

IC 28-12

**ARTICLE 12. FORMATION OF BANKS, TRUST
COMPANIES, AND BUILDING AND LOAN
ASSOCIATIONS**

IC 28-12-1

Chapter 1. Incorporation

IC 28-12-1-1

Incorporators; articles, execution, delivery, and filing

Sec. 1. One (1) or more individuals, all of whom are at least eighteen (18) years of age and at least a majority of whom are citizens of Indiana, may act as the incorporator of a corporation (as defined in IC 28-10-1-3) by doing all of the following:

- (1) Signing and acknowledging before a notary public four (4) copies of the articles of incorporation.
- (2) Delivering to the department for approval the four (4) copies of the articles of incorporation, and the application and other items required by IC 28-12-4.
- (3) Filing the articles of incorporation with the secretary of state after the articles are approved by the department.

As added by P.L.14-1992, SEC.162. Amended by P.L.262-1995, SEC.80.

IC 28-12-1-2

Form of articles

Sec. 2. The department shall prescribe the form of the articles of incorporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-2

Chapter 2. Articles of Incorporation

IC 28-12-2-1

Articles of incorporation; contents

Sec. 1. The articles of incorporation must set forth the following:

- (1) A corporate name for the corporation that satisfies the requirements of IC 28-12-3.
- (2) The number of shares the corporation is authorized to issue.
- (3) The street address of the corporation's principal office in Indiana.
- (4) The name and address of each incorporator, unless the articles of incorporation are articles of conversion or articles of restatement under IC 28-13-14-14.
- (5) The amount of capital with which the corporation will begin business.
- (6) The names and addresses of the individuals who are to serve as the initial directors.
- (7) The maximum number of directors.
- (8) The purpose or purposes for which the corporation is organized.
- (9) The effective date of the articles of incorporation.

As added by P.L.14-1992, SEC.162. Amended by P.L.192-1997, SEC.26; P.L.141-2005, SEC.24.

IC 28-12-2-2

Permissible elements

Sec. 2. The articles may set forth other provisions not inconsistent with law.

As added by P.L.14-1992, SEC.162.

IC 28-12-2-3

Omission of corporate powers

Sec. 3. The articles of incorporation need not set forth any of the corporate powers of the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-3

Chapter 3. Corporate Name

IC 28-12-3-1

Unauthorized purpose or power indicated by name

Sec. 1. A corporation may not use as a part of its corporate name any word or phrase that indicates or implies any purpose or power not possessed by a corporation that may be organized under this chapter.

As added by P.L.14-1992, SEC.162.

IC 28-12-3-2

Same or confusingly similar name prohibited

Sec. 2. The corporate name of the proposed corporation may not be the same as, or confusingly similar to, the name of any other corporation then existing under the laws of Indiana or authorized to transact business in Indiana.

As added by P.L.14-1992, SEC.162.

IC 28-12-3-3

Necessary terms

Sec. 3. (a) If the proposed corporation is organized to transact business under IC 28-1-11, the corporate name must include the word "bank", "trust", "banc", "banco", or "bancorp".

(b) If the proposed corporation is to be a corporate fiduciary, the corporate name of the corporation must include the word "trust" or "fiduciary".

As added by P.L.14-1992, SEC.162. Amended by P.L.262-1995, SEC.81; P.L.79-1998, SEC.87; P.L.10-2006, SEC.76 and P.L.57-2006, SEC.76.

IC 28-12-3-4

Change of name

Sec. 4. Any corporation may, with the prior approval of the department, change its corporate name at any time by amending its articles of incorporation under IC 28-13-14.

As added by P.L.14-1992, SEC.162.

IC 28-12-3-5

Existing or authorized corporations; inapplicability of chapter

Sec. 5. This chapter does not affect the right of any corporation that is, as of July 1, 1992, either existing under Indiana law or authorized to transact business in Indiana.

As added by P.L.14-1992, SEC.162.

IC 28-12-4

Chapter 4. Submission of Articles of Incorporation

IC 28-12-4-1

Accompanying terms

Sec. 1. The articles of incorporation submitted to the department for approval must be accompanied by the following:

- (1) An application in the form prescribed by the department and containing such information as the department may require.
- (2) The deposit of money in an amount determined by the department to be sufficient to defray the expenses of the department in performing its duties under this chapter.
- (3) Evidence satisfactory to the department that the corporation has or will have capital in at least the amount of the capital stated in the articles of incorporation.
- (4) Evidence satisfactory to the department that the corporation is applying for deposit insurance from the Federal Deposit Insurance Corporation or its successor in interest, unless the corporation is being organized solely as a corporate fiduciary.
- (5) Evidence satisfactory to the department that the corporation has or will have adequate insurance coverage on the date the corporation begins operation.

As added by P.L.14-1992, SEC.162. Amended by P.L.262-1995, SEC.82.

IC 28-12-5

Chapter 5. Approval of Application by Department

IC 28-12-5-1

Written or stamped approval; official seal and signature

Sec. 1. (a) If the department approves the application, the department shall write or stamp on the articles of incorporation the following:

(1) The words "Approved by the Department of Financial Institutions of the State of Indiana".

(2) The date of the approval.

(b) The department shall place the impression of the seal of the department and the signature of the director or the director's authorized designee beneath the approval stamp.

As added by P.L.14-1992, SEC.162.

IC 28-12-5-2

Delivery of copies for filing; fees

Sec. 2. If the articles of incorporation are approved by the department, the department shall deliver four (4) copies of the articles of incorporation to the secretary of state for filing, together with the fees that are required.

As added by P.L.14-1992, SEC.162.

IC 28-12-5-3

Return of copies bearing endorsement of secretary of state

Sec. 3. The secretary of state shall return three (3) copies of the articles, bearing the endorsement of the secretary of state, to the department. The department shall return two (2) of the copies to the incorporators. The incorporators shall then file one (1) copy of the articles with the recorder's office of each county in which the corporation maintains an office.

As added by P.L.14-1992, SEC.162. Amended by P.L.122-1994, SEC.116.

IC 28-12-6

Chapter 6. Effective Date of Incorporation

IC 28-12-6-1**Beginning of corporate existence; delayed effective date**

Sec. 1. Unless a delayed effective date is specified, the corporate existence of the corporation begins when the articles of incorporation bearing the approval stamp of the department are filed with the secretary of state.

As added by P.L.14-1992, SEC.162.

IC 28-12-6-2**Conclusive proof of compliance with conditions precedent; exception**

Sec. 2. The filing of the articles of incorporation with the secretary of state is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-7

Chapter 7. Meetings of Corporation

IC 28-12-7-1

Organizational meeting

Sec. 1. After incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors.

As added by P.L.14-1992, SEC.162.

IC 28-12-7-2

Agenda of organizational meeting

Sec. 2. At the organizational meeting, the directors shall complete the organization of the corporation by electing or appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

As added by P.L.14-1992, SEC.162.

IC 28-12-7-3

Consents; actions taken without organizational meeting

Sec. 3. Any action that could be taken at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents that describe the action taken and that are signed by each initial director.

As added by P.L.14-1992, SEC.162.

IC 28-12-7-4

Place of organizational meeting

Sec. 4. An organizational meeting may be held only in Indiana.

As added by P.L.14-1992, SEC.162.

IC 28-12-8

Chapter 8. Business of Corporation

IC 28-12-8-1

Conditions for indebtedness or transactions

Sec. 1. A corporation may not transact any business or incur any indebtedness, except as is incidental to its organization or to obtaining subscriptions to or payment for shares of its capital stock, unless and until the following requirements are met:

- (1) The amount of capital of the corporation as set forth in its articles of incorporation has been fully paid for in money.
- (2) There has been filed with the department the affidavit of not less than a majority of the board of directors stating that the amount of capital as stated in its articles of incorporation has been fully paid in.
- (3) There has been filed with the department a certificate or other written evidence satisfactory to the department that the corporation has obtained deposit insurance from the Federal Deposit Insurance Corporation or its successor in interest, unless the corporation is being organized solely as a trust company.

As added by P.L.14-1992, SEC.162. Amended by P.L.1-1993, SEC.209.

IC 28-12-8-2

Liability of officers and directors for unauthorized business; dissenters; exemption

Sec. 2. If a corporation transacts any business in violation of section 1 of this chapter, the officers and directors of the corporation, upon learning of the action, are jointly and severally liable for the debts or liabilities of the corporation so incurred or arising from the transactions. The liability imposed by this section does not apply to those officers and directors who dissented to the action and caused their written dissent to be filed in the principal office of the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-8-3

Failure to timely complete organization and transact business

Sec. 3. If a corporation organized under this title does not complete its organization and proceeds with the transaction of business within six (6) months after its articles of incorporation have been approved and filed, the approval is revoked and the articles of incorporation are void, unless an extension is granted by the director of the department.

As added by P.L.11-1998, SEC.21.

IC 28-12-9

Chapter 9. Bylaws of Corporation

IC 28-12-9-1

Initial bylaws

Sec. 1. The initial board of directors of the corporation shall adopt initial bylaws for the corporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-9-2

Permissible provisions

Sec. 2. The bylaws of the corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

As added by P.L.14-1992, SEC.162.

IC 28-12-10

Chapter 10. Emergency Bylaws

IC 28-12-10-1

Adoption; effectiveness; management of corporation during emergency

Sec. 1. Unless the articles of incorporation provide otherwise, the board of directors of the corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws may make all provisions necessary for managing the corporation during the emergency, including the following:

- (1) Procedures for calling a meeting of the board of directors.
- (2) Quorum requirements for the meeting.
- (3) Designation of additional or substitute directors.

As added by P.L.14-1992, SEC.162.

IC 28-12-10-2

Continuing effectiveness of regular bylaws; termination of emergency

Sec. 2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

As added by P.L.14-1992, SEC.162.

IC 28-12-10-3

Effect of good faith corporate action

Sec. 3. Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) binds the corporation; and
- (2) may not be used to impose liability on a director, an officer, an employee, or an agent.

As added by P.L.14-1992, SEC.162.

IC 28-12-10-4

Extraordinary event preventing quorum; continuation of emergency

Sec. 4. An emergency exists for purposes of this chapter if an extraordinary event prevents a quorum of the corporation's directors from assembling in time to deal with the business for which the meeting has been or is to be called.

As added by P.L.14-1992, SEC.162.

IC 28-12-11

Chapter 11. Capital Requirements for Corporations

IC 28-12-11-1

Requirements for corporations organized or reorganized under this title

Sec. 1. (a) This section applies only to a corporation that is organized or reorganized under Indiana law and is any of the following:

- (1) A bank and trust company.
- (2) A bank.
- (3) A savings bank.
- (4) A trust company.
- (5) A savings association.
- (6) An industrial loan and investment company.
- (7) A credit union.
- (8) A corporate fiduciary.
- (9) A bank of discount and deposit.
- (10) A loan and trust and safe deposit company.

(b) The department shall determine the minimum amount of the capital of a corporation organized or reorganized under this title after giving consideration to:

- (1) the potential deposit liability to be anticipated, in the case of a proposed new corporation; or
- (2) the existing deposit liability, in the case of a corporation to be reorganized.

As added by P.L.42-1993, SEC.92. Amended by P.L.122-1994, SEC.117; P.L.258-2003, SEC.24; P.L.213-2007, SEC.101; P.L.217-2007, SEC.99.

IC 28-12-11-1.5

Minimum capital

Sec. 1.5. (a) A corporate fiduciary must have at least the minimum capital necessary for the safe and sound operation of the corporate fiduciary.

(b) For the purposes of this section, the department shall determine the minimum capital that is necessary for the safe and sound operation of a corporate fiduciary.

As added by P.L.262-1995, SEC.83.

IC 28-12-11-2

Requirements for corporations merged with existing corporations

Sec. 2. (a) This section applies only to a corporation that is organized or reorganized under Indiana law and is any of the following:

- (1) A bank and trust company.
- (2) A bank.
- (3) A savings bank.
- (4) A trust company.
- (5) A savings association.

- (6) An industrial loan and investment company.
- (7) A credit union.
- (8) A corporate fiduciary.
- (9) A bank of discount and deposit.
- (10) A loan and trust and safe deposit company.

(b) Notwithstanding section 1 of this chapter, the amount of capital stock of a corporation to be organized under this title shall be one hundred dollars (\$100) if an existing corporation will be merged into or otherwise acquired by the corporation for which application has been made.

(c) The new corporation may not transact business before the merger except as incidental to the merger.

(d) Before completion of the merger, the department may conduct any examination into the affairs and records of any party to the merger, as determined by the director to be necessary.

(e) Upon completion of the merger, the resulting corporation is subject to the paid-in capital requirement of this title.

As added by P.L.42-1993, SEC.92. Amended by P.L.122-1994, SEC.118; P.L.213-2007, SEC.102; P.L.217-2007, SEC.100.

IC 28-12-11-3

Requirements for savings associations organized or recognized under this title

Sec. 3. The department shall determine the capital stock requirements of a savings association organized or reorganized under this title after giving consideration to the following:

- (1) In the case of a proposed new savings association, the potential deposit liability anticipated.
- (2) In the case of a savings association to be reorganized, the existing deposit liability.

As added by P.L.42-1993, SEC.92. Amended by P.L.79-1998, SEC.88.