

## NONPROFIT CORPORATION ACT (EXCERPT)

Act 162 of 1982

### CHAPTER 3

#### **450.2301 Payment or distribution of assets, income, or profit; conferring benefits on shareholders or members; transfer of money or property to or for benefit of directors or officers; dividends or distributions to shareholders or members; corporation charging fees or prices for services or products; use, conveyance, or distribution of assets held by corporation for noncharitable purposes; prohibition.**

Sec. 301. (1) A payment or distribution of any part of the assets, income, or profit of a corporation shall conform to the purposes of the corporation.

(2) A corporation may confer benefits on its shareholders or members that conform to the purposes of the corporation.

(3) A corporation shall not make a direct or indirect transfer of money or other property or incur indebtedness to or for the benefit of its directors or officers without adequate consideration. This subsection does not prevent a corporation from paying compensation to its directors and officers in reasonable amounts for services rendered to the corporation or from entering into transactions with officers and directors under sections 545a and 548.

(4) A corporation shall not pay dividends or make distributions of any part of its assets, income, or profit to its shareholders or members, except as follows:

(a) A corporation may pay compensation in reasonable amounts to shareholders or members for services rendered to the corporation.

(b) If a corporation dissolves, the corporation may make distributions of assets, other than assets held for charitable purposes, to shareholders or members as permitted under this act and the corporation may distribute assets held for charitable purposes to 1 or more member or shareholder domestic corporations, foreign corporations, trusts, or similar entities that are organized and operated exclusively for charitable purposes that are not inconsistent with the charitable purposes for which the corporation holds the assets.

(c) The articles of incorporation or bylaws of a corporation whose lawful purposes include providing a benefit to its member or shareholder corporation may provide that the corporation may pay dividends or distribute its income or profit to its member or shareholder corporation.

(d) A corporation whose lawful purposes include selling services or products to its shareholders or members may make distributions of profit to its shareholders or members if both of the following are met:

(i) The profit is derived solely from the charging of fees or prices to its shareholders or members for its services or products.

(ii) The profit is distributed to the shareholders or members on the basis of, or in proportion to, the fees or prices paid by the shareholders or members to the corporation for its services or products.

(e) A corporation may make distributions to shareholders or members that are domestic or foreign corporations, trusts, or similar nonprofit entities organized and operated exclusively for charitable purposes that are not inconsistent with the purposes of the corporation.

(f) A corporation may make distributions to shareholders or members that are domestic corporations or foreign corporations, trusts, or similar nonprofit entities organized and operated exclusively for purposes that are consistent with the purposes of the corporation.

(g) A corporation may make distributions of stock or memberships in another domestic or foreign corporation to its shareholders or members if its shareholders or members will have no greater rights to receive distributions from the domestic corporation or foreign corporation whose stock or memberships are being distributed than the shareholders or members have with respect to the corporation making the distribution.

(5) A corporation whose lawful activities include the charging of fees or prices for its services or products may receive the income and may make a profit as a result of its receipt. Except as authorized in subsections (2), (3), and (4), the corporation shall apply all of that resulting profit to the maintenance, expansion, or operation of the lawful activities of the corporation.

(6) This act shall not be interpreted in a way that permits assets held by a corporation for charitable purposes to be used, conveyed, or distributed for noncharitable purposes.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2302 Corporation organized upon nonstock basis.**

Sec. 302. A corporation shall be organized upon a stock or nonstock basis. A corporation organized upon a

nonstock basis shall be organized upon a membership basis or a directorship basis.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

#### **450.2303 Corporation organized on stock basis; issuance of shares authorized in articles of incorporation; rules of qualification and government of shareholders.**

Sec. 303. (1) A corporation that is organized on a stock basis may issue the number of shares authorized in its articles of incorporation. All of the following apply to shares issued by the corporation:

(a) The shares may be all of 1 class or may be divided into 2 or more classes. Each class shall consist of shares that have the designations and relative voting, distribution, liquidation, and other rights, preferences, and limitations, that are consistent with this act, stated in the articles of incorporation or bylaws.

(b) The articles of incorporation or bylaws may deny, limit, or otherwise prescribe the distribution or liquidation rights of shares of any class. Approval by the shareholders and each affected class of shareholders, if any, voting as a class, is required to adopt, amend, or repeal any bylaw denying, limiting, or otherwise prescribing the voting rights of shareholders or the affected class of shareholders.

(c) If the shares are divided into 2 or more classes, the shares of each class shall be designated to distinguish them from the shares of the other classes.

(d) Each share is equal to every other share of the same class.

(e) Except as otherwise provided by the articles or bylaws, shares of stock are not transferable and shall be canceled upon the death or resignation of the owner of the shares.

(f) Any of the voting, distribution, liquidation, or other rights, preferences, or limitations of a class may be made dependent on facts or events ascertainable outside of the articles of incorporation or the bylaws, if the manner in which the facts or events operate on the rights, preferences, or limitations is set forth in the articles of incorporation or the bylaws.

(2) A corporation may adopt rules of qualification and government of its shareholders pursuant to its articles and bylaws. Adopted rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all shareholders of the same class. A corporation may provide for the cancellation of the stock of a shareholder that fails to comply with adopted rules without liability for an accounting.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2303a Corporation board organized on stock basis; amendment of articles of incorporation deleting reference to par value.**

Sec. 303a. The board of a corporation that is organized on a stock basis by resolution may adopt and file an amendment of the articles of incorporation deleting any reference to par value.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2303b Conversion of shares into shares of any class or bonds; conversion of bonds into other bonds or shares; authorization of board to increase authorized shares.**

Sec. 303b. (1) If provided in the articles of incorporation, and subject to the restrictions in sections 301 and 303c, a corporation may issue shares that are convertible at the option of the holder or the corporation or on the happening of a specified event, into shares of any class or into bonds. A corporation may convert shares into bonds only if the corporation could at the time of conversion have purchased, redeemed, or otherwise acquired the shares by issuing the bonds under section 345. Authorized shares, whether issued or unissued, may be made convertible as provided in this subsection within the period and on the terms and conditions authorized in the articles of incorporation.

(2) Unless otherwise provided in the articles of incorporation, and subject to sections 301 and 303c, a corporation may issue bonds that are convertible at the option of the holder into other bonds or into shares of the corporation within the period and on the terms and conditions as fixed by the board.

(3) If the shareholders approve the issue of bonds or shares convertible into shares of the corporation, the approval may provide that the board is authorized by amendment of the articles of incorporation to increase the authorized shares of any class to the number that will be sufficient, when added to the previously authorized but unissued shares of the class, to satisfy the conversion privileges of any bonds or shares convertible into shares of the class.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2303c Issuance of bonds convertible into shares or shares convertible into other shares of corporation; condition; cancellation of converted bonds; restoration of converted shares.**

Sec. 303c. (1) A corporation shall not issue bonds that are convertible into shares or shares convertible into

other shares of a corporation unless 1 of the following conditions is satisfied:

(a) A sufficient number of authorized but unissued shares of the appropriate class are reserved by the board to be issued only in satisfaction of the conversion privileges of the convertible bonds or shares when issued.

(b) The aggregate conversion privileges of the convertible bonds or shares when issued do not exceed the aggregate of any shares reserved under subdivision (a) and any additional shares which the board may authorize under section 303b(3).

(2) The corporation shall cancel bonds that are converted into shares. Unless otherwise provided in the articles of incorporation, shares that are converted into other shares shall be restored to the status of authorized but unissued shares.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2303d Shares redeemable in cash, bonds, securities, or other property; prices and conditions.**

Sec. 303d. The articles of incorporation may provide for 1 or more classes of shares that are redeemable, in whole or in part, at the option of the shareholder, or the corporation, or if a specified event occurs. Subject to restrictions imposed in sections 301 and 345, the shares may be redeemable in cash, bonds, securities, or other property at prices, within the periods, and under conditions stated in the articles of incorporation.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2304 Corporation organized on membership basis; provisions of articles or bylaws; rights, preferences, and limitations of or on members; classes of members; voting rights; condominium association; homeowners or property owners association; transferability and termination of membership; rules of qualification and government; limitations on membership.**

Sec. 304. (1) Except as otherwise provided in this act, the articles of incorporation or bylaws of a corporation organized on a membership basis may prescribe the number, voting rights, qualifications, liquidation rights, preferences, and limitations, and other rights, preferences, and limitations of or on the members of the corporation.

(2) A corporation organized on a membership basis may have 1 or more classes of members. Except as otherwise provided in this act, any provision for classes of members and the relative number, voting rights, qualifications, liquidation rights, preferences, and limitations, and other rights, preferences, and limitations of or on each class shall be set forth in the articles of incorporation or the bylaws. Each member of any class of members has equal rights with all members of that class.

(3) Except as provided in the articles of incorporation or bylaws, each member of a corporation, regardless of class, is entitled to 1 vote on each matter submitted to a vote of members, unless the articles of incorporation or bylaws deny, limit, or otherwise prescribe the voting rights of any class of members. The members and each affected class of members of a corporation organized on a membership basis, if any, shall adopt, amend, or repeal any bylaw denying, limiting, or otherwise prescribing the voting rights of any class of members.

(4) Members of a condominium association organized for the purposes of administering the affairs of a condominium project are entitled to the voting rights designated in the master deed of the condominium.

(5) The articles of incorporation or the bylaws may provide that members of a homeowners or property owners association are entitled to voting rights based on the number of lots owned by each member.

(6) Except as otherwise provided in this act, the articles of incorporation, or the bylaws, membership is not transferable and is terminated by death, resignation, expulsion, or expiration of a term of membership.

(7) A corporation may adopt rules of qualification and government of its members, including rules of admission to, retention of, and expulsion from membership, under its articles of incorporation or bylaws, if those rules are reasonable, germane to the purposes of the corporation, and equally enforced as to all members.

(8) The articles of incorporation of a corporation that is organized on a membership basis may provide that membership is limited to persons that are members in good standing in other corporations. The articles of incorporation may provide that failure to remain a member in good standing in the other corporation constitutes grounds for expulsion of a member if the articles of incorporation or bylaws of the corporation describe the nature of the evidence that is required and establish the procedures for expulsion of a member.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2305 Corporation organized on directorship basis; members; voting; matters subject to action by board of directors.**

Sec. 305. (1) A corporation that is organized on a directorship basis may or may not have members. If a corporation that is organized on a directorship basis has members, the members are not entitled to notice of or to vote on any matter, including, but not limited to, any action denying, limiting, or otherwise prescribing their rights as members or excluding them from membership.

(2) Except as otherwise provided in this act, all matters that are subject to membership vote or other action under this act in the case of a membership corporation are subject to duly authorized action by the board of directors of a directorship corporation. This subsection does not, however, allow the board of directors of a directorship corporation to adopt an amendment to the articles of incorporation under section 407(1) permitting action by the board of directors by less than unanimous written consent.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2307 Subscription for shares or membership; enforceability; irrevocability; acceptance; consent to revocation; subscription agreement.**

Sec. 307. (1) A subscription for shares or membership made before or after a corporation is formed is not enforceable unless it is in writing and signed by the subscriber.

(2) A subscription for shares of or membership in a corporation to be formed is irrevocable and the corporation may accept it for a period of 6 months, unless otherwise provided in the subscription agreement or unless all of the subscribers consent to its revocation.

(3) A contract with a corporation to purchase its shares to be issued is a subscription agreement and not an executory contract to purchase shares, unless otherwise provided in the contract.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2308 Subscription for shares or membership; payment; installments; call for payment ratable; retention of security interest as security for performance by subscriber.**

Sec. 308. Unless otherwise provided in the subscription agreement:

(a) A subscription for shares or for membership made before or after formation of a corporation shall be paid in full at the time, or in installments and at the times, as the board determines.

(b) A call made by the board for payment on subscriptions is ratable as to all shares or members of the same class.

(c) A corporation may retain a security interest in any shares or memberships as security for performance by the subscriber of the subscriber's obligations under a subscription agreement and subject to the power of sale or rescission on default provided in section 309.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2309 Default in payment of amount due under subscription agreement; rights and duties of corporation; limiting and adding to rights and remedies of corporation.**

Sec. 309. (1) If a subscriber defaults in payment of an installment or call or other amount due under a subscription agreement, including an amount that becomes due as a result of a default in performance of any provision of a subscription agreement, the corporation has the following rights and duties:

(a) It may collect the amount due in the same manner as any other debt owing to it. If the corporation is organized on a stock basis and if the articles of incorporation or bylaws of a corporation permit the transfer of shares, the corporation may at any time before full satisfaction of the claim or a judgment sell the shares in any reasonable manner that is consistent with the articles of incorporation and bylaws. The corporation shall give notice of the time and place of a public sale or of the time after which a private sale may occur, and a written statement of the amount due on each share, to the subscriber personally or by registered or certified mail at least 20 days before the time stated in the notice. The corporation shall pay any excess of net proceeds realized over the amount due plus interest to the subscriber. If the sale is made in good faith, in a reasonable manner and after the notice required in this subdivision, the corporation may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value acquires title to the sold shares free of any right of the subscriber even if the corporation fails to comply with 1 or more of the requirements of this subdivision.

(b) It may rescind the subscription, with the effect provided in section 310, and may recover damages for breach of contract. In the case of transferable shares of a corporation organized on a stock basis, unless special circumstances show proximate damages of a different amount, the measure of damages is the difference between the fair market value at the time and place of tender of the shares and the unpaid contract price. A subscription agreement may also provide for liquidated damages in any reasonable amount. The subscriber may have restitution of the amount by which the sum of payments exceeds the corporation's damages for breach of contract, whether fixed by agreement or judgment.

(2) The rights and duties set forth in this section are cumulative so far as is consistent with entitling the corporation to a full and single recovery of the amount due or its damages. A subscription agreement may limit the rights and remedies of the corporation set forth in this section, and may add to them so far as is consistent with this subsection.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2310 Rescission of subscription under which part of shares issued and in which security interest retained as cancellation of shares.**

Sec. 310. Rescission by a corporation of a subscription under which a part of the shares subscribed for have been issued and in which the corporation retains a security interest, as provided in section 308(c), effects the cancellation of such shares.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

#### **450.2311 Fees or dues required as condition of shareholding or membership; fixing; enforcement.**

Sec. 311. A corporation may fix in the bylaws, or the bylaws may authorize the board to fix, an amount as fees or dues which shareholders or members may be required to pay initially or periodically as a condition of shareholding or admission or retention of membership. The corporation may make bylaws necessary to enforce this requirement, including provisions for cancellation of shares or termination of membership for nonpayment of dues or obligations and for reissuance of shares or reinstatement of membership.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

#### **450.2312 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to issuance of shares by corporation organized on stock bases.

#### **450.2313 Corporation, foreign corporation, business corporation, foreign business corporation, limited liability company, unincorporated association, partnership, or other person as shareholder or member; officers and directors as director of corporation; rights, powers, privileges, and liabilities of shareholders or members.**

Sec. 313. (1) Except as otherwise provided in the articles of incorporation or the bylaws, corporations, foreign corporations, business corporations, foreign business corporations, limited liability companies, unincorporated associations, and partnerships, and any other person without limitation, may be a shareholder or a member of a corporation.

(2) If a corporation, foreign corporation, business corporation, or foreign business corporation is a shareholder or a member in a corporation, its officers or directors may serve as a director of the corporation of which it is a shareholder or member. A corporation, foreign corporation, business corporation, foreign business corporation, limited liability company, unincorporated association, partnership, or other person that is a shareholder or member of a corporation possesses and may exercise all the rights, powers, privileges, and liabilities of individual shareholders or members.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2314 Corporation organized on stock basis; issuance of shares; powers.**

Sec. 314. (1) All of the following apply to the issuance of shares by a corporation that is organized on a stock basis:

(a) The board may authorize shares that are issued for no consideration or for consideration that may consist of any tangible or intangible property or benefit to the corporation, including, but not limited to, cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(b) A determination by the board that any consideration received or to be received for issued shares is conclusive concerning the nature and amount of consideration for the issuance of shares in determining whether the shares are validly issued, fully paid, and nonassessable.

(c) When the corporation receives the consideration for which the board authorized the issuance of shares, the shares issued are fully paid and nonassessable and the subscriber has all the rights and privileges of a holder of the shares.

(2) The powers granted in this section to the board may be reserved to the shareholders in the articles of incorporation.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.



#### **450.2315 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to consideration for issuance of shares.

#### **450.2317 Person purchasing shares of corporation; person holding stock or membership in fiduciary or representative capacity; person becoming assignee, transferee, or pledgee of shares or membership; liability.**

Sec. 317. (1) A person that purchases shares of a corporation from the corporation or purchases a membership in a corporation is not liable to the corporation or its creditors with respect to the shares or membership except to pay the consideration for the issuance of the shares or membership.

(2) A person that holds stock or membership in a corporation in a fiduciary or representative capacity is not personally liable to the corporation as the holder of or subscriber for shares or membership, but the estate or funds for which the person is holding the stock or membership are liable to the corporation as the holder or subscriber.

(3) A person that becomes an assignee, transferee, or pledgee of shares or membership or of a subscription for shares or membership in good faith and without knowledge or notice that the full consideration has not been paid is not liable to the corporation or its creditors for any unpaid portion of the consideration, but the original holder or subscriber and any assignee or transferee before an assignment or transfer to a person that takes in good faith and without knowledge or notice remains liable for that amount.

(4) Unless otherwise provided in the articles of incorporation, a person that is a shareholder or member of a corporation is not personally liable for the acts or debts of the corporation except that the person may become personally liable by reason of the person's own acts or conduct.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2327 Charges and expenses of organization or reorganization; sale or underwriting expenses and compensation; payment or allowance.**

Sec. 327. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby rendering the shares not fully paid or assessable.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

#### **450.2331 Representation of shares by certificates; signatures of officers; seal; facsimiles.**

Sec. 331. Except as provided in section 336, the shares of a corporation shall be represented by certificates that are signed by the chairperson of the board, vice-chairperson of the board, president or a vice-president and that also may be signed by another officer of the corporation. The corporation may seal the certificate with the seal of the corporation or a facsimile of the seal. The signatures of the officers may be facsimiles. If an officer who has signed or whose facsimile signature has been placed on a certificate ceases to be an officer before the certificate is issued, the corporation may issue the certificate and his or her signature has the same effect as if he or she were an officer on the date of issue.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2332 Certificate representing shares; required statements.**

Sec. 332. (1) A certificate that represents shares issued by a corporation shall state on its face all of the following:

- (a) That the corporation is a nonprofit corporation formed under the laws of this state.
- (b) The name of the person to which the certificate is issued.
- (c) The number and class of shares that the certificate represents.
- (d) A statement that the shares are not transferable, unless the articles or bylaws provide that shares are transferable. If the shares are transferable, the certificate shall state any conditions or limitations on transferability of the shares.
- (e) The act under which the corporation was formed.

(2) A certificate that represents shares issued by a corporation that is authorized to issue shares of more than 1 class shall set forth on its face or back or state on its face or back that the corporation will furnish to a shareholder, on request and without charge, a full statement of the designation, relative rights, preferences, and limitations of the shares of each class the corporation is authorized to issue.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2334 Lost or destroyed certificate; issuance of new certificate; bond.**

Sec. 334. A corporation may issue a new certificate for shares or fractional shares in place of a certificate theretofore issued by it, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or the owner's legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged lost or destroyed certificate or the issuance of such a new certificate.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

#### **450.2336 Authorization of shares without certificates.**

Sec. 336. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of a corporation may authorize the issuance of some or all of the shares of any or all of its classes of shares without certificates. The authorization does not affect shares that are 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 under this section, the corporation shall send the shareholder a written statement of the information required on certificates under section 332 and, if applicable, sections 472 and 488.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2338 Issuing fractions of shares; powers of corporation; providing opportunity to purchase additional fractions of share or scrip.**

Sec. 338. (1) A corporation may issue fractions of a share and may do any 1 or more of the following:

(a) Issue certificates for fractions of shares that entitle the holders to exercise voting rights and receive distributions permitted under section 301 in proportion to their fractional holdings.

(b) Pay in cash the fair value of fractions of shares as of the time when those entitled to receive the fractions are determined.

(c) Issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as provided in the scrip for full shares. The scrip does not entitle the holder to any right of a shareholder except as provided in the scrip. A corporation shall issue scrip subject to the condition that it becomes void if it is not exchanged for certificates that represent full shares before a specified date. The scrip may be subject to the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds of the sale distributed to the holders of the scrip, or subject to any other condition that is established by the board.

(2) A corporation may provide reasonable opportunity for a person that is entitled to fractions of a share or scrip to sell them or to purchase additional fractions of a share or scrip that the person needs to acquire a full share.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2341a Issuance of shares pro rata and without consideration; issuance of shares as share dividend; "share dividend" defined.**

Sec. 341a. (1) Unless the articles of incorporation provide otherwise, a corporation may issue shares pro rata and without consideration to the corporation's shareholders or to the shareholders of 1 or more classes as a share dividend.

(2) A corporation may not issue shares of 1 class as a share dividend in respect of shares of another class unless the articles authorize the issuance, the issuance is consistent with the limitations in section 301, and either a majority of the votes entitled to be cast by the class to be issued approve the issue or there are no outstanding shares of the class to be issued.

(3) As used in this section, "share dividend" means shares issued under subsection (1).

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2343 Preemptive right of shareholder of corporation organized on stock basis to acquire unissued shares; extent; statement; principles; "shares" defined.**

Sec. 343. (1) The shareholders of a corporation organized on a stock basis do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation or by agreement between the corporation and 1 or more shareholders.

(2) If a statement is included in the articles of incorporation or an agreement described in subsection (1) that the corporation elects to have preemptive rights, or words of similar import are included in the articles or agreement, the following principles apply except to the extent the articles of incorporation or agreement expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions

prescribed by the board, to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares if the board decides to issue them.

(b) A shareholder may waive his or her 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 any of the following:

(i) Shares that are authorized in the articles of incorporation and are issued within 6 months after the effective date of incorporation.

(ii) Shares that are not issued for money.

(d) Holders of shares of any class that do not have general voting rights but do have preferential rights to distributions or assets do not have preemptive rights with respect to shares of any class.

(e) Holders of shares of any class that have general voting rights but do not have preferential rights to distributions or assets do not have preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares that are subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after the shares are offered to shareholders at a consideration set by the board 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 1 year is subject to the shareholders' preemptive rights.

(3) The preemptive rights, if any, whether created by statute or common law, of shareholders of a corporation formed before January 1, 1973, are not affected by subsections (1) and (2). A corporation may alter or abolish its shareholders' preemptive rights by an amendment to its articles of incorporation.

(4) As used in this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2344 Acquisition of own shares or memberships; amendment of articles of incorporation.**

Sec. 344. (1) Subject to restrictions imposed under this act or the articles of incorporation, a corporation that is organized on a stock or membership basis may acquire its own shares or memberships. Except as provided in subsection (4), those shares or memberships constitute authorized but unissued shares or memberships.

(2) If the articles of incorporation prohibit reissue of any shares or memberships acquired under subsection (1), the board by resolution shall adopt and file any necessary amendment to the articles of incorporation to reduce the number of authorized shares or memberships accordingly.

(3) A corporation shall not acquire its own shares or memberships by purchase, redemption, or otherwise unless after the acquisition there remain outstanding shares or memberships that possess, collectively, voting rights or unless the articles of incorporation have been amended to provide that the corporation is organized on a directorship basis after the acquisition.

(4) A corporation that acquires its own shares or memberships may grant a security interest in the shares or memberships as security for the payment of the purchase price of the shares or memberships. Any shares or memberships acquired by the corporation in which it has granted a security interest are not canceled and do not constitute authorized but unissued shares or memberships until the corporation pays the purchase price. If a corporation has granted a security interest in its own shares or memberships, the shares or memberships shall not be voted directly or indirectly and are not counted in determining the total number of issued shares or members entitled to vote at any given time, except to the extent provided by the agreement creating the security interest in the event of default. When the purchase price is paid, the shares or memberships are canceled and constitute authorized but unissued shares or memberships. If the articles of incorporation prohibit reissue of canceled shares or memberships, then the board by resolution shall adopt and file any amendment to the articles of incorporation required under subsection (2).

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2345 Distributions to shareholders or members.**

Sec. 345. (1) A board may authorize and the corporation may make distributions to its shareholders or members that are permitted in section 301, subject to subsection (3) and any restriction in the articles of incorporation.

(2) If the board does not fix the record date for determining shareholders or members entitled to a distribution, other than a distribution involving a purchase, redemption, or acquisition of the corporation's shares or memberships, the record date is the date the board authorizes the distribution.



(3) A corporation shall not make a distribution if after giving it effect the corporation would not be able to pay its debts as the debts become due in the usual course of business, or 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 dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders or members whose preferential rights are superior to those that receive the distribution.

(4) The board may base a determination that a distribution is not prohibited under subsection (3) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, on a fair valuation, or on any other method that is reasonable.

(5) The effect of a distribution under subsection (3) is measured at the following times:

(a) Except as provided in subsection (7), for distributions by purchase, redemption, or other acquisition of the corporation's shares or memberships, as of the earlier of the date money or other property is transferred or debt incurred by the corporation, or the date the shareholder or member ceases to be a shareholder or member with respect to the acquired shares or ceases to be a member.

(b) For any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) For any other purpose, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or 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 or member that is incurred by reason of a distribution made under this section is at parity with the corporation's indebtedness to its general, unsecured creditors, except as otherwise agreed.

(7) If a corporation acquires its shares or memberships in exchange for an obligation to make future payments, and distribution of an obligation would otherwise be prohibited under subsection (3) at the time it is made, the corporation may issue the obligation and all of the following apply:

(a) The portion of the obligation that could have been distributed without violating subsection (3) is treated as indebtedness as described in subsection (6).

(b) All of the following apply to the portion of the obligation that exceeds the amount treated as indebtedness under subdivision (a):

(i) At any time before the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(ii) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (6) to the extent that a distribution may be made at that time under this section.

(iii) Unless otherwise provided in the agreement for the acquisition of the shares, the obligation is a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made with respect to shares that have preferential rights superior to those of shares acquired in exchange for the obligation.

(8) The enforceability of a guaranty or other undertaking by a third party that relates to a distribution is not affected by the prohibition of the distribution under subsection (3).

(9) If a claim is made to recover a distribution that violates subsection (3), or if a violation of subsection (3) is raised as a defense to a claim based on a distribution, this section does not prevent the person that received the distribution from asserting a right of rescission or other legal or equitable rights.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2361 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to shares redeemable upon occurrence of specified event.

#### **450.2363 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to shares redeemable at option of shareholders in cash, bonds, or other property.

#### **450.2365 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to prohibiting purchase or redemption of own shares by corporation under certain conditions.

#### **450.2371 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to cancellation or retention of reacquired shares.

**450.2391 Conferring voting and inspection rights upon bond holders; signatures of officers.**

Sec. 391. (1) A corporation, in its articles of incorporation, may confer upon the holders of bonds issued or to be issued by it, rights to inspect the corporate books and records and to vote in the election of directors and on any other matters on which shareholders or members of the corporation may vote to the extent, in the manner, and subject to the conditions prescribed in the articles. The articles may grant to the board the power to confer such voting or inspection rights under the terms of any bonds issued or to be issued by the corporation.

(2) The signatures of the officers upon a bond may be facsimiles.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

**450.2392 Applicability of chapter to distributions made in dissolution under chapter 8.**

Sec. 392. This chapter does not apply to distributions made in a dissolution under chapter 8.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.