

**IC 28-13**

**ARTICLE 13. CORPORATE GOVERNANCE**

**IC 28-13-1**

Chapter 1. Shares Generally

**IC 28-13-1-1**

**Number of shares; classes of shares; preferences; limitations; relative rights**

Sec. 1. The articles of incorporation must prescribe the number of shares that the corporation is authorized to issue. If more than one (1) class of shares is authorized by the articles of incorporation, the articles of incorporation must prescribe the number of shares in each class and a distinguishing designation for each class. Before the issuance of shares of a class, the preferences, limitations, and relative rights of the class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 4 of this chapter.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-1-2**

**Voting right; rights to assets on dissolution**

Sec. 2. The articles of incorporation must authorize the following:

- (1) At least one (1) class of shares that together have unlimited voting rights.
- (2) At least one (1) class 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.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-1-3**

**Class of shares with other rights; designations, preferences, and limitations; description not exhaustive**

Sec. 3. (a) The articles of incorporation may authorize at least one (1) class of shares that have at least one (1) of the following characteristics:

- (1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this article.
- (2) Are redeemable or convertible as specified in the articles of incorporation:
  - (A) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
  - (B) for cash, indebtedness, securities, or other property; and
  - (C) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.
- (3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

(4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(b) The description of the designations, preferences, limitations, and relative rights of share classes in this section is not exhaustive.  
*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-1-4**

##### **Series of shares; distinguishing designation; other rights and preferences; articles of amendment**

Sec. 4. (a) If the articles of incorporation so provide, the board of directors may create at least one (1) series, and may determine, in whole or in part, the preferences, limitations, and relative voting and other rights within the limits set forth in sections 1 through 3 of this chapter of the following:

(1) Any class of shares before the issuance of any shares of that class.

(2) At least one (1) series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must 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.

(d) Before issuing shares of a class or series that has the preferences, limitations, and relative voting and other rights determined under this section, the corporation must prepare articles of amendment, which are effective without shareholder action, that set forth the following:

(1) The name of the corporation.

(2) The text of the amendment determining the terms of the class or series of shares.

(3) The date the articles of amendment are adopted.

(4) A statement that the amendment was adopted by the board of directors.

(e) The articles of amendment shall be presented to the director for approval and filed with the secretary of state as provided in IC 28-13-14 before the shares are issued.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-1-5**

##### **Outstanding shares; limitation on reacquisition, redemption, or conversion; unlimited voting rights; right to assets on dissolution**

Sec. 5. (a) 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 the shares are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) and to

IC 28-13-3-3 and IC 28-13-4.

(c) At all times that shares of the corporation are outstanding, at least one (1) share that together has unlimited voting rights and at least one (1) share that together is entitled to receive the net assets of the corporation upon dissolution must be outstanding.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-1-6**

##### **Fractional shares; scrip; rights and preferences**

Sec. 6. (a) A corporation may do any of the following:

- (1) Issue fractions of a share or pay in money the value of fractions of a share.
- (2) Arrange for disposition of fractional shares by the shareholders.
- (3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by IC 28-13-2-6(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to do the following:

- (1) Vote.
- (2) Receive dividends.
- (3) 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 the rights.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including the following:

- (1) That the scrip will become void if not exchanged for full shares before a specified date.
- (2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-2**

### **Chapter 2. Issuance of Shares**

#### **IC 28-13-2-1**

##### **Subscription for shares; terms; call for payment; nonassessable shares; default in payment**

Sec. 1. (a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies terms. A call for payment by the board of directors must be uniform as far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued under subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) 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 twenty (20) days after the corporation sends written demand for payment to the subscriber.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-2**

##### **Subscription agreement; powers of directors; consideration; escrowed or restricted shares for future services or benefits**

Sec. 2. (a) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to this section.

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

(c) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including the following:

- (1) Cash.
- (2) Promissory notes.
- (3) Services performed.
- (4) Contracts for services to be performed.
- (5) Other securities of the corporation. If shares are authorized to be issued for promissory notes or for promises to provide services in the future, the corporation shall report in writing to the shareholders the number of shares authorized to be so issued with or before the notice of the next shareholders' meeting. However, a corporation that is subject to the Securities Exchange Act of 1934, as amended, satisfies the reporting

requirement of this subsection by complying with the proxy disclosure provisions of that act.

(d) The corporation may issue shares for the consideration received or to be received as the board of directors determines to be adequate. The determination by the board of directors is conclusive with regard to the adequacy of consideration for the issuance of shares and with regard to whether the shares are validly issued, fully paid, and nonassessable.

(e) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued are fully paid and nonassessable.

(f) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note or make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against the purchase price until the services are performed, the note is paid, or the benefits received. If the 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 canceled in whole or in part.

*As added by P.L.14-1992, SEC.163. Amended by P.L.1-1993, SEC.210.*

### **IC 28-13-2-3**

#### **Shareholder liability for corporate acts or indebtedness**

Sec. 3. (a) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or the corporation's creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's own acts or conduct.  
*As added by P.L.14-1992, SEC.163.*

### **IC 28-13-2-4**

#### **Pro rata shares; share dividend or split; record date of dividend**

Sec. 4. (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of at least one (1) class or series. An issuance of shares under this subsection may be in the form of a share dividend or a share split, but shall be considered a share dividend for purposes of this article.

(b) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

- (1) the articles of incorporation so authorize;
- (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or
- (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.  
*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-5**

##### **Purchase rights, options, or warrants; corporate shares or other securities**

Sec. 5. A corporation, acting through the corporation's board of directors, may create or issue rights, options, or warrants for the purchase of shares or other securities of the corporation or any successor in interest of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares or other securities are to be issued. The rights, options, or warrants may be issued with or without consideration and may be issued pro rata.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-6**

##### **Share certificates; contents; requisites; validity of signature**

Sec. 6. (a) Shares may be represented by certificates. Unless this article or another statute expressly provides otherwise, the rights and obligations of shareholders of the same class or series of shares are identical whether or not the shares are represented by certificates.

(b) At a minimum each share certificate must state on the certificate face the following:

- (1) The name of the issuing corporation and that the corporation is organized under Indiana law.
- (2) The name of the person to whom issued.
- (3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class:

- (1) the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate; or
- (2) each certificate may state conspicuously on the front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

- (1) must be signed either manually or in facsimile by at least two (2) officers designated in the bylaws or by the board of directors; and
- (2) may bear the seal or a facsimile of the seal of the corporation.

(e) If the person who signed either manually or in facsimile a share certificate no longer holds office when the certificate is issued,

the certificate remains valid.

*As added by P.L.14-1992, SEC.163. Amended by P.L.79-1998, SEC.89.*

#### **IC 28-13-2-7**

##### **Classes or series of shares without certificates; furnishing shareholder information**

Sec. 7. (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 6(b) and 6(c) of this chapter, and, if applicable, section 8 of this chapter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-8**

##### **Shares subject to registration or transfer restrictions; previously issued shares; enforcement of restrictions against holder or transferee**

Sec. 8. (a) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(b) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of any class or series 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.

(c) 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 the restriction's existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 7(b) of this chapter. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(d) A restriction on the transfer or registration of transfer of shares is authorized:

(1) to preserve exemptions under federal or state securities law;  
or

(2) for any other reasonable purpose.

(e) A restriction on the transfer or registration of transfer of shares may do any of the following:

(1) Obligate the shareholder first to offer the corporation or other persons separately, consecutively, or simultaneously an

opportunity to acquire the restricted shares.

(2) Obligate the corporation or other persons separately, consecutively, or simultaneously to acquire the restricted shares.

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-2-9**

##### **Expenses payable from consideration received for shares**

Sec. 9. A corporation may pay the expenses of:

(1) selling or underwriting the corporation's shares; and

(2) organizing or reorganizing the corporation;

from the consideration received for shares.

*As added by P.L.14-1992, SEC.163.*



### **IC 28-13-3**

#### **Chapter 3. Preemptive Rights—Reacquisition and Reissue of Shares**

### **IC 28-13-3-1**

#### **Unissued shares; acquisition rights subject to articles of incorporation**

Sec. 1. 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.

*As added by P.L.14-1992, SEC.163.*

### **IC 28-13-3-2**

#### **Security convertible into or carrying right to subscribe for or acquire shares; election to have preemptive rights; applicable principles**

Sec. 2. (a) For purposes of sections 1 and 2 of this chapter, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or similar words) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation 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 the shares.

(2) A shareholder may waive the preemptive right. A waiver evidenced by a writing is irrevocable even though the waiver is not supported by consideration.

(3) There is no preemptive right with respect to any of the following:

(A) Shares issued as compensation to directors, officers, agents, or employees of the corporation, the corporation's subsidiaries, or the corporation's affiliates.

(B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, the corporation's subsidiaries, or the corporation's affiliates.

(C) Shares authorized in the articles of incorporation that are issued within six (6) months from the effective date of incorporation.

(D) Shares sold otherwise than for money or promissory notes.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of the class.

(5) Holders of shares of any class with general voting rights but

without preferential rights to distributions or assets 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.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for 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 is subject to the shareholders' preemptive rights.

*As added by P.L.14-1992, SEC.163.*

### **IC 28-13-3-3**

#### **Acquisition of own shares by corporation; reduction of authorized shares; contents of articles; treasury shares; unlawful reduction of shares producing insolvency**

Sec. 3. (a) A corporation may acquire its own shares pursuant to an adopted resolution that is submitted to and approved by the director prior to such acquisition of shares. Unless a resolution of the board of directors or the corporation's articles of incorporation provide otherwise, shares so acquired constitute authorized but unissued shares.

(b) If the board resolution or articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(c) Articles of amendment for purposes of subsections (b) and (f):

(1) may be adopted by the board of directors without shareholder action;

(2) shall be delivered to the director of the department for approval or disapproval; and

(3) if approved by the director of the department, shall be delivered to the secretary of state for filing by the director of the department.

(d) The articles filed with the secretary of state must state the following:

(1) The name of the corporation.

(2) The reduction in the number of authorized shares, itemized by class and series.

(3) The action resulting in the reduction and a copy of the board resolution authorizing the action.

(4) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(e) A corporation has authority to use, hold, acquire, cancel, and dispose of treasury shares.

(f) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, as provided in subsection (c), treasury shares of

the corporation that are canceled shall be treated as authorized but unissued shares. Such shares may be canceled by the adoption of a board resolution stating that the shares are to be canceled. The resolution shall be submitted to and approved by the director.

(g) A reduction of the issued and outstanding shares of capital stock of a corporation that renders the corporation insolvent is not lawful.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-4**

### **Chapter 4. Dividends and Other Distributions**

#### **IC 28-13-4-1**

##### **Power of board of directors to make distributions**

Sec. 1. A board of directors may authorize and the corporation may make distributions to the corporation's shareholders subject to restriction by the articles of incorporation and the limitations in section 3 of this chapter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-4-2**

##### **Share dividend or distribution dates of record, declaration, and payment**

Sec. 2. The board of directors may fix a record date, declaration date, and payment date with respect to any share dividend or distribution to the shareholders of the corporation. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a repurchase or reacquisition of shares, the record date is the date the board of directors authorizes the distribution.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-4-3**

##### **Dividends; approval of department required; retained net income; exemption from approval requirements**

Sec. 3. (a) A corporation may declare a dividend of so much of the undivided profits of the corporation as is considered expedient by the board of directors.

(b) A corporation must obtain the approval of the department for the payment of a dividend if the total of all dividends declared by the corporation during the calendar year, including the proposed dividend, would exceed the sum of the net income for the year to date combined with its retained net income for the previous two (2) years.

(c) As used in subsection (b), "retained net income" means the net income of a specified period, calculated under the consolidated report of income instructions, less the total amount of all dividends declared for the specified period.

(d) The department may establish criteria for a corporation to be exempt from the dividend approval requirements of this section. In establishing the criteria, the department shall consider:

- (1) the corporation's composite uniform financial institutions rating assigned as a result of the corporation's most recent federal or state examination, or in the case of a corporate fiduciary, the corporate fiduciary rating assigned as a result of the corporate fiduciary's most recent state examination;
- (2) the resulting Tier 1 leverage capital ratio; and
- (3) the existence of any corrective or supervisory order or agreement.

*As added by P.L.14-1992, SEC.163. Amended by P.L.122-1994, SEC.119; P.L.262-1995, SEC.84; P.L.176-1996, SEC.28; P.L.11-1998, SEC.22; P.L.90-2008, SEC.77.*

#### **IC 28-13-4-4**

##### **Withdrawal of capital stock prohibited**

Sec. 4. A corporation may not, during the time it continues in business as such, withdraw or authorize or permit to be withdrawn any portion of the capital stock in the form of dividends or otherwise.  
*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.85; P.L.258-2003, SEC.25.*

#### **IC 28-13-4-5**

##### **Impairment of capital prohibited; maximum dividend**

Sec. 5. (a) A corporation may not declare or pay any dividends to its shareholders in any form if, by the payment of the dividends, its capital stock will be thereby impaired.

(b) A corporation may never pay a dividend in an amount greater than the remainder of undivided profits then on hand after deducting losses, bad debts, or depreciation that the department may have determined, and all other expenses.

(c) A corporation must obtain department approval before reducing the corporation's capital stock, capital surplus, or preferred stock.

*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.86; P.L.258-2003, SEC.26.*

#### **IC 28-13-4-6**

##### **Bad debts**

Sec. 6. All debts due to a corporation on which interest is past due for a period of six (6) months are bad debts unless, in the opinion of the department, the debts are well secured.

*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.87; P.L.258-2003, SEC.27.*

#### **IC 28-13-4-7**

##### **Protective order for increase of capital and surplus or reduction of deposits; time period for compliance; increase in capital by corporate fiduciary**

Sec. 7. (a) The department may, if the department considers it necessary for the protection of the depositors, require any bank or trust company, savings bank, or savings association to increase the capital and surplus or to reduce the amount of the deposits of the bank or trust company, savings bank, or savings association. The department shall, in arriving at a decision whether to order a bank or trust company, savings bank, or savings association to increase the capital and surplus or reduce the amount of the deposits for the protection of the depositors of the bank or trust company, savings bank, or savings association, take into consideration the following:

- (1) Quality of management.

- (2) Liquidity of assets.
- (3) History of earnings and the retention of earnings.
- (4) Quality and character of ownership.
- (5) Burden of occupancy expenses.
- (6) Potential volatility of deposit structure.
- (7) Quality of operating procedures.
- (8) Capacity to meet present and future needs of the area served, considering its competition.

(b) If the department determines that an increase in the capital and surplus or decrease in the deposits is necessary, the department shall enter an order fixing the amount of the increase or decrease. The order shall be complied with within the time period fixed by the order.

(c) The department may require a corporate fiduciary to increase its capital. In deciding whether to order a corporate fiduciary to increase its capital, the department shall take into consideration the following:

- (1) Quality of management.
- (2) Liquidity of assets.
- (3) History of earnings and the retention of earnings.
- (4) Quality and character of ownership.
- (5) Burden of occupancy expenses.
- (6) Quality of operating procedures.
- (7) Ability to administer fiduciary accounts in a prudent manner consistent with applicable laws or regulations.

(d) If the department determines that an increase in capital under subsection (c) is necessary, the department shall enter an order fixing the amount of the increase. The order must be complied with within the period fixed by the order.

*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.88; P.L.258-2003, SEC.28; P.L.213-2007, SEC.103; P.L.217-2007, SEC.101.*

#### **IC 28-13-4-8**

##### **Repealed**

*(Repealed by P.L.79-1998, SEC.112.)*

#### **IC 28-13-4-9**

##### **Parity of shareholder distribution with corporate indebtedness to unsecured creditors**

Sec. 9. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this chapter is on a parity with the corporation's indebtedness to the corporation's general, unsecured creditors except to the extent subordinated by agreement.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-5**

### **Chapter 5. Meetings of Shareholders**

#### **IC 28-13-5-1**

##### **Annual meeting requisites**

Sec. 1. (a) A corporation must hold a meeting of the shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual meetings of shareholders shall be held at the principal office of the corporation, or in the city, town, or county in which the principal office is located at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any action taken by the corporation.

(d) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in an annual shareholders' meeting by, or through the use of, any means of communication by which all shareholders participating may simultaneously communicate with each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-2**

##### **Special meeting; corporations with more than 50 shareholders**

Sec. 2. (a) A corporation with more than fifty (50) shareholders must hold a special meeting of shareholders on call of the corporation's board of directors or the person or persons, including shareholders or officers, specifically authorized to do so by the articles of incorporation or bylaws.

(b) If the articles of incorporation require the holding of a special meeting on the demand of the corporation's shareholders, but do not specify the percentage of votes entitled to be cast on an issue necessary to demand a special meeting, the board of directors may establish the percentage in the corporation's bylaws. Absent adoption of a bylaw provision, the demand for a special meeting must be made by the holders of all of the votes entitled to be cast on an issue.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-3**

##### **Special meeting; corporations of 50 or fewer shareholders**

Sec. 3. A corporation with not more than fifty (50) shareholders must hold a special meeting of shareholders as follows:

(1) On call of the corporation's board of directors or the person or persons, including shareholders or officers, specifically authorized to do so by the articles of incorporation or bylaws.

(2) If the holders of at least twenty-five percent (25%) of all the votes entitled to be cast on any issue proposed to be considered

at the proposed special meeting sign, date, and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which the meeting is to be held.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-4**

##### **Special meeting requisites and procedure**

Sec. 4. (a) Special meetings of shareholders shall be held at the principal office of the corporation, or in the city, town, or county in which the principal office is located at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(b) Only business within the purpose or purposes described in the meeting notice required by section 7 of this chapter may be conducted at a special shareholders' meeting.

(c) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in a special meeting of shareholders by, or through the use of, any means of communication by which all shareholders participating may simultaneously communicate with each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-5**

##### **Court ordered meeting; requisites and procedure**

Sec. 5. (a) The circuit or superior court of the county where a corporation's principal office is located may order a meeting to be held and may fix the time and place of the meeting.

(b) A meeting ordered under this section shall be conducted in accordance with the corporation's articles of incorporation and bylaws:

(1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) on application of a shareholder who signed a demand for a special meeting valid under section 2 of this chapter if:

(A) notice of the special meeting was not given within sixty (60) days after the date the demand was delivered to the corporation's secretary; or

(B) the special meeting was not held in accordance with the notice.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-6**

##### **Action taken without meeting; consent of voting shareholders**



Sec. 6. (a) Action required or permitted by this article to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by at least one (1) written consent describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporation records.

(b) If not otherwise determined under section 11 of this chapter, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) Action taken under this section is effective when the last shareholder signs the consent, unless the consent specifies a different prior or subsequent effective date.

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-7**

##### **Action with unanimous consent of voting shareholders; notice to nonvoting shareholders**

Sec. 7. If this article requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that under this article would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-8**

##### **Notice of annual and special shareholders' meeting; prerequisites**

Sec. 8. (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting not less than ten (10) or more than sixty (60) days before the meeting date. Unless this article or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this article or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section 11 of this chapter, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(e) This subsection applies only to a corporation that is a building and loan association or a mutual savings bank. Notice of the annual or a special meeting of the shareholders may be given by publication of the notice. Notice under this subsection must satisfy all of the following:

- (1) The notice must be published one (1) time at least ten (10) days before the date of the meeting.
- (2) The notice must be published in one (1) of the following:
  - (A) A newspaper of general circulation in the city or town in which the principal office of the corporation is located.
  - (B) If publication cannot be made under clause (A), publication in a newspaper of general circulation in the county in which the principal office of the corporation is located.
  - (C) If publication cannot be made under clause (A) or (B), publication in a newspaper published closest to the location of the principal office of the corporation.

*As added by P.L.14-1992, SEC.163. Amended by P.L.42-1993, SEC.93.*

#### **IC 28-13-5-9**

##### **Adjournment of annual or special shareholders' meeting; notice**

Sec. 9. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 11 of this chapter, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-5-10**

##### **Waiver by shareholder entitled to notice of meeting; effect of attendance at meeting**

Sec. 10. (a) A shareholder may waive any notice required by this article, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver by the shareholder entitled to the notice must be in writing and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

- (b) A shareholder's attendance at a meeting:
  - (1) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and
  - (2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-5-11**

**Record date; fixing for shareholder meeting or action; adjournment by order of court**

Sec. 11. (a) The bylaws may fix or provide the manner of fixing the record date for at least one (1) voting group to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date. The board of directors must fix a new record date if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, the court may:

- (1) provide that the original record date continues in effect; or
- (2) fix a new record date.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-6**

### **Chapter 6. Voting by Shareholders**

#### **IC 28-13-6-1**

##### **Shareholders' list; requisites and necessity; inspection and copying**

Sec. 1. (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all the corporation's shareholders who are entitled to notice of a shareholders' meeting.

The list must:

- (1) be arranged by voting group;
- (2) be arranged by class or series of shares within each voting group; and
- (3) show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder entitled to vote at the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or the shareholder's agent or attorney authorized in writing, is entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection if the following requirements are met:

- (1) The shareholder's demand is made in good faith and for a proper purpose.
- (2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.
- (3) The records are directly connected with the shareholder's purpose.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, or the shareholder's agent or attorney authorized in writing, is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney authorized in writing, to inspect or copy the shareholders' list during the period specified in subsection (b), the circuit or superior court of the county where a corporation's principal office is located, on application of the shareholder, may order the inspection or copying.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

(f) The use and distribution of any information acquired from inspection or copying the shareholders' list under the rights granted by this section are restricted solely to the proper purpose described with particularity under subsection (b).

(g) In addition to the inspection rights described in this section, a shareholder of a corporation is entitled to inspect and copy, during

regular business hours at a reasonable location specified by the corporation, the record of shareholders, if the shareholder:

- (1) meets the requirements of subsection (b); and
- (2) gives the corporation written notice of the shareholder's demand at least five (5) business days before the date the shareholder wishes to inspect and copy the record.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-6-2**

### **Voting of shares**

Sec. 2. (a) Except as provided in subsections (b), (c), (d), and (e) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if the shares are owned, directly or indirectly, by a second corporation, domestic or foreign, and the corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by the corporation in or for an employee benefit plan or in any other fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a corporation, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(e) A mutual savings association or mutual savings bank may establish the rights of its voting parties in its articles of incorporation or articles of conversion.

(f) A member or a shareholder of a mutual savings bank or a mutual savings association that has not established the rights of its voting parties under subsection (e) is entitled at a members' or shareholders' meeting to cast one (1) vote for each one hundred dollars (\$100) or fraction of one hundred dollars (\$100) of the total amount paid on all deposits in the member's name or all shares standing in the shareholder's name on the books of the mutual savings bank or mutual savings association. Each borrowing member is entitled to cast one (1) vote as a borrower. A person may not, except as proxy, cast more than fifty (50) votes at an election held by the mutual savings bank or mutual savings association.

*As added by P.L.14-1992, SEC.163. Amended by P.L.42-1993, SEC.94; P.L.176-1996, SEC.29; P.L.192-1997, SEC.27; P.L.79-1998, SEC.90; P.L.215-1999, SEC.9.*

## **IC 28-13-6-3**

### **Proxy voting**

Sec. 3. (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for

the shareholder by signing an appointment form, either personally or by the shareholder's attorney-in-fact.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a shorter or longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that the appointment form is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of the following:

- (1) A pledgee.
- (2) A person who purchased or agreed to purchase the shares.
- (3) A creditor of the corporation who extended the corporation credit under terms requiring the appointment.
- (4) An employee of the corporation whose employment contract requires the appointment.
- (5) A party to a voting agreement created under IC 28-13-7-2.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if:

- (1) the transferee did not know of the appointment's existence when the transferee acquired the shares; and
- (2) the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to section 5 of this chapter and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-6-4**

##### **Beneficial owner of shares; recognition procedure; disclosure procedure; sanctions to ensure compliance**

Sec. 4. (a) A corporation may establish a recognition procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the recognition procedure.

(b) A corporation may establish a disclosure procedure by which the names of beneficial owners of the corporation's shares shall, to the extent not prohibited by law, be disclosed to the corporation. A corporation may not establish a procedure requiring disclosure of the

names of the beneficial owners of a private trust created in good faith and not for the purpose of circumventing a disclosure procedure adopted pursuant to this section. The corporation may adopt reasonable sanctions to ensure compliance with its disclosure procedure, including:

- (1) prohibiting the voting of;
- (2) providing for mandatory or optional reacquisition of; or
- (3) the withholding or payment into escrow of dividends with respect to;

shares as to which the beneficial owner's name is not disclosed as required by the disclosure procedure.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-6-5**

##### **Acceptance or rejection of vote, consent, waiver, or proxy appointment; validity of signature**

Sec. 5. (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of the corporation's shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if any of the following are met:

- (1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.
- (2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.
- (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.
- (4) The name signed purports to be that of a pledgee, a beneficial owner, or an attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment.
- (5) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or

proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on the vote, consent, waiver, or proxy appointment or about the signatory's authority to sign for the shareholder.

(d) The corporation and the corporation's officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.  
*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-6-6**

##### **Separate voting group; action on matter at meeting by less than group majority vote; quorum required for approval; law governing election of directors**

Sec. 6. (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this article require a greater number, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, the share is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this article require a greater number of affirmative votes.

(d) The election of directors is governed by section 9 of this chapter.

(e) Any number of members represented either in person or by proxy constitutes a quorum of members at a regular or special members meeting of a mutual savings bank or a mutual savings association.

*As added by P.L.14-1992, SEC.163. Amended by P.L.122-1994, SEC.120; P.L.79-1998, SEC.91.*

#### **IC 28-13-6-7**

##### **Quorum for voting requirement for shareholders comprising voting groups**

Sec. 7. (a) If the articles of incorporation or this article provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 6 of this chapter.



(b) If the articles of incorporation or this article provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 6 of this chapter. A matter may be voted on by one (1) voting group even though no vote is taken by another voting group entitled to vote on the matter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-6-8**

##### **Greater quorum or voting requirements; shareholders or voting groups; provision by articles**

Sec. 8. The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this article.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-6-9**

##### **Directors; election by plurality of votes**

Sec. 9. Directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-7**

### **Chapter 7. Voting Trusts and Agreements**

#### **IC 28-13-7-1**

##### **Creation of voting trust; requisites**

Sec. 1. At least one (1) shareholder may create a voting trust, conferring on a trustee the right to vote or otherwise act for the shareholders by signing an agreement setting out the provisions of the trust that:

- (1) may include anything consistent with the trust's purpose; and
- (2) transfer the shareholders' shares to the trustee.

*As added by P.L.14-1992, SEC.163. Amended by P.L.1-1993, SEC.211.*

#### **IC 28-13-7-2**

##### **Duties of voting trustee; agreement and list**

Sec. 2. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-7-3**

##### **Effective date; irrevocability; rights coupled with interest in shares**

Sec. 3. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust may not be made irrevocable for a period of more than ten (10) years after the effective date of the trust unless the voting or consenting rights granted by the trust are coupled with an interest in the shares to which the rights relate. However, if the agreement so provides, the irrevocable rights may from time to time be extended for additional periods of not more than ten (10) years each as to shares deposited under the agreement whose beneficial owners assent in writing to the extension. The rights are considered to be coupled with an interest in the shares if reserved or given for any of the following:

- (1) In connection with an option, authority, or contract to buy or sell the shares or part of the shares.
- (2) In connection with the pledge of the shares or part of the shares to secure the performance or nonperformance of any act.
- (3) In connection with the performance or nonperformance of any act, or an agreement therefor, by the corporation issuing the shares.
- (4) In connection with any other act or thing constituting an interest sufficient in law to support a power coupled with it.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-7-4**

**Irrevocable trust extension; duties of voting trustee**

Sec. 4. If an irrevocable voting trust is extended in accordance with section 3 of this chapter, the voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-7-5****Voting agreement; exemption; enforceability**

Sec. 5. (a) At least two (2) shareholders may provide for the manner in which the shareholders will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to sections 1 through 4 of this chapter.

(b) A voting agreement created under this section is specifically enforceable.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-8**

### **Chapter 8. Derivative Proceedings**

#### **IC 28-13-8-1**

##### **"Shareholder" defined**

Sec. 1. For purposes of this chapter, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-8-2**

##### **Right to commence proceeding**

Sec. 2. (a) A person may not commence a proceeding in the right of a corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(b) A derivative proceeding may not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-8-3**

##### **Complaint requisites; stay pending corporate investigation**

Sec. 3. (a) A complaint in a proceeding brought in the right of a corporation must be verified and must allege with particularity:

- (1) the demand made, if any, to obtain action by the board of directors; and
- (2) either that the demand was refused or ignored, or why the shareholder did not make the demand.

(b) Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, including an investigation commenced under section 5 of this chapter, the court may stay any proceeding until the investigation is completed.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-8-4**

##### **Discontinuance or settlement of case; approval; notice; payment of defense expenses and fees**

Sec. 4. (a) A proceeding commenced under this chapter may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.

(b) On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the proceeding if the court

finds that the proceeding was commenced without reasonable cause.  
*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-8-5**

**Corporate committee; establishment; powers and duties; determination made independently of board; conclusive presumption on merits; disinterested director or other person**

Sec. 5. (a) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of at least three (3) disinterested directors or other disinterested persons to determine:

- (1) whether the corporation has a legal or equitable right or remedy; and
- (2) whether it is in the best interests of the corporation to pursue that right or remedy, if any, or to dismiss a proceeding that seeks to assert that right or remedy on behalf of the corporation.

(b) In making a determination under subsection (a), the committee is not subject to the direction or control of or termination by the board. A vacancy on the committee may be filled by the majority of the remaining members by selection of another disinterested director or other disinterested person.

(c) If the committee determines that pursuit of a right or remedy through a derivative proceeding or otherwise is not in the best interests of the corporation, the merits of that determination are presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to the right or remedy, unless the shareholder can demonstrate that:

- (1) the committee was not disinterested, as described in subsection (d); or
- (2) the committee's determination was not made after an investigation conducted in good faith.

(d) For purposes of this chapter, a director or other person is disinterested if the director or other person:

- (1) has not been made a party to a derivative proceeding seeking to assert the right or remedy in question, or has been made a party but only on the basis of a frivolous or insubstantial claim or for the sole purpose of seeking to disqualify the director or other person from serving on the committee;
- (2) is able under the circumstances to render a determination in the best interests of the corporation; and
- (3) is not an officer, employee, or agent of the corporation or of a related corporation.

However, an officer, employee, or agent of the corporation or a related corporation who meets the standards of subdivisions (1) and (2) shall be considered disinterested in any case in which the right or remedy under scrutiny is not assertable against a director or officer of the corporation or the related corporation.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-9**

### **Chapter 9. Board of Directors Generally**

#### **IC 28-13-9-1**

##### **Necessity of board; powers**

Sec. 1. (a) Each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the corporation's board of directors, subject to any limitation set forth in the articles of incorporation.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-2**

##### **Qualifications of directors; articles and bylaws prescribing; waiver of citizenship requirement**

Sec. 2. (a) Except as provided in subsection (c), every director must, during the director's whole term of service, be a citizen of the United States. A director must be at least eighteen (18) years of age. At least one-half (1/2) of the directors must reside in Indiana or within a distance of not to exceed fifty (50) miles of any office of the corporation of which the director is a director.

(b) The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(c) The director of the department may waive the United States citizenship requirement set forth in subsection (a) for a particular corporation if the waiver would affect only a minority of the total number of directors of the corporation.

*As added by P.L.14-1992, SEC.163. Amended by P.L.192-2003, SEC.7; P.L.213-2007, SEC.104; P.L.217-2007, SEC.102.*

#### **IC 28-13-9-3**

##### **Size of board; articles and bylaws; annual election of directors**

Sec. 3. (a) A board of directors must consist of at least three (3) individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws. The articles of incorporation or bylaws may provide that the number of directors may be determined by resolution of the board of directors.

(b) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. However, the minimum must be at least three (3) directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, in the bylaws or by resolution of the board of directors.

(c) Directors are elected at the first annual shareholders' meeting and at each subsequent annual meeting unless the directors' terms are staggered under section 6 of this chapter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-4**

##### **Election of directors; voting groups; classes of shares**

Sec. 4. (a) If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of at least one (1) authorized class of shares.

(b) Each class of shares entitled to elect at least one (1) director is a separate voting group for purposes of the election of directors.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-5**

##### **Terms of office; vacancies; continuation until qualification of successor**

Sec. 5. (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless the directors' terms are staggered under section 6 of this chapter.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the end of the term for which the director's predecessor was elected.

(e) Despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-6**

##### **Staggering terms; groups of directors; expiration of terms**

Sec. 6. (a) The articles of incorporation or, if the articles of incorporation so authorize, the bylaws may provide for staggering the board of directors' terms by dividing the total number of directors into either:

(1) two (2) groups, with each group containing one-half (1/2) of the total, as near as may be; or

(2) three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) If terms are staggered under subsection (a):

(1) the terms of directors in the first group expire at the first annual shareholders' meeting after the directors' election;

(2) the terms of the second group expire at the second annual shareholders' meeting after the directors' election; and

(3) the terms of the third group, if any, expire at the third annual shareholders' meeting after the directors' election.

At each annual shareholders' meeting held after the meetings specified in this subsection, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-7**

##### **Resignation; notice; effective date**

Sec. 7. (a) A director may resign at any time by delivering written notice:

- (1) to the board of directors, its chairman, or the secretary of the corporation; or
- (2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-8**

##### **Removal from office; meeting; notice**

Sec. 8. (a) Directors may be removed in any manner provided in the articles of incorporation. In addition, the shareholders or directors may remove one (1) or more directors for cause or, unless the articles of incorporation provide otherwise, without cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) A director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(d) A director may be removed by the shareholders, if the shareholders are otherwise authorized to do so, only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one (1) of the purposes, of the meeting, is removal of the director.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-9**

##### **Vacancies; filling known future vacancies; temporary appointment by director of department**

Sec. 9. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) the board of directors may fill the vacancy; or
- (2) if the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 7(b) of this chapter or otherwise may be filled before the vacancy occurs. However, the new director may not take office until the vacancy



occurs.

(d) If a vacancy is not filled through a corporation's normal process for filling vacancies within a time considered reasonable by the department, the director of the department may make a temporary appointment to the board of directors to fill the vacancy. The director of the department shall appoint a person whom the director considers capable of providing competent leadership and decision making ability. A person appointed to a board of directors under this subsection shall serve on the board until the corporation fills the position through the corporation's normal process for filling vacancies on the board. However, a person appointed to a board of directors by the director of the department under this subsection may not serve on the board for more than two (2) years, unless the person is selected to fill the vacancy through the corporation's normal process for filling vacancies. For purposes of this subsection, in determining whether a corporation has had a reasonable period in which to fill a vacancy, the department shall consider the following:

- (1) The financial condition of the corporation.
- (2) The number of remaining board members.
- (3) The likelihood the board of directors will be able to establish a quorum for the transaction of business.
- (4) The potential harm to the corporation that could result without an appointment under this subsection.

*As added by P.L.14-1992, SEC.163. Amended by P.L.141-2005, SEC.25.*

#### **IC 28-13-9-10**

##### **Compensation; fixing**

Sec. 10. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-10**

### **Chapter 10. Meetings and Action of Board of Directors**

#### **IC 28-13-10-1**

##### **Place of meetings; participants; means of communication; presumption of presence**

Sec. 1. (a) The board of directors may hold regular or special meetings in or out of Indiana.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously communicate with one another during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-10-2**

##### **Action taken without meeting; signed consent; effect**

Sec. 2. (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this article to be taken at a board of directors meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by at least one (1) written consent describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different prior or subsequent effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-10-3**

##### **Notice of meetings**

Sec. 3. (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two (2) days notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-10-4**

##### **Waiver of required notice; attendance or participation in meeting**

Sec. 4. (a) A director may waive any notice required by this article, the articles of incorporation, or bylaws before or after the

date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-10-5**

##### **Quorum of board; effect of majority vote; presumption of assent to action taken; right of dissent or abstention**

Sec. 5. (a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

- (1) a majority of the fixed number of directors if the corporation has a fixed board size; or
- (2) a majority of the number of directors prescribed under IC 28-13-9-3(b).

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless a greater number is required by the articles of incorporation or bylaws.

(c) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

- (1) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding the meeting or transacting business at the meeting;
- (2) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
- (3) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before the meeting's adjournment or to the secretary of the corporation immediately after adjournment of the meeting.

(d) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

*As added by P.L.14-1992, SEC.163. Amended by P.L.42-1993, SEC.95.*

#### **IC 28-13-10-6**

##### **Committees; approval of creation and appointment; applicability of chapter; powers and duties; compliance with standards of conduct for directors**

Sec. 6. (a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create at least one (1) committee and appoint members of the board of directors to serve on the committees. Each committee may have at least one (1) member, who serves at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to the committee must be approved by the greater of:

- (1) a majority of all the directors in office when the action is taken; or
- (2) the number of directors required by the articles of incorporation or bylaws to take action under section 5 of this chapter.

(c) Sections 1 through 5 of this chapter, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and the members of committees as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under IC 28-13-9-1.

(e) A committee may not do any of the following:

- (1) Authorize distributions. However, a committee or an executive officer of the corporation designated by the board of directors may authorize or approve a reacquisition of shares or other distribution if done according to a formula or method or within a range prescribed by the board of directors.
- (2) Approve or propose to shareholders action that this article requires to be approved by shareholders.
- (3) Fill vacancies on the board of directors or on any of the board of directors' committees.
- (4) Except to the extent permitted by subdivision (7), amend articles of incorporation under IC 28-13-14-2.
- (5) Adopt, amend, or repeal bylaws.
- (6) Approve a plan of merger not requiring shareholder approval.
- (7) Authorize or approve the issuance or sale or a contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or an executive officer of the corporation designated by the board of directors to take the action described in this subdivision within limits prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in IC 28-13-11-1.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-10-7**

##### **Attendance record; report; contents; incorporation in minutes of annual meeting**

Sec. 7. (a) In addition to such other duties as may be imposed upon the directors by this article, the directors shall keep a record of the attendance of directors at meetings of the board.

(b) The directors shall make a report showing the following:

- (1) The names of the directors.
- (2) The number of meetings of the board, regular and special.

(3) The number of meetings attended.

(4) The number of meetings from which each director was absent.

(c) The report required by this section shall be read at and incorporated in the minutes of the annual meeting of the shareholders if the corporation is not wholly owned by a corporation holding company. The directors, at the times as the directors are meeting as a board of directors, shall also require the secretary of the board or another designated agent to make official communications from the department a matter of record in the minutes of the meetings of the board of directors.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-10-8**

##### **Examination of corporation statement; departmental accounting and auditing standards; examination of corporation's holding company**

Sec. 8. The board of directors shall cause the corporation to be examined one (1) time each calendar year by a certified public accountant. The board of directors shall submit the examination and a complete statement of the condition of the corporation to the department. The department may require additional information. The department may establish the accounting and auditing standards necessary to define the examination requirements of this section by policy or rule. An examination of a corporation's holding company shall satisfy the requirements of this section if done in accordance with standards prescribed by department policy or rule.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-10-9**

##### **Legal holidays; resolution concerning days other than legal holidays; banking hours; emergencies affecting office hours**

Sec. 9. (a) As used in this section, "emergency" means:

(1) any condition or occurrence that:

(A) may interfere physically with the conduct of normal business operations; or

(B) poses an imminent or existing threat to the safety or security of persons, property, or both persons and property; at one (1) or more of the offices of a corporation;

(2) any condition or occurrence that:

(A) is declared a state of disaster emergency by the governor under IC 10-14-3-12; and

(B) applies to an area that includes one (1) or more of the offices of a corporation; or

(3) the death of or funeral services for an employee, officer, or director of a corporation or for a former employee, officer, or director of a corporation.

(b) A corporation may be closed on any part of a legal holiday by giving reasonable notice to its customers of its intention to be closed in observance of the holiday.

(c) Whenever a corporation is to be closed on a day or part of a day other than a legal holiday, the board of directors shall pass a resolution concerning the closing, and give reasonable notice of the closing to the customers of the corporation.

(d) The board of directors of a corporation may establish and observe different banking hours and designate different fixed days, if any, for closing the principal office and each separate branch office of the corporation.

(e) Any day designated by the President of the United States or by the governor as a day of mourning, celebration, or other special observance is a legal holiday for corporations.

(f) Whenever the officers of a corporation believe that an emergency exists or is impending, which affects or may affect one (1) or more of a corporation's offices, the officers have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one (1) or more of such offices or, if having opened, to close any one (1) or more of such offices during the continuation of the emergency. The office or offices so closed shall remain closed until the time the officers determine that the emergency has ended. However, such office or offices may not remain closed for more than forty-eight (48) consecutive hours on business days, excluding other legal holidays, without requesting the approval of the director of the department of financial institutions.

(g) A corporation closing an office or offices under subsection (f) shall give prompt notice of its action to the director of the department of financial institutions.

(h) Any date on which a corporation is closed under this section is a legal holiday with respect to the business affairs of the corporation. No liability or loss of rights of any kind, on the part of any corporation, director, officer, or employee, accrues or results by virtue of any closing authorized by this section.

*As added by P.L.176-1996, SEC.30. Amended by P.L.90-2008, SEC.78.*

## **IC 28-13-10-10**

### **Commission of crime**

Sec. 10. (a) In the event of a commission of a crime or apparent commission of a crime it shall be the responsibility of the corporation to ensure compliance with Part 353 of the Federal Deposit Insurance Corporation rules and regulations.

(b) Reporting of a crime under Part 353 of the Federal Deposit Insurance Corporation rules and regulations satisfies the reporting requirements of criminal activity for the department.

(c) The department shall use the Financial Crimes Enforcement Network of the United States Department of the Treasury instead of receiving written reports from the corporation.

(d) Failure to report the commission of a crime or apparent commission of a crime as required in Part 353 of the Federal Deposit Insurance Corporation is a violation of this section.

(e) If a corporation is a corporate fiduciary or is not insured by the

Federal Deposit Insurance Corporation, the corporation must notify the department of the commission of a crime or the apparent commission of a crime not later than the first business day after the day the crime or apparent crime was discovered. A written notification must also be delivered to the department not later than thirty (30) days after the date the crime or apparent crime was discovered. A written notification under this section must include the:

- (1) details of the crime; and
- (2) actions taken by the corporation regarding the crime.

*As added by P.L.176-1996, SEC.31. Amended by P.L.192-1997, SEC.28; P.L.63-2001, SEC.23 and P.L.134-2001, SEC.25.*

## **IC 28-13-10-11**

### **Records retention**

Sec. 11. (a) A corporation shall retain its business records under this section for the period required by this section.

(b) A corporation shall permanently retain:

- (1) minute books of meetings of shareholders and directors;
- (2) the capital stock ledger and capital stock certificate ledger or stubs;
- (3) the general ledger;
- (4) the daily statements of condition;
- (5) the investment ledger;
- (6) the copies of examination reports; and
- (7) other records required by the department of financial institutions under this section.

(c) A corporation's board of directors shall develop a records retention policy. In developing the policy, the board of directors shall consider:

- (1) legal actions and administrative proceedings in which the production of company records is necessary or desirable;
- (2) state and federal statutes of limitation applicable to legal actions and administrative proceedings; and
- (3) availability of information contained in the company records from other sources.

(d) Except for records under subsection (b) and for other records required to be permanently retained, a corporation may dispose of a record that has been retained for the period required and in the manner required by this section. A corporation is not under a duty to produce the record in an action or proceeding after the disposal of the record.

(e) This section applies to a corporation under IC 28 and to national banking associations to the extent that this section does not contravene federal law.

*As added by P.L.11-1998, SEC.23.*

## **IC 28-13-11**

### **Chapter 11. Standards of Conduct for Directors**

#### **IC 28-13-11-1**

##### **Discharge of duties; good faith; ordinary prudence; best interests of corporation**

Sec. 1. A director shall, based on facts then known to the director, discharge the duties of a director, including the director's duties as a member of a committee:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner the director reasonably believes to be in the best interests of the corporation.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-11-2**

##### **Right to rely on data and other information; financial statements and data**

Sec. 2. In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) at least one (1) officer or employee of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-11-3**

##### **Bad faith; knowledge making reliance on information unwarranted**

Sec. 3. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by section 2 of this chapter unwarranted.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-11-4**

##### **Best interests of corporation; factors considered**

Sec. 4. A director may, in considering the best interests of a corporation, consider the effects of any action on shareholders, employees, suppliers, and customers of the corporation, and the communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent.

*As added by P.L.14-1992, SEC.163.*



#### **IC 28-13-11-5**

##### **Exemption from personal liability; inapplicability in departmental proceedings**

Sec. 5. (a) A director is not liable for any action taken as a director, or any failure to take any action, unless:

- (1) the director has breached or failed to perform the duties of the director's office under sections 1 through 4 of this chapter; and
- (2) the breach or failure to perform constitutes willful misconduct or recklessness.

(b) The exemption from liability provided by this section does not apply to any proceeding brought by the department against a director.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-11-6**

##### **Legislative intent; business judgment and discretion of directors; corporate takeovers**

Sec. 6. (a) In enacting this article, the general assembly established corporate governance rules for Indiana corporations, including in this chapter the standards of conduct applicable to directors of Indiana corporations, and the corporate constituent groups and interests that a director may take into account in exercising the director's business judgment. The general assembly intends to reaffirm certain of these corporate governance rules to ensure that the directors of Indiana corporations, in exercising their business judgment, are not required to approve a proposed corporate action if the directors in good faith determine, after considering and weighing as they consider appropriate the effects of the action on the corporation's constituents, that the action is not in the best interests of the corporation.

(b) In making a determination under this section, directors are not required to consider the effects of a proposed corporate action on any particular corporate constituent group or interest as a dominant or controlling factor. Without limiting the generality of this section, directors are not required to redeem any rights under or to make inapplicable a shareholder rights plan adopted under IC 28-13-2-5, or to take or decline to take any other action under this article, solely because of the effect such action might have on a proposed acquisition of control of the corporation or the amounts that might be paid to shareholders under the acquisition.

(c) Certain judicial decisions in Delaware and other jurisdictions, which might otherwise be looked to for guidance in interpreting the duties of directors of corporations, including decisions relating to potential change of control transactions that impose a different or higher degree of scrutiny on actions taken by directors in response to a proposed acquisition of control of the corporation, are inconsistent with the proper application of the business judgment rule under this article. Therefore, the general assembly intends:

- (1) to reaffirm that this section allows directors the full discretion to weigh the factors enumerated in section 4 of this

chapter as they consider appropriate; and  
(2) to protect both directors and the validity of corporate action taken by the directors in the good faith exercise of their business judgment after reasonable investigation.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-11-7**

##### **Additional considerations affecting board actions or recommendations; approval of majority of disinterested directors; conclusive presumption of validity**

Sec. 7. (a) In taking or declining to take any action, or in making or declining to make any recommendation to the shareholders of the corporation with respect to any matter, a board of directors of a corporation may, in the board's discretion, consider both the short term and long term best interests of the corporation.

(b) The board of directors shall take into account, and weigh as the directors consider appropriate, the effects of the action or recommendation on the corporation's shareholders and the other corporate constituent groups and interests listed or described in section 4 of this chapter, as well as any other factors considered pertinent by the directors under section 4 of this chapter.

(c) If a determination is made under this section with the approval of a majority of the disinterested directors of the board of the directors, that determination shall conclusively be presumed to be valid unless, after reasonable investigation, it can be demonstrated that the determination was not made in good faith.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-11-8**

##### **Disinterested persons; director or shareholder of corporation**

Sec. 8. (a) For the purposes of section 7 of this chapter, a director is disinterested if:

- (1) the director does not have a conflict of interest, within the meaning of section 9(a) of this chapter, in connection with the action or recommendation in question;
- (2) in connection with matters described in IC 28-13-8 the director is disinterested (as defined in IC 28-13-8-4(d)); and
- (3) in connection with any matter involving or otherwise affecting a transaction under IC 28-1-7, IC 28-1-8, or IC 28-3-2 that would result in a change of the person or persons that have control (as defined in IC 28-2-14-6) over the corporation if the director is not an employee of the corporation or an affiliate or associate of or was not nominated or designated as a director by a person proposing the transaction.

(b) A person may be disinterested under this section even though the person is a director or shareholder of the corporation.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-11-9**

##### **Conflict of interest transactions; direct or indirect interest of**

**director; nonvoidability by corporation; voting for authorization, approval, or ratification**

Sec. 9. (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. Unless otherwise provided under federal or state laws, regulations, or rules, a conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one (1) of the following is true:

- (1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.
- (2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.
- (3) The transaction was fair to the corporation.

(b) For purposes of subsection (a), a director of the corporation has an indirect interest in a transaction if:

- (1) another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction; or
- (2) another entity of which the director is a director, an officer, or a trustee is a party to the transaction and the transaction is, or is required to be, considered by the board of directors of the corporation.

(c) For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if the transaction receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of subsection (a)(2), shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b), may be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-11-10**

**Unlawful distribution; liability of director; right to contribution**

Sec. 10. (a) Subject to section 5 of this chapter, a director who votes for or assents to a distribution made in violation of this article

or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this article or the articles of incorporation.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution:

- (1) from every other director who voted for or assented to the distribution, subject to section 5 of this chapter; and
- (2) from each shareholder for the amount the shareholder accepted.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-12**

### **Chapter 12. Officers Generally**

#### **IC 28-13-12-1**

##### **Necessity; designation; terms; dual officeholding**

Sec. 1. The officers of a corporation must consist of a president, a secretary or cashier, and other officers prescribed by the bylaws. Each of the officers shall be chosen by the board of directors at the time and in the manner and for the terms as the bylaws of the corporation may prescribe. Each officer shall hold office until the officer's successor is chosen and has qualified. The president shall be chosen from among the directors. If the bylaws so provide, at least two (2) offices may be held by the same person, except that the duties of the president and the secretary or cashier may not be performed by the same person.

*As added by P.L.14-1992, SEC.163. Amended by P.L.1-1993, SEC.212.*

#### **IC 28-13-12-2**

##### **Powers and duties**

Sec. 2. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-12-3**

##### **Resignation of officer; notice; effective date; removal of officer; replacement of chief executive officer**

Sec. 3. (a) An officer may resign at any time by delivering notice:

- (1) to the board of directors, its chairman, or the secretary of the corporation; or
- (2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, the corporation's board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(c) A board of directors may remove any officer at any time with or without cause.

(d) An officer who appoints another officer or assistant officer may remove the appointed officer or assistant officer at any time with or without cause.

(e) If a corporation replaces the chief executive officer of the corporation, the corporation shall give the department written notice of the replacement not later than thirty (30) days after the chief

executive officer is replaced.

*As added by P.L.14-1992, SEC.163. Amended by P.L.35-2010, SEC.204.*

#### **IC 28-13-12-4**

##### **Contract rights; effect of election, appointment, or removal**

Sec. 4. (a) The election or appointment of an officer does not create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-12-5**

##### **Adequate fiduciary coverage required**

Sec. 5. (a) Every corporation shall make provision for adequate fidelity coverage for all officers and employees having access to money or bonds of the corporation. The amount and form of fidelity coverage must be approved annually by the board of directors of the corporation. Coverage may be provided:

(1) in the form of a blanket fidelity bond issued by a corporate surety authorized to transact business in Indiana; or

(2) through the establishment of a separate reserve fund within the corporation for that purpose.

(b) If the corporation is a corporate fiduciary (as defined in IC 28-1-1-3), the corporation shall make provision for adequate fiduciary errors and omissions insurance coverage.

*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.89.*

## **IC 28-13-13**

### **Chapter 13. Indemnification of Directors**

## **IC 28-13-13-1**

### **"Corporation" defined**

Sec. 1. As used in this chapter, "corporation" includes a domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-13-2**

### **"Director" defined; scope of term**

Sec. 2. As used in this chapter, "director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, an officer, a partner, a trustee, a manager, an employee, or an agent of another foreign or domestic corporation, partnership, joint venture, limited liability company, trust, employee benefit plan, or other enterprise, whether for profit or not. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. The term includes, unless the context requires otherwise, the estate or personal representative of a director.

*As added by P.L.14-1992, SEC.163. Amended by P.L.8-1993, SEC.457.*

## **IC 28-13-13-3**

### **"Expenses" defined**

Sec. 3. As used in this chapter, "expenses" include attorney's fees.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-13-4**

### **"Liability" defined**

Sec. 4. As used in this chapter, "liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-13-5**

### **"Official capacity" defined; scope of term**

Sec. 5. (a) As used in this chapter, "official capacity" means:

- (1) when used with respect to a director, the office of director in a corporation; and
- (2) when used with respect to an individual other than a director, as contemplated in section 13 of this chapter, the office in a corporation held by the officer or the employment or

agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) The term does not include service for any other foreign or domestic corporation or any partnership, joint venture, limited liability company, trust, employee benefit plan, or other enterprise, whether for profit or not.

*As added by P.L.14-1992, SEC.163. Amended by P.L.8-1993, SEC.458.*

#### **IC 28-13-13-6**

##### **"Party" defined**

Sec. 6. As used in this chapter, "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-13-7**

##### **"Proceeding" defined**

Sec. 7. As used in this chapter, "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-13-8**

##### **Conditional indemnification of director against liability**

Sec. 8. (a) A corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

- (1) the individual's conduct was in good faith; and
- (2) the individual reasonably believed:
  - (A) in the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests; and
  - (B) in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests; and
- (3) in the case of any criminal proceeding, the individual either:
  - (A) had reasonable cause to believe the individual's conduct was lawful; or
  - (B) had no reasonable cause to believe the individual's conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

*As added by P.L.14-1992, SEC.163.*



### **IC 28-13-13-9**

#### **Mandatory indemnification of director for expenses of successful defense of proceeding**

Sec. 9. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

*As added by P.L.14-1992, SEC.163.*

### **IC 28-13-13-10**

#### **Advancement of expenses before final disposition of proceeding; conditions; procedure**

Sec. 10. (a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (1) the director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 8 of this chapter;
- (2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and
- (3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 12 of this chapter.

*As added by P.L.14-1992, SEC.163.*

### **IC 28-13-13-11**

#### **Court ordered indemnification; determination**

Sec. 11. Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if the court determines:

- (1) the director is entitled to mandatory indemnification under section 9 of this chapter, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or
- (2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances,

whether or not the director met the standard of conduct set forth in section 8 of this chapter.  
*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-13-12**

##### **Standards for conditional determinations and authorizations; procedure**

Sec. 12. (a) A corporation may not indemnify a director under section 8 of this chapter unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 8 of this chapter.

(b) The determination shall be made by any one (1) of the following procedures:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee designated by the board of directors in which directors who are parties may participate, consisting solely of two (2) or more directors not at the time parties to the proceeding.

(3) By special legal counsel:

(A) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(B) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors in which directors who are parties may participate.

(4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible. However, if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-13-13**

##### **Indemnification of corporate officers and employees other than directors**

Sec. 13. The following apply unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation, whether or not a director, is entitled to mandatory indemnification under section 9 of this chapter and is entitled to apply for court-ordered indemnification under section 11 of this chapter, in each case to

the same extent as a director.

(2) The corporation may indemnify and advance expenses under this chapter to an officer, employee, or agent of the corporation, whether or not a director, to the same extent as to a director.

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent, whether or not a director, to the extent, consistent with public policy, that may be provided by the corporation's articles of incorporation, bylaws, general or specific action of the corporation's board of directors, or contract.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-13-14**

##### **Liability insurance purchased and maintained by corporation**

Sec. 14. A corporation may purchase and maintain insurance on behalf of an individual:

(1) who is or was a director, an officer, an employee, or an agent of the corporation; or

(2) who, while a director, an officer, an employee, or an agent of the corporation, is or was serving at the request of the corporation as a director, an officer, a partner, a trustee, a manager, an employee, or an agent of another foreign or domestic corporation, partnership, joint venture, trust, limited liability company, employee benefit plan, or other enterprise;

against liability asserted against or incurred by the individual in the capacity described in subdivision (1) or (2). The corporation may purchase and maintain insurance under this section whether or not the corporation would have power to indemnify the individual against the same liability under section 8 or 9 of this chapter.

*As added by P.L.14-1992, SEC.163. Amended by P.L.8-1993, SEC.459.*

#### **IC 28-13-13-15**

##### **Limitation of remedies; effect of chapter**

Sec. 15. (a) The indemnification and advance for expenses provided for or authorized by this chapter does not exclude any other rights to indemnification and advance for expenses that a person may have under:

(1) a corporation's articles of incorporation or bylaws;

(2) a resolution of the board of directors or of the shareholders;  
or

(3) any other authorization, whenever adopted, after notice, by a majority vote of all the voting shares then issued and outstanding.

(b) If the articles of incorporation, bylaws, resolutions of the board of directors or of the shareholders, or other adopted authorization of indemnification or advance for expenses limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles, bylaws, resolution of the board of directors or of the

shareholders, or other adopted authorization of indemnification or advance for expenses.

(c) This chapter does not limit a corporation's power to pay or reimburse expenses incurred by a director, an officer, an employee, or an agent in connection with the person's appearance as a witness in a proceeding at a time when the person has not been made a named defendant or respondent to the proceeding.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-14**

### **Chapter 14. Amendment of Articles of Incorporation**

#### **IC 28-13-14-1**

##### **Authority to amend; restriction on shareholder vested rights**

Sec. 1. (a) A corporation may amend the corporation's articles of incorporation at any time to add or change a provision that is required or permitted to be in the articles of incorporation or to delete a provision not required to be in the articles of incorporation. Whether a provision is required or permitted to be in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation or authorized to be in the bylaws by this article or the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-2**

##### **Adoption without shareholder approval**

Sec. 2. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt at least one (1) amendment to the corporation's articles of incorporation without shareholder action to:

- (1) extend the duration of the corporation if the corporation was incorporated at a time when limited duration was required by law;
- (2) delete the names and addresses of the initial directors;
- (3) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares and fractional shares if the corporation has only shares of that class outstanding;
- (4) reduce the number of authorized shares solely as the result of a cancellation of treasury shares; or
- (5) make any other change expressly permitted by this article to be made without shareholder action.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-3**

##### **Proposal authorized**

Sec. 3. A corporation's board of directors may propose at least one (1) amendment to the articles of incorporation for submission to the shareholders.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-4**

##### **Submission of proposal to shareholders; recommendation; approval vote**

Sec. 4. For an amendment to be adopted the following requirements must be met:

(1) The board of directors must adopt a resolution directing that the proposed amendment be submitted to a vote of the shareholders and the resolution shall be submitted to and approved by the directors before or after the proposed amendment or amendments are submitted to the shareholders.

(2) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances the board of directors should make no recommendation and communicates the basis for the board's determination to the shareholders with the amendment.

(3) The shareholders entitled to vote on the amendment must approve the amendment as provided in section 7 of this chapter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-5**

##### **Conditions of submission to shareholders**

Sec. 5. The board of directors may condition the board's submission of the proposed amendment on any basis.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-6**

##### **Notice of meeting**

Sec. 6. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 28-13-5-8. The notice of meeting must also do the following:

(1) State that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment.

(2) Contain or be accompanied by a copy or summary of the amendment.

*As added by P.L.14-1992, SEC.163. Amended by P.L.63-2001, SEC.24 and P.L.134-2001, SEC.26.*

#### **IC 28-13-14-7**

##### **Vote required**

Sec. 7. Unless this article, the articles of incorporation, or the board of directors acting under section 5 of this chapter requires a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) the votes required by IC 28-13-6-6 and IC 28-13-6-7 by every other voting group entitled to vote on the amendment.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-8**

### **Voting by class or a series of shares**

Sec. 8. (a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group if shareholder voting is otherwise required by this article on a proposed amendment if the amendment would:

- (1) increase or decrease the aggregate number of authorized shares of the class;
- (2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
- (3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
- (4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;
- (5) change the shares of all or part of the class into a different number of shares of the same class;
- (6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (8) limit or deny an existing preemptive right of all or part of the shares of the class;
- (9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class; or
- (10) decrease the number of shares of a class into a different number of shares of the same class to effect a reverse stock split.

(b) If a proposed amendment would affect a series of a class of shares in at least one (1) of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles at least two (2) series of shares to vote as separate voting groups under this section would affect those series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

*As added by P.L.14-1992, SEC.163. Amended by P.L.63-2001, SEC.25 and P.L.134-2001, SEC.27.*

### **IC 28-13-14-8.5**

#### **Purchase price of stock**

Sec. 8.5. (a) The following guidelines and procedures apply when

requesting that the director approve an amendment to articles of incorporation resulting in a reverse stock split authorized by IC 28-13-14-8(a)(10):

(1) The purchase price of the stock must be based on market value if there is an established and active market in the corporation's stock. In the absence of such a market, the fair value of the stock must be determined by obtaining an independent appraisal of the shares upon which the purchase price will be based.

(2) If a market for the corporation's stock exists, the corporation shall clearly disclose to the shareholders how the purchase price was determined in relation to the market value.

(3) If an appraisal is obtained:

(A) the corporation shall disclose to its shareholders:

(i) that an appraisal has been obtained; and

(ii) the identity and qualifications of the person or firm preparing the appraisal, the criteria for selecting the person or firm, and the existence of any material relationship between the bank and the person or firm; and

(B) the corporation shall furnish to each shareholder a summary of the appraisal, the findings and recommendations, the basis for and methods of arriving at the findings and recommendations, and any limitations imposed by the corporation on the preparation of the appraisal.

The corporation must inform its shareholders that the appraisal is available for inspection.

(4) A shareholder that may vote on the amendment to the articles of incorporation on the question of the reverse stock split must be given dissenter's rights in the manner prescribed in IC 28-1-7-21 as if the transaction were a merger of consolidation.

(b) The corporation shall submit to the department a copy of the appraisal or information supporting the purchase price of the stock if an established market already exists, a copy of the proxy material to be sent to the shareholders, and any other correspondence sent to the shareholders describing the proposed amendment to the articles.  
*As added by P.L.63-2001, SEC.26 and P.L.134-2001, SEC.28.*

#### **IC 28-13-14-9**

##### **Adoption before issuance of shares**

Sec. 9. If a corporation has not yet issued shares:

(1) its board of directors; or

(2) if a board of directors has not been selected, the incorporators;

may adopt at least one (1) amendment to the corporation's articles of incorporation.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-10**



**Articles of amendment; contents**

Sec. 10. A corporation amending its articles of incorporation shall prepare articles of amendment setting forth the following:

- (1) The name of the corporation.
- (2) The text of each amendment adopted.
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.
- (4) The date of each amendment's adoption.
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.
- (6) If an amendment was approved by the shareholders:
  - (A) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group represented at the meeting; and
  - (B) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-14-11****Articles of amendment; form**

Sec. 11. The form of the articles of amendment shall be prescribed and furnished by the department.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-14-12****Articles of amendment; preparation and signature; presentation for approval or disapproval and filing**

Sec. 12. (a) The articles of amendment shall be prepared and signed in triplicate by:

- (1) an officer of the corporation;
- (2) if the corporation has not yet issued shares, by a director of the corporation; or
- (3) if the board of directors has not been selected, by the incorporator;

and shall be presented in triplicate to the department at its office for the approval or disapproval of the director.

(b) When the articles of amendment have been approved by the director, the articles shall be presented to the secretary of state for filing.

*As added by P.L.14-1992, SEC.163.*

**IC 28-13-14-13****Change of corporate name; record of articles of amendment**

Sec. 13. If a corporation amends its articles of incorporation to change its corporate name, the corporation may, after the amendment has become effective, file for record with the county recorder of each county in Indiana in which the corporation has real property at the time the amendment becomes effective a file-stamped copy of the articles of amendment. The validity of a change in name is not affected by a corporation's failure to record the articles of amendment.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-14**

##### **Restatement of articles; inclusion of amendment; shareholder notification; articles of restatement; changes not constituting amendment**

Sec. 14. (a) A corporation's board of directors or, if the board of directors has not been selected, the incorporators may restate the corporation's articles of incorporation at any time with or without shareholder action.

(b) The restatement may include at least one (1) amendment to the articles. If the restatement includes an amendment requiring shareholder approval, the amendment must be adopted as provided in sections 3 through 7 of this chapter.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 28-13-5-8. The notice must also do the following:

- (1) State that the purpose or one (1) of the purposes of the meeting is to consider the proposed restatement.
- (2) Contain or be accompanied by a copy of the restatement that identifies any amendment or other change the corporation would make in the articles.

(d) A corporation restating the corporation's articles of incorporation shall prepare articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

- (1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if the restatement does not, that the board of directors adopted the restatement; or
- (2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 10 of this chapter.

Notwithstanding IC 28-12-2-1(4), the corporation is not required to include in the articles of restatement the name and address of each incorporator.

(e) The following do not constitute an amendment to a corporation's articles of incorporation:

- (1) A reordering or renumbering of the articles or sections of the articles.
- (2) The correction of grammatical or spelling errors.

*As added by P.L.14-1992, SEC.163. Amended by P.L.63-2001,*

*SEC.27 and P.L.134-2001, SEC.29; P.L.141-2005, SEC.26.*

#### **IC 28-13-14-15**

##### **Articles of restatement; form**

Sec. 15. (a) The form of articles of restatement shall be prescribed and furnished by the department.

(b) Articles of restatement shall be prepared and signed in triplicate by:

- (1) an officer of the corporation;
- (2) if the corporation has not yet issued shares, by a director of the corporation; or
- (3) if the board of directors has not been selected, by the incorporator;

and shall be presented in triplicate to the department at the department's office, for the approval or disapproval of the director.

(c) When the articles of restatement have been approved by the director, the articles shall be presented to the secretary of state for filing.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-16**

##### **Adopted restated articles; superseding original articles and amendments**

Sec. 16. Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-17**

##### **Restated articles of incorporation; certification**

Sec. 17. The department and the secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by section 14(d) of this chapter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-14-18**

##### **Effect of amendment on existing rights, causes of action, and proceedings**

Sec. 18. (a) An amendment to articles of incorporation does not affect the following:

- (1) A cause of action existing against or in favor of the corporation.
- (2) A proceeding to which the corporation is a party.
- (3) The preexisting rights of persons other than shareholders of the corporation.

(b) An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-15**

### **Chapter 15. Amendment of Bylaws**

#### **IC 28-13-15-1**

##### **Authority to amend or repeal**

Sec. 1. Unless the articles of incorporation provide otherwise, only a corporation's board of directors may amend or repeal the corporation's bylaws.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-15-2**

##### **Greater quorum or voting requirements; shareholders meeting; directors prohibited from action**

Sec. 2. (a) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this article.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) may not be adopted, amended, or repealed by the board of directors.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-15-3**

##### **Greater quorum or voting requirements; directors meeting; voting requisites**

Sec. 3. (a) A bylaw that fixes a greater than majority quorum or voting requirement for action by the board of directors may be amended or repealed:

(1) if originally adopted by the shareholders, only by the shareholders; or

(2) if originally adopted by the board of directors, only by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater than majority quorum or voting requirement for action by the board of directors may provide that the bylaw may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for action by the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

*As added by P.L.14-1992, SEC.163.*

## **IC 28-13-16**

### **Chapter 16. Financial Institution Subsidiaries**

#### **IC 28-13-16-1**

##### **"Qualifying subsidiary" defined**

Sec. 1. As used in this chapter, "qualifying subsidiary" means a foreign or domestic corporation or limited liability company in which a financial institution has more than fifty percent (50%) ownership.  
*As added by P.L.215-1999, SEC.10.*

#### **IC 28-13-16-2**

##### **"Nonqualifying subsidiary" defined**

Sec. 2. As used in this chapter, "nonqualifying subsidiary" means a foreign or domestic corporation or limited liability company in which a financial institution has fifty percent (50%) or less ownership.  
*As added by P.L.215-1999, SEC.10.*

#### **IC 28-13-16-3**

##### **"Financial institution" defined**

Sec. 3. As used in this chapter, "financial institution" means:

- (1) a bank (as defined by IC 28-1-1-3);
- (2) a savings bank;
- (3) a savings association; or
- (4) an industrial loan and investment company that maintains federal deposit insurance.

*As added by P.L.215-1999, SEC.10.*

#### **IC 28-13-16-4**

##### **Acquisition or establishment; powers of subsidiary**

Sec. 4. (a) A financial institution or any of its subsidiaries may acquire or establish a qualifying subsidiary by providing the department with written notice before acquiring or establishing the subsidiary. The department shall notify the requesting financial institution of the department's receipt of the notice.

(b) A subsidiary may exercise a power or engage in an activity permitted to be performed by a financial institution under the same conditions and restrictions as if the power or activity is performed by the financial institution itself, or the activity has been authorized as "activity eligible for notice" procedures under 12 CFR 5.34(e).

(c) The qualified subsidiary may exercise or engage in the activity thirty (30) days after the date on which the department receives the notification unless otherwise notified by the department.

*As added by P.L.215-1999, SEC.10. Amended by P.L.258-2003, SEC.29; P.L.73-2004, SEC.42.*

#### **IC 28-13-16-5**

##### **Acquiring or establishing a nonqualifying subsidiary; application**

Sec. 5. A financial institution or any of its subsidiaries may acquire or establish a nonqualifying subsidiary by submitting an

application to the department containing:

- (1) a complete description of the financial institution's investment in the subsidiary;
- (2) the activity to be conducted; and
- (3) a representation that the activity:
  - (A) could be performed by a financial institution under statutory authority of this title;
  - (B) is a part of or incidental to the business of banking as determined by the director; or
  - (C) has been authorized as "activity eligible for notice" procedures under 12 CFR 5.34(e).

The department shall notify the requesting financial institution of the department's receipt of the application.

*As added by P.L.215-1999, SEC.10. Amended by P.L.73-2004, SEC.43; P.L.10-2006, SEC.77 and P.L.57-2006, SEC.77.*

#### **IC 28-13-16-6**

##### **Review of notice or application; change in scope or nature of business activity of qualifying or nonqualifying subsidiary**

Sec. 6. (a) The department shall review a financial institution's notice or application to acquire or establish a qualifying or nonqualifying subsidiary to determine:

- (1) whether the proposed activities are legally permissible; and
- (2) whether the proposal endangers the safety or soundness of the financial institution.

The director shall either approve or disapprove the application for a nonqualifying subsidiary within sixty (60) days after the date on which the department receives the application. The period for approval or disapproval of the application may be extended by the department based on a determination that additional information from the financial institution or additional time for analysis is required.

(b) If there will be a change in the scope or nature of the business activity of a qualifying subsidiary of a financial institution, the financial institution shall provide the department with written notice before the change occurs. The department shall notify the requesting financial institution of the department's receipt of the notice and shall review the notice to determine:

- (1) whether the proposed change is legally permissible; and
- (2) whether the proposed change endangers the safety or soundness of the financial institution.

The qualifying subsidiary may exercise or engage in the proposed activity thirty (30) days after the date on which the department receives the financial institution's notice, as indicated in the department's notice of receipt, unless otherwise notified by the department.

(c) If there will be a change in the scope or nature of the business activity of a nonqualifying subsidiary of a financial institution, the financial institution shall submit to the department an application containing a complete description of the proposed change. The

department shall notify the requesting financial institution of the department's receipt of the application and shall review the application to determine:

- (1) whether the proposed change is legally permissible; and
- (2) whether the proposed change endangers the safety or soundness of the financial institution.

The director shall either approve or disapprove the application not later than sixty (60) days after the date on which the department receives the application. The period for approval or disapproval of the application may be extended by the department based on a determination that additional information from the financial institution or additional time for analysis is required.

*As added by P.L.215-1999, SEC.10. Amended by P.L.90-2008, SEC.79.*

### **IC 28-13-16-7**

#### **Subsidiaries subject to examination**

Sec. 7. (a) Each qualifying subsidiary and nonqualifying subsidiary is subject to examination by the department or the appropriate federal banking supervisory authorities.

(b) If, upon examination, the department determines that a qualifying subsidiary or a nonqualifying subsidiary is operating in violation of law, regulation, or written condition or in an unsafe or unsound manner or otherwise threatens the safety and soundness of the financial institution, the department may direct the financial institution or subsidiary to take appropriate remedial action, which may include requiring the financial institution to divest or liquidate the subsidiary or discontinue specified activities.

*As added by P.L.215-1999, SEC.10.*

### **IC 28-13-16-8**

#### **Rules**

Sec. 8. The department may adopt rules under IC 4-22-2 or policies to implement this chapter.

*As added by P.L.215-1999, SEC.10.*

## **IC 28-13-17**

### **Chapter 17. Financial Subsidiary Activities of Financial Institutions**

## **IC 28-13-17-1**

### **"Financial institution" defined**

Sec. 1. As used in this chapter "financial institution" has the meaning set forth in IC 28-13-16-3.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*

## **IC 28-13-17-2**

### **"Financial subsidiary" defined**

Sec. 2. As used in this chapter, "financial subsidiary" means a foreign or domestic corporation or limited liability company that is controlled by one (1) or more financial institutions that engages in a financial subsidiary activity.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*

## **IC 28-13-17-3**

### **"Financial subsidiary activity" defined**

Sec. 3. As used in this chapter, "financial subsidiary activity" means:

- (1) an activity that has been authorized for a financial subsidiary of a national bank under 12 U.S.C. 24a and that may be conducted by a national bank only through a financial subsidiary; or
- (2) an activity that has been determined by the department to be financial in nature or incidental to a financial activity.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*

## **IC 28-13-17-4**

### **"Control" defined**

Sec. 4. As used in this chapter, "control" has the meaning set forth in IC 28-2-13-12.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*

## **IC 28-13-17-5**

### **"Hold an interest" defined**

Sec. 5. As used in this chapter, "hold an interest" means the ownership of any equity capital of a financial subsidiary.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*

## **IC 28-13-17-6**

### **"Equity capital" defined**

Sec. 6. As used in this chapter, "equity capital" includes, in addition to an equity investment, a debt instrument issued by a financial subsidiary, if the instrument qualifies as capital of the financial subsidiary under any federal or state law, regulation, or interpretation applicable to the financial subsidiary.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*



#### **IC 28-13-17-7**

##### **Interest in financial subsidiaries engaged in financial subsidiary activities**

Sec. 7. (a) Notwithstanding any other law, but subject to the provisions of this chapter, a financial institution may control or hold an interest in a financial subsidiary that engages in financial subsidiary activities.

(b) This section does not require an activity to be conducted through a financial subsidiary that is authorized to be conducted directly by the financial institution.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*

#### **IC 28-13-17-8**

##### **Financial subsidiary activities engaged in as principal or new financial subsidiary activities**

Sec. 8. (a) A financial institution may not establish, control, or hold an interest of a financial subsidiary that engages in financial subsidiary activities as principal or commence any new financial subsidiary activity under this section or under 12 U.S.C. 1831w(a) unless the following occur:

(1) An application has been filed with the department before the financial subsidiary of the financial institution conducts financial subsidiary activities.

(2) The department determines that the financial subsidiary activity poses no significant adverse effects to the safety and soundness of the financial institution and approves the application. An approval under this subdivision may be made subject to conditions and restrictions determined necessary by the department to prevent unsafe or unsound banking practices.

(3) The financial institution and the financial subsidiary comply with 12 U.S.C. 371c and 12 U.S.C. 371c-1, as if the subsidiary were a financial subsidiary, as defined in 12 U.S.C. 371c(e)(1).

(4) All financial institution affiliates of the financial institution are well-capitalized, as defined in the appropriate capital regulation and guidance of each financial institution's primary federal regulator, and the financial institution complies with the capital deduction requirement in accordance with 12 CFR 362.4(e)(1) through 12 CFR 362.4(e)(3), discloses that capital separation in any published financial statements and does not consolidate the financial subsidiary's assets and liabilities with those of the financial institution in any published financial statements.

(5) The financial institution and the financial subsidiary meet the financial and operational safeguards applicable to a financial subsidiary of a national bank conducting the same activities as provided in 12 U.S.C. 24a(d).

(b) A financial institution that controls or holds an interest in a financial subsidiary engaged in a financial subsidiary activity must comply with the requirements of subsection (a)(2) through (a)(5), as long as the financial institution's financial subsidiary is engaged in

the financial subsidiary activity.

*As added by P.L.63-2001, SEC.28 and P.L.134-2001, SEC.30.*