

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL 378
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Documents,” insert “Distributions.”; in line 9, after “circumstances,” insert “authorizing a corporation to make distributions from certain net earnings under certain circumstances.”; in line 22, after “2-214(a),” insert “2-308.”; and in the same line, after “2-310.1,” insert “2-311(a).”

AMENDMENT NO. 2

On page 3, after line 8, insert:

“2-308.

(a) Subject to the limitations of subsection (b) of this section, any surplus which arises from a reduction of stated capital becomes capital surplus and may be made the basis of:

(1) A distribution or payment to stockholders; and

(2) A reduction of the liability of stockholders whose shares of stock are not fully paid.

(b) [The] EXCEPT AS PROVIDED IN § 2-311(A)(2) OF THIS SUBTITLE, THE net assets of the corporation which remain after a distribution, payment, or reduction of liability shall be at least equal to the aggregate preferential amount payable in the event of voluntary liquidation to the holders of all stock having rights preferred to the rights of holders who received the distribution, payment, or whose liability was reduced.”

(Over)

On page 4, after line 12, insert:

“2-311.

(a) (1) No distribution may be made if, after giving effect to the distribution:

[(1)] (I) The corporation would not be able to pay indebtedness of the corporation as the indebtedness becomes due in the usual course of business; or

[(2)] (II) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE corporation’s total assets would be less than the sum of the corporation’s total liabilities plus, unless the charter permits 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 stockholders whose preferential rights on dissolution are superior to those receiving the distribution.

(2) A CORPORATION MAY MAKE A DISTRIBUTION FROM:

(I) THE NET EARNINGS OF THE CORPORATION FOR THE FISCAL YEAR IN WHICH THE DISTRIBUTION IS MADE;

(II) THE NET EARNINGS OF THE CORPORATION FOR THE PRECEDING FISCAL YEAR; OR

(III) THE SUM OF THE NET EARNINGS OF THE CORPORATION FOR THE PRECEDING EIGHT FISCAL QUARTERS.”.