

**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