

SENATE BILL NO. 77

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 3/18/15

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the books and records of a corporation, including the nonapplication**
2 **of certain provisions to a state bank, the waiver or alteration of certain provisions by**
3 **shareholder agreements, and the application of certain provisions to shareholder voting**
4 **trusts; and amending Rule 26, Alaska Rules of Civil Procedure."**

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

6 *** Section 1.** AS 06.05.301(b) is amended to read:

7 (b) The provisions of AS 10.06 (Alaska Corporations Code) apply to state
8 banks, except those provisions inconsistent with this chapter. The provisions
9 inconsistent with this chapter include AS 10.06.010(4) - (8), 10.06.105(a) and (d),
10 10.06.325, 10.06.356, 10.06.358 - 10.06.360, 10.06.370, 10.06.385 - 10.06.388,
11 10.06.420(i), 10.06.430, 10.06.431, 10.06.453, 10.06.460(b), 10.06.485, 10.06.522 -
12 10.06.868, 10.06.915, 10.06.960, and 10.06.990(30) [10.06.990(31)] and (37).

13 *** Sec. 2.** AS 10.06.424(e) is amended to read:

14 (e) A shareholders' agreement may not alter or waive AS 10.06.350,

1 10.06.358, 10.06.360, 10.06.430, 10.06.431, 10.06.438, 10.06.544, 10.06.570,
 2 10.06.633, 10.06.648, or 10.06.653.

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

4 (a) Any number of shareholders of a corporation may create a voting trust for
 5 the purpose of conferring on [UPON] a trustee or trustees the right to vote or
 6 otherwise represent their shares by entering into a written voting trust agreement
 7 specifying the terms and conditions of the voting trust, by depositing a copy of the
 8 agreement with the corporation at its registered office, and by transferring their shares
 9 to the trustee or trustees for the purpose of the agreement. The trustee or trustees shall
 10 keep a record of the holders of voting trust certificates evidencing a beneficial interest
 11 in the voting trust, giving the names and addresses of all the holders and the number
 12 and class of the shares for which the voting trust certificates are issued, and shall
 13 deposit a copy of the record with the corporation at its registered office. The copies of
 14 the voting trust agreement and the record deposited with the corporation are subject to
 15 the same right of examination by a shareholder of the corporation, in person or by
 16 agent or attorney, as are the books and records of the corporation under AS 10.06.430
 17 and 10.06.431, and the copies of the agreement and the record are subject to
 18 examination by a holder of record of voting trust certificates, either in person or by
 19 agent or attorney, at a reasonable time for a proper purpose. This subsection does not
 20 invalidate an irrevocable proxy complying with AS 10.06.418(e).

21 * **Sec. 4.** AS 10.06.430 is repealed and reenacted to read:

22 **Sec. 10.06.430. Books and records.** (a) A corporation shall keep books and
 23 records. The corporation may keep the books and records in written form or in any
 24 other form capable of being converted into written form within a reasonable time.

25 (b) Upon written request by a corporation's shareholder who complies with the
 26 requirements of this subsection and (c) and (d) of this section, a corporation shall
 27 make its books and records, or certified copies of them, reasonably available to the
 28 shareholder for inspection and copying at the registered office or principal place of
 29 business in the state. The written request must state with reasonable particularity a
 30 proper purpose for the inspection. The shareholder may make the inspection in person,
 31 or by the shareholder's agent or attorney, at a reasonable time and may only inspect

1 and copy those books and records that are directly connected to and sufficient to
2 satisfy the stated proper purpose of the inspection.

3 (c) Before making books and records available for inspection or copying
4 under this section, a corporation may require a shareholder to

5 (1) agree to limitations or conditions on the use or disclosure of the
6 books and records by the shareholder, or by the shareholder's agent or attorney, if the
7 limitations or conditions are reasonable, are appropriate under the circumstances, and
8 are not unreasonably restrictive in light of the shareholder's stated proper purpose; the
9 corporation may require the shareholder to sign an agreement that contains the
10 limitations or conditions;

11 (2) pay the corporation's anticipated costs, which must be reasonable,
12 to comply with the shareholder's request to inspect and copy the books and records.

13 (d) In addition to the requirements described in (b) and (c) of this section, if
14 the shareholder's stated proper purpose is to uncover misconduct, misfeasance, or
15 malfeasance of the corporation or of a director, officer, or committee of the
16 corporation, the shareholder shall provide the corporation with evidence that provides
17 a credible basis for inferring the existence of misconduct, misfeasance, or
18 malfeasance.

19 (e) Notwithstanding another provision of this section or AS 10.06.431 to the
20 contrary, a corporation is not required to allow a shareholder, or a shareholder's agent
21 or attorney, to inspect or copy the books and records of the corporation and has no
22 obligation under this section or AS 10.06.431 to the shareholder, or the shareholder's
23 agent or attorney, if

24 (1) the shareholder has not paid money that the shareholder owes to the
25 corporation;

26 (2) the money owed under (1) of this subsection arises from a
27 judgment against the shareholder in a court action between the shareholder and the
28 corporation; and

29 (3) in the court action described under (2) of this subsection, the court
30 determined that the corporation was the prevailing party or awarded attorney fees to
31 the corporation under Rule 82, Alaska Rules of Civil Procedure.

1 * **Sec. 5.** AS 10.06 is amended by adding a new section to read:

2 **Sec. 10.06.431. Books and records requests; penalties and judicial review.**

3 (a) If a shareholder directly or through the shareholder's agent or attorney violates an
4 agreement allowed under AS 10.06.430(c)(1), the shareholder is liable to the
5 corporation for a penalty that may not exceed \$5,000, and, on petition to the superior
6 court by the corporation, the superior court may order

7 (1) the shareholder to pay the corporation the penalty provided in this
8 subsection;

9 (2) the shareholder to comply with the agreement;

10 (3) the shareholder to return or destroy the books and records that are
11 subject to the confidentiality agreement;

12 (4) other legal or equitable relief that the court considers appropriate.

13 (b) A shareholder may petition the superior court to order a corporation to
14 make available to the shareholder for inspection or copying those books and records
15 that are directly connected to and sufficient to satisfy the stated proper purpose of the
16 inspection.

17 (c) The superior court may order a corporation to make its books and records
18 available to a shareholder for inspection or copying under (b) of this section if the
19 shareholder shows by a preponderance of the evidence that

20 (1) the shareholder is a shareholder of the corporation;

21 (2) the shareholder has complied with AS 10.06.430(b), (c), and, if
22 applicable, AS 10.06.430(d);

23 (3) the shareholder is seeking the inspection or copying for a proper
24 purpose; and

25 (4) the corporation denied the shareholder's demand, failed to respond
26 to the demand within a reasonable amount of time, or required the petitioner to agree
27 to limitations or conditions on the use or disclosure of the books and records that did
28 not comply with AS 10.06.430(c).

29 (d) If the shareholder's stated purpose under (c)(3) of this section is to uncover
30 misconduct, misfeasance, or malfeasance of the corporation or of a director, officer, or
31 committee of the corporation, the shareholder shall provide evidence that provides a

1 credible basis for inferring the existence of misconduct, misfeasance, or malfeasance.

2 (e) A shareholder may not use discovery in a court action to obtain evidence to
3 satisfy the requirement for credible evidence in (d) of this section.

4 (f) In addition to ordering a corporation to make its books and records
5 available for inspection and copying under (c) of this section, a court may

6 (1) set limitations or conditions on the inspection or copying;

7 (2) order the corporation to pay the shareholder the penalty established
8 under (g) of this section; and

9 (3) order other legal or equitable relief that the court considers
10 appropriate.

11 (g) If the corporation, or an officer or agent of the corporation, unreasonably
12 refuses to allow a shareholder, or the agent or attorney of the shareholder, to examine
13 and make copies of the corporation's books and records for a proper purpose, the
14 corporation is liable to the shareholder for a penalty that may not exceed \$5,000.

15 (h) Notwithstanding (g) of this section, a corporation is not liable for a penalty
16 under (g) of this section if the shareholder bringing the action

17 (1) has within five years before bringing the action sold or offered for
18 sale a list of shareholders of the corporation or another corporation or has aided or
19 abetted a person to procure a list of shareholders for the purpose of selling or offering
20 the list for sale;

21 (2) improperly used information secured through a prior examination
22 of the books and records of the corporation or another corporation;

23 (3) is not acting in good faith or for a proper purpose in making the
24 demand; or

25 (4) has, within five years before bringing the action, breached an
26 agreement described in AS 10.06.430(c).

27 * **Sec. 6.** AS 10.06.990 is amended by adding new paragraphs to read:

28 (51) "books and records" means a corporation's books and records of
29 account, minutes, and record of shareholders; in this paragraph,

30 (A) "books and records of account" means the corporation's
31 quarterly and annual balance sheets, statement of income, statement of cash

1 flow, and account balances, debit entries, and credit entries in the corporation's
2 financial accounting journal;

3 (B) "minutes" means the official record of the subjects
4 discussed and actions taken at the meetings of the corporation's shareholders,
5 board, and committees of the board under AS 10.06.405 and 10.06.470, but
6 does not include presentations, reports, and other materials given to the board
7 at the meetings; and

8 (C) "record of shareholders" means a list containing the names
9 and mailing addresses of all shareholders and the number and class of the
10 shares held by each shareholder;

11 (52) "proper purpose" means a purpose that is directly related to the
12 shareholder's interest as a shareholder.

13 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 **INDIRECT COURT RULE AMENDMENT.** (a) AS 10.06.431(e), added by sec. 5 of
16 this Act, has the effect of changing Rule 26(b), Alaska Rules of Civil Procedure, by
17 prohibiting a shareholder from using evidence obtained from discovery in a court action to
18 satisfy the credible evidence requirement in AS 10.06.431(d).

19 (b) In (a) of this section, "shareholder" has the meaning given in AS 10.06.990.

20 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **APPLICABILITY.** (a) AS 10.06.430, as repealed and reenacted by sec. 4 of this Act,
23 AS 10.06.431, added by sec. 5 of this Act, and AS 10.06.990(51) and (52), added by sec. 6 of
24 this Act, apply to the inspection and copying of the books and records of a corporation

25 (1) in a court action that begins or is pending on or after the effective date of
26 this Act; or

27 (2) if the request for the inspection and copying is made on or after the
28 effective date of this Act.

29 (b) In this section, "books and records" and "corporation" have the meanings given in
30 AS 10.06.990, as amended by sec. 6 of this Act.

31 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 CONDITIONAL EFFECT. AS 10.06.431(e), added by sec. 5 of this Act, takes effect
3 only if sec. 7 of this Act receives the two-thirds majority vote of each house required by art.
4 IV, sec. 15, Constitution of the State of Alaska.