

**271B.6-300 Shareholders' preemptive rights.**

- (1) The shareholders of a corporation shall not have a preemptive right to acquire the corporation's unissued shares except:
  - (a) To the extent the articles of incorporation so provide; and
  - (b) To the extent provided in subsection (4) of this section.
- (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) The shareholders of the corporation shall have a preemptive right granted on uniform terms and conditions prescribed by the board of directors, to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.
  - (b) A shareholder may waive his preemptive right. A waiver evidenced by a writing shall be irrevocable even though it is not supported by consideration.
  - (c) There shall be no preemptive right with respect to:
    1. Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;
    2. Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;
    3. Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation; and
    4. Shares sold otherwise than for money.
  - (d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets shall have no preemptive rights with respect to shares of any class.
  - (e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets shall have no 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 subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after being offered to shareholders 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 one (1) year shall be subject to the shareholders' preemptive rights.
- (3) For purposes of this section, "shares" include a security convertible into or carrying a right to subscribe for or acquire shares.
- (4) Except to the extent limited or denied by this subsection, shareholders of a

corporation that existed on January 1, 1989, whose articles of incorporation did not on January 1, 1989, contain a provision specifically addressing preemptive rights shall have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

- (a) No preemptive right shall exist:
  - 1. To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders; or
  - 2. To acquire any shares sold otherwise than for cash.
- (b) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right.
- (c) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of any class with general voting rights but without preferential rights to distributions or assets, or carrying a right to subscribe to or acquire shares of any class with general voting rights but without preferential rights to distributions or assets.
- (d) Holders of shares of any class without general voting rights shall have no preemptive rights to shares of a class which is identical as to rights except that the class has general voting rights.
- (e) The preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity to exercise such right.
- (f) This subsection shall not apply to any class of stock of any corporation after the corporation's articles of incorporation are amended to limit or deny the preemptive rights of any class of its stock.

**Effective:** July 13, 1990

**History:** Amended 1990 Ky. Acts ch. 441, sec. 1, effective July 13, 1990. -- Created 1988 Ky. Acts ch. 23, sec. 46, effective January 1, 1989.