

considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

(A) a majority of the shares present or represented by proxy at the meeting relating to the resolution or amendment to articles of incorporation; or

(B) an amount of shares greater than a majority of the shares present or represented by proxy at the meeting relating to the resolution or amendment to articles of incorporation (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

**(e) Voting power**

For the purposes of this section, the determination of total voting power of a Native Corporation shall include all outstanding shares of stock that carry voting rights except shares that are not permitted to vote on the amendment or resolution in question because of restrictions in the articles of incorporation of the corporation.

**(f) Substantially all of the assets**

For purposes of this section and section 1629e of this title, a Native Corporation shall be considered to be transferring all or substantially all of its assets to a Settlement Trust only if such assets represent two-thirds or more of the fair market value of the Native Corporation's total assets.

(Pub. L. 92-203, §36, as added Pub. L. 100-241, §7, Feb. 3, 1988, 101 Stat. 1795; amended Pub. L. 108-7, div. F, title III, §337(a), Feb. 20, 2003, 117 Stat. 278; Pub. L. 109-179, §1, Mar. 13, 2006, 120 Stat. 283; Pub. L. 109-221, title I, §101(a), May 12, 2006, 120 Stat. 336.)

**Editorial Notes**

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (c)(1)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2006—Pub. L. 109-221, §101(a)(1), made technical corrections to the directory language of Pub. L. 108-7, §337(a). See 2003 Amendment notes below.

Subsec. (d). Pub. L. 109-179, §1, redesignated par. (d)(3) as par. (3), and in that par. as so redesignated, substituted “or an amendment to articles of incorporation under section 1606(g)(1)(B) of this title” for “of this section” in introductory provisions, “the resolution or amendment to articles of incorporation; or” for “such resolution, or” in subpar. (A), and “the resolution or amendment to articles of incorporation” for “such resolution” in subpar. (B).

Subsec. (f). Pub. L. 109-221, §101(a)(2), made technical amendment to reference in original act which appears in text as reference to section 1629e of this title.

2003—Subsec. (d)(1). Pub. L. 108-7, §337(a)(1), as amended by Pub. L. 109-221, §101(a)(1)(A), substituted “Except as otherwise set forth in subsection (d)(3) of this section, an” for “An”.

Subsec. (d)(3). Pub. L. 108-7, §337(a)(2), as amended by Pub. L. 109-221, §101(a)(1)(A), (B), added par. (d)(3) to subsec. (d).

Subsec. (f). Pub. L. 108-7, §337(a)(3), as amended by Pub. L. 109-221, §101(a)(1)(A), (C), added subsec. (f).

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-221, title I, §101(c), May 12, 2006, 120 Stat. 337, provided that: “The amendments made by this section [amending this section and section 1629e of this title] take effect on February 20, 2003.”

**§ 1629c. Duration of alienability restrictions**

**(a) General rule**

Alienability restrictions shall continue until terminated in accordance with the procedures established by this section. No such termination shall take effect until after July 16, 1993: *Provided, however*, That this prohibition shall not apply to a Native Corporation whose board of directors approves, no later than March 1, 1992, a resolution (certified by the corporate secretary of such corporation) electing to decline the application of such prohibition.

**(b) Opt-out procedure**

(1)(A) A Native Corporation may amend its articles of incorporation to terminate alienability restrictions in accordance with this subsection. Only one amendment to terminate alienability restrictions shall be considered and voted on prior to December 18, 1991. Rejection of the amendment shall not preclude consideration prior to December 18, 1991, of subsequent amendments to terminate alienability restrictions.

(B) If an amendment to terminate alienability restrictions is considered, voted on, and rejected prior to December 18, 1991, then subsequent amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on—

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not earlier than five years after the rejection of the most recently rejected amendment to terminate restrictions; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not earlier than two years after the rejection of the most recently rejected amendment to terminate restrictions.

(C) If no amendment to terminate alienability restrictions is considered and voted on prior to December 18, 1991, then amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on—

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not more than once every five years; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not more than once every two years.

(2) An amendment authorized by paragraph (1) shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which alienability restrictions shall terminate.

(3) Dissenters rights may be granted by the corporation in connection with the rejection of an amendment to terminate alienability restrictions in accordance with section 1629d of this title. Once dissenters rights have been so granted, they shall not be granted again in connection with subsequent amendments to terminate alienability restrictions.

**(c) Recapitalization procedure**

(1)(A) On or prior to December 18, 1991, a Native Corporation may amend its articles of incorporation to implement a recapitalization plan in accordance with this subsection. Rejection of an amendment or amendments to implement a recapitalization plan shall not preclude consideration prior to December 18, 1991, of a subsequent amendment or amendments to implement such a plan. Subsequent amendment or amendments shall be considered and voted on not earlier than one year after the date on which the most recent previous recapitalization plan was rejected. No recapitalization plan shall provide for the termination of alienability restrictions prior to December 18, 1991.

(B) An amendment or amendments submitted pursuant to subparagraph (A) (and any subsequent amendment submitted pursuant to subparagraph (C)) may provide for the maintenance or extension of alienability restrictions for—

- (i) an indefinite period of time;
- (ii) a specified period of time not to exceed fifty years; or
- (iii) a period of time that shall end upon the occurrence of a specified event.

(C) If an amendment or amendments approved pursuant to subparagraph (A) or this subparagraph maintains or extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of maintenance or extension then in force.

(D) The board of directors may ask the shareholders to approve en bloc pursuant to a single vote a series of amendments (including an amendment to authorize the issuance of stock pursuant to section 1606(g) of this title) to implement a recapitalization plan that includes a provision maintaining alienability restrictions.

(2)(A) If an amendment to the articles of incorporation of a Native Corporation maintaining or extending alienability restrictions for a specified period of time is approved pursuant to paragraph (1), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of paragraph (1)(C).

(B)(i) A Native Corporation that approves an amendment to its articles of incorporation pursuant to paragraph (1)(B) to maintain or extend alienability restrictions for an indefinite period may later amend its articles to terminate such restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

(ii) Rejection of an amendment described in clause (i) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

(3) If a recapitalization plan approved pursuant to paragraph (1) distributes voting alienable common stock to each holder of shares of Settlement Common Stock (issued pursuant to section 1606(g)(1)(A) of this title) that carries aggregate dividend and liquidation rights equivalent to those carried by such shares of Settlement Common Stock (except for rights to distributions made pursuant to sections 1606(j) and 1606(m) of this title) upon completion of the recapitalization plan, then such holder shall have no right under section 1629d of this title and any other provision of law to further compensation from the corporation with respect to action taken pursuant to this subsection.

**(d) Opt-in procedure**

(1)(A) Subsection (b) shall not apply to a Native Corporation whose board of directors approves, no later than one year after February 3, 1988, a resolution electing the application of this subsection and such resolution is not validly rescinded pursuant to paragraph (2)(B)(ii).

(B) This subsection shall not apply to Village Corporations, Urban Corporations, and Group Corporations located outside of the Bristol Bay and Aleut regions.

(2)(A) Alienability restrictions imposed on Settlement Common Stock issued by a Native Corporation electing application of this subsection shall terminate on December 18, 1991, unless extended in accordance with the provisions of this subsection.

(B)(i) The board of directors of a Native Corporation electing application of this subsection shall, at least once prior to January 1, 1991, approve, and submit to a vote of the shareholders, an amendment to the articles of incorporation of the corporation to extend alienability restrictions. If the amendment is not approved by the shareholders, the board of directors may submit another such amendment to the shareholders once or more a year until December 18, 1991.

(ii) In lieu of approving the amendment to the articles of incorporation described in clause (i) and submitting such amendment to a vote of the shareholders, at any time prior to January 1, 1991, the board of directors of a Native Corporation that has approved a resolution described in paragraph (1)(A) may approve a new resolution rescinding that prior resolution. Upon approval of the new resolution rescinding a resolution described in paragraph (1)(A), the latter resolution shall be void and alienability restrictions on the Settlement Common Stock of such corporation shall continue subsequent to December 18, 1991, until such time as the alienability restrictions are terminated pursuant to the procedure described in subsection (b).

(iii) Notwithstanding any other provision of law, a civil action that challenges the constitutionality of any provision in clause (ii) shall be barred unless it is filed within one year after the date of the vote of the board of directors approving a resolution to rescind a prior opt-in election under paragraph (1)(A). Any such civil action shall be filed in accordance with section

16(b) of the Alaska Native Claims Settlement Act Amendments of 1987 (101 Stat. 1813-1814).

(C) An amendment submitted pursuant to subparagraph (B) and any amendment submitted pursuant to subparagraph (D) may provide for an extension of alienability restrictions for—

- (i) an indefinite period of time, or
- (ii) a specified period of time of not less than one year and not more than fifty years.

(D) If an amendment approved by the shareholders of a Native Corporation pursuant to subparagraph (B) or this subparagraph extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of extension then in force.

(3)(A) If an amendment to the articles of incorporation of a Native Corporation extending alienability restrictions for a specified period of time is approved pursuant to paragraph (2), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of paragraph (2)(D).

(B) If the board of directors of a Native Corporation electing application of this subsection does not submit for a shareholder vote an amendment to the articles of incorporation of the corporation in accordance with paragraph (2)(B), or if the amendment submitted does not comply with paragraph (2)(C), alienability restrictions shall not terminate and shall instead remain in effect until such time as a court of competent jurisdiction, upon petition of one or more shareholders of the corporation, orders that a shareholder vote be taken on an amendment which complies with paragraph (2)(C) and such vote is conducted. Following the vote, the status of alienability restrictions shall be determined in accordance with the other provisions of this subsection and the amendment, if approved.

(4)(A) A Native Corporation that approves an amendment to its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions for an indefinite period of time may later amend its articles of incorporation to terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

(B) The rejection of an amendment described in subparagraph (A) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

(5)(A) If a Native Corporation amends its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions, a shareholder who—

- (i) voted against such amendment, and
- (ii) desires to relinquish his or her Settlement Common Stock in exchange for the stock or payment authorized by the board of directors pursuant to subparagraph (B),

shall notify the Corporation within ninety days of the date of the vote of the shareholders on the amendment of his or her desire.

(B) Within one hundred and twenty days after the date of the vote described in subparagraph (A), the board of directors shall approve a resolution to provide that each shareholder who has notified the corporation pursuant to subparagraph (A) shall receive either—

- (i) alienable common stock in exchange for his or her Settlement Common Stock pursuant to paragraph (6), or
- (ii) an opportunity to request payment for his or her Settlement Common Stock pursuant to section 1629d(a)(1)(B) of this title.

(C) This paragraph shall apply only to the first extension of alienability restrictions approved by the shareholders. No dissenters rights of any sort shall be permitted in connection with subsequent extensions of such restrictions.

(6)(A) If the board of directors of a Native Corporation approves a resolution providing for the issuance of alienable common stock pursuant to paragraph (5)(B), then on December 18, 1991, or sixty days after the approval of the resolution, whichever later occurs, the Settlement Common Stock of each shareholder who has notified the corporation pursuant to paragraph (5)(A) shall be deemed canceled, and shares of alienable common stock of the appropriate class shall be issued to such shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this chapter as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

(B)(i) Alienable common stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by section 1606(g)(1)(B)(iii) of this title shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that section.

(ii) Alienable 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.

(iii) In the resolution authorized by paragraph (5)(B), the board of directors shall provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) of section 1606 of this title shall be exchanged either for—

- (I) a share of alienable common stock carrying such right, or
- (II) a share of alienable common stock that does not carry such right together with a separate, non-voting security that represents only such right.

(iv) In the resolution authorized by paragraph (5)(B), the board of directors may impose upon the alienable common stock to be issued in exchange for Settlement Common Stock one or more of the following—

(I) a restriction granting the corporation, or the corporation and members of the shareholder's immediate family who are Natives or descendants of Natives the first right to purchase, on reasonable terms, the alienable 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; or

(II) any other term, restriction, limitation, or other provision permitted under the laws of the State.

(C) The articles of incorporation of the Native Corporation shall be deemed amended to implement the provisions of the resolution authorized by paragraph (5)(B).

(D) Alienable common stock issued pursuant to this subparagraph 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.

(7)(A) No share of alienable common stock issued pursuant to paragraph (6) shall carry voting rights if it is owned, legally or beneficially, by a person not a Native or a descendant of a Native.

(B)(i) A purchaser or other transferee of shares of alienable common stock shall, as a condition of the obligation of the issuing Native Corporation to transfer such shares on the books of the corporation, deliver to the corporation or transfer agent, as the case may be, a statement on a form prescribed by the corporation identifying the number of such shares to be transferred to such transferee and certifying—

(I) that such transferee is or is not a Native or a descendant of a Native;

(II) that such transferee, if not a Native or a descendant of a Native, understands that shares of such alienable common stock shall not carry voting rights so long as such shares are held by the transferee or any subsequent transferee not a Native or a descendant of a Native;

(III) that such transferee, if a purchaser, understands that such acquisition may be subject to section 78m(d) of title 15 and the regulations of the Securities and Exchange Commission promulgated thereunder; and

(IV) whether such transferee will be the sole beneficial owner of such shares (if not, the transferee must certify as to the identities of all beneficial owners of such shares and whether such owners are Natives or descendants of Natives).

(ii) The statement required by clause (i) shall be prima facie evidence of the matters certified therein and may be relied upon by the corporation in effecting a transfer on its books.

(iii) For purposes of this subparagraph, a beneficial owner of a security includes any person (including a corporation, partnership, trust, association, or other entity) who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares—

(I) voting power, which includes the power to vote, or to direct the voting of, such security; or

(II) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

(iv) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements imposed by this section or section 78m(d) of title 15 shall be deemed for purposes of such sections to be the beneficial owner of such security.

(C) The statement required by subparagraph (B) shall be verified by the transferee before a notary public or other official authorized to administer oaths in accordance with the laws of the jurisdiction of the transferee or in which the transfer is made.

(Pub. L. 92-203, §37, as added Pub. L. 100-241, §8, Feb. 3, 1988, 101 Stat. 1797; amended Pub. L. 101-378, title III, §301, Aug. 17, 1990, 104 Stat. 471; Pub. L. 102-201, title III, §301, Dec. 10, 1991, 105 Stat. 1633.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 16(b) of the Alaska Native Claims Settlement Act Amendments of 1987, referred to in subsec. (d)(2)(B)(iii), is section 16(b) of Pub. L. 100-241, which is set out as a note under section 1601 of this title.

##### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-201 substituted “July 16, 1993: *Provided, however,* That this prohibition shall not apply to a Native Corporation whose board of directors approves, no later than March 1, 1992, a resolution (certified by the corporate secretary of such corporation) electing to decline the application of such prohibition” for “December 18, 1991”.

1990—Subsec. (d)(1)(A). Pub. L. 101-378, §301(1), inserted before period at end “and such resolution is not validly rescinded pursuant to paragraph (2)(B)(ii)”.

Subsec. (d)(2)(B). Pub. L. 101-378, §301(2), (3), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

#### § 1629d. Dissenters rights

##### (a) Coverage

(1) Notwithstanding the laws of the State, if the shareholders of a Native Corporation—

(A) fail to approve an amendment authorized by section 1629c(b) of this title to terminate alienability restrictions, a shareholder who voted for the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock; or

(B) approve an amendment authorized by section 1629c(d) of this title to continue alienability restrictions without issuing alienable common stock pursuant to section 1629c(d)(6) of this title, a shareholder who voted against the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock.

(2)(A) A demand for payment made pursuant to paragraph (1)(A) shall be honored only if at the same time as the vote giving rise to the demand, the shareholders of the corporation ap-