



LAWS OF ALASKA

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Source
CSHB 418(L&C)

Chapter No.
103

AN ACT

Amending the Alaska Corporations Code as it relates to delivery of annual reports, notice of shareholders' meetings, proxy statements, and other information and items to shareholders, to voting, and to proxies, including electronic proxy voting and proxy signing; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 28, 2002

Actual Effective Date: Section 9 takes effect June 29, 2002; remainder of Act takes effect January 1, 2003

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2 shareholders' meetings, proxy statements, and other information and items to shareholders, to
3 voting, and to proxies, including electronic proxy voting and proxy signing; and providing for
4 an effective date.

5

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

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

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1 when deposited with postage prepaid in the United States mail addressed to the
2 shareholder at the address of the shareholder as it appears on the stock transfer books
3 of the corporation, or, if the shareholder has filed with the secretary of the corporation
4 a written request that notice be mailed to a different address, addressed to the
5 shareholder at the new address. An affidavit of the secretary or other person giving
6 the notice or of a transfer agent of the corporation that the notice required by this
7 section has been given [,] is prima facie evidence of the facts stated in the affidavit.

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

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

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

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

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

23 (A) the posting; or

24 (B) the giving of separate notice; or

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

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

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

1 other information to the shared address; the corporation addresses the annual report,
2 proxy statement, or other information to the shareholders as a group (for example,
3 "ABC Corporation Shareholders," "Jane Doe and Household," or "the Smith Family")
4 or to each of the shareholders individually (for example, "John Doe and Richard
5 Jones"); and

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

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

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

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

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

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

30 (iii) state that the corporation will begin sending
31 individual copies to a shareholder within 30 days after the shareholder

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1 notifies the corporation that the shareholder wishes to receive a
2 separate copy of the annual report, proxy statement, or other
3 information; and

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

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

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

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

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

31 (1) an annual report and proxy statements for two consecutive annual

1 shareholders' meetings;

2 (2) during a period of at least 12 months, at least two payments of
3 dividends or interest on securities, or at least two dividend reinvestment confirmations.

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

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

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

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

20 (2) include information that demonstrates that the shareholder
21 authorized the transmission.

22 * Sec. 5. AS 10.06.420 is amended by adding a new subsection to read:

23 (j) If a corporation adopts rules to provide for voting by proxy executed by
24 electronic transmission, the rules must provide that all legally qualified proxies may be
25 voted in the same manner as the corporation's proxy.

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

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

29 (1) by mail;

30 (2) in person; or

31 (3) by electronic transmission, or by a posting on an electronic network

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1 together with a separate notice of the specific posting to the shareholder, if the
2 corporation has received a writing or an electronic transmission from the shareholder
3 that includes information demonstrating that the shareholder authorized the electronic
4 transmission and delivery of annual reports by electronic transmission or electronic
5 posting.

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

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

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

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

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

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

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

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

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