a shareholders' agreement that is consis-
14 tent with this section shall be noted conspicuously on the front or
15 back of each stock certificate together with a statement indicating
16 that the agreement, or a copy of the agreement, is on file at the
17 principal office of the corporation and that the corporation will
18 allow inspection of the agreement or furnish a copy of the agreement
19 without charge. If the share has been issued under AS 10.06.349
20 without a certificate, a statement that discloses the existence of the
21 shareholders' agreement shall be sent within a reasonable time to the
22 shareholder.

23 (d) Shares issued before compliance with (c) this section, if
24 acquired by a person without knowledge of the shareholders' agreement,
25 are not subject to the shareholders' agreement.

26 (e) A shareholders' agreement may not alter or waive AS 10.06.-
27 350, 10.06.358, 10.06.360, 10.06.430, 10.06.438, 10.06.544, 10.06.570,
28 10.06.633, 10.06.648, or 10.06.653.

29 (f) In this section, "shares" includes a security that is

1 convertible into shares or that carries a right to subscribe for or
2 acquire shares.

3 * Sec. 27. AS 10.06.425(a) is amended to read:

4 (a) Any number of shareholders of a corporation may create a
5 voting trust for the purpose of conferring upon a trustee or trustees
6 the right to vote or otherwise represent their shares, for a period
7 not to exceed 10 years, by entering into a written voting trust agree-
8 ment specifying the terms and conditions of the voting trust, by
9 depositing a copy of the agreement with the corporation at its regis-
10 tered office, and by transferring their shares to the trustee or
11 trustees for the purpose of the agreement. The trustee or trustees
12 shall keep a record of the holders of voting trust certificates evi-
13 dencing a beneficial interest in the voting trust, giving the names
14 and addresses of all the holders and the number and class of the
15 shares for which the voting trust certificates are issued, and shall
16 deposit a copy of the record with the corporation at its registered
17 office. The copies of the voting trust agreement and the record
18 deposited with the corporation are subject to the same right of ex-
19 amination by a shareholder of the corporation, in person or by agent
20 or attorney, as are the books and records of the corporation under
21 AS 10.06.430, and the copies of the agreement and the record are
22 subject to examination by a holder of record of voting trust certifi-
23 cates, either in person or by agent or attorney, at a reasonable time
24 for a proper purpose. This subsection does not invalidate an irrevoc-
25 able proxy complying with AS 10.06.418(a).

26 * Sec. 28. AS 10.06.425(b) is repealed and reenacted to read:

27 (b) Shareholders may enter into a voting agreement or any other
28 agreement if the agreement is consistent with this chapter.

29 * Sec. 29. AS 10.06.430(a) is amended to read:

1 (a) A corporation organized under this chapter shall keep cor-
2 rect and complete books and records of account, minutes of proceedings
3 of its shareholders, board, and committees of the board, and a record
4 of its shareholders, containing the names and addresses of all share-
5 holders and the number and class of the shares held by each. The
6 books and [,] records of account, [AND] minutes, and the record of
7 shareholders may be in written form or in any other form capable of
8 being converted into written form within a reasonable time.

9 * Sec. 30. AS 10.06.430(b) is amended to read:

10 (b) A corporation organized under this chapter shall make its
11 books and records of account, or certified copies of them, reasonably
12 available for inspection and copying at the registered office or
13 principal place of business in the state [BY THE DEPARTMENT OR] by a
14 shareholder of the corporation. Shareholder inspection shall be upon
15 written demand stating with reasonable particularity the purpose of
16 the inspection. The inspection may be in person or by agent or attor-
17 ney, at a reasonable time and for a proper purpose. Only books and
18 records of account, minutes, and the record of shareholders directly
19 connected [RELEVANT] to the stated purpose of the inspection may be
20 inspected or copied.

21 * Sec. 31. AS 10.06.430(c) is amended to read:

22 (c) An officer or agent who, or a corporation that, refuses to
23 allow a shareholder, or the agent or attorney of the shareholder, to
24 examine and make copies from its books and records [RECORD] of ac-
25 count, minutes, and record of shareholders, for a proper purpose, is
26 liable to the shareholder for a penalty in the amount of 10 percent of
27 the value of the shares owned by the shareholder or \$5,000, whichever
28 is greater, in addition to other damages or remedy given the share-
29 holder by law. It is a defense to an action for penalties under this

1 section that the person suing has within two years sold or offered for
2 sale a list of shareholders of the corporation or any other corpo-
3 ration or has aided or abetted a person in procuring a list of share-
4 holders for this purpose, or has improperly used information secured
5 through a prior examination of the books and records of account, [OR]
6 minutes, or record of shareholders of the corporation or any other
7 corporation, or was not acting in good faith or for a proper purpose
8 in making the person's demand.

9 * Sec. 32. AS 10.06.433(a) is amended to read:

10 (a) The board shall send an annual report to the shareholders
11 not later than 180 days after the close of the fiscal year or the date
12 on which notice of the annual meeting in the next fiscal year is sent
13 under AS 10.06.410, whichever is first. A [, UNLESS IN THE CASE OF A]
14 corporation with less than 100 holders of record of its shares, as
15 determined under AS 10.06.408, is exempt from this annual requirement
16 unless its articles or bylaws impose the requirement [IS EXPRESSLY
17 WAIVED IN THE ARTICLES OF INCORPORATION]. The annual report must
18 [SHALL] contain a balance sheet as of the end of the fiscal year and
19 an income statement and statement of changes in financial position for
20 the fiscal year, accompanied by a report on the fiscal year by inde-
21 pendent accountants or, if there is no such report, the certificate of
22 an authorized officer of the corporation that the statements were pre-
23 pared without audit from the books and records of the corporation.

24 * Sec. 33. AS 10.06.435(a) is amended to read:

25 (a) An action may be brought in the right of a domestic or
26 foreign corporation to procure a judgment in its favor by a holder of
27 shares of the corporation of voting trust certificates of the corpo-
28 ration, or of a beneficial interest in shares [OR CERTIFICATES] of the
29 corporation.

1 * Sec. 34. AS 10.06.450(c) is repealed and reenacted to read:

2 (c) A director is not acting in good faith if the director has
3 knowledge concerning the matter in question that makes reliance other-
4 wise permitted by (b) of this section unwarranted.

5 * Sec. 35. AS 10.06.453(a) is repealed and reenacted to read:

6 (a) The board of directors shall consist of one or more members.
7 The number of directors shall be fixed by, or in the manner provided
8 in, the bylaws, unless the articles fix the number of directors, in
9 which case a change in the number of directors shall be made only by
10 amendment of the articles. If the number of directors is not other-
11 wise set, the number of directors is three.

12 * Sec. 36. AS 10.06.453(b) is amended to read:

13 (b) Except as otherwise provided in AS 10.06.230 and this sec-
14 tion, the [THE] number of directors may be increased or decreased by
15 amendment of the articles or the bylaws or by action of the board or
16 the shareholders under the specific provisions of an article or a
17 bylaw adopted by approval of the outstanding shares. A change in the
18 number of directors, including by amendment of the articles, is [,]
19 subject to the following limitations:

20 (1) if [IF] the board is authorized by the articles or the
21 bylaws to change the number of directors, whether by amending the
22 bylaws or by taking action under the specific provision of an article
23 or a bylaw adopted by approval of the outstanding shares, the amend-
24 ment or action shall require the vote of a majority of the entire
25 board; [.]

26 (2) a [A] decrease in the number of directors may not
27 shorten the term of an incumbent director.

28 * Sec. 37. AS 10.06.465(d) is amended to read:

29 (d) Notwithstanding AS 10.06.453(e), a [A] director may resign

1 effective upon giving written notice to the chairman of the board, the
2 president, the secretary, or the board of directors of the corpo-
3 ration, unless the notice specifies a later time for the effectiveness
4 of the resignation. [NOTWITHSTANDING THE EFFECTIVENESS OF THE RESIG-
5 NATION, UNDER AS 10.06.453(d) A DIRECTOR HOLDS OFFICE UNTIL A SUCCE-
6 SOR HAS BEEN ELECTED AND QUALIFIED.] If the resignation is effective
7 at a future time, a successor may be elected to take office when the
8 resignation becomes effective.

9 * Sec. 38. AS 10.06.470(a) is amended to read:

10 (a) A regular or special meeting of the board or a committee of
11 the board may be called by the chairman of the board, the president, a
12 vice-president, the secretary, or a director [TWO DIRECTORS] and may
13 be held at any place inside or outside this state.

14 * Sec. 39. AS 10.06.470(b) is amended to read:

15 (b) A regular meeting of the board or a committee designated by
16 the board may be held without notice if the time and place of the
17 meeting is fixed by the bylaws or the board. A special meeting of the
18 board or a committee designated by the board shall be held as provided
19 in the bylaws or, in the absence of bylaw provision, after [UPON]
20 either notice in writing sent 10 [20] days before the meeting or
21 notice by electronic means, personal messenger, or comparable person-
22 to-person communication given at least 72 hours before the meeting.
23 Unless otherwise provided in the bylaws [IN THE CASE OF A SPECIAL
24 MEETING] the notice of a special meeting shall include disclosure of
25 the business to be transacted and the purpose of the meeting.

26 * Sec. 40. AS 10.06.483(d) is amended to read:

27 (d) Subject to the provisions of AS 10.06.020 [AS 10.06.020(a)],
28 a note, mortgage, evidence of indebtedness, contract, [SHARE CERTIFI-
29 CATE,] conveyance, or other instrument in writing, and an assignment

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

9 * Sec. 41. AS 10.06.483(e) is amended to read:

10 (e) An officer shall perform the duties of the office [AN OFFI-
11 CER] in good faith and with that degree of care, including reasonable
12 inquiry, that an ordinarily prudent person in a like position would
13 use under similar circumstances. Except as provided in (f) of this
14 section, an officer is entitled to rely on information, opinions,
15 reports or statements, including financial statements and other finan-
16 cial data in each case prepared or presented by legal counsel or
17 public accountants.

18 * Sec. 42. AS 10.06.483 is amended by adding a new subsection to read:

19 (f) An officer is not acting in good faith if the officer has
20 knowledge concerning the matter in question that makes reliance other-
21 wise permitted by (e) of this section unwarranted.

22 * Sec. 43. AS 10.06.576(f) is amended to read:

23 (f) At the time of filing the notice of election to dissent, or
24 within 30 days after the shareholder has filed the notice, the share-
25 holder shall submit to the corporation, or to its transfer agent, the
26 certificates representing the shares for which payment is claimed, if
27 certificates have been issued. The corporation or its transfer agent
28 shall note conspicuously on the certificates, or on a separate docu-
29 ment if certificates have not been issued for the shares, that a

1 notice of election has been filed, and shall return the certificates
2 or the separate document to the shareholder or to the person who
3 submitted them on the shareholder's behalf. Unless a court, for good
4 cause shown, otherwise directs, a shareholder who fails to comply with
5 this subsection loses the right to dissent granted by this chapter, if
6 the corporation gives written notice that the right to dissent will be
7 lost to the shareholder within 45 days from the date that the share-
8 holder filed the notice of election to dissent. If the corporation
9 fails to exercise this notice option in a timely manner, the share-
10 holder retains the right to dissent granted by this chapter.

11 * Sec. 44. AS 10.06.576(g) is repealed and reenacted to read:

12 (g) When a share of a dissenting shareholder under (f) of this
13 section is transferred, the new certificate must bear a notation
14 similar to that made under (f) of this section and state the name of
15 the original dissenting holder of the shares, or, if the share is a
16 certificateless share, the corporation must give the transferee a
17 written notice stating that a notice of election to dissent has been
18 filed and giving the name of the original dissenting holder. A trans-
19 feree acquires only the rights in the corporation that the original
20 dissenting shareholder had at the time of transfer.

21 * Sec. 45. AS 10.06.578(c) is amended to read:

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

24 (1) advance payment to each shareholder who submitted the
25 share certificates to the corporation, or to whom notice was sent if
26 the shares were certificateless, as provided in AS 10.06.576(f), of
27 the amount offered under (a) of this section; or

28 (2) a statement to a shareholder who has not submitted the
29 share certificates, if certificates were issued for the shares, that

1 advance payment of the amount offered under (a) of this section will
2 be made by the corporation promptly upon submission of the certifi-
3 cates.

4 * Sec. 46. AS 10.06.580(f) is amended to read:

5 (f) Unless prohibited by AS 10.06.578(g), within 60 days after
6 the final determination of the proceeding, the corporation shall pay
7 to each dissenting shareholder who is a party the amount determined
8 under (e) of this section in exchange for the surrender of the certifi-
9 cate representing the dissenter's shares or the dissenter's shares if
10 the shares are certificateless. Upon payment of the judgment, the
11 dissenting shareholder ceases to have an interest in the shares.

12 * Sec. 47. AS 10.06.605(b) is amended to read:

13 (b) A corporation [THE FOLLOWING CORPORATIONS] may elect by
14 approval of the board to wind up and dissolve if the [A] corporation
15 [THAT] has:

- 16 (1) been adjudicated bankrupt;
17 (2) disposed of all of its assets and has not conducted any
18 business for a period of five years immediately preceding the adoption
19 of the resolution to dissolve the corporation; or [AND]
20 (3) issued no shares.

21 * Sec. 48. AS 10.06.628(d) is amended to read:

22 (d) For purposes of this section, "shareholder" includes a
23 beneficial owner of shares who has entered into an agreement under
24 AS 10.06.425(a) [AS 10.06.425].

25 * Sec. 49. AS 10.06.630(e) is amended to read:

26 (e) For the purposes of this section, "shareholder" includes a
27 beneficial owner of shares who has entered into an agreement under
28 AS 10.06.425(a) [AS 10.06.425].

29 * Sec. 50. AS 10.06.633(a) is amended to read:

1 (a) A corporation may be dissolved involuntarily by the commis-
2 sioner if

3 (1) the corporation is delinquent six months in filing its
4 biennial report or in paying its biennial corporation tax [A LICENSE
5 FILING FEE] or a penalty;

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

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

11 (4) the corporation has failed for two years to complete
12 dissolution under a certificate of election under AS 10.06.608 to
13 dissolve;

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

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

19 (7) the corporation is 90 days delinquent in filing notice
20 of change of an officer, director, alien affiliate, or five percent
21 shareholder, as required by this chapter [; OR

22 (8) THE CORPORATION IS CONTROLLED BY A PERSON WHO WILFULLY
23 FAILS TO COMPLY WITH AS 10.06.155 WITHIN 30 DAYS AFTER RECEIPT BY THE
24 CORPORATION OR ITS REGISTERED AGENT OF NOTICE OF NONCOMPLIANCE SENT BY
25 THE DEPARTMENT BY CERTIFIED MAIL].

26 * Sec. 51. AS 10.06.828 is amended to read:

27 Sec. 10.06.828. INCORPORATION OR FILING FEES. A domestic or
28 foreign corporation that is required to file articles of incorpo-
29 ration, an application for a certificate of authority, [OR] amendatory

1 articles, or other application with the department, except corporate
2 entities organized under AS 10.20 and corporate entities organized
3 under the laws of the United States or the laws of a state or terri-
4 tory of the United States or the laws of a foreign country for the
5 same purposes as those allowed under AS 10.20, shall pay to the com-
6 missioner a filing fee established by the department by regulation.
7 The filing fee shall be uniform and fixed without reference to the
8 amount of authorized shares.

9 * Sec. 52. AS 10.06.855 is amended to read:

10 Sec. 10.06.855. PAYMENTS TO BE MADE IN ADVANCE. Fees and
11 charges provided for in this chapter, including the biennial corpo-
12 ration tax, shall [MAY] be paid in advance.

13 * Sec. 53. AS 10.06.960 is amended to read:

14 Sec. 10.06.960. CORPORATIONS ORGANIZED UNDER ALASKA NATIVE
15 CLAIMS SETTLEMENT ACT [P.L. 92-203]. (a) A corporation organized
16 under 43 U.S.C. 1601 - 1629e as amended [43 U.S.C. 1601 - 1629a]
17 (Alaska Native Claims Settlement Act) shall be incorporated under and
18 is subject to this chapter except

19 (1) each corporation shall issue without further considera-
20 tion the number of shares of common stock that may be necessary to
21 comply with the requirements of the act [43 U.S.C. 1601 - 1629a] and
22 all stock so issued is considered fully paid and nonassessable when
23 issued;

24 (2) unless otherwise provided in the articles of incorpo-
25 ration, the capital

26 (A) is considered the consideration for the initial
27 issuance of shares; and

28 (B) of a corporation organized under the act [43
29 U.S.C. 1601 - 1629a] includes the

1 (i) land or interests in it conveyed to the
2 corporation by the United States under the act [43 U.S.C.
3 1601 - 1629a], except that which is required to be conveyed
4 under 43 U.S.C. 1613(c)(1), (3), and (4), entered at its
5 fair value to the corporation upon receiving the conveyance
6 of it; and

7 (ii) money, when received under 43 U.S.C. 1605 and
8 43 U.S.C. 1608, that is retained by the corporation and that
9 is not immediately distributed or required to be distributed
10 under 43 U.S.C. 1606(j).

11 (b) Notwithstanding the provisions of AS 10.06.305 - 10.06.390,
12 payment from the money of a corporation organized under the act [43
13 U.S.C. 1601 - 1629a] that is required by the language of the act [43
14 U.S.C. 1601 - 1629a] to be distributed to shareholders or to other
15 corporations so organized is not a distribution to its shareholders as
16 defined in AS 10.06.990.

17 (c) Notwithstanding the provisions of AS 10.06.546, a plan of
18 merger, consolidation, or exchange in which each participating corpo-
19 ration either (1) was organized under the act [43 U.S.C. 1601 - 1629a
20 (ALASKA NATIVE CLAIMS SETTLEMENT ACT)], within the same one of the 12
21 regions of Alaska established under the act [43 U.S.C. 1601 - 1629a],
22 or (2) resulted from the prior merger, consolidation, or exchange of
23 other similarly organized corporations within the same region, is
24 approved if it receives the affirmative vote of the holders of at
25 least a majority of the outstanding shares of each corporation. If a
26 class of shares of a corporation specified in this subsection is
27 entitled to vote as a class, the plan of merger, consolidation, or
28 exchange is approved if it receives the affirmative vote of the hold-
29 ers of at least a majority of the outstanding shares of each class of

1 shares entitled to vote as a class and of the total outstanding
2 shares. Notwithstanding AS 10.06.574 - 10.06.582, a plan of merger,
3 consolidation, or exchange approved under this section before Decem-
4 ber 19, 1991, may not include a right of shareholders to dissent.

5 (d) A director or officer of a corporation organized under the
6 act [43 U.S.C. 1601 - 1629a] is not personally liable to the contract
7 creditors specified in AS 10.06.490 except as otherwise provided by
8 law.

9 * Sec. 54. AS 10.06.960 is amended by adding new subsections to read:

10 (e) Notwithstanding the provisions of AS 10.06.502 - 10.06.510,
11 a corporation organized under the act may amend its articles by a vote
12 of the board of directors in order for the corporation to comply with
13 the mandatory requirements of the act.

14 (f) Notwithstanding the other provisions of this chapter, a
15 corporation organized under the act is governed by the act to the
16 extent the act is inconsistent with this chapter, the corporation may
17 take any action, including amendment of its articles, authorized by
18 the act, and the action is considered to be approved and adopted if
19 approved under the act. An amendment approved under the act and
20 delivered to the commissioner under AS 10.06.512 shall be filed by the
21 commissioner under AS 10.06.910, and a certificate of amendment shall
22 be issued.

23 (g) Notwithstanding AS 10.06.358, if there are no retained
24 earnings, the directors of a corporation organized under the act may
25 declare and pay distributions in cash or property out of its net
26 profits for the fiscal year in which the distribution is declared and
27 for the preceding fiscal year, except when the corporation is insol-
28 vent under AS 10.06.360. For the purposes of this subsection, a
29 corporation's debts include the amounts it is required to distribute

1 under 43 U.S.C. 1606(i) and 43 U.S.C. 1606(j). The directors may
2 determine the net profits derived from the exploitation or liquidation
3 of wasting assets without consideration of the depletion of those
4 assets resulting from lapse of time, consumption, liquidation, or
5 exploitation of the assets, and a distribution declared from those net
6 profits shall be described, concurrently with distribution of the net
7 profits to shareholders, as a distribution from wasting assets without
8 consideration of the depletion of the assets. In this subsection,
9 "wasting assets" means timber resources and subsurface estates.

10 (h) Notwithstanding AS 10.06.358, the directors of a corporation
11 organized under the act may, from time to time, distribute to its
12 shareholders in partial liquidation a portion of the corporation's
13 assets out of capital, in cash or property, except that a distribution

14 (1) may not be made at a time when the corporation is
15 insolvent under AS 10.06.360;

16 (2) may not be made unless the articles of incorporation
17 authorize the board to make the distribution or the distribution is
18 authorized by the affirmative vote of the holders of at least two-
19 thirds of the outstanding shares;

20 (3) when made, shall be identified as a distribution in
21 partial liquidation and the amount per share shall be disclosed to the
22 shareholders concurrently with the distribution.

23 (i) In this section, "act" means 43 U.S.C. 1601 - 1629e (Alaska
24 Native Claims Settlement Act).

25 * Sec. 55. AS 10.06.990(12) is amended to read:

26 (12) "control" [OR "CONTROLLING INTEREST"] means

27 (A) owning directly or indirectly, or having the power
28 to vote, 25 percent or more of a class of voting securities of a
29 corporation subject to this chapter; or

1 (B) influencing or affecting in any substantive manner
2 the election of a majority of the directors or trustees of a
3 corporation subject to this chapter;

4 * Sec. 56. AS 10.06.990 is amended by adding a new paragraph to read:

5 (47) "entire board" means the total number of directors that
6 the corporation has if there are no vacancies.

7 * Sec. 57. APPLICABILITY TO CERTAIN CORPORATIONS WITH CLASSIFIED DIREC-
8 TORS. (a) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation
9 is organized under 43 U.S.C. 1601 - 1629e and if the corporation's bylaws,
10 as the bylaws exist immediately before July 1, 1989, contain a provision
11 that complies with former AS 10.05 and provides for a board of directors
12 consisting of three or fewer classes of directors with terms of office
13 extending not longer than the third annual meeting after the directors'
14 election, the corporation may continue to elect directors in the classes
15 and for the terms provided under the bylaws.

16 (b) The application of (a) of this section terminates if on or after
17 July 1, 1989, the corporation modifies or eliminates the provisions of the
18 corporation's bylaws on the classification and terms of office of the
19 corporation's directors.

20 (c) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation
21 is not covered by (a) of this section, if the corporation is organized
22 under former AS 10.05, and if the corporation's bylaws, as the bylaws exist
23 immediately before July 1, 1989, contain a provision that complies with
24 former AS 10.05 and provides for a classified board of directors, the
25 corporation may continue to elect directors in the classes and for the
26 terms provided under the bylaws until July 1, 1994.

27 * Sec. 58. APPLICABILITY OF CUMULATIVE VOTING PROVISIONS TO CERTAIN
28 CORPORATIONS. Notwithstanding AS 10.06.420(d) and 10.06.460(a)(2), if a
29 corporation is organized under former AS 10.05 and if the corporation's

1 bylaws, as the bylaws exist immediately before July 1, 1989, contain a
2 provision that complies with former AS 10.05 and prohibits cumulative
3 voting, the corporation may continue to operate without cumulative voting
4 until July 1, 1994.

5 * Sec. 59. AS 10.06.210(1)(L), 10.06.155, and 10.06.230(b) are re-
6 pealed.

7 * Sec. 60. This Act takes effect July 1, 1989.