

HB

315

MIDDLETON, TIMME & MCKAY

LAW OFFICES
SUITE 1800
550 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501

R COLLIN MIDDLETON
WILLIAM H. TIMME
D JOHN MCKAY
JACQUELYN R. LICE

TELEPHONE
10071 276-3390
TELECOPIER
10071 276-8238

JOAN F. CONNORS
OLEN PRICE

February 15, 1991

Mr. Larry Kimball
Alaska Federation of Natives
1577 "C" Street, Suite 100
Anchorage, Alaska 99501

VIA FAX

Re: Amendments to Alaska Probate Code and Uniform Transfers to Minors Act.

Dear Larry:

Enclosed please find an interoffice memorandum from Alison Balen to Mark Kroloff discussing amendments which need to be made to the Alaska Probate Code and the Uniform Transfers to Minors Act ("UTMA"). UTMA, as you may or may not be aware, was passed in the last legislative session and went into effect on January 1, 1991. It replaces the former Uniform Gifts to Minors Act.

As I indicated to you on the telephone, while I do not necessarily agree with CIRI's interpretation of the current law in all respects, I do concur with their recommendations for change. One point, however, is worthy of note. In her memorandum, Alison discusses the potential problem arising from a hiatus in the transition provisions of UTMA which did not appear to cover transfers made during calendar year 1990. I'm not sure if Alison was working with an earlier version of the legislation or what, but my copy of the codified statute validates transfers which were made prior to December 31, 1990. Thus, the potential transition problems which she discusses in the latter part of her memorandum would appear not to exist.

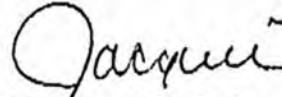
As you are aware, Mark Kroloff and Alison Balen, on behalf of CIRI, myself on behalf of Koniag, and Sealaska are working on this matter. We will try and have some draft language to you by the beginning of March, as you suggested.

Mr. Larry Kimball
February 15, 1991
Page 2

Please let us know if any members of the AFN legislative committee have any questions or comments on any proposed legislation.

Sincerely,

MIDDLETON, TIMME & MCKAY



Jacquelyn R. Luke

JRL:ef

Enclosure

cc: Uwe Gross, w/o Enclosure
Mark Kroloff, w/o Enclosure
Alison Balen, w/o Enclosure
Chris McNeil, w/o Enclosure

CIRI COOK INLET REGION, INC.

Inter - Office Memorandum

TO: Mark W. Kroloff, Vice President & General Counsel
FROM: Alison Balen, Attorney ~~AS~~
DATE: February 7, 1991 .
SUBJECT: Amendments to Title 13

I. Introduction.

Title 13 of the Alaska Statutes includes the Probate Code and rules governing guardianships, trust administration, and transfers to minors. Certain Probate Code provisions that address the transfer of ANCSA stock were set to expire on December 18, 1991, to coincide with the date that stock restrictions were originally to be lifted under ANCSA. Now that stock alienability is no longer tied to that date, amendment of those Probate Code provisions should be sought during the current legislative session, before the provisions expire.

If the Probate Code provisions are to go before the legislature, consideration should be given to whether amendment of any other sections of Title 13 should also be sought. The other section of Title 13 which poses particular problems for transfer of ANCSA stock is the new Alaska Uniform Transfers to Minors Act (AUTMA); we can foresee, and in some cases are already experiencing, problems arising from the application of AUTMA provisions to our procedure for establishing and administering custodianships of stock for minors.

An outline of proposed revisions follows.

II. The Probate Code.

A. Corporate administration of stock probate (AS 13.16.705). This is the fundamental provision for the corporations' administration of ANCSA stock transfers outside of probate. Under this section, ANCSA stock is not subject to probate, and its value is not considered in determining the value of an estate, until December 18, 1991. Likewise, Alaska is made the situs of ANCSA stock, but only until December 18, 1991. I believe the other corporations are generally aware of the expiration of these provisions and the prevailing feeling appears to be that they should be extended now that December 18, 1991 is no longer the triggering date for lifting of stock restrictions.

The biggest issue raised by AS 13.16.705 is, of course, whether ANCSA stock should continue to pass outside of probate under administration by the ANCSA corporation that issued it. We conclude that it should, for all of the following reasons: (1) to save

MEMO TO MARK W. KROLOFF
RE: AMENDMENTS TO TITLE 13
FEBRUARY 7, 1991
PAGE 2

shareholders the time and money required in probate court proceedings; (2) since many people will simply not use the probate process, to prevent issues that would otherwise arise when a corporation is called upon to transfer stock that has not been probated in the courts; (3) to protect the restricted ownership of the corporations by ensuring that the stock passes according to the testator's wishes or the applicable rules of intestacy; and (4) to ensure that sensitivity is given to such Native issues as cultural adoption.

In addition, since valuation problems remain so long as the stock is restricted, the Probate Code provision for omitting the value of ANCSA stock from the value of an estate should be extended beyond December 18, 1991. That provision should apply to an ANCSA corporation for so long as its stock remains restricted from sale.

The situs of ANCSA stock is important in that the Probate Code generally covers the property of nonresidents only if it is located in Alaska. AS 13.06.060(2). Thus, in most cases, the stock of a nonresident shareholder would not be subject to Alaska law without such a provision. Amendment to continue the effect of the situs provision (at least for so long as the stock remains restricted) is necessary.

Finally, while both village and regional corporations currently probate their own stock, there may be some ambiguity under AS 13.16.705 regarding the village corporations' authority to do so. The statute should be amended to remove any such ambiguity and to expressly allow any ANCSA corporation, village or regional, to determine the appropriate distribution of its own stock under the Probate Code.

RECOMMENDATION:

Seek an amendment to AS 13.16.705 that would extend the deadline of December 18, 1991, by providing that that section applies to a particular ANCSA corporation so long as its stock remains restricted from sale. (Once restrictions are lifted for a particular corporation's stock, AS 13.16.705 would no longer apply.) The probate, valuation, and situs issues are thereby resolved. In addition, amend the statute to provide that all ANCSA corporations will probate their own stock, so long as that stock remains restricted.

We know that some of the other corporations currently have attorneys working on amendments to sections of Title 13. In order to save time and money, and to present a united front to the legislature, we should suggest that those attorneys be instructed to coordinate their efforts and come up with draft legislation on which the corporations can generally agree.

B. Intestate share of surviving spouse (AS 13.11.012). This provision of the Probate Code governs the intestate share of a surviving spouse in ANCSA stock. A surviving spouse's share of any other type of property, if there are surviving parents or surviving issue, is the first \$50,000 of the estate plus one-half of the balance (or simply one-half of the estate if there are surviving issue that are not issue of the spouse). AS 13.11.010. For

Memo to Mark W. Kroloff
Re: Amendments to Title 13
February 7, 1991
Page 3

ANCSA stock, however, the surviving spouse's share until December 18, 1991 is all the stock if there are no surviving issue, or one-half of the stock if there are. AS 13.11.012.

Thus, ANCSA stock is treated uniquely in two ways: (1) the spouse's share is not diluted by the survival of parents; and (2) the spouse gets a straight one-half rather than a certain amount off the top and one-half of the balance. One reason for this unique treatment is no doubt the valuation difficulties inherent with ANCSA stock. We therefore recommend that the deadline of December 18 in this provision of the Probate Code also be extended, so that it remains in effect so long as the stock of the particular issuing corporation remains restricted.

RECOMMENDATION:

Seek an amendment to AS 13.11.012 that would provide that it applies to the stock of a particular corporation so long as the stock is restricted from sale.

III. The Alaska Uniform Transfers to Minors Act.

A. Generally. The AUTMA provides for the creation and transfer of custodial property both through gifts made during the donor's lifetime and through transfers made upon the donor's death. Application of the AUTMA to inter vivos gifts of ANCSA stock is fairly straightforward. However, application of the AUTMA to ANCSA stock transfers presents several difficulties simply because that statute was not drafted with the unique characteristics of ANCSA stock in mind.

The AUTMA contains a section on transfer of custodial property under a provision of a will or trust (AS 13.46.040), and a section on transfers in the event of intestacy (AS 13.46.050). Although it has been suggested that an ANCSA corporation would be operating under one of these two provisions when it probates stock, those provisions both apply only to transfers by a personal representative or trustee. There is an ambiguity as to whether an ANCSA corporation technically qualifies as either a personal representative or trustee when it transfers stock on the death of a shareholder.

Another section of the AUTMA applies to the issuance of stock in an ANCSA corporation; it provides that stock "that a minor is entitled to receive under [ANCSA] shall be issued by the corporation to a custodian," and then requires that the custodian be determined according to a strict order of priority. AS 13.46.085. That section is an almost verbatim version of the provision for ANCSA stock found in the old AUGMA (Alaska Uniform Gifts to Minors Act), and CIRI believes that it applies only to the original issuance of stock by the corporation and not to subsequent transfers by a shareholder.

Thus, there is only one section of the AUTMA that squarely applies to a corporation handling a subsequent transfer of stock to a minor: the section providing for transfers by third party obligors. AS 13.46.060. This section applies, for instance, to a bank holding a joint account of which the minor is the surviving payee, or an insurance company

holding policy proceeds payable to a minor. See Uniform Laws Annotated, Model Uniform Transfers to Minors Act, p. 256. It authorizes such a third party to deliver the property to any custodian already appointed for the minor or, in the absence of such an appointment, to an adult member of the minor's family or a trust company unless the property exceeds \$5,000 in value. Because it raises a valuation question, even application of this section to ANCSA stock is problematic.

Clearly, none of the AUTMA provisions was drafted expressly to deal with subsequent transfers of ANCSA stock. Rather than trying to make one of the general provisions fit the unique circumstances of an ANCSA corporation, we propose amending the "Native corporation" section already present in the AUTMA so that it expressly applies to subsequent transfers of stock rather than just to the original issuance of stock.

B. Proposed amendment of the AUTMA section on ANCSA stock. Any new section of the AUTMA for Native corporations should be drafted to resolve three potential problems that exist under the AUTMA as it stands now: (1) the time for termination of custodianships may differ depending on how and when those custodianships were established, creating a record-keeping nightmare for the corporations; (2) the AUTMA section that now applies to ANCSA stock transfers by a corporation does not establish an order of priority for the corporation to follow if no custodian has been appointed by will (it simply requires transfer to "any adult member of the minor's family"); and (3) the effect of the AUTMA on custodianships established during 1990 is unclear. Each of these issues is discussed below.

Under the AUTMA, custodianships created by gift or will terminate at age 21, while those created in the event of intestacy or upon transfers by third party obligors terminate at age 18. AS 13.46.190. So long as any ambiguity exists regarding which section of the AUTMA applies to transfers by ANCSA corporations upon the death of a shareholder, the possibility remains that a corporation could have some custodianships that terminate at age 18 and others that terminate at age 21. Two additional points further complicate the determination of when a custodianship terminates: Testators can (within limits imposed by the AUTMA) set their own time for termination of a custodianship (AS 13.46.195); and the AUTMA may apply to extend or cut short the duration of a custodianship already in existence.¹ In order to simplify procedure, therefore, we recommend that any amendment provide that all custodianships of ANCSA stock terminate at age 18, and that the provision allowing transferors to set a different time of termination does not apply to ANCSA stock custodianships. Since our existing custodianships are set up to terminate at age 18, the question whether the AUTMA can extend or shorten the period will then not arise. (If it should become an issue, however, the amendment could provide that the AUTMA will not apply to change the duration of

¹ The AUTMA provides that it cannot extend the duration of a custodianship in existence on January 1, 1990. The same rule, however, does not apply to custodianships created after January 1, 1990, but before the AUTMA's effective date of January 1, 1991. In addition, it could presumably apply to shorten the duration of a custodianship.

any ANCSA stock custodianship in existence on January 1, 1991, when the AUTMA became effective.)

Since the "Native corporation" section of the AUTMA (AS 13.46.085) currently sets out an order of priority that provides strict guidance to the corporations in appointing a custodian upon the original issuance of stock, that order should be made to apply to subsequent transfers of stock as well. Thus, if a shareholder did not appoint a custodian in his or her will the corporation will appoint (in the following order): the legal guardian of the minor, if any; (2) a parent of the minor, as selected by the parents; or (3) an adult member of the minor's family (as defined by statute). However, if a shareholder nominates the custodian by will, the corporation should be required to honor that nomination.

The AUTMA sets out the following rules for determining when it takes effect and how it applies to existing custodianships:

- (1) The AUTMA takes effect, by its own terms, on January 1, 1991.
- (2) The AUTMA "applies to" transfers "within [its] scope" made after December 31, 1989, so long as the transfer either purports to have been made under the old law (the AUGMA) or the similar law of another state. 13.46.200².
- (3) The AUTMA "validates" transfers of custodial property as defined in the AUTMA made before January 1, 1990, even if not specifically authorized by the old law. 13.46.210.
- (4) The AUTMA applies to all transfers made before January 1, 1990 that were authorized by the AUGMA unless its application impairs constitutionally vested rights or extends the duration of custodianships in existence on January 1, 1990. 13.46.210.

Sorting through the exact effect of the AUTMA on a particular custodianship may be difficult. It appears that under the rules set out above, the AUTMA (including its durational provisions) will apply to custodial transfers to an heir or devisee in 1990 as long as they are generally "within its scope"; however, those transfers are not expressly "validated." The AUTMA will also apply to pre-1990 transfers, and those transfers are validated, except that it will not apply to extend the duration of a custodianship.

² When Alaska adopted this provision of the Model Uniform Transfers to Minors Act, the date was changed either intentionally or accidentally. The Model Act's version of this section provides that the Act applies to transfers made pursuant to the AUGMA (the old law) after the Act's effective date, and was intended to cure the problem that might arise if after the AUTMA became law someone inadvertently cited the AUGMA rather than the AUTMA. Alaska's version, however, provides that the AUTMA applies to transfers purportedly made under the AUGMA within the year before the AUTMA became effective. Similarly, the Model Act validates all transfers made prior to its effective date if the transfer falls within the terms of the Act, while Alaska's version provides that all transfers made prior to January 1, 1990 (one year before the effective date) are validated. The result is to create a curious window for transfers made within 1990, since none of those transfers is validated.

It may be that the exact effect of the AUTMA on a particular pre-1991 custodianship will not often become an issue, particularly since the AUTMA itself provides that it will not apply to extend the duration of an existing custodianship.

However, if an AUTMA amendment were to (1) validate transfers of custodial property as defined in the AUTMA made during 1990, and (2) make all ANCSA stock custodianships terminate at age 18, any potential problems caused by the interplay between the effective date and the applicability / validation dates of the AUTMA will be greatly diminished.

C. Summary. The AUTMA contains several ambiguities with respect to the establishment by ANCSA corporations of stock custodianships. In particular, problems arise regarding how to determine when a custodianship has terminated and therefore when stock should be transferred from the custodian to the minor, and regarding who a corporation should appoint as custodian. The current AUTMA section on Native corporations should be expanded to resolve the ambiguities and provide specific rules for ANCSA stock custodianship.

RECOMMENDATION:

Seek an amendment to AS 13.46.085 (the section of the AUTMA governing Native corporations) so that it expressly applies to subsequent transfers of ANCSA stock. Add several rules of special application to Native corporations: (1) a corporation may transfer the stock to a custodian without regard to valuation of the stock; (2) the transfer must be to the custodian nominated by the shareholder, if any, and otherwise according to the statutory order of priority; (3) all custodianships of ANCSA stock terminate when the minor turns 18 (and a testator or other transferor cannot provide otherwise); and (4) all transfers of custodial property, as defined in the AUTMA, made during 1990, are validated by the AUTMA.



March 12, 1991

Larry Kimball
Alaska Federation of Natives
1577 C Street, Suite 100
Anchorage, Alaska 99501

Dear Mr. Kimball:

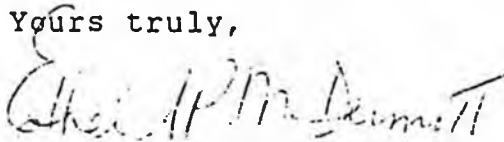
Thank you for taking the time to discuss with me necessary amendments to Alaska Statutes 13.11.012 (governing the intestate share of a surviving spouse in ANCSA stock), and 13.16.705 (excluding ANCSA stock from probate and exempting its value in the determination of a deceased shareholder's estate or allowance).

Arctic Slope Regional Corporation (ASRC) has not undertaken an exhaustive review of the Alaska Statutes to see which other sections require amendment by the Alaska legislature. We understand the Alaska Federation of Natives (AFN) has taken the lead in assessing which amendments are desirable, and enclose suggested language to deal with the two above-referenced statutes. The amendments are pretty straight forward, eliminating only the references to December 18, 1991.

I had requested, by telephone, that the amendments heretofore offered be sent by telefax so I could compare the language and hopefully not duplicate efforts. Since no information was received, I assume it is not extant.

Please call me if you have any questions.

Yours truly,


Ethel A.P. McDermott
Paralegal

Enclosures

Amendment to Alaska Statute 13.16.705.

SEC. 13.16.705. Inheritance of certain stock. (a) Until the date on which all of the outstanding shares of Settlement Common or other inalienable stock of a corporation organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act), as amended, are cancelled and shares of alienable stock are issued in accordance with the Alaska Native Claims Settlement Act, as, amended, no stock is subject to probate nor shall its value be considered in determining the value of an estate or allowance under this title.

(b) Upon the death of the holder, if the stock does not pass by the testamentary disposition clause on the stock certificate, properly executed, it passes by will or intestate succession. In such a case, the determination of the person entitled to the stock shall be made by the appropriate regional corporation on the basis of an affidavit, furnished to it and to the corporation which issued the stock, showing the right of the person entitled to the stock to receive it and to have a new certificate issued. The affidavit, accepted in good faith by a corporation, has the same effect as an affidavit under AS 13.16.685, and the person entitled to the stock, if the affidavit is not accepted, has the remedy set out in AS 13.16.685. In case of dispute as to the person entitled to receive the stock, a person claiming ownership may bring an independent action in the Superior Court.

(c) Unless a separate form is provided which substantially satisfies the requirements of this subsection and which is distributed to the same extent as the stock certificate, each certificate representing stock in a corporation organized under 43 U.S.C. 1601 - 1628, as amended, shall bear provisions, on its reverse side, containing blanks to be filled in by the owner, constituting a last will and testament for the purposes of this section and 43 U.S.C. 1606(h) insofar as the shares represented by that certificate are concerned during the period of its inalienability. A clause may be signed by the owner, dated and notarized. This testamentary disposition may be changed from time to time or revoked, and it governs unless there is a subsequently executed formal will making the specific disposition of the stock.

(d) when ownership of shares passes by devise or inheritance or as a result of court action, the shares shall be partitioned insofar as practicable, in whole shares among those entitled to them.

(e) If a deceased shareholder has failed to dispose of the stock by will and has no heirs under the applicable laws of intestacy, the shares escheat to the corporation.

(f) The situs of inalienable stock of all corporations organized under 43 U.S.C. 1601 - 1628 as amended, is Alaska.

(g) Where appropriate, terms in this section have the meanings given in AS 13.06.050. In this section "stock" includes membership in a corporation organized under AS 10.20 and inchoate rights to stock.

Alaska Statute 13.11.012, as amended:

SEC. 13.11.012 Share of the Spouse in certain stock. Until the date on which all of the outstanding shares of inalienable Settlement Common or any other inalienable stock of a corporation organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) are cancelled and shares of alienable stock are issued in accordance with the provisions under the Alaska Native Claims Settlement Act as amended, the intestate share of the surviving spouse in such corporation's stock is:

- (1) If there is no surviving issue all;
- (2) If the descendant is survived by issue, one-half of it.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 6, 1991

SUBJECT: Sectional summary of (Work Order No. 7-LS1267)

TO: Representative Eileen MacLean
Attn: Rena

FROM: Theresa L. Bannister *tlb*
Legislative Counsel

You have requested a sectional summary of the above described bill relating to the inheritance and transfer of Alaska Native Claims Settlement Act (ANCSA) stock.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 identifies the ANCSA stock that is subject to the section. Updates the ANCSA citation.

Section 2 applies the subsection to ANCSA stock that is settlement common stock or other inalienable stock. Indicates that when the holder of the stock dies, the stock can pass by using the form authorized under (b) of the section, as well as by the testamentary disposition clause on the stock certificate. Identifies which corporation determines who is entitled to the stock. Authorizes the corporation to use an agent for this determination. Makes technical changes.

Section 3 makes technical changes to correspond to the changes made by other sections of the bill. Deletes "in a corporation organized under 43 U.S.C. 1601 - 1628" because the definition of "stock" in sec. 6 of the bill already covers this. Deletes "during the period of its inalienability" because this requirement is established by sec. 7 of the bill. Inserts "certificate, form, or" to reference the other documents that can be used to dispose of the stock.

Section 4 substitutes "stock" for "shares" in order to pull in the definition of "stock" in sec. 6 of the bill.

Representative Eileen MacLean

May 6, 1991

Page 2

Section 5 makes some technical changes. "Inalienable" and "of all corporations organized under 43 U.S.C. 1601 - 1628" are deleted because they are covered in the definition of "stock" in sec. 6 of the bill. Due to ANCSA amendments, the date is no longer applicable and is deleted.

Section 6 defines "stock" for the section.

Section 7 declares that AS 13.16.705 only applies to stock while it is inalienable.

Section 8 requires that a minor's ANCSA stock or membership in an ANCSA corporation be held by a custodian. Updates the ANCSA citation. Makes other technical changes.

Section 9 authorizes a person transferring ANCSA stock to a minor to nominate a custodian for the minor's stock. Indicates that if the transferor doesn't nominate a custodian, the order of priority set out in the subsection is to be used to select a custodian. Makes a technical change in the definition of "member of the minor's family" as it applies to the section.

Section 10 updates the citation for ANCSA. Defines a minor to be an individual under 18 years of age. Defines "stock" for the section.

Section 11 establishes that a minor's stock is transferred to the minor when the minor reaches 18, or to the minor's estate, or heirs, or their custodians, if the minor dies.

Section 12 repeals AS 13.46.085(d)(1).

Section 13 makes secs. 8 - 12 of the Act retroactive to January 1, 1991, to the extent retroactivity is not prohibited by a constitutional provision.

Section 14 makes the Act effective immediately.

If I may be of further assistance, please advise.

TLB:gc

91-251.glc

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723



WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

District 22

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nuiqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

MEMORANDUM

Date: May 7, 1991

To: Representative Dave Donley, Chairman
House Judiciary Committee

From: Representative Eileen P. MacLean

Rep. MacLean

This is to request a hearing in House Judiciary Committee for HB 315, relating to the inheritance and transfer of stock in corporations organized under the Alaska Native Claims Settlement Act (ANSCA).

The bill has two primary goals: 1) to bring state statutes into compliance with federal law relating to the alienability of Native Corporation stock; and, 2) to clarify that the termination date for custodianships is 18 years of age.

Under ANSCA, as originally enacted, all Native Corporation stock was inalienable. It could not be bought, sold, pledged, given as a gift or otherwise transferred, except upon death and in certain other very limited circumstances. The restrictions on alienation were to expire on December 18, 1991. However, in 1987, Congress amended ANSCA to give Native Corporations the right to continue the restrictions on alienability of their stock indefinitely. Since the alienability restrictions will continue under federal law, state law must also be amended to provide for their continuation.

When originally enacted, ANSCA stock held by a minor was covered under the Uniform Gifts to Minors Act. In 1990, the Legislature replaced the Uniform Gift to Minors Act with the Uniform Transfers to Minors Act. However, certain changes made in the Uniform Transfers to Minor Act affected the

custodianship of ANSCA stock in ways which were not intended. One of the primary changes was the age at which the custodianship terminated. Under the old law, all custodianships terminated at age 18. Under the new law, the age at which a custodianship terminates depends on whether the stock was received by gift or inheritance and whether the age was specified for termination. This bill clarifies that custodianships terminate at age 18,.

If you have any questions, please contact Rena Bukovich of my staff at 465-4525.

attachment

SPONSOR STATEMENT

CSHB 315 (Judiciary)

The purpose of House Bill 315 is to bring state statutes into compliance with federal law relating to the alienability of Native Corporation stock; and, to correct unforeseen difficulties arising from the Uniform Transfers to Minors Act, enacted by the Legislature in 1990 to replace the Uniform Gifts to Minors Act.

Under the Alaska Native Claims Settlement Act (ANCSA), as originally enacted, all Native Corporation stock was inalienable. It could not be bought, sold, pledged, given as a gift or otherwise transferred, except upon death and in certain other very limited circumstances. The restrictions on alienation were to expire on December 18, 1991. However, in 1987, Congress amended ANCSA to give Native Corporations the right to continue the restrictions on alienability of their stock indefinitely. Since the alienability restrictions will continue under federal law, state law must also be amended to provide for their continuation.

When originally enacted, ANCSA stock held by a minor was covered under the Uniform Gifts to Minors Act. In 1990, the Legislature replaced the Uniform Gift to Minors Act with the Uniform Transfers to Minors Act. However, certain changes made in the Uniform Transfers to Minor Act affected the custodianship of ANCSA stock in ways which were not intended. One of the primary changes was the age at which the custodianship terminated. Under the old law, all custodianships terminated at age 18. Under the new law, the age at which a custodianship terminates depends on whether the stock was received by gift or inheritance and whether the age was specified for termination. The bill simplifies the procedure for transferring ANCSA stock and clarifies that custodianships terminate at age 18.

The Judiciary Committee Substitute reflects the changes enacted by SB 283 last year to extend the December 18, 1991, date to June 30, 1992; and, makes minor technical changes suggested by Judiciary committee staff.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 315

Revision Date: _____ Department Affected: Department of Law
 Title: "...inheritance and transfer of stock...Alaska Native Claims Settlement Act." BRU: Legal Services
 Sponsor: Representative Maclean Component: Operations
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

| | | | |
|--|--|---|---|
| | | 9 | 3 |
|--|--|---|---|

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| REVENUE FUND SOURCE: | | | | | | |
|----------------------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|--------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER FUND SOURCE: | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) This bill amends Title 13 relating to the transfer and inheritance of stock in corporations organized under the Alaska Native Claims Settlement Act. It further recognizes certain stock as inalienable and eliminates the December 18, 1991, date in state law when stock may be freely transferred. These are private transactions that will not have a fiscal impact on the department.

Prepared By: Richard I. Regan, Director Phone: 465-3672
 Division: Administrative Services Bureau Date: January 21, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 21, 1992

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 6, 1991

FURTHER REFERRALS:

Date of Committee Action: 4/24/92

The JUDICIARY Committee considered:

HB 315

HOUSE BILL NO. 315

INHERITANCE & TRANSFER OF ANCSA STOCK

"An Act relating to the inheritance and transfer of stock in corporations organized under the Alaska Native Claims Settlement Act; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 315 (JUD) the same title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | DNP | NR | AM |
|--------------------|----|-----------------------|-----|----|----|
| <i>[Signature]</i> | - | <i>David Dowley</i> | | ✓ | |
| <i>[Signature]</i> | ✓ | <i>Mark Hatley</i> | | X | |
| | | <i>Terry Marshall</i> | | ✓ | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

David Dowley
CHAIRMAN'S SIGNATURE



LAWS OF ALASKA

1991

Source

CSSB 283(JUD)

Chapter No.

49

AN ACT

Relating to the inheritance and transfer of stock in corporations organized under the Alaska Native Claims Settlement Act.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 15, 1991
Actual Effective Date: September 13, 1991

AN ACT

1 Relating to the inheritance and transfer of stock in corporations organized under the
2 Alaska Native Claims Settlement Act.

1 issued the stock, showing the right of the person entitled to the stock to receive it and to have
2 a new certificate issued. The affidavit, accepted in good faith by a corporation, has the same
3 effect as an affidavit under AS 13.16.685, and the person entitled to the stock, if the affidavit is
4 not accepted, has the remedy set out in AS 13.16.685. In case of dispute as to the person entitled
5 to receive the stock, a person claiming ownership may bring an independent action in the superior
6 court.

7 * Sec. 3. AS 13.16.705(e) is amended to read:

8 (e) The situs of inalienable stock of all corporations organized under 43 U.S.C. 1601 -
9 1628 is Alaska, until June 30, 1992 [DECEMBER 18, 1991].

6 * Section 1. AS 13.11.012 is amended to read:

7 Sec. 13.11.012. SHARE OF THE SPOUSE IN CERTAIN STOCK. Until June 30, 1992
8 [DECEMBER 18, 1991], the intestate share of the surviving spouse in stock in a corporation
9 organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims
10 Settlement Act) is:

- 11 (1) if there is no surviving issue, all of it;
- 12 (2) if the decedent is survived by issue, one-half of it.

13 * Sec. 2. AS 13.16.705(a) is amended to read:

14 (a) Until June 30, 1992 [DECEMBER 18, 1991], stock in a corporation organized under
15 the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) ~~that~~
16 [WHICH] is inalienable under either that Act or its articles of incorporation is not subject to
17 probate nor shall its value be considered in determining the value of an estate or allowance under
18 this title. Upon death of the holder, if the stock does not pass by the testamentary disposition
19 clause on the stock certificate, properly executed, it passes by will or intestate succession. In
20 such a case, the determination of the person entitled to the stock shall be made by the appropriate
21 regional corporation on the basis of an affidavit, furnished to it and to the corporation which

Explanation of Certain Amendments To Title 18

Affecting ANCSA Corporations

1. Amendment to A.S. 13.16.705. Inheritance of Certain Stock

This section was originally enacted by the Legislature to implement Section 7(h) (43 U.S.C. 1606(h)) of the Alaska Native Claims Settlement Act (ANCSA). Under ANCSA, as originally enacted, all Native corporation stock was inalienable. It could not be bought, sold, pledged, given as a gift, or otherwise transferred, except upon death and in certain other very limited circumstances.

The Legislature, in 1972, adopted A.S. 13.16.705 to address the inheritance of ANCSA stock. Because of the inherent difficulties in determining the value of the stock, which would be necessary if the stock were to pass through probate, the decision was made to exempt the stock from probate. Instead, the heirs to both village corporation stock and regional corporation stock would be determined by the appropriate regional corporation on the basis of either a will, a special form provided by the corporation as a separate document or on the back of the stock certificate, or the intestacy laws of the state. The determination was to be made on the basis of affidavits furnished to the corporation showing the right of the person entitled to the stock to receive it. A corporation which accepted the affidavit in good faith was protected from liability for transfer in the same manner as is a person who transfers property on the basis of an affidavit pursuant to A.S. 13.16.685 (Collection of Personal Property by Affidavit and Summary Administration Procedure). Any person who disputed the inheritance determination had the right to bring an independent action in Superior Court to determine ownership.

When ANCSA was originally enacted, the restrictions on alienation of Native corporation stock were to expire on December 18, 1991. In order to track with the federal legislation, therefore, A.S. 13.16.705 also expired on December 18, 1991.

In 1987, however, Congress amended ANCSA to, among other things, give Native corporations the right to continue the restrictions on the alienability of their stock indefinitely. A corporation could also eliminate the alienability restrictions if they desired, or issue new stock which would not be subject to restrictions on alienation. Most, if not all of the Native corporations, however, intend to continue the restraints on alienation.

Since the alienability restrictions will continue after December 18, 1991, A.S. 13.16.705 will still be needed. The proposed legislation therefore re-enacts A.S. 13.16.705, with the following changes:

1. Applies to non-alienable Native corporation stock as long as the stock remains inalienable. Any Native corporation stock not

subject to restraints on alienation would not be subject to this section, and would be treated as any other stock.

2. Provides that inheritance determinations will be made by the corporation which issued the stock, or its agent. Under current law, inheritance determinations are to be made by the regional corporation for all village corporations within its region as well as for its own stock. A number of village corporations, however, possess both the ability and the interest in making their own determinations. The proposed legislation allows those village corporations which choose to make their own inheritance determinations, and allows others to designate the regional corporation or other entity as their agent for purposes of making the determination.
3. Certain minor changes were made to make the provision internally consistent. Reference to stock certificates were eliminated, as Alaska law now allows uncertificated securities. Citations to ANCSA were updated to reflect amendments to that Act.

2. **Amendment to A.S. 13.11.012. Share of the Spouse in Certain Stock**

This section was also enacted to implement ANCSA, and expires on December 18, 1991. It modified the surviving spouse's intestate share of Native corporation stock to eliminate any dilution as a result of the survival of the parents (who typically would have received their own stock) and to allow the share to be determined without valuing the stock. It has also been redrafted to apply to inalienable ANCSA stock for as long as the stock remains inalienable.

3. **Amendment to A.S. 13.46.085. Native corporations: custodians**

The original version of this section was enacted in 1972 to implement ANCSA, and was codified at A.S. 45.60.016 as part of the Uniform Gift to Minors Act. It provided that Native corporation stock issued to a minor was to be held by a custodian, selected in accordance with the priority set out in the statute. It also provided that the provisions of the Uniform Gift to Minors Act would apply to the custodianship, with certain exceptions which were set out in the statute.

In 1990, the Legislature replaced the Uniform Gift to Minors Act with the Uniform Transfers to Minors Act, codified at A.S. 13.46.010 et. seq. The provision dealing with Native corporation stock, with only minor editorial modifications, was re-enacted as A.S. 13.46.085.

Unfortunately, certain changes made by the Uniform Transfers to Minors Act affected the custodianship of ANCSA stock in ways which were not intended by the Legislature. One of the primary changes was the age at which the custodianship terminated. Under the old law, all custodianships terminated at age 18. Under the new law, however, the age at which the custodianship

terminates depends upon whether the minor received the stock by gift, inheritance, or intestate succession, and whether or not the transferor specified a particular age for termination. There is no public policy reason for this difference, and it will make record keeping by the Native corporations needlessly complex. It is also likely to engender bad feelings among shareholders, who will not understand why one custodianship terminates at age 18, and another at age 25.

There is also some ambiguity in both the existing law and the prior law which the proposed legislation eliminates. Although most, if not all, of the Native corporations appoint custodians for all Native corporation stock owned by minors, the existing law refers to the appointment of a custodian for stock "issued" by a Native corporation. This language raises the question as to whether the term "issued" was intended to include stock which was not originally issued to a minor, but was transferred by gift or inheritance. The proposed legislation makes it clear that the section applies to all Native corporation stock held by a minor, whether by original issue or transfer.

The proposed legislation gives persons who transfer Native corporation stock to minors, whether through gift or inheritance, the right to nominate a custodian if they so desire. In the absence of such nomination, the custodian is determined by the corporation according to the priority set out in the statute, which remains unchanged from the existing law. All custodianships terminate at age 18. All other provisions of the section remain unchanged.

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

Secondary disputes, arbitration.

(b) The Secretary may, on request made within one year of the date of enactment of this Act, by representative and responsible leaders of the Native associations listed in subsection (a), merge two or more of the twelve regions: *Provided*, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

Region merge.

Limitation.

(c) If a majority of all eligible Natives eighteen years of age or older who are not permanent residents of Alaska elect, pursuant to subsection 5(c), to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, the Secretary shall establish such a region for the benefit of the Natives who elected to be enrolled therein, and they may establish a Regional Corporation pursuant to this Act.

Thirteenth region.

(d) Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this Act so long as it is organized and functions in accordance with this Act. The articles of incorporation shall include provisions necessary to carry out the terms of this Act.

Incorporation.

(e) The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after the date of enactment of this Act. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

Management.

(g) The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this Act, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

Stock, issuance.

(h) (1) Except as otherwise provided in paragraph (2) of this subsection, stock issued pursuant to subsection (g) shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that for a period of twenty years after the date of enactment of this Act the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated: *Provided*, That such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce or child support.

Stockholders' rights.

Stock transfer.

(2) Upon the death of any stockholder, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy, except that (A) during the twenty-year period after the date of enactment of this Act such stock shall carry voting rights only if the holder thereof through inheritance also is a Native, and (B), in the event the deceased stockholder fails to dispose of his stock by will and has no heirs under the applicable laws of intestacy, such stock shall escheat to the Regional Corporation.

Stock, reissuance.

(3) On January 1 of the twenty-first year after the year in which this Act is enacted, all stock previously issued shall be deemed to be canceled, and shares of stock of the appropriate class shall be issued without restrictions required by this Act to each stockholder share for share.

Certain natural resource revenues, distribution.

(i) Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this Act shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 5. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

Corporate funds, distribution.

(j) During the five years following the enactment of this Act, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 6 (Alaska Native Fund), and under subsection (i) (revenues from the timber resources and subsurface estate patented to it pursuant to this Act), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under section 6 shall be distributed to the stockholders.

(k) Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of residents in all villages.

(l) Funds distributed to a Village Corporation may be withheld until the village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

(m) When funds are distributed among Village Corporations in a region, an amount computed as follows shall be distributed as dividends to the class of stockholders who are not residents of those villages: The amount distributed as dividends shall bear the same ratio to the amount distributed among the Village Corporations that the number of shares of stock registered on the books of the Regional Corporation in the names of nonresidents of villages bears to the number of shares of stock registered in the names of village residents: *Provided*, That an equitable portion of the amount distributed as dividends may be withheld and combined with Village Corporation funds to finance projects that will benefit the region generally.

2

"(s) 'Alienability restrictions' means the restrictions imposed on Settlement Common Stock by section 7(h)(1)(B);

"(t) 'Settlement Trust' means a trust—

"(1) established and registered by a Native Corporation under the laws of the State of Alaska pursuant to a resolution of its shareholders, and

"(2) operated for the sole benefit of the holders of the corporation's Settlement Common Stock in accordance with section 39 and the laws of the State of Alaska."

ISSUANCE OF STOCK

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g)(1) SETTLEMENT COMMON STOCK.—(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

"(B)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to—

"(I) Natives born after December 18, 1971,

"(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, or

"(III) Natives who have attained the age of 65, for no consideration or for such consideration and upon such terms and conditions as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

"(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

"(iii) The amendment authorized by clause (i) may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 37(d)) shall be deemed canceled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

"(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be deemed to be amended to authorize such class vote.

"(C)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other

distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(2) OTHER FORMS OF STOCK.—(A) A Regional Corporation may amend its articles of incorporation to authorize the issuance of shares of stock other than Settlement Common Stock in accordance with the provisions of this paragraph. Such amendment may provide that—

"(i) preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such shares, or

"(ii) issuance of such shares shall permanently preclude the corporation from—

"(I) conveying assets to a Settlement Trust, or

"(II) issuing shares of stock without adequate consideration as required under the laws of the State.

"(B) The amendment authorized by subparagraph (A) may provide that the stock to be issued shall be one or more of the following—

"(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation—

"(I) dividend rights,

"(II) voting rights, and

"(III) liquidation preferences;

"(ii) made subject to one or more of—

"(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

"(II) the restriction described in paragraph (1)(B)(iii); and

"(iii) restricted in issuance to—

"(I) Natives who have attained the age of sixty-five;

"(II) other identifiable groups of Natives or identifiable groups of descendants of Natives defined in terms of general applicability and not in any way by reference to place of residence or family;

"(III) Settlement Trusts; or

"(IV) entities established for the sole benefit of Natives or descendants of Natives, in which the classes of beneficiaries are defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

"(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued—

"(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

"(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to the individuals or entities described in subparagraph (B)(iii)).

"(D) During any period in which alienability restrictions are in effect, no stock whose issuance is authorized by subparagraph (A) shall be—

"(i) issued to, or for the benefit of, a group of individuals composed only or principally of employees, officers, and directors of the corporation; or

"(ii) issued more than thirteen months after the date on which the vote of the shareholders on the amendment authorizing the issuance of such stock occurred if, as a result of the

"(h)(1) RIGHTS AND RESTRICTIONS.—(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

"(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

"(ii) permit the holder to receive dividends or other distributions from the corporation; and

"(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

"(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be—

"(i) sold;

"(ii) pledged;

"(iii) subjected to a lien or judgment execution;

"(iv) assigned in present or future;

"(v) treated as an asset under—

"(I) title 11 of the United States Code or any successor statute,

"(II) any other insolvency or moratorium law, or

"(III) other laws generally affecting creditors' rights; or

"(vi) otherwise alienated.

"(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native—

"(i) pursuant to a court decree of separation, divorce, or child support;

"(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

"(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, or nephew.

"(2) INHERITANCE OF SETTLEMENT COMMON STOCK.—(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless canceled in accordance with subsection (g)(1)(B)(iii)) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be canceled.

"(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of intestate succession to a person not a Native or a descendant of a Native after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 if—

"(i) the corporation—

"(I) amends its articles of incorporation to authorize such purchases, and

"(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

5

issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

“(3) DISCLOSURE REQUIREMENTS.—(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) shall specify—

“(i) the maximum number of shares of any class or series of stock that may be issued, and

“(ii) the maximum number of votes that may be held by such shares.

“(B)(i) If the board of directors of a Regional Corporation intends to propose an amendment pursuant to paragraph (2) which would authorize the issuance of classes or series of stock that, singly or in combination, could cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purposes of electing directors, the shareholders of such corporation shall be expressly so informed.

“(ii) Such information shall be transmitted to the shareholders in a separate disclosure statement or in another informational document in writing or in recorded sound form both in English and any Native language used by a shareholder of such corporation. Such statement or informational document shall be transmitted to the shareholders at least sixty days prior to the date on which such proposal is to be submitted for a vote.

“(iii) If not later than thirty days after issuance of such disclosure statement or informational document the board of directors receives a prepared concise statement setting forth arguments in opposition to the proposed amendment together with a request for distribution thereof signed by the holders of at least 10 per centum of the outstanding shares of Settlement Common Stock, the board shall either distribute such statement to the shareholders or provide to the requesting shareholders a list of all shareholder's names and addresses so that the requesting shareholders may distribute such statement.

“(4) SAVINGS.—(A)(i) No shares of stock issued pursuant to paragraphs (1)(C) and (2) shall carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m). No shares of stock issued pursuant to paragraph (1)(B) shall carry such rights unless authorized pursuant to paragraph (1)(B)(iv).

“(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall apply the ratio last computed pursuant to subsection (m) prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 for purposes of distributing funds pursuant to subsections (j) and (m).

“(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues pursuant to subsection (i).

“(C) No provision of this Act shall limit the right of a Regional Corporation to take an action authorized by the laws of the State unless such action is inconsistent with the provisions of this Act.”

SETTLEMENT COMMON STOCK

SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

6

diate family who are Natives or descendants of Natives, the first right to purchase, on reasonable terms, the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

“(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

“(E) Replacement Common Stock shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.”

VILLAGE, URBAN, AND GROUP CORPORATIONS

SEC. 6. Subsection (c) of section 8 (43 U.S.C. 1607(c)) is amended to read as follows:

“(c) **APPLICABILITY OF SECTION 7.**—The provisions of subsections (g), (h), and (o) of section 7 shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.”

PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

SEC. 7. The Alaska Native Claims Settlement Act is further amended by adding the following new section:

“PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

“SEC. 36. (a) **COVERAGE.**—Notwithstanding any provision of the articles of incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section—

“(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 7, subsection (d)(1)(B) of this section, or section 37;

“(2) a resolution authorized by section 38(a)(2);

“(3) a resolution to establish a Settlement Trust; or

“(4) a resolution to convey all or substantially all of the assets of a Native Corporation to a Settlement Trust pursuant to section 39(a)(1);

shall be considered in accordance with the provisions of this section.

“(b) **BASIC PROCEDURE.**—(1) An amendment or resolution described in subsection (a) may be approved by the board of directors of a Native Corporation in accordance with its bylaws. If the board approves the amendment or resolution, it shall direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such special meeting). One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

“(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the

43 USC 1629b.

"(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

"(C) Settlement Common Stock of a Regional Corporation—

"(i) transferred by will or pursuant to applicable laws of intestate succession after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, or

"(ii) transferred by any means prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987,

to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

"(3) REPLACEMENT COMMON STOCK.—(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 37, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed canceled, and shares of Replacement Common Stock of the appropriate class shall be issued to each shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

"(B)(i) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection (g)(1)(B)(iii) shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that subsection.

"(ii) Prior to the termination of alienability restrictions, the board of directors of the corporation shall approve a resolution to provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) shall be exchanged either for—

"(I) a share of Replacement Common Stock that carries such right, or

"(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iii) Replacement Common Stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

"(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

"(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of incorporation to impose upon Replacement Common Stock one or more of the following—

"(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

"(ii) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's imme-

New Definitions

Adverse Possession: The right of a trespasser to take over land after using it for a period of time, if the legal owner has not objected or taken steps to keep the trespasser out.

Alienability Restrictions: Rules that limit or restrict how stock can change ownership.

Alienable Common Stock: Stock that can be sold, transferred, pledged and otherwise treated just like any other corporate stock.

Articles of incorporation: The laws that govern the corporation. Amendments or changes must be voted on by the shareholders.

Assets: Property, land, material goods and anything owned that has monetary value. A corporation's assets include buildings, office furniture, land and everything else of possible value that it owns.

Collateral: Something of value, such as land, that is promised to secure a loan. If you don't pay back the loan, the lender gets the collateral.

Descendant of Native: A person who is descended from a Native, or adopted by a Native, or adopted by a descendant of a Native. Example: You are a descendant of a Native even if only one of your great, great grandmothers was one-quarter Native.

Developed: Land that has been changed or improved to make it more profitable or productive. If land is developed for reasons other than exploration, automatic protections are lost.

Dissenters Rights: The right of a shareholder to demand payment for his stock if the majority of shareholders vote to keep stock restricted. In order to claim dissenters rights, the shareholder must have voted against continued stock restrictions.

Dividend/Distribution (general): A dividend or distribution is money or another asset (such as additional shares of stock) given to shareholders based on how many shares of stock they own.

Dividend/Distribution (7(j)(m)): Money given to stockholders as part of 7(i) revenue sharing. Under ANCSA, regional corporations must share the revenue they get from timber and subsurface resources. Each region gets a portion, based on its number of shareholders. Section 7(j) and 7(m) of ANCSA

require the regions, in turn, to pass half of that money on to the villages and at-large shareholders. The amount passed on to village corporations and at-large shareholders is based on population.

Leased: Land that is rented to another person or business for gainful use.

Non-Native: A person who is not Native, not a descendent of a Native, and not legally adopted by a Native.

Opt-In: An option regarding stock restrictions. Under the opt-in approach stock restrictions no longer continue automatically. Instead, the restrictions automatically expire unless the shareholders vote to keep them (i.e. opt in to the restrictions). Opt-in is available only to regional corporations and village corporations in the Aleut and Bristol Bay regions.

Opt-Out: An option for Native corporations that allows the shareholders to vote to remove stock restrictions on Dec. 18, 1991.

"Other Stock": Stock issued by a corporation which is not Settlement Common Stock. Other stock can be restricted in different ways, with different rights. It can be made available for sale to either the general public, or to specific groups of people. Other stock does not replace Settlement Common Stock, but it can be issued to existing stockholders.

Recapitalization/Recapitalize: An option that allows a Native corporation to raise money, or capital, by issuing and selling shares of stock. Under a recapitalization plan, the corporation may ask its shareholders to vote on several different stock issues as a single package.

Replacement Common Stock: Stock issued in place of restricted stock after the restrictions have been lifted. Replacement Common Stock is generally alienable, but the corporation may deny voting rights to non-Natives, or require that the corporation, or members of the shareholder's family, have the first right to purchase shares from someone who wants to sell.

Revenue Sharing/7(i): The distribution among regions of money earned from mineral, timber and other subsurface development, pursuant to Section 7(i) of the Alaska Native Claims Settlement Act. Seventy percent of the regional corporations' subsurface and timber revenues are distributed among all the regions, based on number of shareholders in each.

Right-of-first Purchase: Right to have the first chance to buy, at a reasonable price, stock from a shareholder who wants to sell.

Settlement Common Stock: New name for Native corporation stock; has same rights and restrictions.

Settlement Trust: A trust formed under state law, by approval of a Native corporation's shareholders, that is operated for the sole benefit of Native shareholders. A settlement trust would be formed as one way of protecting corporate land and assets.

Shareholder Petition: A process that allows shareholders to demand that the corporation vote on a "1991" issue. The petition must be signed by shareholders who together have at least 25 percent of the corporation's total voting power.

Subsurface Estate: Timber, mineral and other below-ground resources. Under ANCSA, regional corporations own the surface and subsurface estates of their own lands, plus the subsurface of lands owned by villages in their region.

Voting Standard: The percentage of "yes" votes needed to approve a question or resolution put to shareholders. A simple majority is 50 percent of the outstanding shares, plus one share.