

Part 3

Securities of Domestic Insurance Corporations

31A-5-301 Securities regulation.

- (1)
- (a) Except as provided in Subsections (1)(b) and (c), no security issued by a domestic or nondomestic insurance corporation may be sold in this state by or for the corporation or any other person unless it is registered under Section 31A-5-302 and otherwise complies with this chapter. Securities that comply with this chapter are not subject to Title 61, Chapter 1, General Provisions.
 - (b) Securities and transactions exempt under Section 61-1-14 are also exempt under this chapter.
 - (c) Any exemption under Section 61-1-14 may be revoked by the commissioner for a particular insurance corporation by an order after a hearing. The order shall explain the reasons for the revocation.
- (2)
- (a) No person which is organizing or is acquiring additional funds in this state or elsewhere solely or partly for the purpose of organizing a corporation under this chapter, may register or sell its securities in this state, directly or indirectly, unless it obtains an organization permit under Section 31A-5-204.
 - (b) No security may be registered or sold in this state if the person registering or selling the security, or any person affiliated with the person, represents that an insurer will be organized or purchased in this state with the proceeds of the sale, unless the issuer first obtains an organization permit under Section 31A-5-204.
- (3) If a security is issued or sold in violation of this chapter, the transaction is valid and enforceable by an outsider against the corporation or against an insider, and is valid and enforceable by the corporation against an insider.
- (4) This section does not apply to securities issued prior to July 1, 1986.

Amended by Chapter 204, 1986 General Session

31A-5-302 Registration of securities.

- (1)
- (a) An insurance security shall be registered with the commissioner:
 - (i) by coordination under Section 61-1-9; or
 - (ii) by qualification under Section 61-1-10.
 - (b) A registration statement under this Subsection (1) shall conform to Section 61-1-11.
- (2) The commissioner has the powers specified in Sections 61-1-12, 61-1-15, 61-1-19, 61-1-20, and 61-1-24.
- (3) Sections 61-1-16, 61-1-17, 61-1-18.3, and 61-1-25 apply to the regulation of securities under this part.
- (4) As used in this chapter, the words "commission" or "division" under Title 61, Chapter 1, Utah Uniform Securities Act, mean the insurance commissioner.

Amended by Chapter 351, 2009 General Session

31A-5-303 Insider trading of securities.

- (1) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance corporation, or who is a director or officer of a domestic stock corporation, shall file with the commissioner within 10 days after he becomes a beneficial owner, director, or officer, and within 10 days after the close of any following calendar month in which there has been a change in his ownership or office, a statement in a form prescribed by the commissioner, of his office and of all the equity securities of the company which he beneficially owns, and of all the changes in either. The commissioner may accept a copy of a similar statement filed with another regulatory authority in satisfaction of this subsection's requirement.
- (2) To prevent the unfair use of information which may have been obtained by a beneficial owner, director, or officer because of his relationship to the corporation, any profit realized by him from the purchase and sale or sale and purchase of any equity security of the corporation within any period of less than six months, unless the security was acquired in good faith in connection with a debt previously contracted, is recoverable by the corporation. This recovery may be made in spite of any intention by the beneficial owner, director, or officer in entering into the transaction to hold the security purchased or not to repurchase the security sold for a period exceeding six months. A suit to recover the profit may be instituted in any court of competent jurisdiction by the corporation. If the corporation fails to bring suit within 60 days after request by the owner of a security of the corporation or if the corporation fails to prosecute it diligently, the owner of any security of the corporation may bring suit or prosecute the action in the name and on behalf of the corporation. This suit may not be brought more than two years after the date the profit was realized. This subsection does not apply to any transaction where the beneficial owner was not a beneficial owner both at the time of the purchase and sale, or the sale and purchase, of the security involved, nor does it apply to any transaction which the commissioner, by rule, exempts as not within the purpose of this subsection.
- (3)
 - (a) A dealer in the ordinary course of his business and incident to his establishment or maintenance of a primary or secondary market for the security other than on an exchange as defined in the federal Securities Exchange Act of 1934, is not governed by Subsection (2) regarding a purchase and sale or sale and purchase. The commissioner may by rule define terms and prescribe conditions regarding securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.
 - (b) Subsections (1) and (2) do not apply to foreign or domestic arbitrage transactions unless made in contravention of rules the commissioner adopts to carry out this section.
 - (c) Subsections (1) and (2) do not apply to equity securities of a corporation if:
 - (i) the securities are registered, or are required to be registered, under Section 12 of the federal Securities Exchange Act of 1934, as amended; or
 - (ii) the corporation did not have any class of its equity securities held of record by 100 or more persons on the last business day of the year preceding the year in which equity securities of the corporation would otherwise be subject to Subsections (1) and (2).
- (4) No person may, in contravention of rules the commissioner adopts for the protection of investors or the public, solicit or permit the use of his name to solicit a proxy, consent, or authorization regarding an equity security of a domestic stock corporation having 100 or more shareholders of record.
- (5) No provision of this section imposing liability applies to an act done or omitted in good faith in conformity with any rule of the commissioner. Liability does not apply even if the rule is

amended, rescinded, or determined by judicial or other authority to be invalid after the act or omission.

- (6) As used in this section, "equity security" means any stock or similar security; any security convertible, with or without consideration, into stock or a similar security; carrying any warrant or right to subscribe to or purchase stock or a similar security; any such warrant or right; or any other security which the commissioner considers to be of similar nature and designates as an equity security by rules promulgated in the public interest or for the protection of investors.

Enacted by Chapter 242, 1985 General Session

31A-5-304 Promoter stock.

- (1) While the organization permit is effective, the incorporators, directors, and principal officers of a stock corporation shall in the aggregate subscribe and pay, at the public offering price, at least \$150,000 in cash or in property of equivalent value approved by the commissioner under Subsection 31A-5-207(1)(a) or (2)(a), for shares offered by the corporation under the organization permit.
- (2)
- (a) Certificates representing promotional securities and any stock received on those shares as the result of a stock dividend, stock split, or exercise of preemptive or conversion rights, shall be placed in escrow with a depository satisfactory to the commissioner under an agreement providing that the shares may not be transferred without the approval of the commissioner.
- (b) If the corporation issues any life insurance policies, any shares subject to this section shall be released from escrow five years after issuance of the certificate of authority. In other cases, the shares shall be released from escrow three years after issuance of the certificate of authority.
- (3) The commissioner's approval of the transfer of promoter stock under Subsection (2)(a):
- (a) shall be granted upon request, if the corporation has made an addition to earned surplus in each of the two immediately preceding years of at least 15% of the capital and surplus raised by the sale of shares under the organization permit; and
- (b) may be granted upon a showing of hardship by the shareholder or his estate or legatee, if the release from escrow of the shares or a portion of the shares would not, in the commissioner's opinion, endanger the interests of insureds or the public.
- (4) For three years after the issuance of the certificate of authority, an option to purchase stock may be issued only under a plan approved by the commissioner.
- (5) This section does not apply to promotional securities issued prior to July 1, 1986.

Enacted by Chapter 242, 1985 General Session

31A-5-305 Authorized securities.

- (1)
- (a) The articles of incorporation of a stock corporation may authorize the kind of shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except that:
- (i) nonvoting common stock may not be issued;
- (ii) all classes of common stock shall have equal voting rights;
- (iii) all common stock shall have a stated par value; and
- (iv) except with the commissioner's approval, for two years after the initial issuance of a certificate of authority, the corporation may issue no shares and no other securities convertible into shares except a single class of common stock.

- (b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or scrip.
 - (c) The consideration and payment for shares and certificates representing shares is governed by Subsection 31A-5-207(1)(a).
 - (d) The liability of subscribers and shareholders for unpaid subscriptions and the status of stock is governed by Section 16-10a-622.
 - (e) A shareholder's preemptive rights is governed by Section 16-10a-630.
 - (f) Stock corporations may issue bonds and contribution notes on the same basis as mutuals under Subsections (2)(a) and (b).
- (2)
- (a) The articles of incorporation of a nonassessable mutual may authorize bonds of one or more classes. The articles of incorporation shall specify the amount of each class of bonds the corporation is authorized to issue, their designations, preferences, limitations, rates of interest, relative rights, and other terms, subject to all of the following provisions:
 - (i) During the first year after the initial issuance of a certificate of authority, the corporation may issue only a single class of bonds with identical rights.
 - (ii) After the first year, but within five years after the initial issuance of a certificate of authority, additional classes of bonds may be authorized after receiving the approval of the commissioner. The commissioner shall approve the issuance if the commissioner finds that policyholders and prior bondholders will not be prejudiced.
 - (iii) The rate of interest shall be fair.
 - (iv) The bonds shall bear a maturity date not later than 10 years from the date of issuance, when principal and accrued interest shall be due and payable, subject to Subsection (2)(d).
 - (b) A mutual may issue contribution notes with the commissioner's approval. The contribution notes may be denominated by any name that is not misleading. The contribution notes are subject to this subsection. The commissioner may approve the issuance only if the commissioner finds that:
 - (i) the notes will not be issued in denominations of less than \$2,500, and no single issue will be sold to more than 15 persons;
 - (ii) no discount, commission, or other fee will be paid or allowed;
 - (iii) the notes will not be the subject of a public offering;
 - (iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds, or prior contribution notes; and
 - (v) the mutual's articles or bylaws do not forbid their issuance.
 - (c) A mutual may not:
 - (i) if it has any outstanding obligations on bonds or contribution notes, borrow on contribution notes from, or sell bonds to, any other insurer without the approval of the commissioner; or
 - (ii) make a loan to another insurer except a fully secured loan at usual market rates of interest.
 - (d) Payment of the principal or interest on bonds or contribution notes may be made in whole or in part only after approval by the commissioner. The commissioner's approval shall be given if all the financial requirements of the issuer to do the insurance business it is then doing will continue to be satisfied after that payment, and if the interests of its insureds and the public are not endangered by the payment. In the event of liquidation under Chapter 27a, Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are subordinate to the payment of principal and interest on any bonds issued by the corporation.
 - (e) This section does not prevent a mutual from borrowing money on notes which are its general obligations, nor from pledging any part of its disposable assets.
- (3) This section does not apply to securities issued prior to July 1, 1986.

Amended by Chapter 297, 2011 General Session

31A-5-306 Corporate repurchase of shares.

- (1)
 - (a) To the extent of excess surplus, a stock corporation may repurchase its own shares 15 days after giving written notice to the commissioner.
 - (b) A stock corporation without excess surplus shall obtain written approval of the commissioner prior to repurchasing its own shares.
 - (c) Any repurchase of stock is subject to Section 16-10a-631.
 - (d) A stock corporation may not repurchase its own shares if it is hazardous or would become hazardous as a result of the repurchase.
- (2) Within 10 days after the end of any month in which it purchases more than 1% of any class of its outstanding shares, the corporation shall report the price and the names of the registered shareholders from whom the shares are acquired and of any other persons beneficially interested in those shares, so far as the latter are known to the corporation. The corporation shall make a similar report within 10 days after the end of any three-month period in which it purchases more than 2% of any class of its outstanding shares and within 10 days after the end of any 12-month period in which it purchases more than 5% of any class of its outstanding shares. Section 16-10a-631 applies to the corporation's acquisition of its outstanding shares.
- (3) Treasury shares may be disposed of by the corporation for their current market value or, if there is no market, for the consideration the board of directors determines to be the fair value of the shares.
- (4) Section 31A-17-407 applies to accounting for treasury shares.

Amended by Chapter 9, 1996 Special Session 2

Amended by Chapter 9, 1996 Special Session 2

31A-5-307 Reduction in capital.

A stock corporation may reduce its capital by amendment of its articles of incorporation under Section 31A-5-219, if the commissioner is notified of the proposed reduction at least 60 days prior to the proposed effective date of the reduction. The commissioner may disapprove the reduction within 45 days after the notice if he finds that it would violate the law or would be contrary to the interests of insureds. His order shall explain in detail why the distribution is disapproved.

Amended by Chapter 277, 1992 General Session