

**16-10a-1003 Amendment by board of directors and shareholders.**

- (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.
- (2) For an amendment to the articles of incorporation proposed pursuant to Subsection (1) to be adopted:
  - (a) the board of directors shall recommend the amendment to the shareholders unless the board determines that, because of conflicts of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and
  - (b) shareholders entitled to vote on the amendment shall approve the amendment as provided in Subsection (5).
- (3) The board of directors may condition its submission of the proposed amendment on any basis.
- (4) The corporation shall give notice, in accordance with Section 16-10a-705, of the shareholders' meeting at which the amendment will be voted upon, to each shareholder entitled to vote on the proposed amendment. The notice of the meeting shall state that one of the purposes of the meeting is to consider the proposed amendment and it shall contain or be accompanied by a copy or summary of the amendment.
- (5) Unless this chapter, the articles of incorporation, the bylaws, if authorized by the articles of incorporation, or the board of directors acting pursuant to Subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:
  - (a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights;
  - (b) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would materially and adversely affect rights in respect of the shares of the voting group because it:
    - (i) alters or abolishes a preferential right of the shares;
    - (ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
    - (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
    - (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
    - (v) reduces the number of shares owned by the shareholder to a fraction of a share or scrip if the fractional share or scrip so created is to be acquired for cash or the scrip is to be voided under Section 16-10a-604; and
  - (c) the votes required by Sections 16-10a-725 and 16-10a-726 by every other voting group entitled to vote on the amendment.
- (6) If any amendment to the articles of incorporation would impose personal liability on shareholders for the debts of a corporation, it must be approved by all of the outstanding shares affected, regardless of limitations or restrictions on the voting rights of the shares.

Amended by Chapter 378, 2010 General Session