

Part 6 Shares and Distributions

16-10a-601 Authorized shares.

- (1) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by this section and Section 16-10a-602.
- (2) The articles of incorporation shall authorize:
 - (a) one or more classes of shares that together have unlimited voting rights; and
 - (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.
- (3) The articles of incorporation may authorize one or more classes of shares and one or more series of shares within any class that:
 - (a) have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter;
 - (b) are redeemable or convertible as specified in the articles of incorporation:
 - (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
 - (ii) for money, indebtedness, securities, or other property; or
 - (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
 - (c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
 - (d) have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.
- (4) The description of the designations, preferences, limitations, and relative rights of share classes or series of shares in Subsection (3) is not exhaustive.

Amended by Chapter 378, 2010 General Session

16-10a-602 Terms of class or series determined by board of directors.

- (1) If the articles of incorporation so provide, the board of directors, without shareholder action but subject to any limitations and restrictions stated in the articles of incorporation, may amend the corporation's articles of incorporation pursuant to the authority granted to the board of directors by Subsection 16-10a-1002(1)(e) to do any of the following:
 - (a) designate in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in Section 16-10a-601, of any class of shares before the issuance of any shares of that class;
 - (b) create one or more series within a class of shares, fix the number of shares of each such series, and designate, in whole or part, the preferences, limitations, and relative rights of the series, within the limits set forth in Section 16-10a-601, all before the issuance of any shares of that series;

- (c) alter or revoke the preferences, limitations, and relative rights granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares; or
 - (d) increase or decrease the number of shares constituting any series, the number of shares of which was originally fixed by the board of directors, either before or after the issuance of shares of the series, provided that the number may not be decreased below the number of shares of the series then outstanding, or increased above the total number of authorized shares of the applicable class of shares available for designation as a part of the series.
- (2) Each series of a class shall be given a distinguishing designation.
 - (3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.
 - (4) Before issuing any shares of a class or series created under this section, or having preferences, limitations, or relative rights designated by the board of directors as provided in this section, and before any amendment to articles of incorporation contemplated by Subsection (1) shall be effective, the corporation shall deliver to the division for filing, in accordance with the procedure set forth in Section 16-10a-1006, articles of amendment that set forth:
 - (a) the name of the corporation;
 - (b) the text of the amendment adopted by the board of directors pursuant to Subsection (1);
 - (c) the date the amendment was adopted by the board of directors;
 - (d) a statement that the amendment was duly adopted by the board of directors without shareholder action and that shareholder action was not required; and
 - (e) if the amendment alters or revokes the preferences, limitations, or relative rights granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares, a statement that none of the shares of any class or series of shares so affected has been issued.

Amended by Chapter 378, 2010 General Session

16-10a-603 Issued and outstanding shares.

- (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.
- (2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of Subsection (3) and to Section 16-10a-640.
- (3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

Amended by Chapter 378, 2010 General Session

16-10a-604 Fractional shares.

- (1) A corporation may:
 - (a) issue fractions of a share or pay in money the value of fractions of a share;
 - (b) arrange for disposition of fractional shares by the shareholders; or
 - (c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

- (2) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required to be included on a share certificate by Subsections 16-10a-625(2) and (3) and Section 16-10a-627.
- (3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.
- (4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:
 - (a) that the scrip will become void if not exchanged for full shares before a specified date; and
 - (b) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Amended by Chapter 378, 2010 General Session

16-10a-620 Subscriptions for shares.

- (1) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree or the corporation consents to revocation of the subscription and provided the subscription is not considered revocable under the federal securities laws.
- (2) The acceptance by the corporation of a subscription entered into before incorporation and the authorization of the issuance of shares pursuant thereto are subject to Section 16-10a-621.
- (3) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.
- (4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.
- (5) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.
- (6) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 16-10a-621.

Amended by Chapter 378, 2010 General Session

16-10a-621 Issuance of shares.

- (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.
- (2) The board of directors may authorize the issuance of shares for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts or arrangements for services to be performed, or other securities of the corporation. The terms and conditions of any tangible or intangible property or benefit to be provided in the future to the corporation, including contracts or arrangements for services to be performed, shall be set forth in writing. However, the failure to set forth the terms and

conditions in writing does not affect the validity of the issuance of any shares issued for any consideration, or their status as fully paid and nonassessable shares.

- (3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The board of directors' determination regarding the adequacy of consideration for the issuance of shares is conclusive for the purpose of determining whether the shares are validly issued, fully paid, and nonassessable.
- (4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.
- (5) The corporation may place in escrow shares issued in consideration for contracts or arrangements for future services or benefits or in consideration for a promissory note, or make other arrangements to restrict the transfer of the shares issued for any such consideration, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits are received. If specified future services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.
- (6) The board of directors may authorize a committee of the board of directors, or an officer of the corporation, to authorize or approve the issuance or sale, or contract for sale of shares, within limits specifically prescribed by the board of directors.

Amended by Chapter 378, 2010 General Session

16-10a-622 Liability of shareholders.

- (1) A purchaser from a corporation of shares issued by the corporation is not liable to the corporation or its creditors with respect to the shares except to pay or provide the consideration for which the issuance of the shares was authorized under Section 16-10a-621 or specified in the subscription agreement under Section 16-10a-620.
- (2) Unless otherwise provided in the articles of incorporation, a shareholder or subscriber for shares of a corporation is not personally liable for the acts or debts of the corporation solely by reason of the ownership of the corporation's shares.
- (3)
 - (a) A shareholder of a corporation, when acting solely in the capacity of a shareholder, has no fiduciary duty or other similar duty to any other shareholder of the corporation, including not having a duty of care, loyalty, or utmost good faith.
 - (b) This Subsection (3) applies to a corporation governed by this chapter, including a public corporation or a closely-held corporation.
 - (c) This Subsection (3) does not affect any of the following:
 - (i) liability of a shareholder who receives an improper dividend or distribution, as set forth in Section 16-10a-842;
 - (ii) liability for an act before incorporation, as set forth in Section 16-10a-204;
 - (iii) liability of a director or officer of a corporation for breach of a fiduciary duty or other similar duty to shareholders solely in the capacity as a director or officer, regardless of whether the director or officer is a shareholder of the corporation; or
 - (iv) liability of a director or officer of a corporation for an act, breach, or failure for which liability is set forth in:
 - (A) Section 16-10a-840;
 - (B) Section 16-10a-841; or
 - (C) Section 16-10a-842.

Amended by Chapter 44, 2010 General Session

16-10a-623 Share dividends.

- (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or, to the extent and in the manner provided for in the articles of incorporation, to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.
- (2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:
 - (a) the articles of incorporation so authorize;
 - (b) a majority of the votes entitled to be cast by the outstanding shares of the class or series to be issued approve the issue; or
 - (c) there are no outstanding shares of the class or series to be issued.
- (3) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a share dividend. If no future date is so fixed, the record date is the date the board of directors authorizes the share dividend.

Enacted by Chapter 277, 1992 General Session

16-10a-624 Share options and other rights.

- (1) Subject to any provisions in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issue and sale of any shares or other securities of the corporation, rights or options for the purchase of shares or assets of the corporation. The board of directors shall determine the terms upon which the rights or options are issued, their form and content, and the consideration for which the shares are to be issued.
- (2) The terms and conditions of the options or rights may include restrictions or conditions that:
 - (a) preclude or limit the exercise, transfer, or receipt of the options or rights by any person owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation or any transferee of that person; or
 - (b) invalidate or void the options or rights.
- (3) This section applies to all options and rights notwithstanding the date of grant.

Enacted by Chapter 277, 1992 General Session

16-10a-625 Form and content of certificates.

- (1) Shares may but need not be represented by certificates. Unless this chapter or another applicable statute expressly provides otherwise, the rights and obligations of shareholders are not affected by whether or not their shares are represented by certificates.
- (2) Each share certificate shall state on its face:
 - (a) the name of the issuing corporation and that it is organized under the laws of this state;
 - (b) the name of the person to whom the certificate is issued; and
 - (c) the number and class of shares and the designation of the series, if any, the certificate represents.
- (3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, preferences, limitations, and relative rights applicable to each class, the variations in preferences, limitations, and relative rights determined for each series, and the authority of the board of directors to determine variations for any existing or future

class or series, shall be summarized on the front or back of each share certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

- (4) Each share certificate:
 - (a) shall be signed by two officers designated in the bylaws or by the board of directors;
 - (b) may bear the corporate seal or its facsimile; and
 - (c) may contain any other information as the corporation considers necessary or appropriate.
- (5) The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation.
- (6) In case any officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, the certificate may be issued by the corporation with the same effect as if the person were an officer at the date of its issue.

Amended by Chapter 378, 2010 General Session

16-10a-626 Shares without certificates.

- (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.
- (2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by Subsections 16-10a-625(2) and (3), and, if applicable, Section 16-10a-627.

Enacted by Chapter 277, 1992 General Session

16-10a-627 Restrictions on transfer or registration of shares or other securities.

- (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between one or more shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction or otherwise consented to the restriction.
- (2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate, or if the restriction is contained in the information statement required by Subsection 16-10a-626(2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.
- (3) A restriction on the transfer or registration of transfer of shares is authorized:
 - (a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;
 - (b) to preserve entitlements, benefits, or exemptions under federal, state, or local laws; and
 - (c) for any other reasonable purpose.
- (4) A restriction on the transfer or registration of transfer of shares may:
 - (a) obligate the shareholder first to offer to the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

- (b) obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;
 - (c) require, as a condition to a transfer or registration, that any one or more persons, including the corporation or any of its shareholders, approve the transfer or registration, if the requirement is not manifestly unreasonable; or
 - (d) prohibit the transfer or the registration of a transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- (5) The description of the restrictions on the transfer or registration of transfer of shares in Subsection (4) is not exhaustive.
- (6) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Enacted by Chapter 277, 1992 General Session

16-10a-628 Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of incorporating, organizing, or reorganizing the corporation from the consideration received for shares.

Enacted by Chapter 277, 1992 General Session

16-10a-630 Shareholders' preemptive rights.

- (1) Subject to the provisions of Subsection 16-10a-1704(3), the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.
- (2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:
- (a) Upon the decision of the board of directors to issue shares, the shareholders of the corporation have a preemptive right, subject to any uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right, to acquire a number of the shares proposed to be issued in an amount proportional to their percentage ownership of the corporation's outstanding shares.
 - (b) A shareholder may waive a preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.
 - (c) There is no preemptive right with respect to:
 - (i) shares issued as compensation for services to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;
 - (ii) shares issued to satisfy conversion or option rights created to provide compensation for services to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;
 - (iii) shares issued within six months from the effective date of incorporation; or
 - (iv) shares sold otherwise than for cash.
 - (d) Holders of shares of any class without general voting rights but with preferential rights to distributions have no preemptive rights with respect to shares of any other class.
 - (e) Holders of shares of any class with general voting rights but without preferential rights to distributions have no preemptive rights with respect to shares of any class without general voting rights but with preferential rights to distributions unless the shares without general

voting rights but with preferential rights are convertible into or carry a right to subscribe for or acquire shares with general voting rights or without preferential rights.

- (f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders pursuant to the preemptive rights, at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of the one year period is subject to the shareholders' preemptive rights.
- (3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Enacted by Chapter 277, 1992 General Session

16-10a-631 Corporation's acquisition of its own shares.

- (1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.
- (2) If the articles of incorporation prohibit the reissuance of acquired shares:
 - (a) the number of authorized shares is reduced by the number of shares acquired by the corporation, effective upon amendment of the articles of incorporation; and
 - (b) as provided in Section 16-10a-1002, the board of directors may adopt an amendment to the articles of incorporation under Subsection (2)(a) without shareholder action in order to reduce the number of authorized shares by an amount equal to the number of shares acquired by the corporation.
- (3) A corporation amending its articles of incorporation pursuant to Subsection (2) shall deliver to the division for filing articles of amendment setting forth:
 - (a) the name of the corporation;
 - (b) the reduction in the number of authorized shares, itemized by class and series;
 - (c) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares; and
 - (d) a statement that the amendment was adopted by the board of directors without shareholder action and that shareholder action was not required.

Enacted by Chapter 277, 1992 General Session

16-10a-640 Distributions to shareholders.

- (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to any restriction in the articles of incorporation and the limitations in Subsection (3).
- (2) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares. If a record date is necessary but no future date is so fixed, the record date is the date the board of directors authorizes the distribution.
- (3) No distribution may be made if, after giving it effect:
 - (a) the corporation would not be able to pay its debts as they become due in the usual course of business; or
 - (b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon

dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

- (4) The board of directors may base a determination that a distribution is not prohibited under Subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, including consolidated financial statements, or on a fair valuation or other method that is reasonable in the circumstances.
- (5) Except as provided in Subsection (7), the effect of a distribution under Subsection (3) is measured:
 - (a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:
 - (i) the date money or other property is transferred or debt is incurred by the corporation; or
 - (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;
 - (b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
 - (c) in all other cases, as of:
 - (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or
 - (ii) the date the payment is made if it occurs more than 120 days after the date of authorization.
- (6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section, if the indebtedness is unsecured, is on a parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.
- (7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under Subsection (3) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

Enacted by Chapter 277, 1992 General Session

16-10a-641 Unclaimed distributions.

If a corporation has mailed three successive distributions to a shareholder addressed to the shareholder's address shown on the corporation's current record of shareholders and the distributions have been returned as undeliverable, no further attempt to deliver distributions to the shareholder need be made until another address for the shareholder is made known to the corporation, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the shareholder at the other address.

Enacted by Chapter 277, 1992 General Session