IC 23

TITLE 23. BUSINESS AND OTHER ASSOCIATIONS

IC 23-1

ARTICLE 1. INDIANA BUSINESS CORPORATION LAW

IC 23-1-1

Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-2
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-3
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-4
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-5
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-6
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-7
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-8
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-9
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-10
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-11
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-12
Repealed

(Repealed by P.L.149-1986, SEC.65.)

IC 23-1-13
Repealed

(Repealed by P.L.239-1983, SEC.3.)

IC 23-1-13.5
Repealed

(Repealed by P.L.239-1983, SEC.3.)

IC 23-1-14
Repealed

(Repealed by P.L.239-1983, SEC.3.)

IC 23-1-15
Repealed

(Repealed by P.L.239-1983, SEC.3.)

IC 23-1-16
Repealed

(Repealed by P.L.131-1984, SEC.1.)

IC 23-1-17

Chapter 17. Construction and Application

IC 23-1-17-1

Short title

Sec. 1. This article shall be known and may be cited as the Indiana Business Corporation Law.

As added by P.L.149-1986, SEC.1.

IC 23-1-17-2

Amendment or repeal of law

Sec. 2. The general assembly has power to amend or repeal all or part of this article at any time, and all domestic and foreign corporations subject to this article are governed by the amendment or repeal.

As added by P.L.149-1986, SEC.1.

IC 23-1-17-3

Application; domestic corporations

Sec. 3. (a) After July 31, 1987, this article applies to all domestic corporations in existence on July 31, 1987, that were incorporated under IC 23-1-1 through IC 23-1-12 (repealed August 1, 1987) or any other prior law. It also applies to all corporations incorporated under IC 23-1-21.

(b) Before August 1, 1987, the provisions of IC 23-1-18 through IC 23-1-54 do not apply to any domestic corporation, except in accordance with the following:

(1) The corporation's board of directors must adopt a resolution electing to have IC 23-1-18 through IC 23-1-54 (except for IC 23-1-18-3, IC 23-1-21, and IC 23-1-53-3) apply to the corporation.

(2) The resolution must specify a date (after March 31, 1986, and before August 1, 1987) on and after which those provisions will apply to the corporation.

(3) The resolution must be filed in the office of the secretary of state before the date specified under subdivision (2).

(c) The provisions of IC 23-1-18 through IC 23-1-54 (except for IC 23-1-18-3, IC 23-1-21, and IC 23-1-53-3) apply to each domestic corporation that complies with all the conditions prescribed by subsection (b). In addition, such a corporation shall continue to comply with the requirements of IC 23-1-8 and IC 23-3-2 until August 1, 1987, but it is not subject to the provisions of IC 23-1-1 through IC 23-1-7, IC 23-1-9 through IC 23-1-12, IC 23-3-1, and IC 23-3-9.

(d) The provisions of IC 6-8.1-10-9 and IC 22-4-32-23 apply to the officers and directors of each domestic corporation that complies with all the conditions prescribed by subsection (b). In addition, such a corporation is not subject to the provisions of IC 6-8.1-10-8 and IC 22-4-32-22 (repealed August 1, 1987).

(e) After a corporation becomes subject to IC 23-1-18 through

IC 23-1-54, all references in the articles of incorporation of the corporation to the former Indiana General Corporation Act (IC 23-1-1 through IC 23-1-12) (repealed August 1, 1987) shall be considered to refer to the Indiana Business Corporation Law (IC 23-1-17 through IC 23-1-54), unless otherwise determined by resolution of the board of directors. Whenever the board of directors adopts such a resolution, it shall be filed in the office of the secretary of state.

As added by P.L.149-1986, SEC.1. Amended by P.L.107-1987, SEC.3; P.L.3-1990, SEC.81; P.L.1-2010, SEC.91.

IC 23-1-17-3.1

Application; domestic railroad corporations

Sec. 3.1. (a) This article applies to a domestic railroad corporation incorporated before July 1, 1990, if:

(1) the corporation's board of directors adopts a resolution electing to have this article apply to the corporation;

(2) the resolution specifies the date this article will apply to the corporation; and

(3) the resolution is filed in the office of the secretary of state before the date specified under subdivision (2).

(b) The following do not apply to a railroad corporation incorporated under this article:

(1) IC 8-4-1-1 through IC 8-4-1-12.

(2) IC 8-4-2 through IC 8-4-6.

(3) IC 8-4-8.

(4) IC 8-4-11-1.

(5) IC 8-4-12-6.

(6) IC 8-4-13 through IC 8-4-14.

(7) IC 8-4-16.

(8) IC 8-4-21 through IC 8-4-22.

(9) IC 8-4-24.

(c) Unless otherwise specified in a resolution described under subsection (a), a reference to a statute listed under subsection (b) that is contained in the articles of association of a railroad corporation incorporated under this article shall be treated as a reference to the Indiana Business Corporation Law (IC 23-1).

(d) A reference in a statute, other than a statute listed under subsection (b), to a railroad incorporated under a statute listed under subsection (b) shall be considered to include a railroad corporation to which this article applies.

As added by P.L.75-1990, SEC.2. Amended by P.L.1-1993, SEC.190.

IC 23-1-17-4

Application; foreign corporations

Sec. 4. After July 31, 1987, this article applies to all foreign corporations that want to transact business in Indiana. A foreign corporation authorized to transact business in Indiana on July 31, 1987, is subject to this article but is not required to obtain a new certificate of authority to transact business under this article.

As added by P.L.149-1986, SEC.1.

IC 23-1-17-5
Official comments

Sec. 5. Official comments may be published by the general corporation law study commission (P.L.237-1986) and the business law survey commission (IC 23-1-54-3). After their publication, the comments may be consulted by the courts to determine the underlying reasons, purposes, and policies of this article and may be used as a guide in its construction and application.

As added by P.L.149-1986, SEC.1. Amended by P.L.34-1987, SEC.277; P.L.226-1989, SEC.1; P.L.130-2006, SEC.1.

IC 23-1-17-6
Application

Sec. 6. Unless limited or prohibited by the articles of incorporation or bylaws, IC 26-2-8 applies to this article.

As added by P.L.133-2009, SEC.1.

IC 23-1-17.3

Chapter 17.3. Transitional Provisions

IC 23-1-17.3-1

"Repealed statute"

Sec. 1. As used in this chapter, "repealed statute" refers to any of the following repealed by P.L.149-1986:

(1) IC 23-1-1.
(2) IC 23-1-2.
(3) IC 23-1-3.
(4) IC 23-1-4.
(5) IC 23-1-5.
(6) IC 23-1-6.
(7) IC 23-1-7.
(8) IC 23-1-8.
(9) IC 23-1-9.
(10) IC 23-1-10.
(11) IC 23-1-11.
(12) IC 23-1-12.
(13) IC 23-3.

As added by P.L.220-2011, SEC.378.

IC 23-1-17.3-2

Effect of repeal of repealed statute

Sec. 2. Except as provided in section 3 of this chapter, the repeal of a repealed statute does not affect any of the following:

(1) The operation of the repealed statute or any action taken under it before its repeal, including (without limitation) the continuing validity of a corporation's articles of incorporation and bylaws, indemnification provisions for directors, officers, employees, and agents, resolutions of the board of directors and shareholders, and corporate name, all as adopted by any domestic corporation before August 1, 1987, or the date specified in a resolution of the board of directors adopted under IC 23-1-17-3(b), as added by P.L.149-1986, to the same extent that any of these would have been valid had the repealed statute not been repealed.

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the repealed statute before its repeal.

(3) Any violation of the repealed statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

(4) Any proceeding, reorganization, or dissolution commenced under the repealed statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the repealed statute as if it had not been repealed.

As added by P.L.220-2011, SEC.378.

IC 23-1-17.3-3

Effect of reduction by P.L.149-1986 of penalty or punishment

Sec. 3. If a penalty or punishment imposed for violation of a repealed statute is reduced by P.L.149-1986, the penalty or punishment if not already imposed shall be imposed in accordance with P.L.149-1986.

As added by P.L.220-2011, SEC.378.

IC 23-1-17.3-4

Status of resident agent and resident agent address under P.L.149-1986

Sec. 4. Effective August 1, 1987, each resident agent and resident agent's address existing on that date shall be considered the registered agent and registered office, respectively, required by P.L.149-1986.

As added by P.L.220-2011, SEC.378.

IC 23-1-17.3-5

Status of rights and preferences of shares under P.L.149-1986

Sec. 5. Effective August 1, 1987, or the date specified in a resolution of the board of directors adopted under IC 23-1-17-3(b), as added by P.L.149-1986, any existing certificate of resolution of a board of directors designating and stating rights and preferences of shares shall be considered a part of the corporation's articles of incorporation for purposes of P.L.149-1986.

As added by P.L.220-2011, SEC.378.

IC 23-1-18

Chapter 18. Filing Documents

IC 23-1-18-1

Requirements for documents; filing fee

Sec. 1. (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) This article must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by this article. It may contain other information as well.

(d) The document must be legible, typewritten or printed or, if electronically transmitted, in a format that can be retrieved in a reproduced or typewritten form, and otherwise suitable for processing.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be signed:

(1) by the chairman of the board of directors of the domestic or foreign corporation or by any of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator;

(3) if the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary; or

(4) for purpose of annual or biennial reports, by:

(A) a registered agent;

(B) a certified public accountant; or

(C) an attorney;

employed or retained by the business entity.

(g) Except as provided in subsection (m), the person signing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. A signature on a document authorized to be filed under this article may be:

(1) a facsimile; or

(2) made by an attorney in fact.

(h) A power of attorney relating to the signing of a document authorized to be filed under this article by an attorney in fact may but is not required to be:

(1) sworn to, verified, or acknowledged;

(2) signed in the presence of a notary public;

(3) filed with the secretary of state; or

(4) included in another written agreement.

However, the power of attorney must be retained in the records of the corporation.

(i) A document authorized to be filed under this article may but is

not required to contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; and

(3) an acknowledgment, verification, or proof.

(j) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in or on the prescribed form.

(k) The document must be delivered to the office of the secretary of state for filing as described in section 1.1 of this chapter and the correct filing fee must be paid in the manner and form required by the secretary of state.

(l) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(m) A signature on a document that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(n) As used in this subsection, "filed document" means a document filed with the secretary of state under any provision of this title except for IC 23-1-49 or IC 23-1-53-3. As used in this subsection, "plan" means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange. Whenever a provision under this article permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document:

(A) shall be set forth in the plan or filed document; and

(B) shall state the manner in which the facts shall become operative.

(2) The facts may include, but are not limited to:

(A) any of the following that is available in a nationally recognized news or information medium either in print or electronically:

(i) Statistical or market indices.

(ii) Market prices of any security or group of securities.

(iii) Interest rates.

(iv) Currency exchange rates.

(v) Similar economic or financial data;

(B) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document.

(B) The registered office of any entity required in a filed document.

(C) The registered agent of any entity required in a filed document.

(D) The number of authorized shares and designation of each class or series of shares.

(E) The effective date of a filed document.

(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(4) If a provision of a plan or filed document is made dependent on a fact ascertainable outside the plan or filed document, and that fact is not ascertainable by reference to a source described in subdivision (2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time the fact referred to is first ascertainable or changes. Articles of amendment under this subdivision:

(A) are considered to be authorized by the authorization of the original plan or filed document or plan to which the articles of amendment relate; and

(B) may be filed by the corporation without further action by the board of directors or the shareholders.

As added by P.L.149-1986, SEC.2. Amended by P.L.228-1995, SEC.1; P.L.11-1996, SEC.8; P.L.277-2001, SEC.1; P.L.178-2005, SEC.1; P.L.130-2006, SEC.2; P.L.133-2009, SEC.2; P.L.40-2013, SEC.1.

IC 23-1-18-1.1

Documents delivered for filing

Sec. 1.1. (a) For purposes of this article, except for a biennial report filed under IC 23-1-53-4, a document is delivered for filing if the document is transferred to the secretary of state by hand, mail, or a form of electronic transmission meeting the requirements established by the secretary of state.

(b) If a document is delivered for filing by hand or mail, the document must be accompanied by:

(1) two (2) exact or conformed copies of a document filed under IC 23-1-24-3 or IC 23-1-49-9; or

(2) one (1) exact or conformed copy of any other document filed under this article.

As added by P.L.228-1995, SEC.2. Amended by P.L.63-2014, SEC.1.

IC 23-1-18-2

Forms

Sec. 2. (a) The secretary of state may prescribe and furnish on request forms for:

(1) a foreign corporation's application for a certificate of authority to transact business in this state;

(2) a foreign corporation's application for a certificate of withdrawal; and

(3) the biennial reports.

If the secretary of state requires and the form so states, use of these forms is mandatory.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this article but their use is not mandatory.

As added by P.L.149-1986, SEC.2. Amended by P.L.228-1995, SEC.3; P.L.11-1996, SEC.9.

IC 23-1-18-3

Fees

Sec. 3. (a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary of state for filing:

	Document	Electronic Filing Fee	Fee (Other than electronic filing)
(1)	Articles of incorporation	$75	$90
(2)	Application for use of indistinguishable name	$10	$20
(3)	Application for reserved name	$10	$20
(4)	Application for renewal of reservation	$10	$20
(5)	Notice of transfer of reserved name	$10	$20
(6)	Application for registered name	$20	$30

(7)	Application for renewal of registered name	$20	$30
(8)	Corporation's statement of change of registered agent or registered office or both	No Fee	No Fee
(9)	Agent's statement of change of registered office for each affected corporation	No Fee	No Fee
(10)	Agent's statement of resignation	No Fee	No Fee
(11)	Amendment of articles of incorporation	$20	$30
(12)	Restatement of articles of incorporation	$20	$30
	with amendment of articles	$20	$30
(13)	Articles of merger or share exchange	$75	$90
(14)	Articles of dissolution	$20	$30
(15)	Articles of revocation of dissolution	$20	$30
(16)	Certificate of administrative dissolution	No Fee	No Fee
(17)	Application for reinstatement following administrative dissolution	$20	$30
(18)	Certificate of reinstatement	No Fee	No Fee
(19)	Certificate of judicial dissolution	No Fee	No Fee
(20)	Application for certificate of authority	$75	$90
(21)	Application for amended certificate of authority	$20	$30
(22)	Application for certificate of withdrawal	$20	$30
(23)	Certificate of revocation of authority to transact business	No Fee	No Fee
(24)	Biennial report	$20	$30
(25)	Articles of correction	$20	$30
(26)	Application for certificate of existence or authorization	$15	$15
(27)	Any other document required or permitted to be filed by this article, including an application for any other certificates or certification certificate (except for any such other certificates that the secretary of state may determine to issue without additional fee		

in connection with particular filings) and a request for other facts of record under section 9(b)(6) of this chapter	$20	$30

The secretary of state shall prescribe the electronic means of filing documents to which the electronic filing fees set forth in this section apply.

(b) The fee set forth in subsection (a)(24) for filing a biennial report is:

(1) fifteen dollars ($15) per year, for a filing in writing; and

(2) ten dollars ($10) per year, for a filing by electronic means;

to be paid biennially.

(c) The secretary of state shall collect a fee of ten dollars ($10) each time process is served on the secretary of state under this article. If the party to a proceeding causing service of process prevails in the proceeding, then that party is entitled to recover this fee as costs from the nonprevailing party.

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) Per page for copying $ 1

(2) For a certification stamp $15

As added by P.L.149-1986, SEC.2. Amended by P.L.145-1988, SEC.1; P.L.228-1995, SEC.4; P.L.11-1996, SEC.10; P.L.277-2001, SEC.2; P.L.60-2007, SEC.1; P.L.106-2008, SEC.49; P.L.63-2014, SEC.2.

IC 23-1-18-4
Effective date of document

Sec. 4. (a) Except as provided in subsection (b) and section 5(c) of this chapter, a document accepted for filing is effective:

(1) at the time of filing on the date it is filed, as evidenced by means the secretary of state uses for endorsing the date and time of filing on the original document; or

(2) at such later time on the date it is filed as is specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

As added by P.L.149-1986, SEC.2. Amended by P.L.133-2009, SEC.3.

IC 23-1-18-5
Correction of document

Sec. 5. (a) A domestic or foreign corporation may correct a document filed by the secretary of state if:

(1) the document contains an incorrect statement or an inaccuracy;
(2) the document was defectively signed, attested, sealed, verified, or acknowledged; or
(3) the electronic transmission of the document was defective.

(b) A document is corrected:
(1) by preparing articles of correction that:
(A) describe the document (including its filing date) or attach a copy of it to the articles;
(B) specify the incorrect statement or inaccuracy and the reason it is incorrect or the manner in which the execution was defective; and
(C) correct the incorrect statement, inaccuracy, or defective execution; and
(2) by delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons reasonably relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed or when the reliance ceased to be reasonable, whichever first occurs.
As added by P.L.149-1986, SEC.2. Amended by P.L.133-2009, SEC.4.

IC 23-1-18-6
Filing of document by secretary of state; refusal to file

Sec. 6. (a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 1 of this chapter, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name and official title and the date and time of receipt on both the original and the document copy and on the receipt for the filing fee. After filing a document, except as provided in IC 23-1-24-3 and IC 23-1-49-9, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

(c) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within ten (10) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:
(1) affect the validity or invalidity of the document in whole or part;
(2) relate to the correctness or incorrectness of information contained in the document; or
(3) create a presumption that the document is valid or invalid or that information contained in the document is correct or

incorrect.

As added by P.L.149-1986, SEC.2.

IC 23-1-18-7

Refusal to file document; appeal by corporation

Sec. 7. (a) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the circuit or superior court of the county where the corporation's principal office (or, if none in Indiana, its registered office) is or will be located not later than sixty (60) days after the receipt of the document from the secretary of state. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.149-1986, SEC.2. Amended by P.L.133-2009, SEC.5.

IC 23-1-18-8

Certification; evidence of filing

Sec. 8. A certification stamp affixed on or a certification certificate attached to a copy of a document under this chapter, bearing the secretary of state's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

As added by P.L.149-1986, SEC.2. Amended by P.L.145-1988, SEC.2.

IC 23-1-18-9

Certificate of existence or authorization

Sec. 9. (a) Any person may request the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) the domestic corporation's corporate name or the foreign corporation's corporate name used in Indiana;

(2) if a domestic corporation:

(A) that the domestic corporation is duly incorporated under the law of this state;

(B) the date of its incorporation; and

(C) the period of its duration if less than perpetual;

(3) if a foreign corporation, that the foreign corporation is authorized to transact business in Indiana;

(4) that all fees, taxes, and penalties owed to this state have been paid, if:

(A) payment is reflected in the records of the secretary of state; and

(B) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(5) if a domestic corporation or a foreign corporation, that its most recent biennial report required by IC 23-1-53-3 has been filed with the secretary of state;

(6) that articles of dissolution have not been filed; and

(7) other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in Indiana.

As added by P.L.149-1986, SEC.2. Amended by P.L.228-1995, SEC.5; P.L.11-1996, SEC.11.

IC 23-1-18-10

Intentionally signing false document

Sec. 10. A person commits a Class A misdemeanor if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

As added by P.L.149-1986, SEC.2.

IC 23-1-19

Chapter 19. Powers of Secretary of State

IC 23-1-19-1

Powers

Sec. 1. The secretary of state has the power reasonably necessary to perform the duties required by this article.

As added by P.L.149-1986, SEC.3.

IC 23-1-20
Chapter 20. General Definitions

IC 23-1-20-1
Application
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-2
"Articles of incorporation"
Sec. 2. "Articles of incorporation" means the original articles of incorporation and all amendments and restatements of the articles of incorporation. If an amendment of the articles of incorporation or any other document filed under this article restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents.
As added by P.L.149-1986, SEC.4. Amended by P.L.133-2009, SEC.6.

IC 23-1-20-3
"Authorized shares"
Sec. 3. "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-3.5
"Beneficial owner"
Sec. 3.5. "Beneficial owner", for purposes of IC 23-1-22-4, IC 23-1-30-4, and IC 23-1-43, means a person that:

(1) individually or with or through any of its affiliates or associates beneficially owns the shares, directly or indirectly;

(2) individually or with or through any of its affiliates or associates, has:

(A) the right to acquire the shares at any time, under any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or otherwise; or

(B) the right to vote the shares under any agreement, arrangement, or understanding.

However, a person is not a beneficial owner of shares tendered under a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange, and a person is not a beneficial owner of shares under clause (B) if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable regulations under the Securities Exchange Act of 1934 and is not then reportable on a Schedule 13D under the Securities Exchange Act of 1934 or any comparable or successor report;

(3) has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting (except as provided in subdivision (2)), or disposing of the shares with any other person that beneficially owns or whose affiliates or associates beneficially own the shares, directly or indirectly; or

(4) has any derivative instrument that includes the opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the subject shares.

As added by P.L.133-2009, SEC.7.

IC 23-1-20-4
"Conspicuous"

Sec. 4. "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. "Conspicuous" includes the following:

(1) Printing in italics or boldface or contrasting color.

(2) Typing in capitals or underlined.

(3) Placement of text in a separate or otherwise noticeable location.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-5
"Corporation; domestic corporation"

Sec. 5. "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation, incorporated under or subject to the provisions of this article.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-6
"Deliver" or "delivery"

Sec. 6. "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

As added by P.L.149-1986, SEC.4. Amended by P.L.133-2009, SEC.8.

IC 23-1-20-6.5
"Derivative instrument"

Sec. 6.5. "Derivative instrument" means any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to an equity security or similar instrument with a value derived in whole or in part from the value of an equity security, whether or not the instrument or right is subject to settlement in the underlying security or otherwise.

As added by P.L.133-2009, SEC.9.

IC 23-1-20-7
"Distribution"

Sec. 7. (a) "Distribution" means a direct or indirect transfer of

money or other property (except a corporation's own shares) or incurrence or transfer of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares under IC 23-1-28. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(b) The term does not include:

(1) amounts constituting reasonable compensation for past or present services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefit program; or

(2) the making of or payment or performance upon a bona fide guaranty or similar arrangement by a corporation to or for the benefit of its shareholders.

However, the failure of an amount to satisfy subdivision (1), or of a payment or performance to satisfy subdivision (2), is not determinative of whether the amount, payment, or performance is a distribution.

As added by P.L.149-1986, SEC.4. Amended by P.L.130-2006, SEC.3.

IC 23-1-20-8
"Effective date of notice"

Sec. 8. "Effective date of notice" has the meaning set forth in section 29 of this chapter.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-8.5
"Electronic transmission" or "electronically transmitted"

Sec. 8.5. "Electronic transmission" or "electronically transmitted" means the transmission of an electronic record (as defined in IC 26-2-8-102(9)). The time and place of sending and of delivery by electronic means is governed by IC 26-2-8-114.

As added by P.L.133-2009, SEC.10.

IC 23-1-20-9
"Employee"

Sec. 9. "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-10
"Entity"

Sec. 10. "Entity" includes the following:

(1) Domestic corporation and foreign corporation.

(2) Not-for-profit corporation.

(3) Corporation incorporated under any other statute.

(4) Profit and not-for-profit unincorporated association.

(5) Business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest.

(6) Other entity (as defined in IC 23-1-20-17.5).
(7) State, United States, and foreign government.
As added by P.L.149-1986, SEC.4. Amended by P.L.133-2009, SEC.11.

IC 23-1-20-11
"Foreign corporation"
Sec. 11. "Foreign corporation" means a corporation for profit incorporated under a law other than the law of Indiana.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-12
"Governmental subdivision"
Sec. 12. "Governmental subdivision" includes authority, county, district, and municipality.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-13
"Includes"
Sec. 13. "Includes" denotes a partial definition.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-14
"Individual"
Sec. 14. "Individual" includes the guardianship estate of an incapacitated person (as defined in IC 29-3-1-7.5), or the estate of a decedent.
As added by P.L.149-1986, SEC.4. Amended by P.L.33-1989, SEC.20.

IC 23-1-20-15
"Mail"
Sec. 15. "Mail" means:
(1) first class, certified, or registered United States mail, postage prepaid; or
(2) private carrier service, fees prepaid or billed to the sender.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-16
"Means"
Sec. 16. "Means" denotes an exhaustive definition.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-17
"Notice"
Sec. 17. "Notice" has the meaning set forth in section 29 of this chapter.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-17.5

"Other entity"

Sec. 17.5. "Other entity" means:

(1) a limited liability company;
(2) a limited liability partnership;
(3) a limited partnership;
(4) a general partnership;
(5) a business trust;
(6) a real estate investment trust; or
(7) any entity that:
(A) is formed under the requirements of applicable law; and
(B) is not a corporation.

As added by P.L.133-2009, SEC.12.

IC 23-1-20-18
"Person"

Sec. 18. "Person" includes individual and entity.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-19
"Principal office"

Sec. 19. "Principal office" means the office (in or out of Indiana) so designated in the annual or biennial report where the principal executive offices of a domestic or foreign corporation are located.

As added by P.L.149-1986, SEC.4. Amended by P.L.228-1995, SEC.6.

IC 23-1-20-20
"Proceeding"

Sec. 20. "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-21
"Record date"

Sec. 21. "Record date" means the date established under IC 23-1-25 through IC 23-1-28 or IC 23-1-29 through IC 23-1-32 by the corporation for determining the identity of its shareholders for purposes of this article.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-22
"Secretary"

Sec. 22. "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under IC 23-1-36-1 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

As added by P.L.149-1986, SEC.4.

IC 23-1-20-23
"Share"

Sec. 23. "Share" means the unit into which the proprietary interests in a corporation are divided.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-24
"Shareholder"
Sec. 24. "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted pursuant to a recognition procedure or a disclosure procedure established under IC 23-1-30-4.
As added by P.L.149-1986, SEC.4. Amended by P.L.145-1988, SEC.3.

IC 23-1-20-24.5
"Sign" or "signature"
Sec. 24.5. "Sign" or "signature" includes any manual, facsimile, or conformed signature, or an electronic signature (as defined in IC 26-2-8-102(10)).
As added by P.L.133-2009, SEC.13.

IC 23-1-20-25
"State"
Sec. 25. "State", when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-26
"Subscriber"
Sec. 26. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-27
"United States"
Sec. 27. "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-28
"Voting group"
Sec. 28. "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this article are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this article to vote generally on the matter are for that purpose a single voting group.
As added by P.L.149-1986, SEC.4.

IC 23-1-20-29

Method of giving notice; effectiveness

Sec. 29. (a) Notice under this article shall be in writing (including electronic transmission) unless oral notice is authorized by a corporation's articles of incorporation or bylaws.

(b) Notice, if otherwise in proper form under this article, may be communicated:

(1) in person;

(2) by telephone, telegraph, teletype, or other form of wire or wireless communication;

(3) by mail; or

(4) electronically.

If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast or electronic communication.

(c) Written notice by a domestic or foreign corporation to a shareholder is effective when mailed, if correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in Indiana) may be addressed to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in the most recent filing of the corporation under this article.

(e) Except as provided in subsection (c), written notice is effective at the earliest of the following:

(1) When received.

(2) Five (5) days after its mailing, as evidenced by the postmark or private carrier receipt, if correctly addressed to the address listed in the most current records of the corporation.

(3) On the date shown on the return receipt, if sent by registered or certified United States mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated.

(g) If this article prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this article, those requirements govern.

(h) Written notice, including reports or statements from the corporation, to shareholders who share a common address is effective if:

(1) the corporation delivers one (1) copy of a notice, report, or statement to the common address;

(2) the corporation addresses the notice, report, or statement to the:

(A) shareholders either as a group or to each of the shareholders individually; or

(B) shareholders in a form in which each of the shareholders has consented; and

(3) each of the shareholders consents to delivery of a single copy of the notice, report, or statement to the common address of the shareholders.

Consent given under subdivision (3) is revocable by a shareholder who delivers written notice of revocation to the corporation. If a shareholder delivers written notice of revocation to a corporation, the corporation shall begin providing individual notices, reports, or other statements to the shareholder not later than thirty (30) days after delivery of the written notice of revocation.

(i) A shareholder who fails to object to the receipt of the notice, report, or statement at a common address by written notice to the corporation within sixty (60) days after written notice by the corporation of the corporation's intention to send single copies of notices to shareholders who share a common address as permitted by subsection (h) is considered to have consented to receiving a single copy at the common address.

As added by P.L.149-1986, SEC.4. Amended by P.L.228-1995, SEC.7; P.L.133-2009, SEC.14.

IC 23-1-20-30

Persons or entities constituting one shareholder

Sec. 30. (a) For purposes of this article, each of the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one (1) shareholder:

(1) Three (3) or fewer coowners. However, if there are four (4) or more coowners, each coowner shall be counted as a shareholder.

(2) A corporation, limited liability company, partnership, trust, estate, or other entity.

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this article, shareholdings registered in substantially similar names constitute one (1) shareholder if it is reasonable to believe that the names represent the same person.

As added by P.L.149-1986, SEC.4. Amended by P.L.8-1993, SEC.302.

IC 23-1-21

Chapter 21. Incorporation

IC 23-1-21-1

Incorporators

Sec. 1. One (1) or more persons may act as the incorporator or incorporators of a corporation by signing and causing to be delivered articles of incorporation to the secretary of state for filing.

As added by P.L.149-1986, SEC.5.

IC 23-1-21-2

Articles of incorporation; contents

Sec. 2. (a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of IC 23-1-23-1;

(2) the number of shares the corporation is authorized to issue;

(3) the street address of the corporation's initial registered office in Indiana and the name of its initial registered agent at that office; and

(4) the name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) the names and addresses of the individuals who are to serve as the initial directors;

(2) provisions not inconsistent with law regarding:

(A) the purpose or purposes for which the corporation is organized;

(B) managing the business and regulating the affairs of the corporation;

(C) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(D) a par value for authorized shares or classes of shares; and

(E) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; and

(3) any provision that under this article is required or permitted to be set forth in the bylaws.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this article.

As added by P.L.149-1986, SEC.5.

IC 23-1-21-3

Date of corporate existence; filing of articles as evidence of valid existence

Sec. 3. (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The secretary of state's filing of the articles of incorporation 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.149-1986, SEC.5.

IC 23-1-21-4
Persons acting on behalf of nonexistent corporation; liability

Sec. 4. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this article, are jointly and severally liable for all liabilities created while so acting.
As added by P.L.149-1986, SEC.5.

IC 23-1-21-5
Organizational meeting

Sec. 5. (a) After incorporation:

(1) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by electing or appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect a board of directors who shall complete the organization of the corporation; and

(3) if a corporation, under IC 23-1-33-1(c), will not have a board of directors, the subscribers shall hold an organizational meeting to complete the organization of the corporation.

(b) An action required or permitted by this article to be taken by incorporators or subscribers 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 incorporator or subscriber.

(c) An organizational meeting may be held in or out of Indiana.
As added by P.L.149-1986, SEC.5. Amended by P.L.226-1989, SEC.2.

IC 23-1-21-6
Bylaws

Sec. 6. (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a 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.149-1986, SEC.5.

IC 23-1-21-7
Emergency bylaws

Sec. 7. (a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be

effective only in an emergency defined in subsection (d). The emergency bylaws may make all provisions necessary for managing the corporation during the emergency, including:

(1) procedures for calling a meeting of the board of directors;

(2) quorum requirements for the meeting; and

(3) designation of additional or substitute directors.

(b) 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.

(c) 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 corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section 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.149-1986, SEC.5.

IC 23-1-22

Chapter 22. Powers and Purposes

IC 23-1-22-1

Purpose of corporation; law governing

Sec. 1. (a) Every corporation incorporated under this article has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this article unless provisions for incorporation of corporations engaging in that business exist under that statute.

As added by P.L.149-1986, SEC.6.

IC 23-1-22-2

Perpetual duration; powers

Sec. 2. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to:

(1) sue and be sued, complain and defend in its corporate name;

(2) have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it (however, the use of a corporate seal or an impression thereof is not required and does not affect the validity of any instrument whatsoever, notwithstanding any other statutes);

(3) make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;

(5) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any entity, including itself, except as otherwise prohibited by this article;

(7) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) be a promoter, partner, member, associate, or manager of

any partnership, joint venture, trust, or other entity;

(10) conduct its business, locate offices, and exercise the powers granted by this article within or without Indiana;

(11) elect directors, elect and appoint officers, and appoint employees and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) pay pensions and establish and administer pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, welfare plans, qualified and nonqualified retirement plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) transact any lawful business that will aid governmental policy;

(15) make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation; and

(16) adopt, either in the corporation's articles of incorporation or bylaws, a provision establishing exclusive jurisdiction in the circuit or superior courts of any county in Indiana or in the United States district courts of Indiana, for:

(A) any derivative action brought on behalf of, or in the name of the corporation;

(B) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee, or agent of the corporation to:

(i) the corporation; or

(ii) any of the corporation's constituents identified in IC 23-1-35-1(d);

(C) any action asserting a claim arising under:

(i) any provision of this article; or

(ii) the corporation's articles of incorporation or bylaws; or

(D) any actions otherwise relating to the internal affairs of the corporation.

As added by P.L.149-1986, SEC.6. Amended by P.L.63-2014, SEC.3.

IC 23-1-22-3

Emergencies; powers; meetings

Sec. 3. (a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication

and radio; and

(2) one (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section 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.149-1986, SEC.6.

IC 23-1-22-4

Procedures regulating transactions resulting in change of control

Sec. 4. (a) In addition to any other provision contained in its articles of incorporation or bylaws or authorized by any other provision of this article, a corporation may establish one (1) or more procedures by which it regulates transactions that would, when consummated, result in a change of control of such corporation.

(b) For purposes of this section and any procedure established under this section, "control" means:

(1) for any corporation having one hundred (100) or more shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than ten percent (10%) of the voting shares of a corporation's outstanding voting shares; and

(2) for any corporation having fewer than one hundred (100) shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than fifty percent (50%) of the voting shares of the corporation's outstanding voting shares.

(c) A procedure established under this section may be adopted:

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

(2) by amending the articles of incorporation; or

(3) notwithstanding that a vote of the shareholders would otherwise be required by any other provision of this article or the articles of incorporation for the adoption or implementation of all or any portion of the procedure, by amending the bylaws.

As added by P.L.149-1986, SEC.6.

IC 23-1-22-5

Challenging corporation's power to act; ultra vires acts

Sec. 5. (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) in a proceeding by a shareholder against the corporation to enjoin the act;

(2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the attorney general under IC 23-1-47-1.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

As added by P.L.149-1986, SEC.6.

IC 23-1-23
Chapter 23. Name

IC 23-1-23-1
Corporate name

Sec. 1. (a) A corporate name:

(1) must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language; and

(2) except as provided in subsection (e), may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by IC 23-1-22-1 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state from:

(1) the corporate name of a corporation or other business entity incorporated or authorized to transact business in Indiana;

(2) a corporate name reserved or registered under section 2 or 3 of this chapter;

(3) a fictitious name adopted by a foreign corporation authorized to transact business in Indiana because the foreign corporation's true name was unavailable; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in Indiana.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) the other corporation files its written consent to the use, signed by any current officer of the corporation; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) A bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing

the duties that a bank or trust company only is entitled to afford and perform.

(f) Except as provided in IC 23-1-49-6, this article does not control the use of fictitious names.

As added by P.L.149-1986, SEC.7. Amended by P.L.145-1988, SEC.4; P.L.178-2002, SEC.98; P.L.133-2009, SEC.15.

IC 23-1-23-2

Exclusive use of corporate name

Sec. 2. (a) A person may reserve the exclusive right to the use of a name, including a fictitious name for a foreign corporation whose name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for renewable one hundred twenty (120) day periods.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

As added by P.L.149-1986, SEC.7. Amended by P.L.277-2001, SEC.3.

IC 23-1-23-3

Foreign corporation; registration of name

Sec. 3. (a) A foreign corporation may register its name, or its name with any addition required by IC 23-1-49-6, if the name is distinguishable upon the records of the secretary of state as provided in section 1 of this chapter.

(b) A foreign corporation registers its name, or its name with any addition required by IC 23-1-49-6, by delivering to the secretary of state for filing an application setting forth:

(1) its name, or its name with any addition required by IC 23-1-49-6; and

(2) the state or country and date of its incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The filing of the renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this article or by another foreign corporation thereafter authorized to transact business in Indiana. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of

another foreign corporation under the registered name.
As added by P.L.149-1986, SEC.7. Amended by P.L.277-2001, SEC.4.

IC 23-1-24

Chapter 24. Office and Agent

IC 23-1-24-1

Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation

Sec. 1. (a) Each corporation must continuously maintain in Indiana:

(1) a registered office; and

(2) a registered agent, who must be:

(A) an individual who resides in Indiana and whose business office is identical with the registered office;

(B) a domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office; or

(C) a foreign limited liability company, foreign corporation, or nonprofit foreign corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each corporation incorporated after June 30, 2014, shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each corporation incorporated under the laws of Indiana shall provide to the corporation's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the corporation; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the corporation.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a corporation under subsection (c).

(e) If a corporation fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 3 of this chapter, as the registered agent for the corporation.

As added by P.L.149-1986, SEC.8. Amended by P.L.63-2014, SEC.4.

IC 23-1-24-2

Change of registered office or registered agent

Sec. 2. (a) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) the name of the corporation;

(2) the street address of its current registered office;

(3) if the current registered office is to be changed, the street address of the new registered office;

(4) the name of its current registered agent;

(5) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent or a representation that the new registered agent has consented (either on the statement or attached to it) to the appointment; and

(6) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation that the registered agent serves by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

As added by P.L.149-1986, SEC.8. Amended by P.L.107-1987, SEC.4.

IC 23-1-24-3

Resignation of registered agent

Sec. 3. (a) A registered agent may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-1-18 a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the secretary of state shall mail one (1) copy to the corporation at its principal office, if known, and one (1) copy to the registered office, if not discontinued.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

As added by P.L.149-1986, SEC.8. Amended by P.L.228-1995, SEC.8.

IC 23-1-24-4

Service of process or notice

Sec. 4. (a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation or other executive officer, as that term is used in Trial Rule 4.6(a)(1), at the corporation's principal office. Service is perfected under this subsection at the earliest of:

(1) the date the corporation receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the corporation; or

(3) five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

As added by P.L.149-1986, SEC.8.

IC 23-1-25

Chapter 25. Shares Generally

IC 23-1-25-1

Authorization of shares in articles of incorporation

Sec. 1. (a) 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 that 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 2 of this chapter.

(b) The articles of incorporation must authorize:

(1) one (1) or more classes of shares that together have unlimited voting rights; and

(2) one (1) or more classes of shares (that 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.

(c) The articles of incorporation may authorize one (1) or more classes of shares that have one (1) or more 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.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) is not exhaustive.

As added by P.L.149-1986, SEC.9.

IC 23-1-25-2

Series of shares; filing articles with secretary of state

Sec. 2. (a) If the articles of incorporation so provide, the board of directors may create one (1) or more series, and may determine, in whole or in part, the preferences, limitations, and relative voting and other rights (within the limits set forth in section 1 of this chapter) of:

(1) any class of shares before the issuance of any shares of that class; or

(2) one (1) or more 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 any shares of a class or series the preferences, limitations, and relative voting and other rights of which are determined under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(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 it was adopted; and

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

As added by P.L.149-1986, SEC.9.

IC 23-1-25-3

Issuance of shares; number; outstanding shares

Sec. 3. (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 they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) and to IC 23-1-28.

(c) At all times that shares of the corporation are outstanding, one (1) or more shares that together have unlimited voting rights and one (1) or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

As added by P.L.149-1986, SEC.9.

IC 23-1-25-4

Fractional shares; scrip

Sec. 4. (a) A corporation may do any one (1) or more 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 23-1-26-6(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to 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 them.

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

(1) that the scrip will become void if not exchanged for full shares before a specified date; and

(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.149-1986, SEC.9.

IC 23-1-26

Chapter 26. Issuance of Shares

IC 23-1-26-1

Subscription agreements

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 them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to 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.

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

As added by P.L.149-1986, SEC.10.

IC 23-1-26-2

Consideration

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

(b) 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 cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

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

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

(e) The corporation may (but is not required to) 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 (but is not required to) credit distributions in respect of the shares against their 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 cancelled in whole or in part.
As added by P.L.149-1986, SEC.10. Amended by P.L.133-2009, SEC.16.

IC 23-1-26-3
Shareholder liability

Sec. 3. (a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued (section 2 of this chapter) or specified in the subscription agreement (section 1 of this chapter).

(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.149-1986, SEC.10.

IC 23-1-26-4
Share dividends and share splits

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 one (1) or more classes 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, it is the date the board of directors authorizes the share dividend.
As added by P.L.149-1986, SEC.10.

IC 23-1-26-5
Rights, options, or warrants

Sec. 5. (a) A corporation, acting through its 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 (but need not) be issued pro rata.

(b) The terms and conditions of the rights, options, or warrants, including the rights, options, or warrants outstanding on July 1, 2009, may include, without limitation, restrictions or conditions that:

(1) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by:

(A) a person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation; or

(B) a transferee of the person described in clause (A); or

(2) invalidate or void the rights, options, or warrants held by the person described in subdivision (1)(A) or a transferee described in subdivision (1)(B).

As added by P.L.149-1986, SEC.10. Amended by P.L.133-2009, SEC.17.

IC 23-1-26-6

Certificates; contents; signatures

Sec. 6. (a) Shares may but need not 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 their shares are represented by certificates.

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

(1) the name of the issuing corporation and that it is organized under the law of this state;

(2) the name of the person to whom issued; and

(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, 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. Alternatively, each certificate may state conspicuously on its 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 (or the sole officer, if the corporation has only one (1) officer) designated in the bylaws or by the board of directors; and

(2) may bear the corporate seal or its facsimile.

(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 is nevertheless valid.
As added by P.L.149-1986, SEC.10. Amended by P.L.107-1987, SEC.5.

IC 23-1-26-7
Issuance of shares without certificates

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 of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they 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 sections 6(b) and 6(c) of this chapter, and, if applicable, section 8 of this chapter.
As added by P.L.149-1986, SEC.10.

IC 23-1-26-8
Restrictions on transfer or registration of transfer of shares

Sec. 8. (a) 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.

(b) 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 its 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 or contained, a restriction is not enforceable against a person without knowledge of the restriction.

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

(1) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

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

(3) for any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may, among other things:

(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; or

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

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.
As added by P.L.149-1986, SEC.10. Amended by P.L.133-2009, SEC.18.

IC 23-1-26-9
Expenses payable from consideration received for shares

Sec. 9. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.
As added by P.L.149-1986, SEC.10.

IC 23-1-27

Chapter 27. Subsequent Acquisition of Shares by Shareholders and Corporation

IC 23-1-27-1

Preemptive rights

Sec. 1. (a) 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.

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

(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 them.

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

(3) There is no preemptive right with respect to:

(A) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(B) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(C) shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation; or

(D) shares sold otherwise than for money.

(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 any 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 a period of one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.
As added by P.L.149-1986, SEC.11.

IC 23-1-27-2
Corporation acquiring its own shares

Sec. 2. (a) A corporation may acquire its own 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 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 subsection (b) may be adopted by the board of directors without shareholder action, shall be delivered to the secretary of state for filing, and shall set forth:

(1) the name of the corporation;

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

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

(d) A corporation has authority to use, hold, acquire, cancel, and dispose of treasury shares (as defined in prior law).

(e) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, treasury shares of the corporation that are cancelled shall be treated as authorized but unissued shares.
As added by P.L.149-1986, SEC.11. Amended by P.L.107-1987, SEC.6.

IC 23-1-28

Chapter 28. Distributions to Shareholders

IC 23-1-28-1

Distributions

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

As added by P.L.149-1986, SEC.12.

IC 23-1-28-2

Record date, declaration date, and payment date

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 a corporation's shareholders. 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), it is the date the board of directors authorizes the distribution.

As added by P.L.149-1986, SEC.12.

IC 23-1-28-3

Prohibited distributions

Sec. 3. A distribution may not be made if, after giving it effect:

(1) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) the corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

As added by P.L.149-1986, SEC.12.

IC 23-1-28-4

Basis for determination that distribution not prohibited

Sec. 4. The board of directors may base a determination that a distribution is not prohibited under section 3 of this chapter either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

As added by P.L.149-1986, SEC.12.

IC 23-1-28-5

Measuring effect of distribution; date

Sec. 5. The effect of a distribution under section 3 of this chapter is measured:

(1) in the case of distribution by purchase, redemption, or other

acquisition of the corporation's shares, as of the earlier of:

(A) the date money or other property is transferred or debt incurred by the corporation; or

(B) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of:

(A) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or

(B) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

As added by P.L.149-1986, SEC.12.

IC 23-1-28-6

Indebtedness to shareholder; priority

Sec. 6. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this chapter is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

As added by P.L.149-1986, SEC.12.

IC 23-1-29

Chapter 29. Meetings of Shareholders

IC 23-1-29-1

Annual meetings; exceptions

Sec. 1. (a) Unless directors are elected by written consent instead of at an annual meeting as permitted by section 4 of this chapter, a corporation shall hold a meeting of the shareholders annually at a time stated in or fixed in accordance with the bylaws. However, if a corporation's articles of incorporation authorize shareholders to cumulate the shareholder's votes when electing directors as provided under IC 23-1-30-9, directors may not be elected by less than unanimous consent.

(b) Annual shareholders' meetings may be held in or out of Indiana 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 corporate action.

(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 hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

As added by P.L.149-1986, SEC.13. Amended by P.L.133-2009, SEC.19.

IC 23-1-29-2

Special meetings

Sec. 2. (a) A corporation with more than fifty (50) shareholders must hold a special meeting of shareholders on call of its board of directors or the person or persons (including, but not limited to, shareholders or officers) specifically authorized to do so by the articles of incorporation or bylaws. If such corporation's articles of incorporation require the holding of a special meeting on the demand of its shareholders, but do not specify the percentage of votes entitled to be cast on an issue necessary to demand such special meeting, the board of directors may establish such percentage in the corporation's bylaws. Absent adoption of such 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.

(b) A corporation with fifty (50) or fewer shareholders must hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons (including, but not limited to, shareholders or officers) specifically authorized to do so by the articles of incorporation or bylaws; or

(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 such corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(c) Special shareholders' meetings may be held in or out of Indiana 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.

(d) If not otherwise fixed under section 3 or 7 of this chapter, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(e) Only business within the purpose or purposes described in the meeting notice required by section 5(c) of this chapter may be conducted at a special shareholders' meeting.

(f) 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 hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

As added by P.L.149-1986, SEC.13. Amended by P.L.227-1989, SEC.1; P.L.133-2009, SEC.20.

IC 23-1-29-3

Court-ordered meetings

Sec. 3. The circuit or superior court of the county where a corporation's principal office (or, if none in Indiana, its registered office) is located may order a meeting to be held and may fix the time and place of the meeting, which 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.149-1986, SEC.13.

IC 23-1-29-4

Action taken without a meeting; consent of shareholders; notice to nonvoting shareholders

Sec. 4. (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 one (1) or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, bearing the date of signature, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) This subsection does not apply to a corporation that has a class of voting shares registered with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934. Unless otherwise provided in the articles of incorporation, any action required or permitted by this article to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action taken are signed by the holders of outstanding shares having at least the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under section 7 of this chapter, and if prior board action is not required with respect to the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 7 of this chapter, and if prior board action is required with respect to the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board taking the prior action is adopted. A written consent to take a corporate action is not valid unless, not later than sixty (60) days after the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

(d) A consent signed in accordance with this section has the effect of a vote taken at a meeting and may be described as a vote in any document. Unless the:

(1) consent specifies a different prior or subsequent effective date; or

(2) articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents;

the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If this article requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written

consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten (10) days after:

(1) written consents sufficient to take the action have been delivered to the corporation; or

(2) the date that tabulation of the written consents has been completed under an authorization as described in subsection (d).

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this article, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after:

(1) written consents sufficient to take the action have been delivered to the corporation; or

(2) the date that tabulation of the written consents has been completed under an authorization as described in subsection (d).

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this article, would have been required to be sent to voting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(g) The notice requirements of subsections (e) and (f) do not delay the effectiveness of actions taken by written consent, and a failure to comply with the notice requirements does not invalidate actions taken by written consent. However, this subsection does not limit the power of a court to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give timely notice.

(h) An electronic transmission may be used to consent to an action if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent, or the shareholder's attorney in fact.

(i) Unless otherwise determined by a resolution of the board, delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

As added by P.L.149-1986, SEC.13. Amended by P.L.107-1987, SEC.7; P.L.133-2009, SEC.21.

IC 23-1-29-4.5
Repealed

(Repealed by P.L.133-2009, SEC.42.)

IC 23-1-29-5
Notice of meetings

Sec. 5. (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten (10) nor 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 7 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) 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 7 of this chapter, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

(f) A corporation may give notice of a shareholders' meeting under this section by mailing the notice, postage prepaid, through the United States Postal Service, using any class or form of mail, if:

(1) the shares to which the notice relates are of a class of securities that is registered under the Exchange Act (as defined in IC 23-1-43-9); and

(2) the notice and the related proxy or information statement required under the Exchange Act (as defined in IC 23-1-43-9) are available to the public, without cost or password, through the corporation's Internet web site not fewer than thirty (30) days before the shareholders' meeting.

As added by P.L.149-1986, SEC.13. Amended by P.L.178-2005, SEC.2.

IC 23-1-29-6
Waiver of notice

Sec. 6. (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 must be:

(1) in writing;

(2) signed by the shareholder entitled to the notice; and

(3) 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.149-1986, SEC.13. Amended by P.L.133-2009, SEC.22.

IC 23-1-29-7

Fixing of record date

Sec. 7. (a) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order 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, which it must do 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, it may provide that the original record date continues in effect or it may fix a new record date.

As added by P.L.149-1986, SEC.13.

IC 23-1-30

Chapter 30. Voting by Shareholders

IC 23-1-30-1

Shareholders' list

Sec. 1. (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and 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. Subject to IC 23-1-52-2(c), 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.

(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 the shareholders' list during the period specified in subsection (b) (or copy the list as permitted by subsection (b)), the circuit or superior court of the county where a corporation's principal office (or, if none in Indiana, its registered 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 subject to IC 23-1-52-5.

As added by P.L.149-1986, SEC.14.

IC 23-1-30-2

Shares entitled to vote

Sec. 2. (a) Except as provided in subsections (b) and (c) 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. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first 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 it 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 bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

As added by P.L.149-1986, SEC.14.

IC 23-1-30-3

Voting of shares; appointment of proxy

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

(b) A shareholder may authorize a person or persons to act for the shareholder as proxy by any of the following:

(1) A shareholder or the shareholder's designated officer, director, employee, or agent may execute a writing by:

(A) signing it; or

(B) causing the shareholder's signature or the signature of the designated officer, director, employee, or agent of the shareholder to be affixed to the writing by any reasonable means, including by facsimile signature.

(2) A shareholder may transmit or authorize the transmission of an electronic submission. The electronic submission:

(A) may be transmitted by any electronic means, including data and voice telephonic communications and computer network;

(B) may be transmitted to:

(i) the person who will be the holder of the proxy;

(ii) a proxy solicitation firm; or

(iii) a proxy support service organization or similar agency authorized by the person who will be the holder of the proxy to receive the electronic submission; and

(C) must either contain or be accompanied by information from which it can be determined that the electronic submission was transmitted by or authorized by the shareholder.

(3) Any other method allowed by law.

(c) A copy, facsimile telecommunication, or other reliable reproduction of the writing or electronic submission created under subsection (b)(1) or (b)(2) may be used instead of the original writing or electronic submission for all purposes for which the original writing or electronic submission may be used if the copy, facsimile telecommunication, or other reproduction is a complete copy of the entire original writing or electronic submission.

(d) 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.

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

(1) a pledgee;

(2) a person who purchased or agreed to purchase the shares;

(3) a creditor of the corporation who extended it credit under terms requiring the appointment;

(4) an employee of the corporation whose employment contract requires the appointment; or

(5) a party to a voting agreement created under IC 23-1-31-2.

(f) 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.

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

(h) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and 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.

(i) Subject to section 5 of this chapter and to any express limitation on the proxy's authority contained in the writing or electronic submission, 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.149-1986, SEC.14. Amended by P.L.107-1987, SEC.8; P.L.9-1998, SEC.1.

IC 23-1-30-4

Beneficial owners of shares; recognition procedure; disclosure procedure

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 its 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 without limitation:

(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.149-1986, SEC.14.

IC 23-1-30-5
Acceptance of signature

Sec. 5. (a) If the name signed on or submitted with 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 or submitted with a vote, consent, waiver, or proxy appointment does not correspond to the name of its 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:

(1) the shareholder is an entity and the name purports to be that of an officer or agent of the entity;
(2) the name 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 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 purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the person's authority to act for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
(5) two (2) or more persons are the shareholder as cotenants or fiduciaries and the name purports to be the name of at least one (1) of the coowners and the person acting appears to be acting on behalf of all the coowners.

(c) The inspectors or the persons making a determination of the validity of proxies shall specify the information upon which they rely in determining the validity of a proxy. 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:

(1) the validity of the signature on a writing or about the signatory's authority to sign for the shareholder; or
(2) the validity of an electronic submission or the submitter's

authority to make the electronic transmission.

(d) The corporation and its 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.149-1986, SEC.14. Amended by P.L.9-1998, SEC.2.

IC 23-1-30-6

Voting group; quorum

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 provide otherwise, 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, it is deemed 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.

As added by P.L.149-1986, SEC.14.

IC 23-1-30-7

Voting groups; method of taking action

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.149-1986, SEC.14.

IC 23-1-30-8

Special voting requirements in articles of incorporation

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.149-1986, SEC.14.

IC 23-1-30-9
Election of directors; cumulative voting

Sec. 9. (a) Unless otherwise provided in the articles of incorporation, 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.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that "(all) (a designated voting group of) shareholders are entitled to cumulate their votes for directors" (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) a shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than forty-eight (48) hours before the time set for the meeting of the shareholder's intent to cumulate the shareholder's votes during the meeting, and if one (1) shareholder gives this notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

As added by P.L.149-1986, SEC.14.

IC 23-1-31

Chapter 31. Voting Trusts and Agreements

IC 23-1-31-1

Voting trust

Sec. 1. (a) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (that may include anything consistent with its purpose) and transferring their shares to the trustee. 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.

(b) 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 its effective date 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:

(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; or

(4) in connection with any other act or thing constituting an interest sufficient in law to support a power coupled with it.

(c) If an irrevocable voting trust is extended in accordance with subsection (b), 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.149-1986, SEC.15.

IC 23-1-31-2

Voting agreement

Sec. 2. (a) Two (2) or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 1 of this chapter.

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

As added by P.L.149-1986, SEC.15.

IC 23-1-32

Chapter 32. Derivative Proceedings

IC 23-1-32-1

Right to commence or maintain proceeding

Sec. 1. A person may not commence a proceeding in the right of a domestic or foreign 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. The 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.149-1986, SEC.16.

IC 23-1-32-2

Complaint; stay of proceeding

Sec. 2. A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why the shareholder did not make the demand. 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 4 of this chapter), the court may stay any proceeding until the investigation is completed.

As added by P.L.149-1986, SEC.16.

IC 23-1-32-3

Discontinuance or settlement of proceeding

Sec. 3. (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 counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

As added by P.L.149-1986, SEC.16.

IC 23-1-32-4

Committee of disinterested directors or persons

Sec. 4. (a) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of three (3) or more 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 shall be presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to such right or remedy, unless such shareholder can demonstrate that:

(1) the committee was not "disinterested" within the meaning of this section; or

(2) the committee's determination was not made after an investigation conducted in good faith.

(d) For purposes of this section, 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.149-1986, SEC.16.

IC 23-1-32-5

"Shareholder" defined

Sec. 5. 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.149-1986, SEC.16.

IC 23-1-33

Chapter 33. Board of Directors Generally

IC 23-1-33-1

Necessity of board of directors; powers

Sec. 1. (a) Except as provided in subsection (c), 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, its board of directors, subject to any limitation set forth in the articles of incorporation.

(c) A corporation having fifty (50) or fewer shareholders may dispense with the board of directors or limit the authority of the board by describing in its articles of incorporation who will perform some or all of the duties of the board of directors. If a corporation elects to dispense with or limit the authority of the board of directors, any reference to the board of directors by this article also includes those persons described in the articles of incorporation who will perform the duties of the board of directors.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-2

Qualifications

Sec. 2. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-3

Number of directors; time for electing

Sec. 3. (a) A board of directors must consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(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. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the board of directors.

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

As added by P.L.149-1986, SEC.17.

IC 23-1-33-4

Election of directors by classes of shares

Sec. 4. 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 one (1) or more

authorized classes of shares. Each class (or classes) of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.
As added by P.L.149-1986, SEC.17.

IC 23-1-33-5
Terms of office

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

(b) Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4 or a shorter term is specified in the bylaws for a director nominee failing to receive a specified vote for election, the terms of all other directors expire at:

(1) the next; or

(2) if the director's terms are staggered in accordance with section 6 of this chapter, the applicable second or third;

annual shareholders' meeting following their election.

(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) Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4, 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.149-1986, SEC.17. Amended by P.L.133-2009, SEC.23.

IC 23-1-33-6
Staggered terms

Sec. 6. (a) The articles of incorporation or the bylaws may provide for staggering their 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) if there are more than two (2) directors, three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) In the event that terms are staggered under subsection (a), the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, 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.

(c) A corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934 shall provide for staggering the

terms of directors in accordance with this section unless, not later than thirty (30) days after the later of:

(1) July 1, 2009; or

(2) the time when the corporation's voting shares are registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934;

the board of directors of the corporation adopts a bylaw expressly electing not to be governed by this subsection. However, an election not to be governed by this subsection may be rescinded by a subsequent action of the board of directors unless the original articles of incorporation contain a provision expressly electing not to be governed by this subsection.

(d) If the board fails to provide for the staggering of the terms of directors as required by subsection (c), the board must be staggered as follows:

(1) The first group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without any remaining.

(2) The second group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without two (2) remaining.

(3) The third group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest lower whole number if the number of directors is not divisible by three (3) without any remaining.

The directors shall be placed into the groups established by this subsection alphabetically by last name.

As added by P.L.149-1986, SEC.17. Amended by P.L.107-1987, SEC.9; P.L.277-2001, SEC.5; P.L.133-2009, SEC.24.

IC 23-1-33-7

Resignation

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:

(1) a later effective date; or

(2) an effective date determined upon the happening of an event.

(c) A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that the resignation is irrevocable.

As added by P.L.149-1986, SEC.17. Amended by P.L.107-1987, SEC.10; P.L.133-2009, SEC.25.

IC 23-1-33-8
Removal

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 with or without cause unless the articles of incorporation provide otherwise.

(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) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, 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 they are otherwise authorized to do so, only at a meeting called for the purpose of removing the director and 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.149-1986, SEC.17.

IC 23-1-33-9
Vacancies

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, they 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 but the new director may not take office until the vacancy occurs.

As added by P.L.149-1986, SEC.17.

IC 23-1-33-10
Compensation

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.149-1986, SEC.17.

IC 23-1-34

Chapter 34. Meetings and Action of Board of Directors

IC 23-1-34-1

Meetings; method of conducting

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 hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

As added by P.L.149-1986, SEC.18.

IC 23-1-34-2

Action taken without a meeting; consent

Sec. 2. (a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, 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:

(1) evidenced by one (1) or more written consents describing the action taken;

(2) signed by each director;

(3) included in the minutes or filed with the corporate records reflecting the action taken; and

(4) delivered to the secretary.

(b) Action taken under this section is effective when the last director signs the consent, unless:

(1) the consent specifies a different prior or subsequent effective date, in which case the consent is effective on that date; or

(2) no effective date contemplated by subdivision (1) is designated and the action taken under this section is taken electronically as contemplated by IC 26-2-8. If action is taken as contemplated by IC 26-2-8, the effective date is determined in accordance with IC 26-2-8.

A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before the delivery to the corporation of unrevoked written consents signed by all the directors.

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

(d) Action taken without a meeting is an organic action (as defined in IC 26-2-8-102(15)).

As added by P.L.149-1986, SEC.18. Amended by P.L.133-2009, SEC.26.

IC 23-1-34-3

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.149-1986, SEC.18.

IC 23-1-34-4

Waiver of notice

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.149-1986, SEC.18.

IC 23-1-34-5

Quorum; assent to action taken

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, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors determined under subsection (a).

(c) 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 the articles of incorporation or bylaws provide otherwise.

(d) 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 deemed 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 it 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 its adjournment or to the secretary of the corporation immediately after adjournment of the meeting. 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.149-1986, SEC.18.

IC 23-1-34-6
Committees

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

(b) The creation of a committee and appointment of members to it 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 their members 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 23-1-33-1.

(e) A committee may not, however:

(1) authorize distributions, except 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 its committees;

(4) except to the extent permitted by subdivision (7), amend articles of incorporation under IC 23-1-38-2;

(5) adopt, amend, or repeal bylaws;

(6) approve a plan of merger not requiring shareholder approval; or

(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, except 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 23-1-35-1.

As added by P.L.149-1986, SEC.18. Amended by P.L.107-1987, SEC.11.

IC 23-1-35

Chapter 35. Standards of Conduct for Directors

IC 23-1-35-1

Standards of conduct; liability; reaffirmation of corporate governance rules; presumption

Sec. 1. (a) A director shall, based on facts then known to the director, discharge the duties as 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.

(b) 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) one (1) or more officers or employees 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.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) 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 communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent.

(e) A director is not liable for any action taken as a director, or any failure to take any action, regardless of the nature of the alleged breach of duty, including alleged breaches of the duty of care, the duty of loyalty, and the duty of good faith, unless:

(1) the director has breached or failed to perform the duties of the director's office in compliance with this section; and

(2) the breach or failure to perform constitutes willful misconduct or recklessness.

(f) 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 deem appropriate the effects of such action on the corporation's constituents, that such action is not in the best interests of the corporation. In making such determination, 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 the foregoing, directors are not required to render inapplicable any of the provisions of IC 23-1-43, to redeem any rights under or to render inapplicable a shareholder rights plan adopted pursuant to IC 23-1-26-5, 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 such an acquisition. Certain judicial decisions in Delaware and other jurisdictions, which might otherwise be looked to for guidance in interpreting Indiana corporate law, 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 subsection (d) as they deem appropriate; and

(2) to protect both directors and the validity of corporate action taken by them in the good faith exercise of their business judgment after reasonable investigation.

(g) 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 may, in its discretion, consider both the short term and long term best interests of the corporation, taking into account, and weighing as the directors deem appropriate, the effects thereof on the corporation's shareholders and the other corporate constituent groups and interests listed or described in subsection (d), as well as any other factors deemed pertinent by the directors under subsection (d). If a determination is made with respect to the foregoing with the approval of a majority of the disinterested directors of the board of directors, that determination shall conclusively be presumed to be valid unless it can be demonstrated that the determination was not made in good faith after reasonable investigation.

(h) For the purposes of subsection (g), a director is disinterested if:

(1) the director does not have a conflict of interest, within the meaning of section 2 of this chapter, in connection with the action or recommendation in question;

(2) in connection with matters described in IC 23-1-32 the director is disinterested (as defined in IC 23-1-32-4(d));

(3) in connection with any matter involving or otherwise

affecting:

(A) a control share acquisition (as defined in IC 23-1-42-2) or any matter related to a control share acquisition under IC 23-1-42 or other provisions of this article;

(B) a business combination (as defined in IC 23-1-43-5) or any matter related to a business combination under IC 23-1-43 (including a person becoming an interested shareholder) or other provisions of this article; or

(C) any transaction that may result in a change of control (as defined in IC 23-1-22-4) of the corporation;

the director is not an employee of the corporation; and

(4) in connection with any matter involving or otherwise affecting:

(A) a control share acquisition (as defined in IC 23-1-42-2) or any matter related to a control share acquisition under IC 23-1-42 or other provisions of this article;

(B) a business combination (as defined in IC 23-1-43-5) or any matter related to a business combination under IC 23-1-43 (including a person becoming an interested shareholder) or other provisions of this article; or

(C) any transaction that may result in a change of control (as defined in IC 23-1-22-4) of the corporation;

the director is not an affiliate or associate of, or was not nominated or designated as a director by, a person proposing any of the transactions described in clause (A), (B), or (C).

(i) 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.149-1986, SEC.19. Amended by P.L.227-1989, SEC.2; P.L.133-2009, SEC.27.

IC 23-1-35-2

Conflict of interest transaction

Sec. 2. (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. 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 this section, 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, officer, or 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 it 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.149-1986, SEC.19. Amended by P.L.107-1987, SEC.12.

IC 23-1-35-3

Loan or guarantee to director

Sec. 3. (a) Except as provided by subsection (c), a corporation may not lend money to or guarantee the obligation of a director of the corporation unless:

(1) the particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or

(2) the corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(c) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.

As added by P.L.149-1986, SEC.19.

IC 23-1-35-4

Unlawful distribution; liability; contribution

Sec. 4. (a) Subject to section 1(e) 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 1(e) of this chapter; and

(2) from each shareholder for the amount the shareholder accepted.

As added by P.L.149-1986, SEC.19. Amended by P.L.107-1987, SEC.13.

IC 23-1-35-5

Directors and business opportunities; conflicts of interest

Sec. 5. (a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation, if one (1) or more of the following applies:

(1) The opportunity and all material facts concerning the opportunity then known to the director were disclosed to or known by the board of directors or a committee of the board of directors before the director became legally obligated regarding the opportunity, and the board of directors or committee of the board of directors disclaimed the corporation's interest in the opportunity.

(2) The opportunity and all material facts concerning the business opportunity then known to the director were disclosed to or known by the shareholders entitled to vote before the director became legally obligated regarding the opportunity, and the shareholders disclaimed the corporation's interest in the opportunity.

(b) For purposes of subsection (a)(1), a business opportunity is disclaimed if approved in the manner provided in section 2(c) of this chapter as if the business opportunity were a conflict of interest transaction.

(c) For purposes of subsection (a)(2), a business opportunity is disclaimed if approved in the manner provided in section 2(d) of this chapter as if the business opportunity were a conflict of interest transaction.

(d) In any proceeding seeking equitable relief or other remedies against a director for the director allegedly improperly taking advantage of a business opportunity, the fact that the director did not employ the procedure described in subsection (a) before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation under the circumstances.

As added by P.L.133-2009, SEC.28. Amended by P.L.1-2010, SEC.92.

IC 23-1-36

Chapter 36. Officers Generally

IC 23-1-36-1

Officers; election or appointment; secretary

Sec. 1. (a) A corporation has the officers described in its bylaws or elected or appointed by the board of directors in accordance with the bylaws or appointed by a duly elected or appointed officer in accordance with the bylaws. However, a corporation must have at least one (1) officer.

(b) A duly elected or appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation, and that officer is considered the secretary of the corporation for purposes of this article.

(d) The same individual may simultaneously hold more than one (1) office in a corporation.

As added by P.L.149-1986, SEC.20.

IC 23-1-36-2

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.149-1986, SEC.20.

IC 23-1-36-3

Resignation; removal

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, its 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.

As added by P.L.149-1986, SEC.20. Amended by P.L.107-1987,

SEC.14.

IC 23-1-36-4
Contract rights

Sec. 4. (a) The election or appointment of an officer does not itself 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.149-1986, SEC.20.

IC 23-1-37

Chapter 37. Indemnification of Directors, Officers, Employees, and Agents

IC 23-1-37-1

"Corporation" defined

Sec. 1. As used in this chapter, "corporation" includes any 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.149-1986, SEC.21.

IC 23-1-37-2

"Director" defined

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, officer, partner, member, manager, trustee, employee, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, 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. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

As added by P.L.149-1986, SEC.21. Amended by P.L.8-1993, SEC.303.

IC 23-1-37-3

"Expenses" defined

Sec. 3. As used in this chapter, "expenses" include counsel fees.

As added by P.L.149-1986, SEC.21.

IC 23-1-37-4

"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.149-1986, SEC.21.

IC 23-1-37-5

"Official capacity" defined

Sec. 5. 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.

"Official capacity" does not include service for any other foreign or domestic corporation or any partnership, limited liability company, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not.

As added by P.L.149-1986, SEC.21. Amended by P.L.8-1993, SEC.304.

IC 23-1-37-6
"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.149-1986, SEC.21.

IC 23-1-37-7
"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.149-1986, SEC.21.

IC 23-1-37-8
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 its best interests; and

(B) in all other cases, that the individual's conduct was at least not opposed to its 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)(B).

(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.149-1986, SEC.21.

IC 23-1-37-9
Mandatory indemnification of director against expenses

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.149-1986, SEC.21.

IC 23-1-37-10
Reimbursement of expenses in advance of final disposition

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.149-1986, SEC.21.

IC 23-1-37-11
Application to court for indemnification

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 it 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.149-1986, SEC.21.

IC 23-1-37-12

Authorization of indemnification

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 duly designated by the board of directors (in which designation 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 selection 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, except that 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.149-1986, SEC.21.

IC 23-1-37-13

Officers, employees, and agents; indemnification and advance of expenses

Sec. 13. 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; and

(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 its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

As added by P.L.149-1986, SEC.21.

IC 23-1-37-14

Insurance against liability

Sec. 14. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, member, manager, trustee, employee, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, member, manager, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under section 8 or 9 of this chapter. The:

(1) corporation may purchase insurance under this section from; and

(2) insurance purchased under this section may be reinsured in whole or in part by;

an insurer that is owned by or otherwise affiliated with the corporation whether the insurer does or does not do business with other persons.

As added by P.L.149-1986, SEC.21. Amended by P.L.8-1993, SEC.300; P.L.8-1993, SEC.305; P.L.1-1994, SEC.116.

IC 23-1-37-15

Indemnification rights under articles of incorporation, bylaws, or resolutions

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 duly 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 duly 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, officer, employee, or 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.149-1986, SEC.21.

IC 23-1-38

Chapter 38. Amendment of Articles of Incorporation

IC 23-1-38-1

Required and permitted changes; vested property rights

Sec. 1. (a) A corporation may amend its 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.149-1986, SEC.22.

IC 23-1-38-2

Amendments by board of directors without shareholder action

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

(1) extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) delete the names and addresses of the initial directors;

(3) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares or a lesser number of whole shares and fractional shares if the corporation has only shares of that class outstanding;

(5) change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;

(6) reduce the number of authorized shares solely as the result of a cancellation of treasury shares; or

(7) make any other change expressly permitted by this article to be made without shareholder action.

As added by P.L.149-1986, SEC.22. Amended by P.L.107-1987, SEC.15.

IC 23-1-38-3

Proposal of amendment for submission to shareholders; procedure for adoption

Sec. 3. (a) A corporation's board of directors may propose one (1) or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) 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 it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(2) the shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice of meeting must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(e) Unless this article, the articles of incorporation, or the board of directors (acting under subsection (c)) require 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 23-1-30-6 and IC 23-1-30-7 by every other voting group entitled to vote on the amendment.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-4

Voting by shareholders

Sec. 4. (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; or
(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.

(b) If a proposed amendment would affect a series of a class of shares in one (1) or more 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 two (2) or more series of shares to vote as separate voting groups under this section would affect those two (2) or more 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.149-1986, SEC.22.

IC 23-1-38-5

Corporation not yet issuing shares; adoption of amendments by board of directors

Sec. 5. If a corporation has not yet issued shares, its board of directors (or if a board of directors has not been selected, then the incorporators) may adopt one (1) or more amendments to the corporation's articles of incorporation.

As added by P.L.149-1986, SEC.22.

IC 23-1-38-6

Filing articles of amendment

Sec. 6. (a) A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(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;

(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.

(b) If a corporation amends its articles of incorporation to change its corporate name, it may, after the amendment has become effective, file for record with the county recorder of each county in Indiana in which it 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.149-1986, SEC.22.

IC 23-1-38-7

Restated articles of incorporation

Sec. 7. (a) A corporation's board of directors or, if the board of directors has not been selected, the incorporators may restate its articles of incorporation at any time with or without shareholder action.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 3 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 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing 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 it 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 6 of this chapter.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) 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 subsection

(d).
As added by P.L.149-1986, SEC.22.

IC 23-1-38-8
Court-ordered reorganization; articles of amendment; dissenters' rights; application of section

Sec. 8. (a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by IC 23-1-21-2.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) the name of the corporation;
(2) the text of each amendment approved by the court;
(3) the date of the court's order or decree approving the articles of amendment;
(4) the title of the reorganization proceeding in which the order or decree was entered; and
(5) a statement that the court had jurisdiction of the proceeding under federal statute.

(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.
As added by P.L.149-1986, SEC.22.

IC 23-1-38-9
Effect of amendment

Sec. 9. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the preexisting rights of persons other than shareholders of the corporation. 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.149-1986, SEC.22.

IC 23-1-38.5

Chapter 38.5. Domestication and Conversion

IC 23-1-38.5-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

(1) "Charter" means:

(A) the original articles of incorporation and all amendments required to be filed by a domestic corporation; or

(B) any original public organic documents and all amendments required to be filed by a domestic other entity;

with the secretary of state in connection with the formation of the corporation or other entity.

(2) "Converting entity" means a corporation or other entity that adopts a plan of entity conversion.

(3) "Domestic entity" means a corporation or other entity that is incorporated or organized under the laws of Indiana.

(4) "Filing entity" means an entity that is created by filing a public organic document.

(5) "Foreign entity" means a corporation or other entity that is incorporated or organized under a law other than the laws of Indiana.

(6) "Limited liability entity" means a corporation or other entity that provides for limited personal liability of its interest holders.

(7) "Other entity" means a limited liability company, limited liability partnership, limited partnership, general partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and that is not a corporation.

(8) "Surviving entity" means the corporation or other entity that is in existence immediately after consummation of an entity conversion under this chapter.

(9) "Unlimited liability entity" means an entity that does not limit the personal liability of its interest holders.

As added by P.L.178-2002, SEC.99. Amended by P.L.178-2005, SEC.3; P.L.130-2006, SEC.4.

IC 23-1-38.5-2

Limitations on use of chapter

Sec. 2. (a) A corporation, a nonprofit corporation, or any other entity engaging in a business that is subject to regulation under another statute may be a party to a transaction under this chapter unless the transaction is prohibited or authorized under another statute.

(b) This chapter may not be used to effect a transaction that:

(1) converts an insurance company organized on the mutual principle to a company organized on a stock share basis;

(2) converts a nonprofit corporation to a corporation or other entity; or

(3) converts a domestic corporation or other entity to a nonprofit

corporation.

As added by P.L.178-2002, SEC.99. Amended by P.L.178-2005, SEC.4; P.L.130-2006, SEC.5.

IC 23-1-38.5-3

Approval of transactions by department of financial institutions or department of insurance; trust properties

Sec. 3. (a) If a domestic or foreign business corporation, a nonprofit corporation, or another entity may not be a party to a merger without the approval of the department of financial institutions or the department of insurance, the corporation or other entity may not be a party to a transaction under this chapter without the prior approval of the department of financial institutions or the department of insurance.

(b) Property held in trust or for a charitable purpose under the law of this state by a domestic or foreign other entity shall not, by any transaction under this chapter, be diverted from the objects for which it was donated, granted, or devised.

As added by P.L.178-2002, SEC.99. Amended by P.L.133-2009, SEC.29.

IC 23-1-38.5-4

Limitations on change of form

Sec. 4. (a) A foreign corporation may become a domestic corporation only if the domestication is permitted by the organic law of the foreign corporation. The laws of Indiana govern the effect of domesticating in Indiana under this chapter.

(b) A domestic corporation may become a foreign corporation only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the corporation of a plan of domestication in the manner provided in this section. The laws of the foreign jurisdiction govern the effect of domesticating in that jurisdiction.

(c) The plan of domestication must include:

(1) a statement of the jurisdiction in which the corporation is to be domesticated;

(2) the terms and conditions of the domestication;

(3) the manner and basis of reclassifying the shares of the corporation following its domestication into:

(A) shares or other securities;

(B) obligations;

(C) rights to acquire shares or other securities;

(D) cash;

(E) other property; or

(F) any combination of the types of assets referred to in clauses (A) through (E); and

(4) any desired amendments to the articles of incorporation of the corporation following its domestication.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.6.

IC 23-1-38.5-5
Domestication of domestic corporation in foreign jurisdiction; requirements

Sec. 5. In the case of a domestication of a domestic corporation in a foreign jurisdiction, the following apply:

(1) The plan of domestication must be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not the shareholder is entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the articles of incorporation as they will be in effect immediately after the domestication.

(5) Unless a greater requirement is established by the articles of incorporation or by the board of directors acting under subdivision (3), the plan of domestication may be submitted for the approval of the shareholders:

(A) at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists; and

(B) if any class or series of shares is entitled to vote as a separate group on the plan, at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the domestication by that voting group is present.

(6) Separate voting on the plan of domestication by voting groups is required by each class or series of shares that:

(A) is to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the types of assets referred to in this clause;

(B) would be entitled to vote as a separate group on a

provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under IC 23-1-30-7; or

(C) is entitled under the articles of incorporation to vote as a voting group to approve an amendment of the articles.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.7.

IC 23-1-38.5-6

Execution and requirements for articles of domestication of foreign corporation; delivery to secretary of state; cancellation of certificate of authority

Sec. 6. (a) After the domestication of a foreign corporation has been authorized as required by the laws of the foreign jurisdiction, the articles of domestication must be executed by an officer or other duly authorized representative. The articles must set forth:

(1) the name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in Indiana or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of IC 23-1-23-1;

(2) the jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication in that jurisdiction; and

(3) a statement that the domestication of the corporation in Indiana was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication under this chapter.

(b) The articles of domestication must either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in the articles of incorporation or must have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication must be delivered to the secretary of state for filing and are effective at the time provided in IC 23-1-18-4.

(d) If the foreign corporation is authorized to transact business in this state under IC 23-1-49, its certificate of authority is canceled automatically on the effective date of its domestication.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.8.

IC 23-1-38.5-7

Execution and requirements for articles of charter surrender; delivery to secretary of state

Sec. 7. (a) Whenever a domestic corporation has adopted and approved, in the manner required by this chapter, a plan of domestication providing for the corporation to be domesticated in a

foreign jurisdiction, an officer or another authorized representative of the corporation must execute articles of charter surrender on behalf of the corporation. The articles of charter surrender must set forth:

(1) the name of the corporation;

(2) a statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

(3) a statement that the domestication was approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group, in the manner required by this chapter and the articles of incorporation; and

(4) the corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender must be delivered by the corporation to the secretary of state for filing. The articles of charter surrender are effective at the time provided in IC 23-1-18-4.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.9.

IC 23-1-38.5-8

Effects of domestication of foreign corporation; owner liability of shareholder in foreign corporation

Sec. 8. (a) When a domestication of a foreign corporation in Indiana becomes effective:

(1) the title to all real and personal property, both tangible and intangible, held by the corporation remains in the corporation without reversion or impairment;

(2) the liabilities of the corporation remain the liabilities of the corporation;

(3) an action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;

(4) the articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of the corporation;

(5) the shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities, or cash or other property in accordance with the terms of the domestication as approved under the laws of the foreign jurisdiction, and the shareholders are entitled only to the rights provided by those terms and under those laws; and

(6) the corporation is considered to:

(A) be incorporated under the laws of Indiana for all purposes;

(B) be the same corporation without interruption as the corporation that existed under the laws of the foreign jurisdiction; and

(C) have been incorporated on the date it was originally incorporated in the foreign jurisdiction.

(b) When a domestication of a domestic corporation in a foreign jurisdiction becomes effective, the foreign corporation is considered

to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication; and

(2) agree that it will promptly pay the amount, if any, to which shareholders are entitled under IC 23-1-40.

(c) The owner liability of a shareholder in a foreign corporation that is domesticated in Indiana is as follows:

(1) The domestication does not discharge owner liability under the laws of the foreign jurisdiction to the extent owner liability arose before the effective time of the articles of domestication.

(2) The shareholder does not have owner liability under the laws of the foreign jurisdiction for a debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any owner liability preserved by subdivision (1), as if the domestication had not occurred and the corporation were still incorporated under the laws of the foreign jurisdiction.

(4) The shareholder has whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subdivision (1), as if the domestication had not occurred and the corporation were still incorporated under the laws of that jurisdiction.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.10.

IC 23-1-38.5-9

Abandonment of plan of domestication; delivery of statement to secretary of state

Sec. 9. (a) Unless otherwise provided in a plan of domestication of a domestic corporation, after the plan has been adopted and approved as required by this chapter, and at any time before the domestication has become effective, the plan of domestication may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) after articles of charter surrender have been filed with the secretary of state but before the domestication has become effective, a statement that the domestication has been abandoned under this section, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the domestication. The statement is effective upon filing and the domestication is abandoned and may not become effective.

(c) If the domestication of a foreign corporation in Indiana is abandoned under the laws of the foreign jurisdiction after articles of domestication have been filed with the secretary of state, a statement

that the domestication has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement is effective upon filing and the domestication is abandoned and may not become effective.
As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.11.

IC 23-1-38.5-10
Conversion of domestic and foreign corporations and other entities

Sec. 10. (a) A domestic corporation may become a domestic other entity under a plan of entity conversion. If the organic law of the surviving entity does not provide for a conversion, section 14 of this chapter governs the effect of converting to that form of entity.

(b) A domestic corporation may become a foreign other entity under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to an other entity in that jurisdiction.

(c) A domestic other entity may become a domestic corporation under a plan of entity conversion. Section 15 of this chapter governs the effect of converting to a domestic corporation.

(d) A domestic other entity may become a different domestic other entity under a plan of entity conversion. If the organic law of the surviving entity does not provide for a conversion, section 15 of this chapter governs the effect of converting to the different domestic other entity.

(e) A domestic other entity may become a foreign other entity under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to an other entity in that jurisdiction.

(f) A domestic other entity may become a foreign corporation under a plan of entity conversion only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to a corporation in that jurisdiction.

(g) A foreign other entity may become a domestic corporation or other entity if the organic law of the foreign other entity authorizes the entity to become an entity in another jurisdiction. The laws of Indiana govern the effect of converting to a domestic corporation or other entity under this chapter.

(h) A foreign corporation may become a domestic other entity if the organic law of the foreign corporation authorizes the corporation to become an entity in another jurisdiction. The laws of Indiana govern the effect of converting to a domestic other entity under this chapter.

(i) If the organic law of a domestic other entity does not provide procedures for the approval of an entity conversion, the conversion must be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the other entity, and its interest

holders are entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the other entity. If the organic law of a domestic other entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion must be adopted and approved and the entity conversion effectuated in accordance with the procedures set forth in this chapter and in IC 23-1-40. For purposes of applying this chapter and IC 23-1-40:

(1) the other entity and its interest holders, interests, and organic documents taken together are considered a domestic corporation and the shareholders, shares, and articles of incorporation of a domestic corporation, as the context may require; and

(2) if the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group is considered the board of directors.

(j) If as a result of conversion one (1) or more shareholders or interest holders of a surviving entity become subject to owner liability for the debts, obligations, or liabilities of the surviving entity or any other person or entity, approval of the plan of conversion requires each shareholder or interest holder of the converting entity to execute a separate written consent to become subject to owner liability.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.12.

IC 23-1-38.5-11

Requirements for plan of entity conversion

Sec. 11. (a) A plan of entity conversion must include:

(1) a statement of the type of other entity that the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) the terms and conditions of the conversion;

(3) the manner and basis of converting the shares or interests of the converting entity following its conversion into shares, interests, or other securities, obligations, rights to acquire interests or other securities of the surviving entity or cash, other property, or any combination of the types of assets referred to in this subdivision; and

(4) the full text, as in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

(b) The plan of entity conversion may also include a provision that the plan may be amended before filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders or interest holders the plan may not be amended to change:

(1) the amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan by the shareholders or interest holders; or

(2) the organic documents that will be in effect immediately following the conversion, except for changes permitted by a

provision of the organic law of the surviving entity comparable to IC 23-1-38-2.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.13; P.L.133-2009, SEC.30.

IC 23-1-38.5-12

Adoption and approval of plan of entity conversion; written consent

Sec. 12. In the case of an entity conversion of a domestic corporation to a domestic other entity or foreign other entity, the following apply:

(1) The plan of entity conversion must be adopted by the board of directors.

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make that recommendation, in which case the board of directors must communicate to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan. The notice must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion.

(5) Unless a greater requirement is established by the articles of incorporation or by the board of directors acting under subdivision (3), approval of the plan of entity conversion requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists.

(6) In addition to the vote required under subdivision (5), separate voting on the plan of equity conversion by voting groups is also required by each class or series of shares. Unless the articles of incorporation, or the board of directors acting under subdivision (3), requires a greater vote or a greater number of votes to be present, if the corporation has more than one (1) class or series of shares outstanding, approval of the plan of entity conversion requires the approval of each separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be

cast on the conversion by that voting group is present.

(7) If as a result of the conversion one (1) or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion requires the execution, by each shareholder, of a separate written consent to become subject to the owner liability.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.14.

IC 23-1-38.5-13

Execution of articles of entity conversion; requirements for articles; delivery to secretary of state; cancellation of certificate of authority

Sec. 13. (a) After conversion of a domestic corporation to a domestic other entity has been adopted and approved as required by this chapter, articles of entity conversion must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles must:

(1) set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must satisfy the organic law of the surviving entity;

(2) state the type of other entity that the surviving entity will be;

(3) set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the articles of incorporation; and

(4) if the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic other entity to a domestic corporation has been adopted and approved as required by the organic law of the other entity, an officer or another duly authorized representative of the other entity must execute articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the converting entity; and

(3) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case provisions that would not be required to be included in restated articles of

incorporation of a domestic corporation may be omitted.

(c) After the conversion of a domestic other entity to a different domestic other entity has been adopted and approved as required by the organic law of the different other entity and, if applicable, section 10(j) of this chapter, an officer or another authorized representative of the other entity must execute the articles of entity conversion on behalf of the other entity. The articles must:

(1) set forth the name of the other entity immediately before the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which must satisfy the requirements of the organic laws of the surviving entity;

(2) set forth a statement that the plan of entity conversion was approved in accordance with the organic law of the converting entity; and

(3) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(d) After the conversion of a foreign other entity to a domestic corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign other entity by any officer or authorized representative. The articles must:

(1) set forth the name of the converting entity immediately before the filing of the articles of entity conversion and the name to which the name of the other entity is to be changed, which must satisfy the requirements of IC 23-1-23-1;

(2) set forth the jurisdiction under the laws of which the converting entity was organized immediately before the filing of the articles of entity conversion and the date on which the other entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the converting entity was duly approved in the manner required by its organic law; and

(4) either contain all of the provisions that IC 23-1-21-2(a) requires to be set forth in articles of incorporation and any other desired provisions that IC 23-1-21-2(b) permits to be included in articles of incorporation, or have attached articles of incorporation, except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(e) After the conversion of a foreign other entity or foreign corporation to a domestic other entity has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign converting entity by any officer or authorized representative. The articles must:

(1) set forth the name of the converting entity immediately before the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which must satisfy the requirements of the organic laws of the surviving entity;

(2) set forth the jurisdiction under the laws of which the converting entity was organized immediately before the filing of the articles of entity conversion and the date on which the converting entity was organized in that jurisdiction;

(3) set forth a statement that the conversion of the converting entity was approved in the manner required by its organic law; and

(4) if the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document, except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(f) The articles of entity conversion must be delivered to the secretary of state for filing and take effect at the effective time provided in IC 23-1-18-4.

(g) If the converting entity is a foreign corporation or a foreign other entity that is authorized to transact business in Indiana under a provision of law similar to IC 23-1-49, its certificate of authority or other type of foreign qualification is canceled automatically on the effective date of its conversion.

As added by P.L.178-2002, SEC.99. Amended by P.L.213-2003, SEC.2; P.L.178-2005, SEC.5; P.L.130-2006, SEC.15.

IC 23-1-38.5-14

Execution of articles of charter surrender; delivery to secretary of state

Sec. 14. (a) Whenever a domestic filing entity has adopted and approved, in the manner required by this chapter, a plan of entity conversion providing for the converting entity to be converted to a foreign entity, articles of charter surrender must be executed on behalf of the converting entity by any officer or other duly authorized representative. The articles of charter surrender must set forth:

(1) the name of the converting entity;

(2) a statement that the articles of charter surrender are being filed in connection with the conversion of the domestic entity to a foreign entity;

(3) a statement that the conversion was duly approved by the shareholders or interest holders in the manner required by this chapter and the articles of incorporation if the converting entity is a domestic corporation or the organic laws of the converting entity and, if applicable, section 10(j) of this chapter if the converting entity is a domestic other entity;

(4) the jurisdiction under the laws of which the surviving entity will be organized; and

(5) if the surviving entity will not be a filing entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender must be delivered by the converting entity to the secretary of state for filing. The articles of charter surrender take effect on the effective time provided in IC 23-1-18-4.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.16.

IC 23-1-38.5-15

Effects of conversions; shareholder liability; owner liability

Sec. 15. (a) When a conversion under this section in which the surviving entity is a domestic business corporation or domestic other entity becomes effective:

(1) the title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;

(2) the liabilities of the converting entity remain the liabilities of the surviving entity;

(3) an action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;

(4) in the case of a surviving entity that is a filing entity, the articles of conversion and the articles of incorporation or public organic document attached to the articles of conversion constitute the articles of incorporation or public organic document of the surviving entity;

(5) in the case of a surviving entity that is not a filing entity, the private organic document provided for in the plan of conversion constitutes the private organic document of the surviving entity;

(6) the shares, interests, other securities, obligations, or rights to acquire shares, interests, or other securities of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities of the surviving entity, or into cash or other property in accordance with the plan of conversion, and the shareholders or interest holders of the converting entity are entitled only to the rights provided in the plan of conversion and to any rights they may have under the organic law of the converting entity;

(7) the surviving entity is considered for all purposes of the laws of Indiana to:

(A) be a domestic corporation or domestic other entity;

(B) be the same corporation or other entity without interruption as the converting entity that existed before the conversion; and

(C) have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized; and

(8) unless otherwise agreed in writing, for all purposes of the laws of Indiana, the converting entity is not required to wind up

its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute a dissolution of the converting entity.

(b) If the shareholders or interest holders of a converting entity are entitled to receive dissenters' rights upon conversion, the surviving entity is considered to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders or interest holders who exercise dissenters' rights in connection with the conversion; and

(2) agree that it will promptly pay the amount, if any, to which the shareholders or interest holders referred to in subdivision (1) are entitled under the organic law of the converting entity.

(c) A shareholder or interest holder in a limited liability entity that is a converting entity who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the surviving entity is personally liable only for those debts, obligations, or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unlimited liability entity that is a converting entity that converts to a limited liability entity is as follows:

(1) The conversion does not discharge any owner liability under the organic law of the converting entity to the extent that any such owner liability arose before the effective time of the articles of entity conversion.

(2) The interest holder does not have owner liability under the organic law of the surviving entity for any debt, obligation, or liability of the surviving entity that arises after the effective time of the articles of entity conversion.

(3) The provisions of the organic law of the converting entity continue to apply to the collection or discharge of any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

(4) The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the converting entity with respect to any owner liability preserved by subdivision (1), as if the conversion had not occurred and the surviving entity were still the converting entity.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.17; P.L.1-2007, SEC.162.

IC 23-1-38.5-16

Abandonment of plan of entity conversion before conversion becomes effective; delivery of statement to secretary of state

Sec. 16. (a) Unless otherwise provided in a plan of entity conversion of a domestic entity, after the plan has been adopted and approved as required by this chapter, and at any time before the entity conversion becomes effective, the plan of entity conversion may be

abandoned by the governing or managing body or person of the converting entity without action by the shareholders or interest holders of the converting entity.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state but before the entity conversion becomes effective, a statement that the entity conversion has been abandoned under this section, executed by an officer or authorized representative, must be delivered to the secretary of state for filing before the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is considered abandoned and shall not become effective.

As added by P.L.178-2002, SEC.99. Amended by P.L.130-2006, SEC.18.

IC 23-1-39

Chapter 39. Amendment of Bylaws

IC 23-1-39-1

Power of board of directors

Sec. 1. Unless the articles of incorporation or section 4 of this chapter provide otherwise, only a corporation's board of directors may amend or repeal the corporation's bylaws.

As added by P.L.149-1986, SEC.23. Amended by P.L.133-2009, SEC.31.

IC 23-1-39-2

Bylaws fixing quorum or voting requirements; adoption or amendment by shareholders

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.149-1986, SEC.23.

IC 23-1-39-3

Bylaw fixing greater than majority quorum or voting requirement; amendment or repeal

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 it 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.149-1986, SEC.23. Amended by P.L.3-2008, SEC.164.

IC 23-1-39-4

Voting procedures

Sec. 4. (a) This section does not apply to any corporation that has

a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934.

(b) Unless the articles of incorporation specifically prohibit the adoption of a bylaw under this section, alter the vote specified in IC 23-1-30-9(a), or provide for cumulative voting, a corporation may elect in the corporation's bylaws to be governed in the election of directors as follows:

(1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes.

(2) To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present. However, a nominee who is elected but receives more votes against than for election shall serve as a director for a term that ends on the date that is the earlier of:

(A) ninety (90) days after the date on which the voting results are determined; or

(B) the date on which an individual is selected by the board of directors to fill the office held by the director, which selection constitutes the filling of a vacancy by the board to which IC 23-1-33-9 applies.

Subject to subdivision (3), a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period described in clause (A).

(3) The board of directors may select a qualified individual to fill the office held by a director who received more votes against than for election.

(c) Subsection (b) does not apply to an election of directors by a voting group if:

(1) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(2) absent a provision described in subdivision (1), at a time fixed by the board of directors that is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur;

there are more candidates for election by the voting group than the number of directors to be elected, one (1) or more of whom are properly proposed by shareholders. An individual is not considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(d) A bylaw under which a corporation elects to be governed by this section may be repealed:

(1) if originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(2) if adopted by the board of directors, by the board of

directors.

As added by P.L.133-2009, SEC.32.

IC 23-1-40

Chapter 40. Merger and Share Exchange

IC 23-1-40-1

Right to merge; plan of merger

Sec. 1. (a) One (1) or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by section 3 of this chapter) approve a plan of merger.

(b) The plan of merger must set forth:

(1) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(2) the terms and conditions of the merger; and

(3) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or in part.

(c) The plan of merger may set forth:

(1) amendments to the articles of incorporation of the surviving corporation; and

(2) other provisions relating to the merger.

As added by P.L.149-1986, SEC.24.

IC 23-1-40-2

Acquisition of shares of another corporation; plan of exchange

Sec. 2. (a) A corporation may acquire all of the outstanding shares of one (1) or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by section 3 of this chapter) approve the exchange.

(b) The plan of exchange must set forth:

(1) the name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) the terms and conditions of the exchange; and

(3) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation through a voluntary exchange or otherwise.

As added by P.L.149-1986, SEC.24.

IC 23-1-40-3

Shareholder approval of plan of merger or share exchange; procedure; abandonment of plan

Sec. 3. (a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the

board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (g)) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) the board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(2) the shareholders entitled to vote must approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(e) Unless this article, the articles of incorporation, or the board of directors (acting under subsection (c)) requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(f) Separate voting by voting groups is required:

(1) on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under IC 23-1-38-4; or

(2) on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) the articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in IC 23-1-38-2) from its articles before the merger;

(2) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same proportionate number of shares relative to the number of shares held by all such shareholders (except for shares of the surviving corporation received solely as a result of the shareholder's proportionate shareholdings in the other corporations party to the merger), with identical designations, preferences, limitations, and relative rights, immediately after;

(3) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result

of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares (adjusted to reflect any forward or reverse share split that occurs under the plan of merger) of the surviving corporation outstanding immediately before the merger; and

(4) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares (adjusted to reflect any forward or reverse share split that occurs under the plan of merger) outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

As added by P.L.149-1986, SEC.24. Amended by P.L.107-1987, SEC.16; P.L.3-2008, SEC.165.

IC 23-1-40-4

Merger of subsidiary and parent corporation

Sec. 4. (a) A parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary and the parent corporation without approval of the shareholders of the parent or subsidiary.

(b) If the parent corporation will be the surviving corporation, the board of directors of the parent shall adopt a plan of merger that sets forth:

(1) the names of the parent and subsidiary; and

(2) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or in part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the secretary of state for filing until at least thirty (30) days after the date it mailed

a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(e) The articles of incorporation of the parent corporation that are in effect immediately before the effective date of the merger constitute the articles of incorporation of the surviving corporation, and articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in IC 23-1-38-2). If the subsidiary is a domestic corporation and will be the surviving corporation of a merger with a parent that is a foreign corporation, the articles of incorporation of the parent corporation that will be inherited by the subsidiary upon the effective date of the merger shall be delivered to the secretary of state for filing together with the articles of merger to be delivered for filing under section 5(a) of this chapter.

(f) If the parent corporation will not be the surviving corporation, the board of directors of the parent shall adopt a plan of merger that sets forth:

(1) the names of the parent and subsidiary; and

(2) the manner and basis of converting the shares of the parent into shares of the surviving corporation.

(g) A plan adopted under subsection (f) must ensure that each shareholder of the parent corporation whose shares were outstanding immediately before the effective date of the merger will hold the same proportionate number of shares relative to the number of shares held by all such shareholders (except for shares of the surviving corporation received solely as a result of the shareholder's proportionate shareholdings in any other corporations besides the parent which are parties to the merger), with identical designations, preferences, limitations, and relative rights, of the surviving corporation immediately after that effective date. If the plan provides that the shareholders of the subsidiary (other than the parent) will not be shareholders of the surviving corporation immediately after that effective date, the plan must also set forth the manner and basis of converting the shares of the subsidiary held by such shareholders into obligations or other securities of the surviving corporation or shares, obligations, or other securities of any other corporation or into cash or other property in whole or in part.

As added by P.L.149-1986, SEC.24. Amended by P.L.107-1987, SEC.17; P.L.145-1988, SEC.5.

IC 23-1-40-5

Surviving corporation; filing of articles of merger or share exchange

Sec. 5. (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) the name of the surviving or acquiring corporation following

the merger or share exchange;

(2) if shareholder approval was not required, a statement to that effect;

(3) if approval of the shareholders of one (1) or more corporations party to the merger or share exchange was required:

(A) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the merger or share exchange as to each corporation; and

(B) either the total number of votes cast for and against the merger or share exchange by each voting group entitled to vote separately on the merger or share exchange or the total number of undisputed votes cast for the merger or share exchange separately by each voting group and a statement that the number cast for the merger or share exchange by each voting group was sufficient for approval by that voting group.

(b) Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles of merger or share exchange are filed.

(c) The surviving corporation resulting from a merger may, after the merger 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 of the merger, the title to which will be transferred by the merger, a file-stamped copy of the articles of merger. If the articles of merger set forth amendments to the articles of incorporation of the surviving corporation that change its corporate name, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county in Indiana in which the surviving or acquiring corporation has any real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in corporate name.

As added by P.L.149-1986, SEC.24. Amended by P.L.133-2009, SEC.33.

IC 23-1-40-6

Effect of merger

Sec. 6. (a) When a merger takes effect:

(1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(3) the surviving corporation has all liabilities of each corporation party to the merger;

(4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the

surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(5) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(6) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under IC 23-1-44.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under IC 23-1-44.

(c) After a merger or share exchange takes effect as provided in this section, any terms of the plan of merger or plan of share exchange that are not included in the articles of incorporation shall be considered to be contract rights only, and not part of the governing documents of the corporation.

As added by P.L.149-1986, SEC.24. Amended by P.L.107-1987, SEC.18.

IC 23-1-40-7

Foreign corporations; participation in merger or share exchange

Sec. 7. (a) One (1) or more foreign corporations may participate in a merger or a share exchange with one (1) or more domestic corporations if:

(1) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) in a share exchange, the corporation whose shares will be acquired in the share exchange is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) the foreign corporation complies with section 5 of this chapter if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) each domestic corporation complies with the applicable provisions of sections 1 through 4 of this chapter and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 5 of this chapter.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to

the merger or share exchange; and

(2) to agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under IC 23-1-44.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one (1) or more classes or series of a domestic corporation through a voluntary exchange or otherwise.
As added by P.L.149-1986, SEC.24.

IC 23-1-40-8
Requirements for merger of domestic corporation with other business entity; plan of merger; conditions for merger to become effective; merger of other business entities

Sec. 8. (a) As used in this section, "other business entity" means a limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic corporations may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic corporation that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic corporation and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic corporation or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the shares of each domestic corporation that is a party to the merger and the partnership interests, shares, obligations, or other securities

of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) One (1) or more other business entities may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or under the laws of another jurisdiction, if the following requirements are met:

(1) Each business entity that is a party to the merger complies with the applicable provisions of this chapter.

(2) Merger is permitted by the laws of the jurisdiction under which each other entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(3) The merging entities approve a plan of merger that sets forth the following:

(A) The name and jurisdiction of formation, organization, or incorporation of each other business entity intending to merge, and the name of the surviving or resulting other business entity into which each other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the partnership

interests, shares, obligations, or other securities of the surviving entity or other business entity, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire partnership interests, shares, obligations, or other securities of the surviving entity or any other business entity, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(4) The plan of merger may set forth any other provisions related to the merger.

(e) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in this chapter.

(f) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity, and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity.

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(g) This section, to the extent applicable, applies to the merger of one (1) or more domestic corporations with or into one (1) or more other business entities.

(h) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic corporations with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

As added by P.L.178-2002, SEC.100. Amended by P.L.178-2005, SEC.6.

IC 23-1-41

Chapter 41. Sale of Assets

IC 23-1-41-1

Right to sell, lease, or otherwise dispose of corporate property; shareholder approval

Sec. 1. The approval of the shareholders of a corporation is not required unless the articles of incorporation require the approval of the shareholders to:

(1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the corporation's property in the usual and regular course of business;

(2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of the corporation's property whether or not in the usual and regular course of business; or

(3) transfer any or all of the corporation's property to a corporation all the shares of which are owned by the corporation.

As added by P.L.149-1986, SEC.25. Amended by P.L.133-2009, SEC.34.

IC 23-1-41-2

Sale, lease, or disposition of property other than in regular course of business

Sec. 2. (a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 1 of this chapter, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations before taxes or revenues from continuing operations for the fiscal year, in each case of the corporation and the corporation's subsidiaries on a consolidated basis, the corporation is conclusively considered to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the shareholders for the shareholder's approval. The board of directors shall transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make the recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition the board of directors' submission of a disposition to the shareholders under subsection (b)

on any basis.

(d) If:

(1) a disposition is required to be approved by the shareholders under subsection (a); and

(2) the approval is to be given at a meeting;

the corporation shall notify each shareholder, whether the shareholder is entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval in accordance with IC 23-1-29-5. The notice must state that the purpose or one (1) of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors (acting under subsection (c)) requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the shareholders requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b), and at any time before the disposition has been consummated, the disposition may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition that constitutes a distribution is governed by IC 23-1-28 and not by this section.

(h) A disposition of assets in the course of dissolution under IC 23-1-45, IC 23-1-46, IC 23-1-47, or IC 23-1-48 is not governed by this section.

(i) The assets of a direct or indirect consolidated subsidiary shall be considered the assets of the parent corporation for the purposes of this section.

As added by P.L.149-1986, SEC.25. Amended by P.L.133-2009, SEC.35.

IC 23-1-42

Chapter 42. Control Share Acquisitions

IC 23-1-42-1

"Control shares" defined

Sec. 1. As used in this chapter, "control shares" means shares that, except for this chapter, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares (directly or indirectly, alone or as a part of a group), to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

(1) One-fifth (1/5) or more but less than one-third (1/3) of all voting power.

(2) One-third (1/3) or more but less than a majority of all voting power.

(3) A majority or more of all voting power.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-2

"Control share acquisition" defined

Sec. 2. (a) As used in this chapter, "control share acquisition" means the acquisition (directly or indirectly) by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

(b) For purposes of this section, shares acquired within ninety (90) days or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.

(c) For purposes of this section, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has voting power only of shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others.

(d) The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

(1) Before January 8, 1986.

(2) Pursuant to a contract existing before January 8, 1986.

(3) Pursuant to the laws of descent and distribution.

(4) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this chapter.

(5) Pursuant to a merger or plan of share exchange effected in compliance with IC 23-1-40 if the issuing public corporation is a party to the agreement of merger or plan of share exchange.

(e) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing this chapter by or from:

(1) any person whose voting rights had previously been authorized by shareholders in compliance with this chapter; or

(2) any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition but for subsection (d);

does not constitute a control share acquisition, unless the acquisition entitles any person (directly or indirectly, alone or as a part of a group) to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-3

"Interested shares" defined

Sec. 3. As used in this chapter, "interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:

(1) An acquiring person or member of a group with respect to a control share acquisition.

(2) Any officer of the issuing public corporation.

(3) Any employee of the issuing public corporation who is also a director of the corporation.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-4

"Issuing public corporation" defined

Sec. 4. (a) As used in this chapter, "issuing public corporation" means a corporation that has:

(1) one hundred (100) or more shareholders;

(2) its principal place of business or its principal office in Indiana, or that owns or controls assets within Indiana having a fair market value of more than one million dollars ($1,000,000); and

(3) either:

(A) more than ten percent (10%) of its shareholders resident in Indiana;

(B) more than ten percent (10%) of its shares owned of record or owned beneficially by Indiana residents; or

(C) one thousand (1,000) shareholders resident in Indiana.

(b) The residence of a record shareholder is presumed to be the address appearing in the records of the corporation.

As added by P.L.149-1986, SEC.26. Amended by P.L.133-2009, SEC.36.

IC 23-1-42-5

Voting rights under IC 23-1-42-9

Sec. 5. Unless the corporation's articles of incorporation or bylaws provide that this chapter does not apply to control share acquisitions of shares of the corporation before the control share acquisition, control shares of an issuing public corporation acquired in a control share acquisition have only such voting rights as are conferred by section 9 of this chapter.
As added by P.L.149-1986, SEC.26.

IC 23-1-42-6
Acquiring person statement

Sec. 6. Any person who proposes to make or has made a control share acquisition may at the person's election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement must set forth all of the following:

(1) The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares.

(2) A statement that the acquiring person statement is given pursuant to this chapter.

(3) The number of shares of the issuing public corporation owned (directly or indirectly) by the acquiring person and each other member of the group.

(4) The range of voting power under which the control share acquisition falls or would, if consummated, fall.

(5) If the control share acquisition has not taken place:

(A) a description in reasonable detail of the terms of the proposed control share acquisition; and

(B) representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-7
Special meeting of shareholders

Sec. 7. (a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the corporation's expenses of a special meeting, within ten (10) days thereafter, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition.

(b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within fifty (50) days after receipt by the issuing public corporation of the request.

(c) If no request is made, the voting rights to be accorded the

shares acquired in the control share acquisition shall be presented to the next special or annual meeting of shareholders.

(d) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than thirty (30) days after receipt by the issuing public corporation of the acquiring person statement.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-8

Notice

Sec. 8. (a) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.

(b) Notice of the special or annual shareholder meeting at which the voting rights are to be considered must include or be accompanied by both of the following:

(1) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this chapter.

(2) A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-9

Voting rights of acquired control shares; resolution

Sec. 9. (a) Control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

(b) To be approved under this section, the resolution must be approved by:

(1) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that voting group, with the holders of the outstanding shares of a class being entitled to vote as a separate voting group if the proposed control share acquisition would, if fully carried out, result in any of the changes described in IC 23-1-38-4(a); and

(2) each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-10

Redemption of acquired control shares

Sec. 10. (a) If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, control shares acquired in a control share acquisition with

respect to which no acquiring person statement has been filed with the issuing public corporation may, at any time during the period ending sixty (60) days after the last acquisition of control shares by the acquiring person, be subject to redemption by the corporation at the fair value thereof pursuant to the procedures adopted by the corporation.

(b) Control shares acquired in a control share acquisition are not subject to redemption after an acquiring person statement has been filed unless the shares are not accorded full voting rights by the shareholders as provided in section 9 of this chapter.

As added by P.L.149-1986, SEC.26.

IC 23-1-42-11

Dissenters' rights; "fair value" defined

Sec. 11. (a) Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation have dissenters' rights as provided in this chapter.

(b) As soon as practicable after such events have occurred, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that they have dissenters' rights to receive the fair value of their shares pursuant to IC 23-1-44.

(c) As used in this section, "fair value" means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

As added by P.L.149-1986, SEC.26.

IC 23-1-43

Chapter 43. Business Combinations

IC 23-1-43-1

"Affiliate" defined

Sec. 1. As used in this chapter, "affiliate" means a person that directly, or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with, a specified person.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-2

"Announcement date" defined

Sec. 2. As used in this chapter, "announcement date", when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for the business combination.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-3

"Associate" defined

Sec. 3. As used in this chapter, "associate", when used to indicate a relationship with any person, means:

(1) any corporation or organization of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of voting shares;

(2) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; and

(3) any relative or spouse of the person, or any relative of the spouse, who has the same home as the person.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-4

"Beneficial owner" defined

Sec. 4. As used in this chapter, "beneficial owner", when used with respect to any shares, has the meaning set forth in IC 23-1-20-3.5.

As added by P.L.149-1986, SEC.27. Amended by P.L.133-2009, SEC.37.

IC 23-1-43-5

"Business combination" defined

Sec. 5. As used in this chapter, "business combination", when used in reference to any resident domestic corporation and any interested shareholder of the resident domestic corporation, means any of the following:

(1) Any merger of the resident domestic corporation or any subsidiary of the resident domestic corporation with:

(A) the interested shareholder; or

(B) any other corporation (whether or not itself an interested shareholder of the resident domestic corporation) that is, or after the merger or consolidation would be, an affiliate or associate of the interested shareholder.

(2) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one (1) transaction or a series or transactions) to or with the interested shareholder or any affiliate or associate of the interested shareholder of assets of the resident domestic corporation or any subsidiary of the resident domestic corporation:

(A) having an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the assets, determined on a consolidated basis, of the resident domestic corporation;

(B) having an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the outstanding shares of the resident domestic corporation; or

(C) representing ten percent (10%) or more of the earning power or net income, determined on a consolidated basis, of the resident domestic corporation.

(3) The issuance or transfer by the resident domestic corporation or any subsidiary of the resident domestic corporation (in one (1) transaction or a series of transactions) of any shares of the resident domestic corporation or any subsidiary of the resident domestic corporation that have an aggregate market value equal to five percent (5%) or more of the aggregate market value of all the outstanding shares of the resident domestic corporation to the interested shareholder or any affiliate or associate of the interested shareholder except under the exercise of warrants or rights to purchase shares offered, or a dividend or distribution paid or made, pro rata to all shareholders of the resident domestic corporation.

(4) The adoption of any plan or proposal for the liquidation or dissolution of the resident domestic corporation proposed by, or under any agreement, arrangement, or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder.

(5) Any:

(A) reclassification of securities (including without limitation any share split, share dividend, or other distribution of shares in respect of shares, or any reverse share split);

(B) recapitalization of the resident domestic corporation;

(C) merger or consolidation of the resident domestic corporation with any subsidiary of the resident domestic corporation; or

(D) other transaction (whether or not with or into or otherwise involving the interested shareholder);

proposed by, or under any agreement, arrangement, or understanding (whether or not in writing) with, the interested

shareholder or any affiliate or associate of the interested shareholder, that has the effect (directly or indirectly) of increasing the proportionate share of the outstanding shares of any class or series of voting shares or securities convertible into voting shares of the resident domestic corporation or any subsidiary of the resident domestic corporation that is directly or indirectly owned by the interested shareholder or any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments.

(6) Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit (directly or indirectly, except proportionately as a shareholder of the resident domestic corporation), of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by or through the resident domestic corporation.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-6
"Common shares" defined

Sec. 6. As used in this chapter, "common shares" means any shares other than preferred shares.

As added by P.L.149-1986, SEC.27. Amended by P.L.5-1988, SEC.121.

IC 23-1-43-7
"Consummation date" defined

Sec. 7. As used in this chapter, "consummation date", with respect to any business combination, means the date of consummation of the business combination or, in the case of a business combination as to which a shareholder vote is taken, the later of:

(1) the business day before the vote; or

(2) twenty (20) days before the date of consummation of the business combination.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-8
"Control" defined

Sec. 8. (a) As used in this chapter, "control", including the terms "controlling", "controlled by", and "under common control with", means the possession (directly or indirectly) of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(b) A person's beneficial ownership of ten percent (10%) or more of the voting power of a corporation's outstanding voting shares creates a presumption that the person has control of the corporation.

(c) Notwithstanding subsections (a) and (b), a person is not considered to have control of a corporation if the person holds voting power, in good faith and not for the purpose of circumventing this

chapter, as an agent, bank, broker, nominee, custodian, or trustee for one (1) or more beneficial owners who do not individually or as a group have control of the corporation.
As added by P.L.149-1986, SEC.27.

IC 23-1-43-9
"Exchange Act" defined

Sec. 9. As used in this chapter, "Exchange Act" means the Act of Congress known as the Securities Exchange Act of 1934, as amended.
As added by P.L.149-1986, SEC.27.

IC 23-1-43-10
"Interested shareholder" defined

Sec. 10. (a) As used in this chapter, "interested shareholder", when used in reference to any resident domestic corporation, means any person (other than the resident domestic corporation or any subsidiary of the resident domestic corporation) that is:

(1) the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of the outstanding voting shares of the resident domestic corporation; or

(2) an affiliate or associate of the resident domestic corporation and at any time within the five (5) year period immediately before the date in question was the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of the then outstanding shares of the resident domestic corporation.

(b) For the purpose of determining whether a person is an interested shareholder, the number of voting shares of the resident domestic corporation considered to be outstanding includes shares considered to be beneficially owned by the person through application of section 4 of this chapter, but does not include any other unissued shares of voting shares of the resident domestic corporation that may be issuable under any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.
As added by P.L.149-1986, SEC.27.

IC 23-1-43-11
"Market value" defined

Sec. 11. As used in this chapter, "market value", when used in reference to shares or property of any resident domestic corporation, means the following:

(1) In the case of shares, the highest closing sale price of a share during the thirty (30) day period immediately preceding the date in question on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Exchange Act on which the shares are listed, or, if the shares are not listed on any such exchange, the highest closing

bid quotation with respect to a share during the thirty (30) day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotation is available, the fair market value on the date in question of a share as determined by the board of directors of the resident domestic corporation in good faith.

(2) In the case of property other than cash or shares, the fair market value of the property on the date in question as determined by the board of directors of the resident domestic corporation in good faith.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-12
"Preferred shares" defined

Sec. 12. As used in this chapter, "preferred shares" means any class or series of shares of a resident domestic corporation that under the bylaws or articles of incorporation of the resident domestic corporation:

(1) is entitled to receive payment of dividends before any payment of dividends on some other class or series of shares; or

(2) is entitled in the event of any voluntary liquidation, dissolution, or winding up of the corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

As added by P.L.149-1986, SEC.27. Amended by P.L.5-1988, SEC.122.

IC 23-1-43-13
"Resident domestic corporation" defined

Sec. 13. (a) As used in this chapter, "resident domestic corporation" means a corporation that has one hundred (100) or more shareholders.

(b) A resident domestic corporation does not cease to be a resident domestic corporation by reason of events occurring or actions taken while the resident domestic corporation is subject to this chapter.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-14
"Share" defined

Sec. 14. As used in this chapter, "share" means:

(1) any share or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for a share; and

(2) any security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-15
"Share acquisition date" defined

Sec. 15. As used in this chapter, "share acquisition date", with respect to any person and any resident domestic corporation, means the date that the person first becomes an interested shareholder of the resident domestic corporation.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-16
"Subsidiary" defined

Sec. 16. As used in this chapter, "subsidiary" of any resident domestic corporation means any other corporation of which a majority of the outstanding voting shares entitled to be cast are owned (directly or indirectly) by the resident domestic corporation.

As added by P.L.149-1986, SEC.27. Amended by P.L.5-1988, SEC.123.

IC 23-1-43-17
"Voting shares" defined

Sec. 17. As used in this chapter, "voting shares" means shares of capital stock of a corporation entitled to vote generally in the election of directors.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-18
Business combination with interested shareholder within five years of share acquisition date

Sec. 18. (a) Notwithstanding any other provision of this article (except sections 20 through 24 of this chapter), a resident domestic corporation may not engage in any business combination with any interested shareholder of the resident domestic corporation for a period of five (5) years following the interested shareholder's share acquisition date unless the business combination or the purchase of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved by the board of directors of the resident domestic corporation before the interested shareholder's share acquisition date.

(b) If a good faith proposal regarding a business combination is made in writing to the board of directors of the resident domestic corporation, the board of directors shall respond, in writing, within thirty (30) days or such shorter period, if any, as may be required by the Exchange Act, setting forth its reasons for its decision regarding the proposal.

(c) If a good faith proposal to purchase shares is made in writing to the board of directors of the resident domestic corporation, the board of directors, unless it responds affirmatively in writing within thirty (30) days or such shorter period, if any, as may be required by the Exchange Act, is considered to have disapproved the share purchase.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-19

Business combination with interested shareholder; requirements

Sec. 19. Notwithstanding any other provision of this article (except sections 18 and 20 through 24 of this chapter), a resident domestic corporation may not engage at any time in any business combination with any interested shareholder of the resident domestic corporation other than a business combination meeting all requirements of the articles of incorporation of the domestic corporation and the requirements specified in any of the following:

(1) A business combination approved by the board of directors of the resident domestic corporation before the interested shareholder's share acquisition date, or as to which the purchase of shares made by the interested shareholder on the interested shareholder's share acquisition date had been approved by the board of directors of the resident domestic corporation before the interested shareholder's share acquisition date.

(2) A business combination approved by the affirmative vote of the holders of a majority of the outstanding voting shares not beneficially owned by the interested shareholder proposing the business combination, or any affiliate or associate of the interested shareholder proposing the business combination, at a meeting called for that purpose no earlier than five (5) years after the interested shareholder's share acquisition date.

(3) A business combination that meets all of the following conditions:

(A) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of the resident domestic corporation in the business combination is at least equal to the higher of the following:

(i) The highest per share price paid by the interested shareholder, at a time when the interested shareholder was the beneficial owner (directly or indirectly) of five percent (5%) or more of the outstanding voting shares of the resident domestic corporation, for any common shares of the same class or series acquired by it within the five (5) year period immediately before the announcement date with respect to the business combination or within the five (5) year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since the earliest date, up to the amount of the interest.

(ii) The market value per common share on the

announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from that date through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since that date, up to the amount of the interest.

(B) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the resident domestic corporation is at least equal to the highest of the following (whether or not the interested shareholder has previously acquired any shares of the class or series of shares):

(i) The highest per share price paid by the interested shareholder, at a time when the interested shareholder was the beneficial owner (directly or indirectly) of five percent (5%) or more of the outstanding voting shares of the resident domestic corporation, for any shares of the class or series of shares acquired by it within the five (5) year period immediately before the announcement date with respect to the business combination or within the five (5) year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of shares since the earliest date, up to the amount of the interest.

(ii) The highest preferential amount per share to which the holders of shares of the class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the resident domestic corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled before payment of dividends on some other class or series of shares (unless the aggregate amount of the dividends is included in the preferential amount).

(iii) The market value per share of the class or series of shares on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest

compounded annually from that date through the consummation date at the rate for one (1) year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of shares since that date, up to the amount of the interest.

(C) The consideration to be received by holders of a particular class or series of outstanding shares (including common shares) of the resident domestic corporation in the business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of the class or series of shares previously acquired by it, and the consideration shall be distributed promptly.

(D) The holders of all outstanding shares of the resident domestic corporation not beneficially owned by the interested shareholder immediately before the consummation of the business combination are entitled to receive in the business combination cash or other consideration for the shares in compliance with clauses (A), (B), and (C).

(E) After the interested shareholder's share acquisition date and before the consummation date with respect to the business combination, the interested shareholder has not become the beneficial owner of any additional voting shares of the resident domestic corporation except:

(i) as part of the transaction that resulted in the interested shareholder becoming an interested shareholder;

(ii) by virtue of proportionate share splits, share dividends, or other distributions of shares in respect of shares not constituting a business combination under section 5(5) of this chapter;

(iii) through a business combination meeting all of the conditions of section 18 of this chapter and this section; or

(iv) through purchase by the interested shareholder at any price that, if the price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of the purchase, would have satisfied the requirements of clauses (A), (B), and (C).

As added by P.L.149-1986, SEC.27. Amended by P.L.5-1988, SEC.124.

IC 23-1-43-20

Corporation having shares registered under Exchange Act; application of chapter

Sec. 20. This chapter does not apply to any business combination of a resident domestic corporation that does not, as of the share acquisition date, have a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Exchange Act, unless the corporation's articles of incorporation

provide otherwise.
As added by P.L.149-1986, SEC.27.

IC 23-1-43-21
Amendment of articles of incorporation making corporation subject to this chapter; application of chapter

Sec. 21. This chapter does not apply to any business combination of a resident domestic corporation the articles of incorporation of which have been amended to provide that the resident domestic corporation is subject to this chapter and that has not had a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Exchange Act on the effective date of the amendment, and that is a business combination with an interested shareholder whose share acquisition date is before the effective date of the amendment.
As added by P.L.149-1986, SEC.27.

IC 23-1-43-22
Election not to be covered by this chapter; application of chapter

Sec. 22. This chapter does not apply to any business combination of a resident domestic corporation:

(1) the original articles of incorporation of which contain a provision expressly electing not to be governed by this chapter;
(2) that, before the earlier of:
(A) September 1, 1987; or
(B) thirty (30) days after the date specified by a resolution of the board of directors adopted under IC 23-1-17-3(b), if the board of directors adopts such a resolution;
adopts an amendment to the resident domestic corporation's bylaws expressly electing not to be governed by this chapter; however, an election under this subdivision may be rescinded by subsequent amendment of the bylaws; or
(3) that adopts an amendment to the resident domestic corporation's articles of incorporation, approved by the affirmative vote of the holders, other than interested shareholders and their affiliates and associates, of a majority of the outstanding voting shares of the resident domestic corporation, excluding the voting shares of interested shareholders and their affiliates and associates, expressly electing not to be governed by this chapter, if the amendment to the articles of incorporation is not to be effective until eighteen (18) months after the vote of the resident domestic corporation's shareholders and does not apply to any business combination of the resident domestic corporation with an interested shareholder whose share acquisition date is on or before the effective date of the amendment.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-23
Inadvertent interested shareholder; application of chapter

Sec. 23. This chapter does not apply to any business combination of a resident domestic corporation with an interested shareholder of the resident domestic corporation who became an interested shareholder inadvertently, if the interested shareholder:

(1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the corporation so that it no longer is the beneficial owner (directly or indirectly) of ten percent (10%) or more of the outstanding voting shares of the resident domestic corporation; and

(2) would not at any time within the five (5) year period preceding the announcement date with respect to the business combination have been an interested shareholder but for the inadvertent acquisition.

As added by P.L.149-1986, SEC.27.

IC 23-1-43-24

Interested shareholder on January 7, 1986; application of chapter

Sec. 24. This chapter does not apply to any business combination with an interested shareholder who was an interested shareholder on January 7, 1986.

As added by P.L.149-1986, SEC.27.

IC 23-1-44

Chapter 44. Dissenters' Rights

IC 23-1-44-1

"Corporation" defined

Sec. 1. As used in this chapter, "corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-2

"Dissenter" defined

Sec. 2. As used in this chapter, "dissenter" means a shareholder who is entitled to dissent from corporate action under section 8 of this chapter and who exercises that right when and in the manner required by sections 10 through 18 of this chapter.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-3

"Fair value" defined

Sec. 3. As used in this chapter, "fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-4

"Interest" defined

Sec. 4. As used in this chapter, "interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-4.5

"Preferred shares" defined

Sec. 4.5. As used in this chapter, "preferred shares" means a class or series of shares in which the holders of the shares have preference over any other class or series with respect to distributions.

As added by P.L.133-2009, SEC.38.

IC 23-1-44-5

"Record shareholder" defined

Sec. 5. As used in this chapter, "record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent that treatment as a record shareholder is provided under a recognition

procedure or a disclosure procedure established under IC 23-1-30-4.
As added by P.L.149-1986, SEC.28.

IC 23-1-44-6
"Beneficial shareholder" defined

Sec. 6. As used in this chapter, "beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.
As added by P.L.149-1986, SEC.28.

IC 23-1-44-7
"Shareholder" defined

Sec. 7. As used in this chapter, "shareholder" means the record shareholder or the beneficial shareholder.
As added by P.L.149-1986, SEC.28.

IC 23-1-44-8
Right to dissent and obtain payment for shares

Sec. 8. (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party if:

(A) shareholder approval is required for the merger by IC 23-1-40-3 or the articles of incorporation; and

(B) the shareholder is entitled to vote on the merger.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale.

(4) The approval of a control share acquisition under IC 23-1-42.

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) This section does not apply to the holders of shares of any class or series if, on the date fixed to determine the shareholders entitled to receive notice of and vote at the meeting of shareholders at which the merger, plan of share exchange, or sale or exchange of property is to be acted on, the shares of that class or series were a covered security under Section 18(b)(1)(A) or 18(b)(1)(B) of the

Securities Act of 1933, as amended.

(c) The articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate the right to dissent and obtain payment for any class or series of preferred shares. However, any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates the right to dissent and obtain payment for any shares:

(1) that are outstanding immediately before the effective date of the amendment; or

(2) that the corporation is or may be required to issue or sell after the effective date of the amendment under any exchange or other right existing immediately before the effective date of the amendment;

does not apply to any corporate action that becomes effective within one (1) year of the effective date of the amendment if the action would otherwise afford the right to dissent and obtain payment.

(d) A shareholder:

(1) who is entitled to dissent and obtain payment for the shareholder's shares under this chapter; or

(2) who would be so entitled to dissent and obtain payment but for the provisions of subsection (b);

may not challenge the corporate action creating (or that, but for the provisions of subsection (b), would have created) the shareholder's entitlement.

(e) Subsection (d) does not apply to a corporate action that was approved by less than unanimous consent of the voting shareholders under IC 23-1-29-4.5(b) if both of the following apply:

(1) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected.

(2) The proceeding challenging the corporate action is commenced not later than ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

As added by P.L.149-1986, SEC.28. Amended by P.L.107-1987, SEC.19; P.L.133-2009, SEC.39.

IC 23-1-44-9

Dissenters' rights of beneficial shareholder

Sec. 9. (a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one (1) person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the shareholder's other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to

shares held on the shareholder's behalf only if:

(1) the beneficial shareholder submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) the beneficial shareholder does so with respect to all the beneficial shareholder's shares or those shares over which the beneficial shareholder has power to direct the vote.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-10

Proposed action creating dissenters' rights; notice

Sec. 10. (a) If proposed corporate action creating dissenters' rights under section 8 of this chapter is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter.

(b) If corporate action creating dissenters' rights under section 8 of this chapter is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 12 of this chapter.

As added by P.L.149-1986, SEC.28. Amended by P.L.107-1987, SEC.20.

IC 23-1-44-11

Proposed action creating dissenters' rights; assertion of dissenters' rights

Sec. 11. (a) If proposed corporate action creating dissenters' rights under section 8 of this chapter is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(1) must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated; and

(2) must not vote the shareholder's shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for the shareholder's shares under this chapter.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-12

Dissenters' notice; contents

Sec. 12. (a) If proposed corporate action creating dissenters' rights under section 8 of this chapter is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 11 of this chapter.

(b) The dissenters' notice must be sent no later than ten (10) days after approval by the shareholders, or if corporate action is taken

without approval by the shareholders, then ten (10) days after the corporate action was taken. The dissenters' notice must:

(1) state where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(4) set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the subsection (a) notice is delivered; and

(5) be accompanied by a copy of this chapter.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-13

Demand for payment and deposit of shares by shareholder

Sec. 13. (a) A shareholder sent a dissenters' notice described in IC 23-1-42-11 or in section 12 of this chapter must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice under section 12(b)(3) of this chapter, and deposit the shareholder's certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits the shareholder's shares under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter and is considered, for purposes of this article, to have voted the shareholder's shares in favor of the proposed corporate action.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-14

Uncertificated shares; restriction on transfer; dissenters' rights

Sec. 14. (a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 16 of this chapter.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-15
Payment to dissenter

Sec. 15. (a) Except as provided in section 17 of this chapter, as soon as the proposed corporate action is taken, or, if the transaction did not need shareholder approval and has been completed, upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 13 of this chapter the amount the corporation estimates to be the fair value of the dissenter's shares.

(b) The payment must be accompanied by:

(1) the corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) a statement of the corporation's estimate of the fair value of the shares; and

(3) a statement of the dissenter's right to demand payment under section 18 of this chapter.

As added by P.L.149-1986, SEC.28. Amended by P.L.107-1987, SEC.21.

IC 23-1-44-16
Failure to take action; return of certificates; new action by corporation

Sec. 16. (a) If the corporation does not take the proposed action within sixty (60) days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 12 of this chapter and repeat the payment demand procedure.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-17
Withholding payment by corporation; corporation's estimate of fair value; after-acquired shares

Sec. 17. (a) A corporation may elect to withhold payment required by section 15 of this chapter from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(b) To the extent the corporation elects to withhold payment under subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the shares and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer a statement of its

estimate of the fair value of the shares and a statement of the dissenter's right to demand payment under section 18 of this chapter.
As added by P.L.149-1986, SEC.28.

IC 23-1-44-18
Dissenters' estimate of fair value; demand for payment; waiver

Sec. 18. (a) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and demand payment of the dissenter's estimate (less any payment under section 15 of this chapter), or reject the corporation's offer under section 17 of this chapter and demand payment of the fair value of the dissenter's shares, if:

(1) the dissenter believes that the amount paid under section 15 of this chapter or offered under section 17 of this chapter is less than the fair value of the dissenter's shares;

(2) the corporation fails to make payment under section 15 of this chapter within sixty (60) days after the date set for demanding payment; or

(3) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.

(b) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection (a) within thirty (30) days after the corporation made or offered payment for the dissenter's shares.
As added by P.L.149-1986, SEC.28.

IC 23-1-44-19
Court proceeding to determine fair value; judicial appraisal

Sec. 19. (a) If a demand for payment under IC 23-1-42-11 or under section 18 of this chapter remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares. If the corporation does not commence the proceeding within the sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the circuit or superior court of the county where a corporation's principal office (or, if none in Indiana, its registered office) is located. If the corporation is a foreign corporation without a registered office in Indiana, it shall commence the proceeding in the county in Indiana where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(c) The corporation shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment:

(1) for the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation; or

(2) for the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under section 17 of this chapter.

As added by P.L.149-1986, SEC.28.

IC 23-1-44-20

Costs; fees; attorney's fees

Sec. 20. (a) The court in an appraisal proceeding commenced under section 19 of this chapter shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against such parties and in such amounts as the court finds equitable.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 10 through 18 of this chapter; or

(2) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

As added by P.L.149-1986, SEC.28.

IC 23-1-45

Chapter 45. Voluntary Dissolution

IC 23-1-45-1

Corporation that has not issued shares or commenced business

Sec. 1. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either:

(A) that none of the corporation's shares has been issued; or

(B) that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

As added by P.L.149-1986, SEC.29.

IC 23-1-45-2

Proposal for dissolution; notice; adoption by shareholders

Sec. 2. (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting under subsection (c)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

(f) After a proposal for dissolution is adopted, the corporation shall give the notices required by IC 6-8.1-10-9, IC 22-4-32-23, and IC 32-34-1-25.

As added by P.L.149-1986, SEC.29. Amended by P.L.107-1987,

SEC.22; P.L.145-1988, SEC.6; P.L.31-1995, SEC.4; P.L.2-2002, SEC.73.

IC 23-1-45-3
Filing of articles of dissolution; date of dissolution

Sec. 3. (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth the following:

(1) The name of the corporation.
(2) The date dissolution was authorized.
(3) If dissolution was approved by the shareholders:
(A) the number of votes entitled to be cast on the proposal to dissolve; and
(B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

If voting by voting groups is required, the information required by this subdivision shall be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

As added by P.L.149-1986, SEC.29.

IC 23-1-45-4
Revocation of dissolution

Sec. 4. (a) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) the name of the corporation;
(2) the effective date of the dissolution that was revoked;
(3) the date that the revocation of dissolution was authorized;
(4) if the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
(5) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
(6) if shareholder action was required to revoke the dissolution, the information required by section 3(a)(3) of this chapter.

(d) Unless a delayed effective date is specified, revocation of dissolution is effective when articles of revocation of dissolution are

filed.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

As added by P.L.149-1986, SEC.29.

IC 23-1-45-5

Continuance of corporate existence; winding up affairs; effect of dissolution

Sec. 5. (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) collecting its assets;

(2) disposing of its properties that will not be distributed in kind to its shareholders;

(3) discharging or making provision for discharging its liabilities;

(4) distributing its remaining property among its shareholders according to their interests; and

(5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) transfer title to the corporation's property;

(2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(3) subject its directors or officers to standards of conduct different from those prescribed in IC 23-1-33 through IC 23-1-37;

(4) change:

(A) quorum or voting requirements for its board of directors or shareholders;

(B) provisions for selection, resignation, or removal of its directors, or officers, or both; or

(C) provisions for amending its bylaws;

(5) prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(7) terminate the authority of the registered agent of the corporation.

As added by P.L.149-1986, SEC.29.

IC 23-1-45-6

Disposition of known claims; procedure

Sec. 6. (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The

written notice must:

(1) specify the amount that the dissolved corporation believes will satisfy the claim;

(2) inform the creditor that it has the right to dispute the amount of the claim and describe the procedure for disputing the amount of the claim;

(3) provide a mailing address where a dispute of the amount of the claim may be sent;

(4) state the deadline, which may not be fewer than sixty (60) days after the effective date of the written notice, by which the dissolved corporation must receive the dispute of the amount of the claim; and

(5) state that the claim will be fixed at the amount specified by the dissolved corporation if a dispute of the amount of the claim is not received by the deadline.

(c) If the amount of the claim is disputed, the claimant must notify the dissolved corporation of the dispute by the deadline. If the dissolved corporation rejects the disputed amount, the claimant must commence a proceeding to enforce the claim within ninety (90) days after the effective date of the dissolved corporation's rejection notice.

(d) The amount of the claim is fixed if:

(1) the claimant does not notify the dissolved corporation by the deadline; or

(2) the claimant who has notified the dissolved corporation of a dispute and has received a rejection notice does not commence a proceeding within ninety (90) days from the effective date of the rejection notice.

(e) Regardless of a dispute in the amount of the claim, the dissolved corporation must tender to the claimant the amount of the claim as set forth by the dissolved corporation in the notice of claim within thirty (30) days after the earliest of the following dates:

(1) The date that the claim becomes fixed.

(2) The date that the claimant commences the proceeding to enforce the claim.

(f) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

As added by P.L.149-1986, SEC.29.

IC 23-1-45-7

Notice of dissolution; claims against dissolved corporation

Sec. 7. (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in Indiana, its registered office) is or was last located;

(2) describe the information that must be included in a claim and

provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim within two (2) years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 6 of this chapter.

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on.

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

As added by P.L.149-1986, SEC.29. Amended by P.L.75-1990, SEC.3.

IC 23-1-46

Chapter 46. Administrative Dissolution

IC 23-1-46-1

Grounds

Sec. 1. The secretary of state may commence a proceeding under section 2 of this chapter to administratively dissolve a corporation if:

(1) the corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this article or other law;

(2) the corporation does not deliver for filing its biennial report to the secretary of state within sixty (60) days after it is due;

(3) the corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(4) the corporation does not notify the secretary of state within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

As added by P.L.149-1986, SEC.30. Amended by P.L.228-1995, SEC.9.

IC 23-1-46-2

Procedure for dissolution; winding up affairs; authority of registered agent

Sec. 2. (a) If the secretary of state determines that one (1) or more grounds exist under section 1 of this chapter for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the determination under IC 23-1-24-4 unless the secretary of state:

(1) receives a receipt showing failure of service of process upon the corporation's registered agent at the address of the registered office; and

(2) determines that the secretary of state's office has no record of the corporation's principal office address.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under IC 23-1-24-4, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under IC 23-1-24-4.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under IC 6-8.1-10-9 and IC 23-1-45-5 and notify claimants under IC 23-1-45-6 and IC 23-1-45-7.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.
As added by P.L.149-1986, SEC.30. Amended by P.L.73-1988, SEC.2; P.L.63-2014, SEC.5.

IC 23-1-46-3
Reinstatement

Sec. 3. (a) A corporation administratively dissolved under section 2 of this chapter may apply to the secretary of state for reinstatement. The application must:

(1) recite the name of the corporation and the effective date of its administrative dissolution;
(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;
(3) state that the corporation's name satisfies the requirements of IC 23-1-23-1; and
(4) contain a certificate from the department of state revenue reciting that all taxes owed by the corporation have been paid.

(b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under IC 23-1-24-4.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.
As added by P.L.149-1986, SEC.30. Amended by P.L.107-1987, SEC.23.

IC 23-1-46-4
Denial of application for reinstatement; notice; appeal

Sec. 4. (a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under IC 23-1-24-4 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit or superior court of the county where the corporation's principal office (or, if none in Indiana, its registered office) is located within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.149-1986, SEC.30.

IC 23-1-47

Chapter 47. Judicial Dissolution

IC 23-1-47-1

Judicial dissolution; when allowable

Sec. 1. The circuit or superior court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(A) the corporation obtained its articles of incorporation through fraud; or

(B) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) in a proceeding by a shareholder if it is established that:

(A) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; or

(B) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired;

(3) in a proceeding by a creditor if it is established that:

(A) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(B) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

As added by P.L.149-1986, SEC.31.

IC 23-1-47-2

Venue; parties; preservation of corporate assets

Sec. 2. (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Marion County. Venue for a proceeding brought by any other party named in section 1 of this chapter lies in the county where a corporation's principal office (or, if none in Indiana, its registered office) is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

As added by P.L.149-1986, SEC.31.

IC 23-1-47-3
Receivers and custodians

Sec. 3. (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in Indiana) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) the receiver:

(A) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

As added by P.L.149-1986, SEC.31.

IC 23-1-47-4
Decree of dissolution; winding up affairs

Sec. 4. (a) If, after a hearing, the court determines that one (1) or more grounds for judicial dissolution described in section 1 of this chapter exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with IC 6-8.1-10-9 and IC 23-1-45-5 and the

notification of claimants in accordance with IC 23-1-45-6 and IC 23-1-45-7.

As added by P.L.149-1986, SEC.31. Amended by P.L.73-1988, SEC.3.

IC 23-1-48

Chapter 48. Deposit of Assets of Dissolved Corporation

IC 23-1-48-1

Deposit of assets; payment to claimant

Sec. 1. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the creditor, claimant, or shareholder or a representative of the creditor, claimant, or shareholder that amount.

As added by P.L.149-1986, SEC.32.

IC 23-1-49

Chapter 49. Certificate of Authority of Foreign Corporations

IC 23-1-49-1

Necessity of certificate of authority; transacting business

Sec. 1. (a) A foreign corporation may not transact business in Indiana until it obtains a certificate of authority from the secretary of state. However, this requirement does not apply to the following:

(1) Banks.
(2) Savings banks.
(3) Savings associations.
(4) Corporate fiduciaries.
(5) Credit unions.
(6) Industrial loan and investment companies.
(7) Surety companies.
(8) Trust companies.
(9) Safe deposit companies.
(10) Railroad corporations.
(11) Insurance companies.
(12) Building and loan associations.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) or within the meaning of IC 27-1-17-1 or IC 28-1-22-1:

(1) Maintaining, defending, or settling any proceeding.
(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
(3) Maintaining bank accounts.
(4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities.
(5) Selling through independent contractors.
(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Indiana before they become contracts.
(7) Making loans or otherwise creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
(9) Owning, without more, real or personal property.
(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.
(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

As added by P.L.149-1986, SEC.33. Amended by P.L.107-1987, SEC.24; P.L.145-1988, SEC.7; P.L.171-1996, SEC.1.

IC 23-1-49-2

Transacting business without certificate of authority

Sec. 2. (a) A foreign corporation transacting business in Indiana without a certificate of authority may not maintain a proceeding in any court in Indiana until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in Indiana without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in Indiana until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of not more than ten thousand dollars ($10,000) if it transacts business in Indiana without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in Indiana.

As added by P.L.149-1986, SEC.33.

IC 23-1-49-3

Application for certificate; contents; certificate of existence from foreign state or country

Sec. 3. (a) A foreign corporation may apply for a certificate of authority to transact business in Indiana by delivering an application to the secretary of state for filing. The application must set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in Indiana, a corporate name that satisfies the requirements of section 6 of this chapter;

(2) the name of the state or country under whose law it is incorporated;

(3) its date of incorporation and period of duration;

(4) the street address of its principal office;

(5) the address of its registered office in Indiana and the name of its registered agent at that office; and

(6) the names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

As added by P.L.149-1986, SEC.33.

IC 23-1-49-4
Amended certificate of authority

Sec. 4. (a) A foreign corporation authorized to transact business in Indiana must obtain an amended certificate of authority from the secretary of state if it:

(1) changes its corporate name;
(2) changes the period of its duration;
(3) changes the state or country of its incorporation; or
(4) converts to a different form of entity.

(b) The requirements of section 3 of this chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

As added by P.L.149-1986, SEC.33. Amended by P.L.130-2006, SEC.19.

IC 23-1-49-5
Rights under certificate of authority

Sec. 5. (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in Indiana subject, however, to the right of the state to revoke the certificate as provided in this article.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this article is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This article does not authorize Indiana to regulate the organization or internal affairs of a foreign corporation authorized to transact business in Indiana.

As added by P.L.149-1986, SEC.33.

IC 23-1-49-6
Corporate name

Sec. 6. (a) If the corporate name of a foreign corporation does not satisfy the requirements of IC 23-1-23-1, the foreign corporation, to obtain or maintain a certificate of authority to transact business in Indiana:

(1) may add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in Indiana; or
(2) may use a fictitious name to transact business in Indiana if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the secretary of state from:

(1) the corporate name of a corporation incorporated or authorized to transact business in Indiana;
(2) a corporate name reserved or registered under IC 23-1-23-2

or IC 23-1-23-3;

(3) the fictitious name of another foreign corporation authorized to transact business in Indiana; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in Indiana.

(c) A foreign corporation may apply to the secretary of state for authorization to use in Indiana the name of another corporation (incorporated or authorized to transact business in Indiana) that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A foreign corporation may use in Indiana the name (including the fictitious name) of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the foreign corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in Indiana changes its corporate name to one that does not satisfy the requirements of IC 23-1-23-1, it may not transact business in Indiana under the changed name until it adopts a name satisfying the requirements of IC 23-1-23-1 and obtains an amended certificate of authority under section 4 of this chapter.

As added by P.L.149-1986, SEC.33.

IC 23-1-49-7

Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation

Sec. 7. (a) Each foreign corporation authorized to transact business in Indiana must continuously maintain in Indiana:

(1) a registered office; and

(2) a registered agent, who may be:

(A) an individual who resides in Indiana and whose business office is identical with the registered office;

(B) a domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office; or

(C) a foreign limited liability company, foreign corporation,

or nonprofit foreign corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each foreign corporation qualified after June 30, 2014, to do business in Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each foreign corporation qualified to do business in Indiana shall provide to the foreign corporation's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the foreign corporation; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the foreign corporation.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a foreign corporation under subsection (c).

(e) If a foreign corporation fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 9 of this chapter, as the registered agent for the foreign corporation.

As added by P.L.149-1986, SEC.33. Amended by P.L.63-2014, SEC.6.

IC 23-1-49-8

Change in registered office or registered agent

Sec. 8. (a) A foreign corporation authorized to transact business in Indiana may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) its name;

(2) the street address of its current registered office;

(3) if the current registered office is to be changed, the street address of its new registered office;

(4) the name of its current registered agent;

(5) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent or a representation that the new registered agent has consented (either on the statement or attached to it) to the appointment; and

(6) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign corporation that the registered agent serves by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the

secretary of state for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.
As added by P.L.149-1986, SEC.33. Amended by P.L.107-1987, SEC.25.

IC 23-1-49-9
Resignation of registered agent

Sec. 9. (a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-1-18 a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail one (1) copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.
As added by P.L.149-1986, SEC.33. Amended by P.L.228-1995, SEC.10.

IC 23-1-49-10
Service of process or notice on foreign corporation

Sec. 10. (a) The registered agent of a foreign corporation authorized to transact business in Indiana is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or other executive officer, as that term is used in Trial Rule 4.6(A)(1), at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(1) has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) has withdrawn from transacting business in Indiana under IC 23-1-50; or

(3) has had its certificate of authority revoked under IC 23-1-51-2.

(c) Service is perfected under subsection (b) at the earliest of:

(1) the date the foreign corporation receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

As added by P.L.149-1986, SEC.33.

IC 23-1-50

Chapter 50. Withdrawal of Foreign Corporations

IC 23-1-50-1

Necessity of certificate of withdrawal

Sec. 1. A foreign corporation authorized to transact business in Indiana may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

As added by P.L.149-1986, SEC.34.

IC 23-1-50-2

Application for certificate of withdrawal

Sec. 2. A foreign corporation authorized to transact business in Indiana may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) that it is not transacting business in Indiana and that it surrenders its authority to transact business in Indiana;

(3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in Indiana;

(4) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subdivision (3); and

(5) a commitment to notify the secretary of state in the future of any change in its mailing address.

As added by P.L.149-1986, SEC.34.

IC 23-1-50-3

Service of process after withdrawal of corporation

Sec. 3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this chapter is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

As added by P.L.149-1986, SEC.34.

IC 23-1-51

Chapter 51. Revocation of Certificate of Authority of Foreign Corporations

IC 23-1-51-1

Grounds

Sec. 1. The secretary of state may commence a proceeding under section 2 of this chapter to revoke the certificate of authority of a foreign corporation authorized to transact business in Indiana if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within sixty (60) days after it is due;

(2) the foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this article or other law;

(3) the foreign corporation is without a registered agent or registered office in Indiana for sixty (60) days or more;

(4) the foreign corporation does not inform the secretary of state under IC 23-1-49-8 or IC 23-1-49-9 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the incorporator, director, officer, or agent knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

As added by P.L.149-1986, SEC.35.

IC 23-1-51-2

Procedure for revocation; service of process after revocation

Sec. 2. (a) If the secretary of state determines that one (1) or more grounds exist under section 1 of this chapter for revocation of a certificate of authority, the secretary of state shall, under IC 23-1-49-10, serve the foreign corporation with written notice of the determination, unless the secretary of state:

(1) receives a receipt showing failure of service of process upon the foreign corporation's registered agent at the address of the registered office; and

(2) determines that the secretary of state's office has no record of the foreign corporation's principal office address.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice

is perfected under IC 23-1-49-10, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under IC 23-1-49-10.

(c) The authority of a foreign corporation to transact business in Indiana ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

As added by P.L.149-1986, SEC.35. Amended by P.L.63-2014, SEC.7.

IC 23-1-51-2.5

Application for reinstatement; effective date of reinstatement

Sec. 2.5. (a) A foreign corporation that has had its certificate of authority revoked under section 2 of this chapter may apply to the secretary of state for reinstatement. The application for reinstatement must include all the following:

(1) The name of the foreign corporation.

(2) The effective date of the revocation of the foreign corporation's certificate of authority.

(3) A statement that the ground or grounds for revocation of the foreign corporation's certificate of authority either did not exist or have been eliminated.

(4) A statement that the foreign corporation's name satisfies the requirements of IC 23-1-23-1 or IC 23-1-49-6.

(5) A certificate from the department of state revenue stating that all taxes owed by the foreign corporation have been paid.

(b) If the secretary of state determines that the application contains the information required under subsection (a) and that the information is correct, the secretary of state shall:

(1) cancel the certificate of revocation of the foreign corporation's certificate of authority; and

(2) prepare a certificate of reinstatement that states:

(A) that the certificate of revocation of the foreign

corporation's certificate of authority has been canceled; and
(B) the date that the reinstatement is effective;
(3) file the original certificate of reinstatement; and
(4) serve, as provided in IC 23-1-49-10, a copy of the certificate of reinstatement on the foreign corporation.

(c) When the certificate of reinstatement is effective, the certificate of reinstatement relates back to and is considered to take effect as of the effective date of the revocation of the foreign corporation's certificate of authority and the foreign corporation resumes carrying on its business as if the revocation of the foreign corporation's certificate of authority had never occurred.

As added by P.L.63-2014, SEC.8.

IC 23-1-51-3

Denial of application for reinstatement; written notice; appeal

Sec. 3. (a) If the secretary of state denies a foreign corporation's application for reinstatement under section 2.5 of this chapter, the secretary of state shall serve, as provided in IC 23-1-49-10, the foreign corporation with a written notice that explains the reason or reasons for denial.

(b) The foreign corporation may appeal the denial of reinstatement to the circuit or superior court of the county in which its registered office is located within thirty (30) days after service of the certificate of revocation is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of all the following:

(1) The secretary of state's certificate of revocation.
(2) The foreign corporation's application for reinstatement described in section 2.5 of this chapter.
(3) The secretary of state's notice of denial described in subsection (a).

(c) The court may order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.149-1986, SEC.35. Amended by P.L.63-2014, SEC.9.

IC 23-1-52
Chapter 52. Records

IC 23-1-52-1
Required records

Sec. 1. (a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect.

(2) Its bylaws or restated bylaws and all amendments to them currently in effect.

(3) Resolutions adopted by its board of directors with respect to one (1) or more classes or series of shares and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years.

(5) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under IC 23-1-53-1.

(6) A list of the names and business addresses of its current directors and officers.

(7) Its most recent annual report delivered to the secretary of state under IC 23-1-53-3.

As added by P.L.149-1986, SEC.36.

IC 23-1-52-2
Shareholder's right to inspect and copy records

Sec. 2. (a) Subject to section 3(c) of this chapter, a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 1(e) of this chapter if the shareholder gives the corporation written notice of the shareholder's demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of the shareholder's demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a).

(2) Accounting records of the corporation.

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records identified in subsection (b) only if:

(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; and

(3) the records are directly connected with the shareholder's purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(1) the right of a shareholder to inspect records under IC 23-1-30-1 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) the power of a court, independently of this article, to compel the production of corporate records for examination.

As added by P.L.149-1986, SEC.36.

IC 23-1-52-3

Inspection by agent or attorney; copies; costs; list of shareholders

Sec. 3. (a) A shareholder's agent or attorney, if authorized in writing, has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under section 2 of this chapter includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 2(b)(3) of this

chapter by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.
As added by P.L.149-1986, SEC.36.

IC 23-1-52-4
Court order for inspection and copying; costs; restrictions

Sec. 4. (a) If a corporation does not allow a shareholder who complies with section 2(a) of this chapter to inspect and copy any records required by that subsection to be available for inspection, the circuit or superior court of the county where the corporation's principal office (or, if none in Indiana, its registered office) is located may order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with sections 2(b) and 2(c) of this chapter may apply to the circuit or superior court in the county where the corporation's principal office (or, if none in Indiana, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it shall impose the restrictions provided by section 5 of this chapter on the use and distribution of the records by the demanding shareholder.
As added by P.L.149-1986, SEC.36.

IC 23-1-52-5
Use and distribution of information

Sec. 5. (a) The use and distribution of any information acquired from records inspected or copied under the rights granted by this chapter or by IC 23-1-30-1 are restricted solely to the proper purpose described with particularity under section 2(c) of this chapter.

(b) This section applies whether the use and distribution are by the shareholder, the shareholder's agent or attorney, or any person who obtains the information (directly or indirectly) from the shareholder or agent or attorney.

(c) The shareholder, the shareholder's agent or attorney, and any other person who obtains the information shall use reasonable care to ensure that the restrictions imposed by this section are observed.
As added by P.L.149-1986, SEC.36.

IC 23-1-53
Chapter 53. Reports

IC 23-1-53-1
Annual financial statements

Sec. 1. (a) On written request of any shareholder, a corporation shall prepare and mail to the shareholder annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year most recently completed, an income statement for that year, and a statement of changes in shareholders' equity for that year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the public accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

As added by P.L.149-1986, SEC.37. Amended by P.L.107-1987, SEC.26.

IC 23-1-53-2
Repealed

(Repealed by P.L.133-2009, SEC.42.)

IC 23-1-53-3
Biennial reports

Sec. 3. (a) Each domestic corporation and each foreign corporation authorized to transact business in Indiana shall deliver a biennial report to the secretary of state for filing that sets forth:

(1) the name of the corporation and the state or country under whose law it is incorporated;

(2) the address of its registered office and the name of its registered agent at that office in Indiana;

(3) the address of its principal office; and

(4) the names and business addresses of its directors, secretary, and the highest executive officer of the corporation.

(b) Information in the biennial report must be current as of the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the secretary of state in the second year following the calendar year in which a

domestic corporation was incorporated or a foreign corporation was authorized to transact business. Except as provided in subsection (d), the biennial report is due during the same month as the month in which the corporation was incorporated or authorized to transact business.

(d) If the secretary of state, in cooperation with the department of state revenue, allows a domestic corporation to file a biennial report at the same time the corporation files its adjusted gross income tax return under section 4 of this chapter, the biennial report of the corporation is due when the domestic corporation's adjusted gross income tax return is due under IC 6-3.

(e) Subsequent biennial reports must be delivered to the secretary of state every second year following the year in which the last biennial report was filed. The secretary of state may accept reports during the two (2) months before the month that they are due.

(f) If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

As added by P.L.149-1986, SEC.37. Amended by P.L.107-1987, SEC.28; P.L.96-1993, SEC.2; P.L.228-1995, SEC.11; P.L.11-1996, SEC.12.

IC 23-1-53-4

Filing biennial report at same time as adjusted gross income tax return

Sec. 4. (a) The secretary of state in cooperation with the department of state revenue may provide for the filing of a biennial report by a domestic corporation at the same time the domestic corporation files an adjusted gross income tax return.

(b) As provided in subsection (a), a domestic corporation may file a biennial report with the department of state revenue at the same time the corporation files an adjusted gross income tax return. However, a domestic corporation retains the option of filing the biennial report directly with the secretary of state. The biennial report must in any case meet the requirements of IC 23-1-53-3.

(c) A biennial report filed under this section is delivered to the office of the secretary of state for filing for purposes of this article when it is delivered to the department of state revenue.

(d) The department of state revenue shall forward all biennial reports filed under this chapter to the office of the secretary of state.

(e) The department of state revenue in cooperation with the office of the secretary of state shall prescribe and furnish a form for a biennial report filed under this chapter.

(f) If for any reason a domestic corporation does not file an adjusted gross income tax return, it shall file a biennial report with the secretary of state at a time prescribed by the office of secretary of

state.
As added by P.L.228-1995, SEC.12.

IC 23-1-54

Chapter 54. Miscellaneous Provisions

IC 23-1-54-1

Repealed

(Repealed by P.L.107-1987, SEC.51.)

IC 23-1-54-2

Preemptive rights in existence under prior law

Sec. 2. Shareholders' preemptive rights in existence on July 31, 1987 (or on the date specified by a resolution of the board of directors of a corporation adopted under IC 23-1-17-3(b)), under prior law continue in effect as created under prior law. However, if the corporation's articles of incorporation are amended under this article with respect to preemptive rights, then all shareholders' preemptive rights are subject to this article after the amendment is effective.

As added by P.L.149-1986, SEC.38.

IC 23-1-54-3

Indiana business law survey commission

Sec. 3. (a) The Indiana business law survey commission is established for the purpose of considering recommendations to the general assembly, from time to time, concerning amendments to this article, IC 23-17, or any other corporation, limited liability company, or partnership laws, or new or additional legislation affecting corporations, limited liability companies, partnerships, or other business entities (domestic or foreign) authorized to do business or doing business in Indiana.

(b) The commission consists of fourteen (14) members, appointed by the governor, who shall serve without compensation and without reimbursement for expenses. The secretary of state also shall serve as an ex officio member.

(c) The commission shall conduct its proceedings and affairs according to such rules as it may prescribe.

(d) The commission may publish official comments.

As added by P.L.145-1988, SEC.9. Amended by P.L.226-1989, SEC.3; P.L.179-1991, SEC.26; P.L.8-1993, SEC.306; P.L.130-2006, SEC.20.

IC 23-1-55

Chapter 55. Intention to Sell Sexually Explicit Materials

IC 23-1-55-1

Application

Sec. 1. This chapter does not apply to a person who sells sexually explicit materials on June 30, 2008, unless the person changes the person's business location after June 30, 2008.

As added by P.L.92-2008, SEC.1.

IC 23-1-55-2

Registration of the intent to offer for sale or to sell sexually explicit materials

Sec. 2. A person (as defined in IC 35-31.5-2-234) that intends to offer for sale or sell sexually explicit materials shall register with the secretary of state the intent to offer for sale or sell sexually explicit materials and provide a statement detailing the types of materials that the person intends to offer for sale or sell.

As added by P.L.92-2008, SEC.1. Amended by P.L.114-2012, SEC.46.

IC 23-1-55-3

Notification of registration to local officials

Sec. 3. (a) As used in this section, "local officials of the county" refer to all of the following:

(1) The county executive.

(2) If a person described in section 2 of this chapter intends to locate in a municipality, the executive of the municipality.

(3) A local entity that supervises a zoning board in the county.

(b) After receiving a registration described in section 2 of this chapter, the secretary of state shall notify the local officials of the county in which a person described in section 2 of this chapter intends to offer for sale or sell sexually explicit materials of the registration filed under section 2 of this chapter.

As added by P.L.92-2008, SEC.1.

IC 23-1.5

ARTICLE 1.5. PROFESSIONAL CORPORATIONS

IC 23-1.5-1

Chapter 1. Definitions

IC 23-1.5-1-1

Application of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-1-2

"Accounting professional"

Sec. 2. "Accounting professional" means an individual who is licensed as:

(1) a certified public accountant under IC 25-2.1-3;
(2) a public accountant under IC 25-2.1-6; or
(3) an accounting practitioner under IC 25-2.1-6.

As added by P.L.239-1983, SEC.1. Amended by P.L.30-1993, SEC.2.

IC 23-1.5-1-3

"Architectural or engineering professional"

Sec. 3. "Architectural or engineering professional" means an individual who is registered as:

(1) an architect under IC 25-4-1;
(2) a landscape architect under IC 25-4-2;
(3) a professional engineer under IC 25-31-1; or
(4) a professional surveyor under IC 25-21.5.

As added by P.L.239-1983, SEC.1. Amended by P.L.23-1991, SEC.5; P.L.57-2013, SEC.22.

IC 23-1.5-1-4

"Attorney"

Sec. 4. "Attorney" means an individual in good standing admitted to the practice of law in Indiana.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-1-5

"Bureau"

Sec. 5. "Bureau" means the following:

(1) In the case of:
    (A) an accounting professional;
    (B) an architectural professional;
    (C) an engineering professional;
    (D) a health care professional;
    (E) a real estate professional; or
    (F) a veterinarian;

the Indiana professional licensing agency established by IC 25-1-5-3.

(2) In the case of an attorney, the state board of law examiners.

As added by P.L.239-1983, SEC.1. Amended by P.L.132-1984, SEC.1; P.L.169-1985, SEC.19; P.L.229-1995, SEC.1; P.L.1-2006, SEC.406.

IC 23-1.5-1-5.4
"Charitable remainder annuity trust"

Sec. 5.4. "Charitable remainder annuity trust" has the meaning set forth in Section 664(d)(1) of the Internal Revenue Code.
As added by P.L.172-1996, SEC.1.

IC 23-1.5-1-5.6
"Charitable remainder unitrust"

Sec. 5.6. "Charitable remainder unitrust" has the meaning set forth in Section 664(d)(2) or 664(d)(3) of the Internal Revenue Code.
As added by P.L.172-1996, SEC.2.

IC 23-1.5-1-6
"Disqualified person"

Sec. 6. "Disqualified person" means an individual, corporation, limited liability company, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this article to own shares issued by a professional corporation. The term includes a charitable remainder unitrust or charitable remainder annuity trust that is or becomes a disqualified person for failure to comply with section 13(3) of this chapter.
As added by P.L.239-1983, SEC.1. Amended by P.L.8-1993, SEC.307; P.L.172-1996, SEC.3.

IC 23-1.5-1-7
"Foreign professional corporation"

Sec. 7. "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under the law of another state or country.
As added by P.L.239-1983, SEC.1.

IC 23-1.5-1-8
"Health care professional"

Sec. 8. "Health care professional" means an individual who is licensed, certified, or registered by a board (as defined in IC 25-1-9-1). However, the term does not include a veterinarian.
As added by P.L.239-1983, SEC.1. Amended by P.L.150-1986, SEC.1; P.L.149-1987, SEC.15; P.L.14-2002, SEC.1.

IC 23-1.5-1-9
"Licensing authority"

Sec. 9. "Licensing authority" means the following:

(1) In the case of an accounting professional, the Indiana state board of public accountancy.

(2) In the case of an architectural professional, the board of registration for architects and landscape architects.

(3) In the case of an engineering professional, the state board of registration for professional engineers.
(4) In the case of an attorney, the Indiana supreme court.
(5) In the case of a health care professional, the board (as defined in IC 25-1-9-1) that issues the individual's license, certification, or registration.
(6) In the case of a veterinarian, the Indiana board of veterinary medical examiners.
(7) In the case of a professional surveyor, the state board of registration for professional surveyors.
(8) In the case of a real estate professional, the Indiana real estate commission.

As added by P.L.239-1983, SEC.1. Amended by P.L.137-1985, SEC.4; P.L.169-1985, SEC.20; P.L.150-1986, SEC.2; P.L.149-1987, SEC.16; P.L.23-1991, SEC.6; P.L.33-1993, SEC.8; P.L.229-1995, SEC.2; P.L.24-1999, SEC.1; P.L.82-2000, SEC.1; P.L.14-2002, SEC.2; P.L.57-2013, SEC.23.

IC 23-1.5-1-10
"Professional corporation"

Sec. 10. "Professional corporation" means:
(1) a corporation for profit organized under this article; or
(2) a foreign corporation admitted to do business under this article.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-1-11
"Professional service"

Sec. 11. "Professional service" means any type of service that may be legally performed only by:
(1) an accounting professional;
(2) an architectural or engineering professional;
(3) an attorney;
(4) a health care professional;
(5) a veterinarian; or
(6) a real estate professional.

As added by P.L.239-1983, SEC.1. Amended by P.L.229-1995, SEC.3.

IC 23-1.5-1-12
"Qualified person"

Sec. 12. "Qualified person" means an individual, general partnership, professional corporation, or trustee of a qualified trust that is eligible under this article to own shares issued by a professional corporation.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-1-13
"Qualified trust"

Sec. 13. "Qualified trust" means one (1) of the following:

(1) A trust of which the entire beneficial ownership is owned by a qualified person and the trustee is a qualified person.
(2) A voting trust established under IC 23-1-31, if the beneficial owner of any shares on deposit and the trustee of the voting trust are qualified persons.
(3) A charitable remainder unitrust or charitable remainder annuity trust that complies with each of the following conditions:
(A) Has one (1) or more current income recipients, all of whom are qualified persons.
(B) Has a trustee or an independent special trustee who:
(i) is a qualified person; and
(ii) has exclusive authority over the shares of the professional corporation while the shares are held in the trust.
(C) Has one (1) or more irrevocably designated charitable remaindermen, all of which must at all times:
(i) be domiciled; or
(ii) maintain a local chapter;
in Indiana.
(D) When distributing any assets during the term of the trust to charitable organizations, the distributions are made only to charitable organizations described in Section 170(c) of the Internal Revenue Code that:
(i) are domiciled; or
(ii) maintain a local chapter;
in Indiana.
As added by P.L.239-1983, SEC.1. Amended by P.L.149-1986, SEC.46; P.L.172-1996, SEC.4.

IC 23-1.5-1-13.5
"Real estate professional"
Sec. 13.5. "Real estate professional" means an individual who is licensed as a real estate broker licensed under IC 25-34.1-3-4.1.
As added by P.L.229-1995, SEC.4. Amended by P.L.127-2012, SEC.2.

IC 23-1.5-1-14
"Veterinarian"
Sec. 14. "Veterinarian" means an individual admitted to practice veterinary medicine under IC 25-38.1-3.
As added by P.L.239-1983, SEC.1. Amended by P.L.2-2008, SEC.47.

IC 23-1.5-2

Chapter 2. Administrative Provisions

IC 23-1.5-2-1

Application of IC 23-1

Sec. 1. IC 23-1 applies to professional corporations formed under this article. However, in the event of a conflict between this article and IC 23-1, this article applies.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-2

Performance of administrative functions by bureaus

Sec. 2. All administrative functions, duties, and responsibilities assigned by this article to any licensing authority shall be performed by the appropriate bureau.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-3

Formation of professional corporations; authorization of investments; admission of foreign professional corporations

Sec. 3. (a) Except as provided in subsections (c) and (d) and IC 25-2.1-5, a professional corporation may be formed to render professional services as follows:

(1) One (1) or more accounting professionals may form a professional corporation to render services that may legally be performed only by an accounting professional.

(2) One (1) or more architectural or engineering professionals may form a professional corporation to render services that may legally be performed only by an architectural or engineering professional.

(3) One (1) or more attorneys may form a professional corporation to render services that may legally be performed only by an attorney.

(4) One (1) or more health care professionals may form a professional corporation to render services that may legally be performed only by a health care professional.

(5) One (1) or more veterinarians may form a professional corporation to render services that may legally be performed only by a veterinarian.

(6) One (1) or more real estate professionals may form a professional corporation to render services that may legally be performed only by a real estate professional.

(b) A foreign professional corporation may be admitted to render professional services in Indiana by complying with IC 23-1.5-5.

(c) A domestic professional corporation or a foreign professional corporation admitted to render professional services in Indiana:

(1) shall have at least one (1) shareholder who is licensed in Indiana; and

(2) may have at least one (1) shareholder who is licensed under the laws of another state to render similar professional services.

(d) In addition to the professional services permitted by its articles of incorporation, a professional corporation may invest its funds in any type of investment not prohibited by law.
As added by P.L.239-1983, SEC.1. Amended by P.L.229-1995, SEC.5; P.L.34-1997, SEC.3; P.L.128-2001, SEC.1.

IC 23-1.5-2-4
Qualifications of directors and officers
Sec. 4. The directors of a professional corporation and all the officers other than the secretary and the treasurer must be qualified persons with respect to the corporation.
As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-5
Persons rendering professional services; licensing
Sec. 5. (a) A professional corporation may render professional services only through individuals permitted to render such services in Indiana. However, individuals who are not usually and ordinarily considered by custom and practice to be rendering professional services (such as clerks, bookkeepers, and technicians) are not required to be licensed to perform their services.
(b) A licensed individual acting in his individual capacity may render professional services, even though the individual may be a shareholder, director, officer, employee, or agent of a professional corporation.
As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-6
Liability of corporation, shareholders, and persons rendering professional services
Sec. 6. (a) An individual who renders professional services as an employee of a professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered such services as a sole practitioner.
(b) An individual who renders professional services as an employee of a professional corporation is liable for the conduct of other employees of the professional corporation under his direction or control to the same extent a sole practitioner would be so liable.
(c) A corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation is liable to the same extent as its employees.
(d) Except as otherwise provided by statute or by rule of the licensing authority, the personal liability of a shareholder of a professional corporation is no greater in any respect than that of a shareholder of a corporation organized under IC 23-1.
As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-7
Relationship of patient or client to corporation or person performing professional services; privileged communications

Sec. 7. (a) The relationship between an individual performing professional services as an employee of a professional corporation and a client or patient is the same as if the individual performed such services as a sole practitioner.

(b) The relationship between a professional corporation performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(c) A privilege applicable to communications between a person rendering professional services and the person receiving such services recognized under Indiana law remains inviolate and extends to a professional corporation and its employees in all cases in which it applies to communications between an individual rendering professional services on behalf of the corporation and the person receiving such services.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-8

Corporate name

Sec. 8. (a) The corporate name of every professional corporation organized under this article:

(1) must include the words "Professional Services Corporation" or "Professional Corporation" or an abbreviation of these words;

(2) may not contain any word or phrase that indicates or implies any purpose or power not possessed by corporations organizable under this article; and

(3) may not contain any word or phrase that indicates that it is organized for any purpose other than that listed in the articles of incorporation.

In addition, only a professional corporation in which all shareholders are physicians licensed under IC 25-22.5 may use the term "medical" in its corporate name.

(b) A licensing authority may by rule adopt further requirements than those specified in subsection (a) as to the names of professional corporations organized under this article.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-9

Certificates of registration and incorporation; issuance

Sec. 9. (a) The secretary of state may issue a certificate of incorporation under this article only if a certificate of registration has first been obtained as provided by this section.

(b) Application for a certificate of registration:

(1) shall be made to the bureau in writing; and

(2) must contain the name and address of the proposed corporation and such other information as may be required by a licensing authority.

(c) Upon receipt of the application, the licensing authority shall review the application and make such investigation of the proposed corporation as it considers necessary. If the licensing authority finds

that:

(1) the directors and shareholders are properly licensed in compliance with statute and the rules of the licensing authority; and

(2) the corporation will be organized in compliance with statute and with the rules of the licensing authority;

the licensing authority shall certify to the bureau that a certificate of registration should be issued. When the bureau has received approval from the appropriate licensing authorities, the bureau shall issue, upon payment of a registration fee of twenty-five dollars ($25), a certificate of registration.

(d) The incorporators shall present the certificate of registration to the secretary of state at the time the articles of incorporation are presented for filing.

(e) The secretary of state shall issue a certificate of incorporation within sixty (60) days after the date the articles of incorporation are filed, if he finds that the articles of incorporation conform to law.

(f) After the articles of incorporation are approved, the secretary of state shall:

(1) place his endorsement on the certificate of registration; and

(2) return to the incorporators the certificate of registration and the certificate of incorporation, along with all accompanying documents.

(g) The certificate of registration takes effect upon the issuance of the certificate of incorporation by the secretary of state, and remains in effect until January 31 following the date of incorporation.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-2-10
Certificate of registration; renewal

Sec. 10. (a) The certificate of registration must be renewed biennially before January 31 of even numbered years. The holder of the certificate of registration must apply for renewal by submitting to the bureau:

(1) a written application upon a form prescribed by the bureau; and

(2) a fee of twenty dollars ($20).

(b) The licensing authority shall submit its approval to the bureau for the renewal of the certificate of registration if the licensing authority finds that the corporation has complied with:

(1) this chapter; and

(2) the rules of the licensing authority.

As added by P.L.239-1983, SEC.1. Amended by P.L.152-1988, SEC.4.

IC 23-1.5-2-11

(Repealed by P.L.34-1997, SEC.26.)

IC 23-1.5-2-11.1
Biennial report

Sec. 11.1. A professional corporation must file a biennial report under IC 23-1.

As added by P.L.34-1997, SEC.4.

IC 23-1.5-3
Chapter 3. Ownership

IC 23-1.5-3-1
Shares; issuance; transfer

Sec. 1. (a) Except as provided in IC 25-2.1-5, a professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(1) individuals who are authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation;

(2) general partnerships in which all the partners are authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation;

(3) professional corporations authorized by Indiana law or the laws of another state to render a professional service permitted by the articles of incorporation of the corporation; and

(4) the trustee of a qualified trust.

(b) When determined necessary by the licensing authority for any profession in order to prevent violations of the ethical standards of the profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares, but no such rule may, of itself, have the effect of causing a shareholder of a professional corporation at the time the rule becomes effective to become a disqualified person. All shares issued in violation of:

(1) this section; or

(2) any rule adopted by a licensing authority as provided by this section;

are void.

(c) Except as provided in IC 25-2.1-5, a shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to individuals, general partnerships, professional corporations, and trustees of qualified trusts qualified under this article to own shares issued directly to them by the professional corporation. A transfer of shares in violation of this subsection is void; however, this subsection does not apply to the transactions described in section 3 of this chapter.

(d) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares represented by that certificate are subject to:

(1) restrictions on transfer imposed by this article; and

(2) such restrictions on transfer as may be imposed by the licensing authority under this article.

(e) This section does not permit or authorize an individual to practice within Indiana any profession with respect to which a license or registration is required by the state without the individual being licensed or registered under the laws of the state.

As added by P.L.239-1983, SEC.1. Amended by P.L.34-1997, SEC.5; P.L.128-2001, SEC.2.

IC 23-1.5-3-2
Authority to purchase shares from disqualified persons

Sec. 2. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or earned surplus for the purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or when the purchase or payment would make it insolvent.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-3-3
Transfer or purchase of shares from disqualified persons; procedure

Sec. 3. (a) Whenever:

(1) a shareholder of a professional corporation dies;

(2) a shareholder of a professional corporation becomes a disqualified person;

(3) a charitable remainder unitrust or charitable remainder annuity trust that holds shares of a professional corporation becomes a disqualified person; or

(4) shares of a professional corporation are transferred by operation of law or court decree to a disqualified person;

the shares of the deceased shareholder or disqualified person may be transferred to a qualified person. If the shares are not so transferred, the shares shall be purchased or redeemed by the corporation to the extent of funds that may legally be made available for the purchase, as provided in section 2 of this chapter.

(b) Within five (5) months after such death or thirty (30) days after such a disqualification or transfer, if the price and method of payment for such shares is not fixed or ascertainable by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation shall make a written offer to pay for the shares at a specified price determined by the corporation to be the fair value of the shares as of the date of the death, disqualification, or transfer. The offer:

(1) shall be given to the disqualified person, which, in the case of a deceased shareholder, is the executor, administrator, or heirs at law if there is no executor or administrator; and

(2) must be accompanied by:

(A) a balance sheet of the corporation, as of the latest available date and not more than twelve (12) months before the making of the offer; and

(B) an income statement of the corporation for the twelve (12) month period ending on the date of the balance sheet.

(c) If the fair value of the shares is agreed upon between the disqualified person and the corporation within thirty (30) days after the date of the written offer from the corporation, payment for the

shares shall be made upon surrender of the certificate or certificates representing the shares:

(1) within sixty (60) days after the date of the offer; or

(2) at such other time as the parties may fix by agreement.

Upon payment of the agreed value, the disqualified person ceases to have any interest in the shares.

(d) If the disqualified person and the corporation do not agree on the fair value of the shares within thirty (30) days after the corporation's written offer, the following procedures apply:

(1) The disqualified person may make written demand within sixty (60) days after the date of the corporation's written offer that the corporation file a petition in the circuit or superior court in the county where the principal office of the corporation is located, requesting that the fair value of the shares be determined. The corporation shall file a petition under this subdivision within thirty (30) days after receipt of written demand from the disqualified person. If the corporation fails to institute the proceeding as required by this subdivision, the disqualified person may do so within sixty (60) days after delivery of the written demand to the corporation.

(2) If the corporation so elects at any time within sixty (60) days after the date of the corporation's written offer, it may file a petition for the determination of the fair value of the shares in the circuit or superior court in the county where the principal office of the corporation is located.

(3) The disqualified person shall be made a party to any proceeding under this subsection.

(4) All proceedings instituted under this subsection shall be governed by the Indiana rules of trial procedure.

(5) In a proceeding under this subsection, the court may appoint one (1) or more persons as appraisers to receive evidence and make a recommendation to the court on the question of the fair value of the shares. The appraisers have such authority as shall be specified in the appointment order of the court.

(e) In a proceeding under subsection (d), the disqualified person is entitled to judgment against the corporation for the amount of the fair value of his shares as of the date of death, disqualification, or transfer, upon surrender to the corporation of the certificate or certificates representing the shares. The court may order that the judgment be paid by the corporation in such installments as the court determines to be fair and just. The judgment may include an allowance for interest, not to exceed the legal rate of interest for judgments specified in IC 24-4.6-1-101, from the date of death, disqualification, or transfer.

(f) Except as provided in this subsection, the costs and expenses of any proceeding under subsection (d) shall be determined by the court and shall be assessed against the corporation. If the fair value of the shares as determined by the court does not exceed the amount specified in the last written offer made by the corporation, the court may assess all or any part of the costs and expenses of the proceeding

against the disqualified person. For purposes of this subsection, expenses include:

(1) reasonable compensation for and reasonable expenses of the appraisers; and

(2) reasonable fees and expenses of counsel.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten (10) months after the death of the deceased shareholder or within five (5) months after the disqualification or transfer, the corporation shall immediately cancel the shares on its books, and the disqualified person as of the date of cancellation has no further interest as a shareholder in the corporation other than his right to payment for such shares under this section. A corporation may not cancel its shares if a petition for a determination of fair value has been filed under this section in a circuit or superior court.

(h) Shares acquired by a corporation:

(1) in payment of the agreed value for the shares; or

(2) in payment of a judgment entered for the payment of those shares, as provided in this section;

may be held and disposed of by the corporation as in the case of other treasury shares.

(i) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement is specifically enforceable in the courts of this state.

(j) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

As added by P.L.239-1983, SEC.1. Amended by P.L.172-1996, SEC.5.

IC 23-1.5-3-4

Proxies; voting trusts

Sec. 4. (a) A proxy for shares of a professional corporation is valid only if it is given to a qualified person of that corporation.

(b) A voting trust with respect to shares of a professional corporation is valid only if all the trustees and beneficiaries of the voting trust are qualified persons.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-3-5

Powers of administrator, executor, guardian, and others of estate of shareholder who holds all outstanding shares

Sec. 5. This section applies to an administrator, executor, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation. Such a person may:

(1) exercise voting rights; and

(2) serve as a director and officer of the corporation;
for the purposes of amending the articles of incorporation as provided in IC 23-1.5-4-2 or dissolving the corporation.
As added by P.L.239-1983, SEC.1.

IC 23-1.5-3-6
Filing of articles of incorporation; notice of change of ownership or address

Sec. 6. (a) A professional corporation shall file a copy of its articles of incorporation, certified by the secretary of state, with the bureau. Thereafter, the corporation shall file with the bureau certified copies of all amendments to its articles of incorporation, including articles of acceptance and all articles of merger to which the corporation is a party.

(b) A professional corporation shall notify the bureau of a change in the ownership of any of the shares in the professional corporation or a change in its business address within thirty (30) days after the date of the change. Notice of change in ownership must contain the names and post office addresses of the transferor shareholder and the transferee shareholder, and notice of change of business address must contain the street address of the old location and the street address of the new location.
As added by P.L.239-1983, SEC.1. Amended by P.L.34-1997, SEC.6.

IC 23-1.5-4

Chapter 4. Change of Corporate Form

IC 23-1.5-4-1

Merger and consolidation

Sec. 1. (a) A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation.

(b) Upon the merger or consolidation of a professional corporation, if the surviving or new corporation is to render professional services in Indiana, it shall comply with this article.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-4-2

Cessation of professional services

Sec. 2. (a) If a professional corporation ceases to render professional services, the corporation shall:

(1) amend its articles of incorporation to delete from its stated purposes the rendering of professional services; and

(2) conform to the requirements of IC 23-1 regarding its corporate name.

(b) The corporation may then continue in existence as a corporation under IC 23-1 and is no longer subject to this article.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-4-3

Involuntary dissolution

Sec. 3. (a) A professional corporation formed under this article may be involuntarily dissolved as provided by IC 23-1-47.

(b) In addition to the causes specified in IC 23-1-47 for the involuntary dissolution of a corporation, a failure to comply with this article is a cause for the involuntary dissolution of a professional corporation under IC 23-1-46.

As added by P.L.239-1983, SEC.1. Amended by P.L.34-1987, SEC.278.

IC 23-1.5-4-4

Right of corporation to accept this article

Sec. 4. (a) Any corporation organized under Indiana law for any purpose or purposes for which a corporation might be organized under this article, and existing on September 1, 1983, may accept this article, and avail itself of the rights and privileges provided by this article, by complying with this article. Without limitation, this right to accept this article extends to any corporation formed under this or any other general statute, for any purpose or purposes for which a corporation might be organized under this article, if the corporation existed on or after September 1, 1983, or if its articles of incorporation fix a time of corporate existence that has terminated or thereafter terminates, if this corporation files its articles of acceptance

within two (2) years after such termination. The acceptance of this article may be effected by the officer, directors, and members of the corporation or by persons acting as such.

(b) Upon acceptance and compliance with the requirements of this article, the corporation shall be considered to have existed since termination and its acts, during this time, have the same validity as if performed before termination.

(c) This section does not apply to any corporation whose corporate franchise has been forfeited under any other statute.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-4-5

Articles of acceptance; approval by board of directors and members; presentation to secretary of state

Sec. 5. (a) The board of directors or trustees of a corporation desiring to accept this article shall, by a resolution adopted by a majority vote of the board, approve articles of acceptance setting forth the following information:

(1) The name of the corporation.

(2) The location of its principal office and the name and address of its resident agent.

(3) The date of its incorporation.

(4) A designation of the law under which it was organized.

(5) A declaration that it accepts all of the terms and provisions of this article.

(6) A restatement of those provisions of its articles of incorporation or association that it desires to have continued in effect, as long as the provisions restated would have been authorized by this article as provisions of original articles of incorporation for a corporation organized under this article. Failure to restate such provisions in the articles of acceptance constitutes nonconformance to law, and the secretary of state shall refuse to file these articles of acceptance. Any provision not stated in its articles of acceptance is not effective after the articles are filed; however, this subdivision does not prevent any corporation from adopting and filing amended articles of acceptance that make the articles conform to this subdivision. Amended articles of acceptance shall be filed and recorded in the same manner as required for original articles of acceptance.

(b) The resolution of the board of directors approving the articles of acceptance must direct that the articles be submitted to a vote of those members of the corporation who are entitled to vote in respect to the articles, at a designated meeting, which may be an annual meeting of members or a special meeting of those members who are entitled to vote. If the designated meeting is an annual meeting, notice of the submission of the articles of acceptance shall be included in the notice of the annual meeting. If it is a special meeting, it shall be called by the resolution designating the meeting and notice shall be given at the time and in the manner provided in IC 23-17-10.

(c) The articles of acceptance approved by the board of directors

shall be submitted to a vote of the members as provided in subsection (b). To be adopted, they must receive the affirmative votes of two-thirds (2/3) of the members entitled to vote.

(d) Upon approval and adoption, the articles of acceptance:

(1) shall be signed in duplicate, in the form prescribed by the secretary of state, by any current officer of the corporation and verified and affirmed subject to penalties for perjury; and

(2) shall be presented in duplicate to the secretary of state at his office, accompanied by those fees prescribed by law.

As added by P.L.239-1983, SEC.1. Amended by P.L.179-1991, SEC.27.

IC 23-1.5-4-6

Articles of acceptance; approval by secretary of state

Sec. 6. Upon the presentation of the articles of acceptance, the secretary of state, if he finds they conform to the requirements of section 5 of this chapter, shall endorse his approval upon both of the copies of the articles, and, when all fees have been paid as required by law, shall:

(1) file one (1) copy of the articles in his office;

(2) issue a certificate of acceptance; and

(3) return to the corporation the remaining copy of the articles of acceptance, bearing the endorsement of his approval, together with the certificate of acceptance.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-4-7

Certificate of acceptance; issuance

Sec. 7. The acceptance becomes effective upon issuance of a certificate of acceptance by the secretary of state. The corporation is entitled to all rights and privileges and is subject to all penalties, liabilities, and restrictions provided by this article granted to or imposed upon corporations organized under this article. The articles of incorporation shall be considered to be amended to the extent, if any, that any provision or provisions of the articles are restated in the articles of acceptance.

As added by P.L.239-1983, SEC.1.

IC 23-1.5-5

Chapter 5. Foreign Professional Corporations

IC 23-1.5-5-1

Necessity of compliance; application of IC 23-1-50

Sec. 1. A foreign professional corporation desiring to be admitted to render professional services in Indiana must:

(1) comply with IC 23-1-49; and

(2) comply with this article.

IC 23-1-50 applies to the foreign professional corporation.

As added by P.L.239-1983, SEC.1. Amended by P.L.11-1987, SEC.26.

IC 23-1.5-5-2

Revocation of certificate of admission

Sec. 2. The certificate of admission of any foreign corporation admitted to render professional services in Indiana may be revoked at any time by the secretary of state:

(1) as provided by IC 23-1-51; or

(2) for failure to comply with this article.

As added by P.L.239-1983, SEC.1. Amended by P.L.34-1987, SEC.279.

IC 23-2

ARTICLE 2. SECURITIES AND FRANCHISES

IC 23-2-1

Repealed

(Repealed by P.L.27-2007, SEC.37.)

IC 23-2-2
Repealed

(Repealed by Acts 1975, P.L.261, SEC.17.)

IC 23-2-2.5
Chapter 2.5. Franchises

IC 23-2-2.5-1
Definitions

Sec. 1. As used in this chapter:

(a) "Franchise" means a contract by which:

(1) a franchisee is granted the right to engage in the business of dispensing goods or services, under a marketing plan or system prescribed in substantial part by a franchisor;

(2) the operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(3) the person granted the right to engage in this business is required to pay a franchise fee.

"Franchise" includes a contract whereby the franchisee is granted the right to sell franchises on behalf of the franchisor. The term as defined in subdivisions (1), (2), and (3) does not include a contract where the franchisee, or any of its officers or directors at the time the contract is signed, has been in the type of business represented by the franchise or a similar business for at least two (2) years, and the parties to the contract anticipated, or should have anticipated, at the time the contract was entered into that the franchisee's gross sales derived from the franchised business during the first year of operations would not exceed twenty percent (20%) of the gross sales of all the franchisee's business operations.

(b) "Franchisee" means a person to whom a franchise is granted.

(c) "Franchisor" means a person who grants a franchise.

(d) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.

(e) "State" includes a territory or possession of the United States, the District of Columbia, and Puerto Rico.

(f) "Fraud" and "deceit" includes any misrepresentation in any manner of a material fact, any promise or representation or prediction as to the future not made honestly or in good faith, or the failure or omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

(g) "Offer" or "offer to sell" does not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

(h) "Publish" means to issue or circulate by newspaper, mail, radio, or television, or otherwise disseminate to the public.

(i) "Franchise fee" means any fee that a franchisee is required to pay directly or indirectly for the right to conduct a business to sell, resell, or distribute goods, services, or franchises under a contract agreement, including, but not limited to, any such payment for goods

or services. "Franchise fee" does not include:

(1) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card;

(2) amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of goods or services; or

(3) the purchase or agreement to purchase goods at a bona fide wholesale price.

(j) "Disclosure statement" means the document provided for in section 13 of this chapter and all amendments to such document.

(k) "Write" or "written" includes printed, lithographed, or produced by any other means of graphic communication.

(l) "Advertisement" means any published communication which offers any franchise for sale.

(m) "Affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with, the person to whom affiliation is attributed.

(n) "Commissioner" means the Indiana securities commissioner under IC 23-19-6-1(a).

(o) "Service station franchisee" means a person who is granted by an oil company, refiner, jobber, or other franchisor a supply franchise agreement or a lease franchise agreement, or both, to sell gasoline at retail by a metered pump in Indiana.

(p) "Designated family member" means any person named in a franchise agreement by a service station franchisee as the person entitled to fulfill the terms of the agreement on behalf of the franchisee if the franchisee dies before the term of the franchise has ended. Only the following are eligible to be named as designated family members:

(1) The spouse of the franchisee.

(2) A natural or adopted child of the franchisee.

(3) A stepchild of the franchisee.

(4) The guardian of the franchisee's child or stepchild.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.241-1983, SEC.1; P.L.206-1993, SEC.1; P.L.27-2007, SEC.10.

IC 23-2-2.5-2

Application of chapter

Sec. 2. This chapter applies to an offer or franchise if:

(a) the offeree or franchisee is an Indiana resident; or

(b) the franchised business contemplated by the offer or franchise will be or is operated in Indiana.

An offer to sell is not made in this state because the franchisor circulates or there is circulated on his behalf in Indiana an advertisement in: (1) a bona fide newspaper or other publication of general, regular and paid circulation which has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months; or (2) a radio or television program originating

outside this state which is received in Indiana.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-3
Exempt franchisors

Sec. 3. Sections 9 through 25 of this chapter do not apply to the offer or sale of a franchise if the franchisor either sells no more than one (1) franchise in any twenty-four (24) month period or the franchisor:

(a) has a net worth:

(1) on a consolidated basis according to current financial statements certified by independent certified public accountants, of not less than five million dollars ($5,000,000); or

(2) according to current financial statements certified by independent certified public accountants of not less than one million dollars ($1,000,000) and is at least eighty percent (80%) owned by a corporation which has a net worth on a consolidated basis, according to current financial statements certified by independent certified public accountants, of not less than five million dollars ($5,000,000);

(b) has:

(1) had at least twenty-five (25) franchisees conducting business at all times during the five (5) year period immediately preceding the offer or sale; or

(2) conducted the business which is the subject of the franchise continuously for not less than five (5) years preceding the offer or sale;

or if any corporation which owns at least eighty percent (80%) of the franchisor has had at least twenty-five (25) franchisees conducting business at all times during the five (5) year period immediately preceding the offer or sale, or such corporation has conducted the business which is the subject of the franchise continuously for not less than five (5) years preceding the offer or sale; and

(c) discloses in writing to each prospective franchisee, at least ten (10) days prior to the execution by the prospective franchisee of a binding franchise or other agreement, or at least ten (10) days prior to the receipt of any consideration, whichever first occurs, the following information:

(1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any affiliate that will engage in business transactions with franchisees.

(2) The franchisor's principal business address and the name and address of its agent in Indiana authorized to receive service of process.

(3) The business form of the franchisor and the jurisdiction under which it was organized.

(4) The business experience of the franchisor, including the

length of time the franchisor:

(i) has conducted a business of the type to be operated by the franchisee;

(ii) has granted franchises for that business; and

(iii) has granted franchises in other lines of business.

(5) A copy of the franchise contract proposed for use or in use in Indiana.

(6) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.

(7) A statement describing any payments other than franchise fees that the franchisee is required to pay to the franchisor or affiliated persons, including royalties or payments which the franchisor or affiliated persons collect in whole or in part on behalf of a third party or parties.

(8) A statement of the conditions under which the franchise may be terminated, renewal refused, or repurchased.

(9) A statement as to whether the franchisee is required to purchase from the franchisor or affiliates or their designee services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchised business, together with a description thereof.

(10) A statement as to whether the franchisee is limited in the goods or services offered by him to his customers.

(11) A statement of the terms and conditions of any financing agreements.

(12) A statement of any past or present practice or of any intent of the franchisor to transfer to a third party any note, contract, or other obligation of the franchisee in whole or in part.

(13) If any financial statement concerning estimated profits or earnings is used, the data upon which the estimate is based.

(14) A statement as to whether the franchisee will receive an exclusive area or territory.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.1.

IC 23-2-2.5-4
Exempt franchisees

Sec. 4. The offer of sale of a franchise by a franchisee who is not an affiliate of the franchisor for his own account is exempt from section 9 if the offer or sale is not effected by or through a franchisor. A sale is not effected by or through a franchisor if a franchisor is entitled to approve or disapprove a different franchisee.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-5
Sales exempted by commissioner

Sec. 5. Section 9 does not apply to an offer or sale which the commissioner, by rule or order, exempts as not being comprehended within the purposes of this law and the registration of which he finds is not necessary or appropriate in the public interest or for the protection of investors.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-6
Denial or revocation of exemptions; grounds

Sec. 6. The commissioner may, without a hearing, issue a stop order denying or revoking any exemption specified in sections 3, 4, or 5 with respect to an offer or sale if he finds that it is in the public interest and either:

(a) that there has been a failure to comply with any of the provisions of this chapter; or

(b) that the offer or sale would constitute misrepresentation to, or deceit or fraud on, the purchaser or offeree.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-7
Notice of denial or revocation of exemptions; hearing

Sec. 7. (a) Upon the entry of a stop order under section 6 of this chapter, the commissioner shall notify the franchisor:

(1) of the entry of the stop order;

(2) of the reasons for the stop order; and

(3) that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the franchisor consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the stop order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the stop order.
(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.1.

IC 23-2-2.5-8
Determination of exemption; request; fee; notice; hearing; order

Sec. 8. The commissioner may determine whether any proposed offer or sale is entitled to an exemption. However, the commissioner may decline to exercise that authority as to any such offer or sale. Any interested party desiring the commissioner to exercise that authority shall submit to the commissioner a verified statement of all material facts relating to the proposed offer or sale, which verified statement shall be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of fifty dollars ($50.00). After such notice to interested parties as the commissioner deems proper and after a hearing, if any, the commissioner may enter an order finding the proposed offer or sale

entitled or not entitled to the exemption claimed. Any order so entered, unless an appeal be taken therefrom in the manner prescribed in this chapter is binding upon the commissioner and upon all interested parties if the proposed offer or sale of a franchise when consummated or issued conforms in every relevant and material particular with the facts set forth in the verified statement submitted. *(Formerly: Acts 1975, P.L.262, SEC.1.)*

IC 23-2-2.5-9
Offer or sale of franchise; requisites; disclosure statement

Sec. 9. No person may offer or sell any franchise:

(1) unless the franchise is registered under this chapter or is exempt from such registration under sections 3 through 5 of this chapter; and

(2) without first providing to the prospective franchisee at least ten (10) days prior to the execution by the prospective franchisee of a binding franchise or at least ten (10) days prior to the receipt by the franchisor of any consideration, whichever first occurs, a disclosure statement together with a copy of all proposed contracts relating to the sale of a franchise.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.2.

IC 23-2-2.5-10
Repealed

(Repealed by P.L.168-2001, SEC.16.)

IC 23-2-2.5-10.5
Registration of franchise; notification form

Sec. 10.5. (a) A person who wants to offer for sale a franchise in Indiana and who is not exempt under sections 3 through 5 of this chapter shall register the franchise by notification to the commissioner on a notification form prescribed by the commissioner. The notification shall include the following:

(1) The name of the franchisor.

(2) The name or names under which the franchisor intends to do business.

(3) The franchisor's principal business address.

(b) The following items shall be filed with the notification:

(1) One (1) copy of the disclosure statement required under section 13 of this chapter.

(2) The consent to service of process required under section 24 of this chapter, unless consent has previously been filed by the person.

(3) The registration fee required under section 43 of this chapter.

(c) A franchisor may register only one (1) franchise for each notification.

(d) The registration of a franchise under this section is effective upon the commissioner's receipt of the notification. The notification

is effective for one (1) year from the date of the commissioner's receipt of the notification.

(e) During the one (1) year registration period, a person is not required to file with the commissioner any supplemental information, including any amendments to the disclosure statement, unless the commissioner, acting under the commissioner's authority to suspend or revoke a registration under section 14 of this chapter, requests the information.

As added by P.L.168-2001, SEC.2.

IC 23-2-2.5-11

Signatures and verifications

Sec. 11. Registration notification forms, registration renewal forms, and amendments thereto, shall be signed and verified by the franchisor.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.3.

IC 23-2-2.5-12

Escrow or impoundment of franchise fees; inadequate funding

Sec. 12. If the commissioner finds that:

(1) the franchisor has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering; and

(2) the escrow or impoundment of franchise fees is necessary and appropriate to protect prospective franchisees;

the commissioner may by order require the escrow or impoundment of franchise fees and other funds paid by the franchisee until no later than the time of opening of the business of the franchisee.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.4.

IC 23-2-2.5-13

Disclosure statements

Sec. 13. A registration notification form filed under section 10.5 of this chapter shall be accompanied by the fee prescribed in section 43 of this chapter and by one (1) copy of a disclosure statement. The disclosure statement shall be in a form prescribed by the commissioner or in a form permitted under 16 CFR 436, as amended.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.5.

IC 23-2-2.5-14

Stop orders; descriptions of charges

Sec. 14. (a) The commissioner may, without a hearing, issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of a registration if the commissioner finds that the issuance of the order is in the public interest and also finds that:

(1) there has been a failure to comply with this chapter or the

rules or orders of the commissioner pertaining to this chapter;

(2) the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud on, the purchasers or offerees;

(3) the franchisor has failed to comply with any rule promulgated or order issued pursuant to section 12 of this chapter; or

(4) the franchisor, or the franchisor's predecessor, or any of the franchisor's directors, trustees, general partners, chief executives, financial officers, accounting officers, franchise sales officers, or other principal officers, or, if the franchisor is a limited liability company, any member or manager of the franchisor:

(A) during the ten (10) year period immediately preceding the date of registration, has:

(i) been convicted of a felony;

(ii) pleaded nolo contendere to a felony charge; or

(iii) been held liable in a civil action by final judgment;

if the felony or civil action involved fraud, embezzlement, misappropriation of property, or the violation of any state or federal statute involving the offer or sale of securities or franchises;

(B) is subject to any currently effective order affecting the franchise resulting from a proceeding or pending action brought by any individual or public agency or department;

(C) is a defendant in any pending criminal or material civil proceeding;

(D) during the ten (10) year period immediately preceding the date of registration, has been the defendant against whom a final judgment was entered in any material civil action; or

(E) is the franchisor or a principal executive officer or general partner of the franchisor and has, during the ten (10) year period immediately preceding the date of registration, reorganized due to insolvency or been adjudicated as a bankrupt.

(b) An order issued under this section based on a finding by the commissioner under subsection (a)(4)(A) must include a description of the charge, violation, or judgment referred to in subsection (a)(4)(A). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(B) must include a copy of the order referred to in subsection (a)(4)(B). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(D) must include a description of the judgment referred to in subsection (a)(4)(D). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(E) must include a description of the insolvency or adjudication referred to in subsection (a)(4)(E).

(c) Before issuing a stop order under subsection (a)(4), such an order must be based on a finding by the commissioner that involvement of a person referred to in subsection (a)(4) creates an

unreasonable risk to prospective franchisees.
(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.6; P.L.30-2002, SEC.1; P.L.1-2003, SEC.73.

IC 23-2-2.5-15
Notice of stop order

Sec. 15. (a) Upon the entry of a stop order under section 14 of this chapter, the commissioner shall notify the franchisor:

(1) of the entry of the stop order;
(2) of the reasons for the stop order; and
(3) that, upon receipt of a written request, the matter will be set down for hearing to commence within fifteen (15) days after receipt of such request, unless the franchisor consents to a later date.

(b) If no hearing is requested or none is ordered by the commissioner, the stop order is effective until it is modified or vacated by the commissioner.

(c) If a hearing is requested or ordered, the commissioner, after notice and hearing, may modify or vacate the stop order.
(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.7.

IC 23-2-2.5-16
Stop orders; vacating or modifying

Sec. 16. The commissioner may vacate or modify a stop order if he finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-17
Effectiveness of registration

Sec. 17. If no stop order under section 14 of this chapter is in effect, registration by notification takes effect upon the commissioner's receipt of the notification form. A registration by notification is effective for a period of one (1) year.
(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.8.

IC 23-2-2.5-18
Renewal of registration; period

Sec. 18. A registration by notification may be renewed by submitting to the commissioner a registration renewal form not later than the date the registration is due to expire. If no stop order or other order under section 14 of this chapter is in effect, registration of the offer is renewed at the time the registration would have expired. A renewal is effective for a period of one (1) year unless the commissioner specified a shorter period.
(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.9; P.L.48-2006, SEC.6.

IC 23-2-2.5-19
Renewal forms

Sec. 19. A registration renewal form shall be in the form and contain the content prescribed by the commissioner and shall be accompanied by one (1) copy of the proposed disclosure statement. Each such registration renewal form shall be accompanied by the fee prescribed in section 43 of this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.10.

IC 23-2-2.5-20
Repealed

(Repealed by P.L.30-2002, SEC.3.)

IC 23-2-2.5-21
Records of sales

Sec. 21. Every franchisor offering franchises for sale shall maintain a complete set of books, records, and accounts of those sales.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-22
Experts

Sec. 22. The commissioner may accept and act upon the opinions, appraisals, or reports of any experts which may be presented by a franchisor or any interested party, on any question of fact concerning the franchises proposed to be offered or sold. The commissioner may also have any or all matters concerning those franchises investigated, appraised, passed upon or certified to the commissioner by any experts selected by the commissioner, at the expense of the franchisor.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.11.

IC 23-2-2.5-23
Registration or filing not considered finding upon merits

Sec. 23. (a) Neither:

(1) the fact that a registration renewal form has been filed or a registration notification form has been submitted to the commissioner under section 10.5 of this chapter; nor

(2) the fact that such registration has become effective;

constitutes a finding by the commissioner that any document filed under this chapter is true, complete, or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, franchise or transaction.

(b) A person may not make or cause to be made to any prospective purchaser or offeree any representation inconsistent with subsection (a).

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.12.

IC 23-2-2.5-24
Consent to service of process on secretary of state

Sec. 24. Before a person may offer to sell franchises under this chapter, the person shall file with the commissioner, in the form that the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state or any successor secretary of state to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator that arises under this chapter or any rule or order under this chapter after the consent has been filed with the same force as if served personally on the person filing the consent. A person who has filed a consent with the commissioner for a previous registration or exemption under this chapter is not required to file another consent. The person's previous consent shall remain effective for all subsequent registrations or exemptions filed by the person under this chapter. Service shall be made in accordance with the Indiana Rules of Civil Procedure.
(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.1-1991, SEC.159; P.L.168-2001, SEC.13.

IC 23-2-2.5-25
Repealed

(Repealed by P.L.30-2002, SEC.3.)

IC 23-2-2.5-26
Advertisements containing false statements; notification; hearing

Sec. 26. No person shall publish or cause to be published any advertisement concerning any franchise in Indiana after the commissioner finds that the advertisement contains any statement that is false, is misleading or omits to make any statement necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and so notifies the person in writing. Such notification may be given without notice of hearing. At any time after the issuance of a notification under this section, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such written request, the matter shall be set down for hearing to commence within fifteen (15) days after receipt of the request unless the person making that request consents to a later date.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-27
Fraud or deceit unlawful

Sec. 27. It is unlawful for any person in connection with the offer, sale or purchase of any franchise, or in any filing made with the commissioner, directly or indirectly: (1) to employ any device, scheme or artifice to defraud; (2) to make any untrue statements of a

material fact or to omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading; or (3) to engage in any act which operates or would operate as a fraud or deceit upon any person.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-28
Violations; judgment; damages; interest; attorney's fees

Sec. 28. A person who recovers judgment for a violation of this chapter may recover, as part of that judgment: (1) any consequential damages; (2) interest at eight percent (8%) on the judgment; and (3) reasonable attorney's fees; unless the defendant proves that the plaintiff knew the facts concerning the violation, or that the defendant exercised reasonable care and did not know, or, if he had exercised reasonable care, would not have known, of the facts concerning the violation.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-29
Aiders and abettors in violations; joint and several liability

Sec. 29. Every person who materially aids or abets in an act or transaction constituting a violation of this chapter is also liable jointly and severally to the same extent as the person whom he aided and abetted, unless the person who aided and abetted had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-30
Limitation of actions

Sec. 30. A person may not maintain an action to enforce any liability created under this chapter unless brought before the expiration of three (3) years after discovery by the plaintiff of the facts constituting the violation.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-31
Survival of actions

Sec. 31. Every civil action under this chapter survives the death of any person who might have been a plaintiff or defendant.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-32
Remedies

Sec. 32. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion bring an action in the appropriate circuit or superior court to enjoin the acts or practices, to enforce compliance with this chapter, or to obtain any other appropriate

remedy. Upon proper showing, a permanent or preliminary injunction, restraining order, declaratory judgment or other appropriate remedy shall be granted and, in addition to and independent of any other remedy granted herein, a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-33
Investigations; proceedings; powers; self-incrimination

Sec. 33. (a) The commissioner may in his discretion make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter.

(b) For the purpose of any investigation or proceeding under this chapter, the commissioner or his representative may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems material to the inquiry.

(c) Upon order of the commissioner or his representative in any hearing, depositions may be taken of any witness, to be taken in the manner prescribed by law for depositions in civil actions, and made returnable to the commissioner or his representative.

(d) In case of failure by any person to obey a subpoena, the circuit or superior court, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or his representative, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation.

(e) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner, or his representative, or in any proceeding instituted by the commissioner, on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence documentary or otherwise.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-34
Violations; orders and notices; hearing; costs; civil penalties; enforcement action

Sec. 34. (a) If it appears to the commissioner that:

(1) the offer of any franchise is subject to registration under this chapter and it is being, or it has been, offered for sale without such offer first being registered; or

(2) a person has engaged in or is about to engage in an act, a practice, or a course of business constituting a violation of this chapter or a rule or an order under this chapter;

the commissioner may investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and an opportunity for hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter. In addition to all other remedies, the commissioner may bring an action in the name of and on behalf of the state against any person participating in or about to participate in a violation of this chapter, to enjoin the person from continuing or doing an act furthering a violation of this chapter and may obtain the appointment of a receiver or conservator. Upon a proper showing by the commissioner, the court shall enter an order of the commissioner directing rescission, restitution, or disgorgement against a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or a notice by the commissioner under subsection (a), the commissioner shall promptly notify the respondent of the following:

(1) That the order or notice has been issued.

(2) The reasons the order or notice has been issued.

(3) That upon the receipt of a written request the matter will be set for a hearing to commence not later than forty-five (45) business days after the commissioner receives the request, unless the respondent consents to a later date.

If the respondent does not request a hearing and the commissioner does not order a hearing, the order or notice will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of the hearing, may modify or vacate the order or extend it until final determination.

(c) In a final order, the commissioner may charge the costs of an investigation or a proceeding conducted in connection with a violation of:

(1) this chapter; or

(2) a rule or an order adopted or issued under this chapter;

to be paid as directed by the commissioner in the order.

(d) In a proceeding in a circuit or superior court under this section, the commissioner is entitled to recover all costs and expenses of investigation to which the commissioner would be entitled in an administrative proceeding, and the court shall include the costs in its final judgment.

(e) If the commissioner determines, after notice and opportunity for a hearing, that a person has violated this chapter, the commissioner may, in addition to or instead of all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars ($10,000) for each violation. An appeal from the

decision of the commissioner imposing a civil penalty under this subsection may be taken by an aggrieved party under section 44 of this chapter.

(f) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (e).

(g) Penalties collected under this section shall be deposited in the securities division enforcement account established under IC 23-19-6-1(f).

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.230-2007, SEC.5; P.L.1-2009, SEC.129.

IC 23-2-2.5-35

Offer of franchise exempt from registration without compliance with IC 23-2-2.5-3 and IC 23-2-2.5-27; cease and desist order; hearing

Sec. 35. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with sections 3 and 27, the commissioner may order the franchisor or offeror of such franchise to cease and desist from the further offer or sale of such franchise unless and until such offer is made in compliance with this chapter. If, after such an order has been made, a request for a hearing is filed in writing by the person affected, a hearing shall be held to commence within fifteen (15) days after the request is made, unless the person affected consents to a later date.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-36

Prosecution of violations

Sec. 36. The commissioner may refer such evidence as is available concerning any violation of this chapter to the prosecuting attorney of the county in which the violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings under this chapter. If evidence concerning violations of this chapter is referred to a prosecuting attorney, he shall within ninety (90) days file with the commissioner a written statement concerning any action taken or, if no action has been taken, the reasons therefor.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-37

Violations; felony

Sec. 37. A person who knowingly violates this chapter commits a Level 5 felony.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by Acts 1978, P.L.2, SEC.2307; P.L.158-2013, SEC.262.

IC 23-2-2.5-38

Conduct equivalent to appointment of secretary of state for service of process

Sec. 38. When any person engages in conduct prohibited by this chapter, whether or not he has filed a consent to service of process under section 24 and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the secretary of state or his successor in office to be his attorney to receive service of any lawful process in any civil action or proceeding against him or his successor or personal representative which grows out of that conduct and which is brought under this chapter, with the same force and validity as if served on him personally. Service shall be made in accordance with the Indiana Rules of Civil Procedure.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-39
Exemption or classification; burden of proof
Sec. 39. The burden of proof of the entitlement to any exemption or classification provided in this chapter, in any civil or criminal proceeding is on the party claiming the exemption or classification.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-40
Certificate of commissioner as evidence
Sec. 40. In any civil or criminal proceeding under this chapter a certificate duly signed by the commissioner showing compliance or noncompliance with this chapter respecting the franchise in question or respecting compliance or noncompliance with this chapter by any person constitutes prima facie evidence of such compliance or such noncompliance and is admissible in evidence in any such proceeding.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-41
Statements and documents filed with secretary of state as evidence
Sec. 41. Copies of any statements and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner are admissible in any civil or criminal proceeding under this chapter to the same effect as the original of such statement, document or record would be if actually produced.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-42
Administration of chapter
Sec. 42. This chapter shall be administered by the office of the secretary of state of Indiana through the commissioner.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-43
Fees and funds; accounting; deposit; expenses
Sec. 43. (a) All fees and funds of whatever character accruing from the administration of this chapter shall be:

(1) accounted for by the secretary of state;
(2) paid into the state treasury monthly; and
(3) placed in the same account of the state general fund as established by IC 23-19-6-1(f), from which all compensation and expenses shall be paid for the administration of this chapter.

(b) The fee for filing a form for registration by notification of the sale of franchises under section 10.5 of this chapter is five hundred dollars ($500).

(c) The fee for filing a registration renewal form under section 18 of this chapter is two hundred fifty dollars ($250).

(d) When a registration notification form or registration renewal form is denied or withdrawn, the commissioner shall retain one hundred fifty dollars ($150) of the fee.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.233-1985, SEC.4; P.L.168-2001, SEC.14; P.L.30-2002, SEC.2; P.L.27-2007, SEC.11.

IC 23-2-2.5-44
Appeal

Sec. 44. An appeal may be taken by any person from any final order of the commissioner affecting such person in the same manner as prescribed in IC 23-19-6-9.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.27-2007, SEC.12.

IC 23-2-2.5-45
Assistance of attorney general; expenses

Sec. 45. In connection with the administration and enforcement of the provisions of this chapter, it is hereby made the duty of the attorney general of Indiana to render all necessary assistance to the commissioner upon his request, and to that end the attorney general shall employ such legal and such other professional services as shall be necessary to adequately and fully perform such service under the direction of the commissioner as the demands of the securities division shall require, and any expenses so incurred by the attorney general for the purposes aforesaid shall be chargeable against and paid out of the securities division fund and if such fund is insufficient for the payment of such expenses and any expenses of the securities division incident to the administration of this chapter, then a sufficient sum of money for the payment of any such deficiency is hereby appropriated annually out of any money received by the secretary of state as fees for the incorporation and for the filing of the annual reports of corporations.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-46
Liability for performance of official duties

Sec. 46. Neither the secretary of state nor the commissioner, nor any employee of the securities division shall be liable in their individual capacity, except to the state of Indiana, for any act done or

omitted in connection with the performance of their respective duties under the provisions of this chapter.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-47
Construction and purpose of chapter

Sec. 47. All provisions of this chapter delegating and granting power to the secretary of state, the securities division and the commissioner shall be liberally construed to the end that the practice or commission of fraud may be prohibited and prevented, disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured, in connection with the issuance, barter, sale, purchase, transfer or disposition of franchises in this state. It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division and the commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for the effective administration thereof.
(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-48
Public records; inspection; disclosure or use of information restricted; copies; destruction

Sec. 48. (a) All registration notification forms, registration renewal forms, applications to amend registrations, reports, and other papers and documents filed with the commissioner under this chapter shall be open to public inspection. The commissioner may publish any information filed with or obtained by the commissioner. No provision of this chapter authorizes the commissioner or any of the commissioner's assistants, clerks, or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter or to other federal or state regulatory agencies. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of the commissioner's assistants, clerks, or deputies.

(b) It is unlawful for the commissioner or any of the commissioner's assistants, clerks, or deputies to use for personal benefit any information which is filed with or obtained by the commissioner and which is not then generally available to the public.

(c) Upon request, and at such reasonable charges as the commissioner prescribes by rule, the commissioner shall furnish to any person photostatic or other copies (certified by the commissioner if certification is requested) of any document which is retained as a matter of public record, except that the commissioner shall not charge or collect any fee for photostatic or other copies of any document furnished to public officers for use in their official capacity.

(d) The commissioner may destroy any registration notification forms, together with the files and folders, as useless or obsolete, four (4) years after the date of registration; provided that a permanent record shall be maintained of any disciplinary action taken by the commissioner and of all orders issued under this chapter.

(e) Copies on microfilm or in other form which may be retained by the commissioner of any records destroyed under this section shall be accepted for all purposes as equivalent to the original when certified by the commissioner.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.168-2001, SEC.15.

IC 23-2-2.5-49

Construction with other laws

Sec. 49. Nothing in this chapter shall be construed to relieve corporations or other business organizations from making reports now or hereafter required by law to be made to the secretary of state, or any other state officer, or paying the fees now or hereafter to be paid by corporations or other business organizations. This chapter shall not be construed to repeal any law now in force regulating the organization of corporations or other business organizations in Indiana, or the admission of any foreign corporation but the provisions of this chapter shall be construed to be additional to any provisions regulating the organization of a corporation or other business organization under the laws of Indiana, or the admission of a foreign corporation to do business in Indiana.

(Formerly: Acts 1975, P.L.262, SEC.1.)

IC 23-2-2.5-50

Administrative orders and procedures

Sec. 50. IC 4-21.5 does not apply to proceedings under this chapter.

(Formerly: Acts 1975, P.L.262, SEC.1.) As amended by P.L.7-1987, SEC.103.

IC 23-2-2.5-51

Service stations; succession to ownership by family member of deceased franchisee

Sec. 51. (a) Any designated family member of a deceased service station franchisee may succeed to the ownership of the existing agreement if all of the following conditions are met:

(1) The designated family member gives the service station franchisor written notice of the intention to succeed to the service station agreement within thirty (30) days of the service station franchisee's death.

(2) The designated family member agrees to be bound by all terms and conditions of the existing owner's franchise agreement.

(3) There is no good cause for the service station franchisor to refuse to honor the succession.

For purposes of this subsection, the grounds for termination or nonrenewal of a franchise set out in the federal Petroleum Marketing Practices Act (15 U.S.C. 2801 et seq.) constitute good cause. Notification of the refusal must be submitted to the designated family member in writing within sixty (60) days after the date of the service station franchisee's death, and must specify the reasons for the refusal. The form of the written notice required under this subsection shall be prescribed in the terms of the agreement.

(b) This section does not apply to agreements between franchisors and service station franchisees entered into or renewed before July 1, 1983.

As added by P.L.241-1983, SEC.2.

IC 23-2-2.7

Chapter 2.7. Deceptive Franchise Practices

IC 23-2-2.7-1

Franchise agreement; unlawful provisions

Sec. 1. It is unlawful for any franchise agreement entered into between any franchisor and a franchisee who is either a resident of Indiana or a nonresident who will be operating a franchise in Indiana to contain any of the following provisions:

(1) Requiring goods, supplies, inventories, or services to be purchased exclusively from the franchisor or sources designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor. However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or service or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor does not constitute designation of a source nor does a reasonable right of the franchisor to disapprove a supplier constitute a designation. This subdivision does not apply to the principal goods, supplies, inventories, or services manufactured or trademarked by the franchisor.

(2) Allowing the franchisor to establish a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement; or, if no exclusive territory is designated, permitting the franchisor to compete unfairly with the franchisee within a reasonable area.

(3) Allowing substantial modification of the franchise agreement by the franchisor without the consent in writing of the franchisee.

(4) Allowing the franchisor to obtain money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchisee and the other person, other than for compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

(5) Requiring the franchisee to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability to be imposed by this chapter or requiring any controversy between the franchisee and the franchisor to be referred to any person, if referral would be binding on the franchisee. This subdivision does not apply to arbitration before an independent arbitrator.

(6) Allowing for an increase in prices of goods provided by the franchisor which the franchisee had ordered for private retail consumers prior to the franchisee's receipt of an official price increase notification. A sales contract signed by a private retail

consumer shall constitute evidence of each order. Price changes applicable to new models of a product at the time of introduction of such new models shall not be considered a price increase. Price increases caused by conformity to a state or federal law, or the revaluation of the United States dollar in the case of foreign-made goods, are not subject to this subdivision.

(7) Permitting unilateral termination of the franchise if such termination is without good cause or in bad faith. Good cause within the meaning of this subdivision includes any material violation of the franchise agreement.

(8) Permitting the franchisor to fail to renew a franchise without good cause or in bad faith. This chapter shall not prohibit a franchise agreement from providing that the agreement is not renewable upon expiration or that the agreement is renewable if the franchisee meets certain conditions specified in the agreement.

(9) Requiring a franchisee to covenant not to compete with the franchisor for a period longer than three (3) years or in an area greater than the exclusive area granted by the franchise agreement or, in absence of such a provision in the agreement, an area of reasonable size, upon termination of or failure to renew the franchise.

(10) Limiting litigation brought for breach of the agreement in any manner whatsoever.

(11) Requiring the franchisee to participate in any:

(A) advertising campaign or contest;

(B) promotional campaign;

(C) promotional materials; or

(D) display decorations or materials;

at an expense to the franchisee that is indeterminate, determined by a third party, or determined by a formula, unless the franchise agreement specifies the maximum percentage of gross monthly sales or the maximum absolute sum that the franchisee may be required to pay.

As added by Acts 1976, P.L.116, SEC.1. Amended by P.L.233-1985, SEC.5; P.L.11-1987, SEC.27.

IC 23-2-2.7-2

Franchise agreement; unlawful acts and practices

Sec. 2. It is unlawful for any franchisor who has entered into any franchise agreement with a franchisee who is either a resident of Indiana or a nonresident operating a franchise in Indiana to engage in any of the following acts and practices in relation to the agreement:

(1) Coercing the franchisee to:

(i) order or accept delivery of any goods, supplies, inventories, or services which are neither necessary to the operation of the franchise, required by the franchise agreement, required by law, nor voluntarily ordered by the franchisee;

(ii) order or accept delivery of any goods offered for sale by

the franchisee which includes modifications or accessories which are not included in the base price of those goods as publicly advertised by the franchisor;

(iii) participate in an advertising campaign or contest, any promotional campaign, promotional materials, display decorations, or materials at an expense to the franchisee over and above the maximum percentage of gross monthly sales or the maximum absolute sum required to be spent by the franchisee provided for in the franchise agreement; in the absence of such provision for required advertising expenditures in the franchise agreement, no such participation may be required; or

(iv) enter into any agreement with the franchisor or any designee of the franchisor, or do any other act prejudicial to the franchisee, by threatening to cancel or fail to renew any agreement between the franchisee and the franchisor. Notice in good faith to any franchisee of the franchisee's violation of the terms or provisions of a franchise or agreement does not constitute a violation of this subdivision.

(2) Refusing or failing to deliver in reasonable quantities and within a reasonable time after receipt of an order from a franchisee for any goods, supplies, inventories, or services which the franchisor has agreed to supply to the franchisee, unless the failure is caused by acts or causes beyond the control of the franchisor.

(3) Denying the surviving spouse, heirs, or estate of a deceased franchisee the opportunity to participate in the ownership of the franchise under a valid franchise agreement for a reasonable time after the death of the franchisee, provided that the surviving spouse, heirs, or estate maintains all standards and obligations of the franchise.

(4) Establishing a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable area. However, a franchisor shall not be considered to be competing when operating a business either temporarily for a reasonable period of time, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire full ownership of such business on reasonable terms and conditions.

(5) Discriminating unfairly among its franchisees or unreasonably failing or refusing to comply with any terms of a franchise agreement.

(6) Obtaining money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the

franchisee and the other person, other than compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

(7) Increasing prices of goods provided by the franchisor which the franchisee had ordered for retail consumers prior to the franchisee's receipt of a written official price increase notification. Price increases caused by conformity to a state or federal law, the revaluation of the United States dollar in the case of foreign-made goods or pursuant to the franchise agreement are not subject to this subdivision.

(8) Using deceptive advertising or engaging in deceptive acts in connection with the franchise or the franchisor's business.

As added by Acts 1976, P.L.116, SEC.1. Amended by P.L.233-1985, SEC.6.

IC 23-2-2.7-3
Termination or election not to renew franchise; notice

Sec. 3. Unless otherwise provided in the agreement, any termination of a franchise or election not to renew a franchise must be made on at least ninety (90) day's notice.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-4
Action to recover damages or reform franchise agreement

Sec. 4. Any franchisee who is a party to a franchise agreement entered into or renewed after July 1, 1976 which contains any provision set forth in Section 1 of this chapter or who is injured by an unfair act or practice set forth in Section 2 of this chapter may bring an action to recover damages, or reform the franchise agreement.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-5
Franchise defined

Sec. 5. For the purposes of this chapter, franchise means any franchise as defined in IC 23-2-2.5-1, clauses (a) (1) (2) and (3), and any agreement meeting the provisions of IC 23-2-2.5-1, clauses (a) (1) and (2) which relates to the business of selling automobiles and/or trucks and the business of selling gasoline and/or oil primarily for use in vehicles with or without the sale of accessory items.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-6
Application of chapter

Sec. 6. The provisions of this chapter apply only to agreements entered into or renewed, or act or practice occurring after July 1, 1976.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-7
Limitation of actions

Sec. 7. No action may be brought for a violation of this chapter more than two (2) years after the violation.
As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-3
Repealed

(Repealed by Acts 1979, P.L.235, SEC.2.)

IC 23-2-3.1
Chapter 3.1. Takeover Offers

IC 23-2-3.1-0.5
Legislative finding; purpose

Sec. 0.5. (a) The general assembly finds that it is often difficult for corporate shareholders to obtain sufficient information to make an informed and timely decision when faced with the questions of accepting or rejecting a takeover offer. Moreover, there have emerged a number of practices which have resulted in shareholders of Indiana corporations losing the benefits of takeover offers because they lacked the sophistication and ability to secure those benefits. These practices have included multiple proration pools, two-step transactions and similar practices, and have resulted in relatively small shareholders losing both the advantages of the takeover offer and their equity positions in the corporation.

(b) By enacting this chapter, it is the intent and purpose of the general assembly to provide for full and fair disclosure of all material information concerning takeover offers to shareholders of Indiana corporations, so that the opportunity of each shareholder to make an informed and well-reasoned investment decision may be secured. It is also the purpose of the general assembly to protect shareholders of Indiana corporations from being disadvantaged by those practices described in subsection (a). Finally, it is the purpose of the general assembly to provide for adequate disclosure and that protection in a manner consistent with the Constitutions of the United States and of Indiana.

As added by Acts 1981, P.L.215, SEC.1. Amended by P.L.242-1983, SEC.1.

IC 23-2-3.1-1
Definitions

Sec. 1. As used in this chapter:

"Affiliate" means any person controlling, controlled by, or under the common control of another person.

"Beneficial owner of a security" means any person who, directly or indirectly, has the power to vote or direct the voting of all or part of the voting rights of the security, or has the power to dispose of or direct the disposition of the security.

"Commissioner" means the securities commissioner as defined in IC 23-19-1-2(4).

"Control" means possession, direct or indirect, of the power to direct or to cause the direction of the management and policies of a person, through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless that power is the result of an official position or corporate office. The term includes "controlling", "controlled by", and "under common control with." Control is presumed to exist if any person is the beneficial owner of ten percent (10%) or more of any class of the voting securities of any other person. This presumption

may be rebutted only by a showing that control does not exist in fact, at a hearing pursuant to section 9 of this chapter.

"Equity security" means:

(1) any share or similar security carrying, at the time of the takeover offer, the right to vote on any matter by virtue of the articles of incorporation, bylaws, or governing instrument of the target company or the right to vote for directors or persons performing substantially similar functions by operation of law;

(2) any security convertible into a security described in subdivision (1) or any warrant or right to purchase that security; or

(3) any other security which, for the protection of investors, is an equity security pursuant to a regulation of the commissioner.

"Offeror" means a person who makes or in any way participates in making a takeover offer. The term includes all affiliates of that person and all persons who act jointly or in concert with that person for the purpose of acquiring, holding, or disposing of, or exercising any voting rights attached to, the equity securities of a target company. It also includes the target company with respect to acquisitions of its own equity securities and with respect to periods of time when it is controlled by or under common control with the offeror. It does not include a financial institution or broker-dealer loaning funds or extending credit to any offeror in the ordinary course of its business, or any accountant, attorney, financial institution, broker-dealer, newspaper or magazine of general circulation, consultant, or other person furnishing information, services, or advice to or performing ministerial or administrative duties for an offeror and not otherwise participating in the takeover offer.

"Offeree" means a record or beneficial owner of equity securities of the class which an offeror acquires or offers to acquire in connection with a takeover offer.

"Person" means an individual, corporation, limited liability company, association, partnership, trust, or other entity.

"Substantially equivalent terms" means terms under which the fair market value of the consideration offered any offeree of a class of equity securities of the target company (determined on a per share or a per unit basis) are equal to the highest consideration offered in connection with a takeover offer to any other offeree of that class (determined on a per share or per unit basis).

"Takeover offer" means an offer to acquire or an acquisition of any equity security of a target company, pursuant to a tender offer or request or invitation for tenders, if, after the acquisition, the offeror is directly or indirectly a record or beneficial owner of more than ten percent (10%) of any class of the outstanding equity securities of the target company.

"Target company" means an issuer of securities which is organized under the laws of this state, has its principal place of business in this state, and has substantial assets in this state. Target company does not include:

(1) a financial institution subject to regulation by the department of financial institutions under IC 28, if the takeover offer is subject to approval by the department of financial institutions;
(2) a corporation subject to regulation by the utility regulatory commission under IC 8, if the takeover offer is subject to approval of the commission; or
(3) a public utility, public utility holding company, bank holding company, or savings association subject to regulation by a federal agency, if the takeover offer is subject to the approval by that federal agency.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.2; P.L.242-1983, SEC.2; P.L.23-1988, SEC.111; P.L.8-1993, SEC.311; P.L.79-1998, SEC.21; P.L.27-2007, SEC.13.

IC 23-2-3.1-2
Compliance with designated sections

Sec. 2. A person shall not make a takeover offer unless the offer is in compliance with sections 3, 4, 5.5, 6.5, 7, and 8 of this chapter.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.3; P.L.242-1983, SEC.3; P.L.229-1989, SEC.1.

IC 23-2-3.1-3
Statement; filing with commissioner; copy to target company

Sec. 3. Any offeror, before making a takeover offer, shall:
(1) file any required statements with the commissioner in compliance with sections 5 and 5.5 of this chapter; and
(2) not later than the filing date of the statements, deliver a copy of each statement to the president of the target company at its principal office.

As added by Acts 1979, P.L.235, SEC.1. Amended by P.L.229-1989, SEC.2.

IC 23-2-3.1-4
Statement; consent to service of process; filing fee

Sec. 4. Each statement required under section 5 or 5.5 of this chapter must be accompanied by:
(1) a consent of the offeror to service of process specified in IC 23-19-6-11; and
(2) a filing fee of seven hundred fifty dollars ($750).

As added by Acts 1979, P.L.235, SEC.1. Amended by P.L.229-1989, SEC.3; P.L.27-2007, SEC.14.

IC 23-2-3.1-5
Contents of statement; document prepared under federal law

Sec. 5. (a) If the takeover offer is subject to any federal law, including the Securities Exchange Act of 1934 (15 U.S.C. 78), the statement must consist of one (1) copy of each document required to be filed with the Securities and Exchange Commission or any other federal agency.

(b) If the takeover offer is not subject to any requirement of

federal law, the statement must be filed on forms prescribed by the commissioner and contain the following information:

(1) The identity of and material information concerning the offeror, including:

(A) if the offeror is a corporation:

(i) information concerning its organization, including the year and jurisdiction of its organization;

(ii) a description of each class of its capital stock and long-term debt;

(iii) a description of the business done by the offeror and its affiliates and any material changes of its business during the past three (3) years;

(iv) a description of the location and character of the principal properties of the offeror and its affiliates;

(v) a description of any material pending legal or administrative proceedings in which the offeror or any of its affiliates is a party;

(vi) the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past three (3) years; and

(vii) audited financial statements of the offeror and its affiliates for its three (3) most recent annual accounting periods and interim financial statements for any current period; and

(B) if the offeror is not a corporation:

(i) information concerning the background of the person, including the person's material business activities and affiliations during the past three (3) years; and

(ii) a description of any material pending legal or administrative proceeding in which the person is a party.

(2) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including:

(A) a statement describing any securities being offered in exchange for the equity securities of the target company; and

(B) if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the transaction and the names of all the parties.

(3) If the purpose of the acquisition is to gain control of the target company, a statement of any plans or proposals or negotiations with respect to the acquisition which the offeror has upon gaining control to:

(A) liquidate the target company;

(B) sell its assets;

(C) effect its merger or consolidation; or

(D) make any other major change in its business, corporate structure, management or personnel.

(4) The number of shares or units of any equity security of the target company of which each offeror is the record or beneficial owner or which the offeror has a right to acquire, directly or indirectly.

(5) Information as to any contracts, arrangements, understandings, or negotiations with any person concerning any equity security of the target company, including:

(A) transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits; or

(B) the giving or withholding of proxies;

naming the persons with whom those contracts, arrangements, or understandings have been entered into.

(6) Information as to any contracts, arrangements, understandings, or negotiations, with any officer, director, administrator, manager, executive employee, or record or beneficial owner of equity securities of the target company with respect to the tender of any equity securities of the target company, the purchase by the offeror of any equity securities owned by that person otherwise than pursuant to the takeover offer, the retention of any person in the person's present position or in any other management position or with respect to that person giving or withholding a favorable recommendation to the takeover offer.

(7) A description of the provisions made or to be made for providing all material information concerning the takeover offer to the offerees, including a description of the proposed takeover offer in the form proposed to be published or sent the offerees initially disclosing the takeover offer.

(8) Any other information which the commissioner prescribes by rule.

(c) In addition to information required under subsection (a) or (b), a statement filed under this section must include the following information:

(1) A description of any contract between the offeror and a government (other than the United States, a state of the United States, a commonwealth or possession of the United States, a government in free association with the United States, or a political subdivision of a state) executed during the three (3) years preceding the date of the filing of the statement.

(2) A description of any subsidy received by the offeror from a goverment described in subdivision (1) during the three (3) years preceding the date of the filing of the statement.

(3) A list of any offices or appointments held under a government described in subdivision (1) by the offeror if the offeror is an individual, or by a member of the board of directors or principal officer if the offeror is a corporation.

As added by Acts 1979, P.L.235, SEC.1. Amended by P.L.229-1989, SEC.4.

IC 23-2-3.1-5.5

Definitions; application of section

Sec. 5.5. (a) The definitions in IC 23-1-20 apply to this section,

except to the extent of any conflict with section 1 of this chapter.

(b) This section applies to:

(1) a foreign corporation incorporated under a law other than the law of the United States or any state of the United States (as defined in IC 1-1-4-1); or

(2) a person who is not a citizen of the United States.

(c) This section does not apply to the initiation of a new business in Indiana by a person subject to this section.

(d) Notwithstanding any other provision of this title, a person subject to this section may not make a takeover offer unless the person files a statement with the commissioner under this subsection.

(e) The statement filed under subsection (d) must state the following:

(1) The financial sources to be used by the person in the takeover offer.

(2) The proposed consummation date of the takeover.

As added by P.L.229-1989, SEC.5.

IC 23-2-3.1-6
Repealed

(Repealed by Acts 1981, P.L.215, SEC.11.)

IC 23-2-3.1-6.5
Terms of offer; requisites; number of offerees

Sec. 6.5. No takeover offer may be made which is not made to all offerees holding the same class of equity securities of the target company on substantially equivalent terms. A takeover offer to purchase less than any or all equity securities of the same class of the outstanding equity securities of the target company is not considered as having been made to all offerees of that class on substantially equivalent terms if the pro rata portion of equity securities of that class tendered by any offeree which will be accepted by the offeror is not equal to the highest pro rata portion of equity securities of that class tendered by any other offeree which will be accepted by the offeror. A takeover offer permitting offerees to elect to receive one (1) or more differing kinds of consideration is not considered as having been made to all offerees holding the same class of equity securities of the target company on substantially equivalent terms if proration occurs and the pro rata share of any one (1) or more differing kinds of consideration which is allocable to any offeree is not equal to the highest pro rata share allocable to any other offeree.

As added by P.L.242-1983, SEC.4.

IC 23-2-3.1-7
Hearing; findings and order; notices; expenses; right to appear; insurance companies

Sec. 7. (a) A hearing shall be held at any time within twenty (20) business days after the required statements under sections 5 and 5.5 of this chapter are filed. If, following the hearing, and within twenty (20) business days after a statement is filed, the commissioner finds

by a preponderance of the evidence that:

(1) the takeover statement fails to provide full and fair disclosure to the offerees of all material information concerning the takeover offer; or

(2) the takeover offer is not made to all offerees of the same class of equity securities of the target company on substantially equivalent terms; the commissioner shall by order prohibit the purchase of shares tendered in response to the takeover offer or condition purchase upon changes or modifications.

(b) At least five (5) days notice shall be given to the target company, the offeror, and such other persons as the commissioner may designate that a hearing will be held under this section.

(c) The expenses, including the cost of transcripts, of all hearings held under this section shall be borne by the offeror. As security for the payment of the expenses, the offeror shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

(d) The target company, the offeror, any offeree, and any other person whose interests may be affected have the right to appear at any hearing held pursuant to this chapter and to become a party to the proceeding. Each such person has the right to present evidence, examine and cross-examine witnesses, offer oral written arguments and, in connection with the proceeding may conduct discovery proceedings in the manner provided in the Indiana Rules of Trial Procedure. The commissioner may employ any sanction or power granted courts in the Indiana Rules of Trial Procedure, excluding the power of contempt, to enforce the commissioner's discovery rulings or orders.

(e) In the case of a takeover offer subject to the approval of the insurance commissioner, the offeror within five (5) days after the statement is filed shall mail a notice to all offerees of the target company advising the offerees of the general terms and conditions of the takeover offer and the date of the hearing at which they may appear. No shares shall be tendered, or purchased by the offeror, until after approval by both the securities commissioner and the insurance commissioner. All expenses of notifying the offerees shall be borne by the offeror.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.4; P.L.242-1983, SEC.5; P.L.229-1989, SEC.6.

IC 23-2-3.1-8

Purchase of shares; prohibition

Sec. 8. No shares shall be purchased or paid for pursuant to a takeover offer within the first twenty (20) business days after the offer is made. No shares shall be purchased or paid for in violation of any order of the commissioner.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.5.

IC 23-2-3.1-8.4

Subsequent acquisition of equity securities by offeror; equivalent terms; limitation

Sec. 8.4. No offeror may acquire in any manner any equity security of any class of a target company at any time within two (2) years following the conclusion of a takeover offer with respect to that class, including but not limited to acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, and any other recapitalization or reorganization, unless the holder of that equity security is also afforded, at the time of that acquisition, a reasonable opportunity to dispose of that security to the offeror upon substantially equivalent terms.

As added by P.L.242-1983, SEC.6.

IC 23-2-3.1-8.5

Statements of material fact; omissions; false or misleading statements; fraudulent, deceptive, or manipulative acts

Sec. 8.5. In connection with any takeover offer, or any solicitation of offerees in opposition to or in favor of any takeover offer, it is unlawful for any person to make any untrue statement of a material fact or to omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices.

As added by Acts 1981, P.L.215, SEC.6.

IC 23-2-3.1-8.6

Exempt acquisitions; notice and hearing to precede order

Sec. 8.6. (a) The provisions of sections 2 through 7 of this chapter do not apply to the following:

(1) An acquisition by an offeror, if the instant transaction and all acquisitions of equity securities of the same class during the preceding twelve (12) months by the offeror or any of its affiliates do not exceed two percent (2%) of that class.

(2) An acquisition of equity securities of a target company having seventy-five (75) or fewer holders of record of equity securities at the time of the takeover offer.

(3) An acquisition determined by order of the commissioner to be a takeover offer that is not made for the purpose of, and not having the effect of, changing or influencing the control of a target company.

(b) An order may only be adopted under subsection (a)(3) of this section after a hearing. Not less than five (5) business days' notice of a hearing must be given to the target company, the offeror, and such other persons as the commissioner may designate.

(c) The burden of establishing entitlement to any exemption is on the offeror.

As added by Acts 1981, P.L.215, SEC.7. Amended by P.L.242-1983, SEC.7.

IC 23-2-3.1-9
Administration of chapter; regulations; immunity

Sec. 9. (a) This chapter shall be administered by the secretary of state of Indiana by and through the commissioner, who may exercise all powers granted to the commissioner under IC 23-19.

(b) Subject to the approval of the secretary of state, the commissioner may promulgate regulations necessary to carry out the purposes of this chapter under IC 4-22-2.

(c) Neither the secretary of state, nor the securities commissioner, nor any employee of the securities division, shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter.

As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.8; P.L.27-2007, SEC.15.

IC 23-2-3.1-10
Cease and desist orders; injunctions; subpoenas; production of books and papers

Sec. 10. (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any regulation or order adopted under this chapter, the commissioner may investigate and issue orders and notices, including ex parte cease and desist orders without notice. In addition to all other remedies, he may bring an action in any circuit or superior court in the name and on behalf of the state of Indiana against any person or persons participating in or about to participate in a violation of this chapter to enjoin those persons from continuing or doing any act in violation of this chapter or to enforce compliance with this chapter. In any court proceedings, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring:

(1) the appearance of any defendant or his employees or agents to testify and give evidence concerning the acts or conduct or things complained of; or

(2) the production of documents, books and records;

as may appear necessary for the hearing of the petition.

(b) Whenever any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any regulation or order adopted under this chapter, the offeror, target company or any record or beneficial owner of an equity security of the target company may bring an action in the circuit or superior court of the county where the target company has its principal office or Marion County to enjoin that person from continuing or doing any act in violation of this chapter or to enforce compliance with this chapter.

(c) Upon a proper showing, the court may grant a permanent or preliminary injunction or temporary restraining order or may order rescission of any sales, tenders for sale, purchases or tenders for purchase of equity securities determined to be unlawful under this

chapter or any regulation or order of the commissioner. The court may not require the commissioner to post a bond.
As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.9.

IC 23-2-3.1-11
Appeal; notice; transcript; disposition on appeal

Sec. 11. An appeal may be taken by any offeror, target company, or other party to any proceeding before the commissioner from any final order of the commissioner to the court of appeals for errors of law under the same terms and conditions as govern appeals in ordinary civil actions, except as otherwise provided in this section. An assignment of errors that the decision, ruling, or order of the commissioner is contrary to law is sufficient to present both the sufficiency of the facts found to sustain the decision, ruling, or order, and the sufficiency of the evidence to sustain the findings of facts upon which it was rendered. Within twenty (20) days from the entry of an order, the commissioner shall be served with a written notice of the appeal which states the grounds upon which a reversal of the final order is sought and with a demand in writing for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to that order. The commissioner shall within twenty (20) days after service of the notice of appeal make, certify, and deliver to the appellant the transcript. The appellant shall, within five (5) days after the receipt of the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal shall stand as the appellant's assignment of errors. If the order of the commissioner is reversed, the court shall direct the commissioner's further action in the matter, including the making and entering of any order and the conditions, limitations, or restrictions to be contained in the order. However, the commissioner is not barred from later revoking or altering the order for any proper cause which may later accrue or be discovered. If the order is affirmed, the appellant may file a new disclosure statement after thirty (30) days from the ruling of the court of appeals if the disclosure statement is not otherwise barred or limited. The appeal does not suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court.
As added by Acts 1979, P.L.235, SEC.1. Amended by Acts 1981, P.L.215, SEC.10; P.L.3-1989, SEC.138.

IC 23-2-4

Chapter 4. Supervision of Continuing Care Contracts

IC 23-2-4-1

Definitions

Sec. 1. As used in this chapter, the term:

"Application fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in processing the individual's application to become a resident.

"Commissioner" means the securities commissioner as provided in IC 23-19-6-1(a).

"Continuing care agreement" means the following:

(1) For continuing care retirement communities registered before January 2, 2007, an agreement by a provider to furnish to at least one (1) individual, for the payment of an entrance fee and periodic charges, accommodations in a living unit of a home, and at least two (2) of the following services for the life of the individual or for more than one (1) month unless the agreement is cancelled:

(A) Meals and related services.

(B) Nursing care services.

(C) Medical services.

(D) Other health related services.

(2) For continuing care retirement communities registered after January 1, 2007, and before July 1, 2009, an agreement by a provider to furnish to an individual, for the payment of an entrance fee of at least twenty-five thousand dollars ($25,000) and periodic charges:

(A) accommodations in a living unit of a continuing care retirement community;

(B) meals and related services;

(C) nursing care services;

(D) medical services;

(E) other health related services; or

(F) any combination of these services;

for the life of the individual or for more than one (1) month, unless the agreement is canceled.

(3) For continuing care retirement communities registered after June 30, 2009, an agreement by a provider to furnish to an individual, for the payment of an entrance fee of at least twenty-five thousand dollars ($25,000) and periodic charges:

(A) accommodations in a living unit of a continuing care retirement community;

(B) meals and related services;

(C) nursing care services;

(D) medical services;

(E) other health related services; or

(F) any combination of these services;

for the life of the individual, unless the agreement is terminated as specified under this chapter.

"Continuing care retirement community" includes both of the following:

(1) An independent living facility.

(2) A health facility licensed under IC 16-28.

"Contracting party" means a person or persons who enter into a continuing care agreement with a provider.

"Entrance fee" means the sum of money or other property paid or transferred, or promised to be paid or transferred, to a provider in consideration for one (1) or more individuals becoming a resident of a continuing care retirement community under a continuing care agreement.

"Living unit" means a room, apartment, cottage, or other area within a continuing care retirement community set aside for the use of one (1) or more identified residents.

"Long term financing" means financing for a period in excess of one (1) year.

"Omission of a material fact" means the failure to state a material fact required to be stated in any disclosure statement or registration in order to make the disclosure statement or registration, in light of the circumstances under which they were made, not misleading.

"Person" means an individual, a corporation, a partnership, an association, a limited liability company, or other legal entity.

"Provider" means a person that agrees to provide care under a continuing care agreement.

"Refurbishment fee" means the fee charged an individual, in addition to the entrance fee or any other fee, to cover the provider's reasonable costs in refurbishing a previously occupied living unit specifically designated for occupancy by that individual.

"Resident" means an individual who is entitled to receive benefits under a continuing care agreement.

"Solicit" means any action of a provider in seeking to have an individual residing in Indiana pay an application fee and enter into a continuing care agreement, including:

(1) personal, telephone, or mail communication or any other communication directed to and received by any individual in Indiana; and

(2) advertising in any media distributed or communicated by any means to individuals residing in Indiana.

"Termination" refers to the cancellation of a continuing care agreement under this chapter.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.1; P.L.177-1991, SEC.8; P.L.8-1993, SEC.312; P.L.27-2007, SEC.16; P.L.153-2009, SEC.3; P.L.278-2013, SEC.17.

IC 23-2-4-2

Application of chapter

Sec. 2. This chapter applies to any person who:

(1) enters into a continuing care agreement in Indiana to provide care at a continuing care retirement community located either inside Indiana or outside Indiana;

(2) enters into a continuing care agreement outside Indiana to provide care at a continuing care retirement community located in Indiana;

(3) extends the term of an existing continuing care agreement in Indiana to provide care at a continuing care retirement community located either inside Indiana or outside Indiana;

(4) extends the term of an existing continuing care agreement outside Indiana to provide care at a continuing care retirement community located in Indiana; or

(5) solicits the execution of a continuing care agreement by persons in Indiana.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.4.

IC 23-2-4-3

Registration; application; order

Sec. 3. (a) A provider shall register each continuing care retirement community with the commissioner if:

(1) before opening the continuing care retirement community, the provider:

(A) enters into;

(B) extends; or

(C) solicits;

a continuing care agreement; or

(2) while operating the continuing care retirement community, the provider has either:

(A) for a continuing care retirement community registered before January 2, 2007, continuously maintained since on or before January 1, 2007, at least one (1) continuing care agreement with an individual living in the continuing care community; or

(B) for a continuing care retirement community registered after January 1, 2007, entered into a continuing care agreement with at least twenty-five percent (25%) of the individuals living in the continuing care retirement community.

(b) If a provider fails to register a continuing care retirement community, the provider may not:

(1) enter into, or extend the term of, a continuing care agreement to provide continuing care to any person at that continuing care retirement community;

(2) provide services at that continuing care retirement community under a continuing care agreement; or

(3) solicit the execution, by persons residing within Indiana, of a continuing care agreement to provide continuing care at that continuing care retirement community.

(c) The provider's application for registration must be filed with the commissioner by the provider on forms prescribed by the commissioner, and must be accompanied by an application fee of two hundred fifty dollars ($250). The application must contain the

following information:

(1) an initial disclosure statement, as described in section 4 of this chapter; and

(2) any other information required by the commissioner under rules adopted under this chapter.

(d) The commissioner may accept, in lieu of the information required by subsection (c), any other registration, disclosure statement, or other document filed by the provider in Indiana, in any other state, or with the federal government if the commissioner determines that such document substantially complies with the requirements of this chapter.

(e) Upon receipt of the application for registration, the commissioner shall mark the application filed. Within sixty (60) days of the filing of the application, the commissioner shall enter an order registering the provider or rejecting the registration. If no order of rejection is entered within that sixty (60) day period, the provider shall be considered registered unless the provider has consented in writing to an extension of time; if no order of rejection is entered within the time period as extended by consent, the provider shall be considered registered.

(f) If the commissioner determines that the application for registration complies with all of the requirements of this chapter, the commissioner shall enter an order registering the provider. If the commissioner determines that such requirements have not been met, the commissioner shall notify the provider of the deficiencies and shall inform the provider that it has sixty (60) days to correct them. If the deficiencies are not corrected within sixty (60) days, the commissioner shall enter an order rejecting the registration. The order rejecting the registration shall include the findings of fact upon which the order is based. The provider may petition for reconsideration, and is entitled to a hearing upon that petition.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.5; P.L.278-2013, SEC.18.

IC 23-2-4-4

Initial disclosure statement; contents

Sec. 4. The initial disclosure statement shall contain the following information:

(1) The name and business address of the provider.

(2) If the provider is a partnership, corporation, limited liability company, or association, the names and duties of its officers, directors, trustees, partners, members, or managers.

(3) The name and business address of any person having a five percent (5%) or greater ownership interest in the provider or manager of the continuing care retirement community.

(4) A description of the business experience of the provider and its officers, directors, trustees, partners, or managers.

(5) A statement as to whether the provider or any of its officers, directors, trustees, partners, or managers, within ten (10) years prior to the date of the initial disclosure statement:

(A) was convicted of a crime;
(B) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against the provider or individual;
(C) had a prior discharge in bankruptcy or was found insolvent in any court action; or
(D) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.

(6) The identity of any other continuing care retirement community currently or previously operated by the provider or manager of the continuing care retirement community.
(7) The location and description of other properties, both existing and proposed, of the provider in which the provider owns a twenty-five percent (25%) ownership interest, and on which continuing care retirement communities are or are intended to be located.
(8) A statement as to whether the provider is, or is affiliated with, a religious, charitable, or other nonprofit association, and the extent to which the affiliate organization is responsible for the financial and contractual obligations of the provider.
(9) A description of all services to be provided by the provider under its continuing care agreements with contracting parties, and a description of all fees for those services, including conditions under which the fees may be adjusted.
(10) A description of the terms and conditions under which the continuing care agreement can be cancelled, or fees refunded.
(11) Financial statements of the provider prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by an independent certified or public accountant, including a balance sheet as of the end of the provider's last fiscal year and income statements for the last three (3) fiscal years, or such shorter period of time as the provider has been in operation.
(12) If the operation of the continuing care retirement community has not begun, a statement of the anticipated source and application of funds to be used in the purchase or construction of the continuing care retirement community, and an estimate of the funds, if any, which are anticipated to be necessary to pay for start-up losses.
(13) A copy of the forms of agreement for continuing care used by the provider.
(14) Any other information that the commissioner may require by rule or order.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.8-1993, SEC.313; P.L.153-2009, SEC.6.

IC 23-2-4-5
Annual disclosure statement; contents; fee

Sec. 5. (a) Each year after the initial year in which a continuing

care retirement community is registered under section 3 of this chapter, the provider shall file with the commissioner within four (4) months after the end of the provider's fiscal year, unless otherwise extended by the written consent of the commissioner, an annual disclosure statement which shall consist of the financial information set forth in section 4(11) of this chapter.

(b) The annual disclosure statement required to be filed with the commissioner under this section shall be accompanied by an annual filing fee of one hundred dollars ($100).

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.2; P.L.153-2009, SEC.7.

IC 23-2-4-6

Disclosure statements; amendment

Sec. 6. (a) A provider shall amend its initial or annual disclosure statement filed with the commissioner under section 3 and section 5 of this chapter at any time if necessary to prevent the initial or annual disclosure statement from containing any material misstatement of fact or omission of a material fact.

(b) Upon the sale of a continuing care retirement community to a new provider, the new provider shall amend the currently filed disclosure statement to reflect the fact of sale and any other fact that would be required to be disclosed under section 4 of this chapter if the new provider were filing an initial disclosure statement.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.8.

IC 23-2-4-7

Delivery of disclosure statements to persons executing agreements

Sec. 7. (a) Prior to the execution of a continuing care agreement, a provider shall deliver to the contracting party and the prospective resident a copy of the initial disclosure statement and the latest annual disclosure statement.

(b) After the execution of a continuing care agreement, a provider shall provide, upon request, a copy of the initial disclosure statement and the latest annual disclosure statement.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-7.5

Termination of contract

Sec. 7.5. (a) This section does not apply to a continuing care retirement community registered before July 1, 2009.

(b) A continuing care agreement may be terminated for any of the following reasons:

(1) The provider has determined that the resident is inappropriate for living in the care setting.

(2) The resident is unable to fully pay the periodic charges because the resident inappropriately divested the assets and income the resident identified at the time of admission to meet the ordinary and customary living expenses for the resident.

(3) Providing assistance to the resident would jeopardize the financial solvency of the provider and the other residents being served by the provider.

(4) The resident has requested a termination of the agreement as allowed under the agreement.

As added by P.L.153-2009, SEC.9.

IC 23-2-4-8

Sanctions against registration of providers or execution of new continuing care agreements; findings of fact; cease and desist order; notice and hearing

Sec. 8. (a) The commissioner may deny, revoke, or refuse to renew registration of a provider or prohibit the execution of new continuing care agreements if the commissioner finds that:

(1) the provider willfully violated any provision of this chapter or any rule or order adopted under this chapter;

(2) the provider failed to file an annual disclosure statement required by section 5 of this chapter;

(3) the provider failed to deliver to a prospective resident or contracting party a copy of the disclosure statements as required by section 7 of this chapter;

(4) the provider delivered to a prospective resident or contracting party a disclosure statement that contained a misstatement of material fact or omission of a material fact even though the provider, at the time of the delivery of the disclosure statement, had no actual knowledge of the misstatement or omission;

(5) the provider failed to comply with the terms of a cease and desist order of the commissioner; or

(6) according to rules adopted by the commissioner under IC 4-22-2, the provider is insolvent and the financial condition of the provider may jeopardize the care of the residents.

(b) Findings of fact in support of an order under this section, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) If the commissioner finds, after notice and hearing, that the provider has committed a violation for which revocation could be ordered, the commissioner may first issue a cease and desist order. If the cease and desist order is not effective in remedying the violation, the commissioner may, after notice and hearing, order that the registration be revoked.

(d) The commissioner may summarily prohibit the execution of new continuing care agreements pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the provider that it has been entered and of the reasons for the order and that upon receipt of a written request the matter will be set down for hearing to commence within fifteen (15) business days after receipt of the request unless the provider consents to a later date. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until

it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the provider, may modify, vacate, or extend the order until final determination.

(e) Except as provided in subsection (d), an order may not be entered under this section unless there has been:

(1) appropriate prior notice to the provider;

(2) opportunity for hearing; and

(3) written findings of fact and conclusions of law.

(f) The commissioner may vacate or modify an order if the commissioner finds that the conditions that prompted entry have changed or that it is in the public interest to do so.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.131-1988, SEC.6; P.L.1-1992, SEC.114.

IC 23-2-4-9

Offense

Sec. 9. A person who knowingly or intentionally fails to comply with any of the registration or disclosure requirements of sections 3, 4, 5, 6, or 7 of this chapter commits a Class A infraction.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-10

Conditions of registration; deposit of entrance and refurbishment fees into escrow account; limitations

Sec. 10. (a) Except as provided by section 11 of this chapter, the commissioner shall require, as a condition of registration, that:

(1) the provider establish an interest-bearing escrow account with a bank, trust company, or other escrow agent approved by the commissioner; and

(2) any entrance fees received by the provider prior to the date the resident is permitted to occupy the living unit in the continuing care retirement community be placed in the escrow account, subject to release as provided by subsection (b).

(b) If the entrance fee gives the resident the right to occupy a living unit that has been previously occupied, the entrance fee and any income earned thereon shall be released to the provider when the living unit is first occupied by the new resident. If the entrance fee applies to a living unit that has not been previously occupied by any resident, the entrance fee and any income earned thereon shall be released to the provider when the commissioner is satisfied that:

(1) aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements, plus:

(A) anticipated proceeds of any first mortgage loan or other long term financing commitment; and

(B) funds from other sources in the actual possession of the provider;

are equal to at least fifty percent (50%) of the aggregate cost of constructing, purchasing, equipping, and furnishing the continuing care retirement community and equal to at least fifty

percent (50%) of the estimate of funds necessary to fund startup losses of the continuing care retirement community, as reported under section 4(12) of this chapter; and

(2) a commitment has been received by the provider for any permanent mortgage loan or other long term financing described in the statement of anticipated source and application of funds to be used in the purchase or construction of the continuing care retirement community under section 4(12) of this chapter, and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the continuing care retirement community, have been substantially satisfied.

(c) If the funds in an escrow account under this section and any interest earned thereon are not released within the time provided by this section or by rules adopted by the commissioner, then the funds shall be returned by the escrow agent to the persons who made the payment to the provider.

(d) An entrance fee held in escrow shall be returned by the escrow agent to the person who paid the fee in the following instances:

(1) At the election of the person who paid the fee, at any time before the fee is released to the provider under subsection (b).

(2) Upon receipt by the escrow agent of notice from the provider that the person is entitled to a refund of the entrance fee.

(e) This section does not require a provider to place a nonrefundable application fee charged to prospective residents in escrow.

(f) A provider is not required to place a refurbishment fee of a prospective resident in escrow if a continuing care agreement provides that the prospective resident:

(1) will occupy the living unit within sixty (60) days after the refurbishment fee is paid; and

(2) will receive a refund of any portion of the refurbishment fee not expended for refurbishment if the continuing care agreement is cancelled before occupancy.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.3; P.L.153-2009, SEC.10.

IC 23-2-4-11

Letter of credit, negotiable securities, or bond instead of escrow account

Sec. 11. In lieu of establishing an escrow account under section 10 of this chapter, a provider may, with the commissioner's permission, post a letter of credit from a financial institution, negotiable securities, or a bond by a surety authorized to do business in Indiana. The letter of credit, negotiable securities, or bond must be:

(1) approved by the commissioner as to form;

(2) for an amount not to exceed the total amount of all entrance fees received by the provider before the date the resident is permitted to occupy the living unit; and

(3) executed in favor of the commissioner on behalf of individuals who may be found entitled to a refund of entrance fees.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-12

Entrance fees; use

Sec. 12. Any money or property received by a provider as an entrance fee to a continuing care retirement community constructed or purchased after August 31, 1982, or any income earned thereon, may be used by the provider only for purposes directly related to the construction, maintenance, or operation of that particular continuing care retirement community. A continuing care retirement community in operation on September 1, 1982, may not use the entrance fees or income earned thereon after August 31, 1982, for the construction, operation, or maintenance of another continuing care retirement community constructed or purchased after August 31, 1982.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.11.

IC 23-2-4-13

Retirement home guaranty fund; creation and expiration; purpose; levy

Sec. 13. (a) There is established the Indiana retirement home guaranty fund. The purpose of the fund is to provide a mechanism for protecting the financial interests of residents and contracting parties in the event of the bankruptcy of the provider.

(b) To create the fund, a guaranty association fund fee of one hundred dollars ($100) shall be levied on each contracting party who enters into a continuing care agreement after August 31, 1982, and before July 1, 2009. The fee shall be collected by the provider and forwarded to the commissioner within thirty (30) days after occupancy by the resident. Failure of the provider to collect and forward such fee to the commissioner within that thirty (30) day period shall result in the imposition by the commissioner of a twenty-five dollar ($25) penalty against the provider. In addition, interest payable by the provider shall accrue on the unpaid fee at the rate of two percent (2%) a month.

(c) Any money received by the commissioner under subsection (b) shall be forwarded to the treasurer of state. The fund, and any income from it, shall be held in trust, deposited in a segregated account, invested and reinvested by the treasurer of state in the same manner as provided in IC 20-49-3-10 for investment of the common school fund.

(d) All reasonable expenses of collecting and administering the fund shall be paid from the fund.

(e) Money in the fund at the end of the state's fiscal year shall remain in the fund and shall not revert to the general fund.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.2-2006, SEC.180; P.L.153-2009, SEC.12.

IC 23-2-4-14
Fund; board of directors; membership; compensation

Sec. 14. (a) There is established a board of directors to administer the fund. The board of directors of the fund shall consist of five (5) members to be appointed by the governor, from a list submitted by the secretary of state, as follows:

(1) one (1) provider;
(2) two (2) residents;
(3) one (1) individual with expertise in insurance; and
(4) one (1) individual with expertise in banking and finance.

In addition, the commissioner shall serve as an ex officio member of the board. Directors shall serve such terms as are established in the plan of operation under section 15 of this chapter.

(b) Members of the board of directors are not entitled to compensation for their services. However, each member is entitled to the following:

(1) Reimbursement for traveling and other expenses incurred as members of the board, as provided in the state travel policies and procedures, established by the Indiana department of administration and approved by the budget agency.
(2) Reimbursement for expenses related to one (1) meal provided each year in connection with the board's annual meeting.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.177-1991, SEC.9.

IC 23-2-4-15
Board; submission and approval of plan of operation; contents of plan; adoption of rules

Sec. 15. (a) The board of directors shall submit to the commissioner a plan of operation, and such subsequent amendments to the plan as are necessary to assure the fair, reasonable, and equitable administration of the fund. The plan of operation is effective upon the commissioner's approval, which must be in writing.

(b) If the board of directors fails to submit by September 1, 1983, a plan of operation considered suitable by the commissioner, or, if at any other time the board of directors fails to submit amendments to the plan considered necessary by the commissioner, the commissioner shall adopt rules under IC 4-22-2 necessary to carry out this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the board of directors and approved by the commissioner.

(c) The plan of operation shall establish:

(1) procedures for handling the assets of the fund;
(2) the method of reimbursing members of the board of directors under section 14 of this chapter;
(3) regular places and times for meetings of the board of directors;
(4) recordkeeping procedures for all financial transactions

relating to the fund and the board of directors; and

(5) any additional provisions necessary for the execution of the powers and duties of the board of directors.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.3-2008, SEC.166.

IC 23-2-4-16

Termination of bankrupt home; payments to residents from fund; subrogation rights of board

Sec. 16. (a) If a continuing care retirement community is bankrupt and the operation of the continuing care retirement community is terminated, the board of directors shall, subject to the approval of the commissioner, distribute from the guaranty association fund established in section 13 to the living residents of the continuing care retirement community an aggregate amount not to exceed one-half (1/2) of the amount in the fund at the time of disbursement. The amount each living resident is entitled to receive shall be prorated, based on the total amount paid on behalf of the resident by the contracting party under the continuing care agreement. In no event may the amount paid to an individual resident under this section exceed the total amount paid on behalf of that resident under the continuing care agreement, less the total value of services received under the agreement.

(b) Any living resident of the continuing care retirement community shall be eligible to receive distributions under subsection (a), regardless of whether any contribution to the guaranty association fund has been made on behalf of the resident.

(c) A resident compensated under this section assigns the resident's rights under the continuing care agreement, to the extent of compensation received under this section, to the board of directors on behalf of the fund. The board of directors may require an assignment of those rights by a resident to the board, on behalf of the fund, as a condition precedent to the receipt of compensation under this section. The board of directors, on behalf of the fund, is subrogated to these rights against the assets of a bankrupt or dissolved provider. Any monies or property collected by the board of directors under this subsection shall be deposited in the fund.

(d) The subrogation rights of the board of directors, on behalf of the fund, have the same priority against the assets of the bankrupt or dissolved provider as those possessed by the resident under the continuing care agreement.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.4; P.L.153-2009, SEC.13.

IC 23-2-4-17

Fund; examination and regulation by commissioner; reports

Sec. 17. The fund is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner before May 1 of each year:

(1) a financial report for the preceding calendar year, in a form

approved by the commissioner; and

(2) a report of its activities during the preceding calendar year.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-18

Fund; exemption from certain fees and taxes

Sec. 18. The fund is exempt from payment of all fees and taxes levied by Indiana or any of its political subdivisions.

As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-19

Repealed

(Repealed by P.L.234-1985, SEC.5.)

IC 23-2-4-20

Disclosure statements; liability of provider

Sec. 20. (a) If:

(1) a provider enters into a continuing care agreement:

(A) in violation of section 3 of this chapter; or

(B) without having first delivered to the contracting party and the prospective resident the disclosure statements as required by section 7 of this chapter; or

(2) a provider delivers to the prospective resident and the contracting party a disclosure statement that makes an untrue or misleading statement of material fact or omits a material fact;

the provider is liable to the individual who entered into the continuing care agreement for the repayment of all entrance fees, application fees, periodic charges, or other fees paid by that person to the provider less the reasonable value of care and lodging provided the resident until the untrue statement, misstatement, or omission was actually or should reasonably have been discovered by the resident or the contracting party, together with interest thereon at the legal rate for judgments, costs, and reasonable attorney's fees.

(b) Liability of the provider under this section for any untrue statement, misstatement, or omission in the disclosure statement shall exist only if the provider had actual knowledge of or, in the exercise of reasonable care, should have known of the untrue statement, misstatement, or omission.

(c) An action may not be maintained by any individual to enforce liability under this section unless commenced within:

(1) two (2) years after the execution of the continuing care agreement that gave rise to the violation;

(2) two (2) years after the failure to deliver the disclosure statement; or

(3) two (2) years after the delivery of the disclosure statement containing an untrue statement, misstatement, or omission of a material fact;

whichever occurs later.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.16-1983, SEC.14.

IC 23-2-4-21
Commissioner; petition for appointment of receiver

Sec. 21. If the commissioner has reason to believe that a continuing care retirement community is insolvent, the commissioner may petition the superior or circuit court of the county in which the continuing care retirement community is located, or the superior or circuit court of Marion County, for the appointment of a receiver to assume the management and possession of the continuing care retirement community and its assets.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.153-2009, SEC.14.

IC 23-2-4-22
Commissioner; powers; hearings and investigations

Sec. 22. The commissioner, or his designated representative, may:

(1) conduct under IC 4-21.5-3 hearings necessary to carry out this chapter;

(2) hear evidence;

(3) conduct investigations to determine whether any person has violated or is about to violate this chapter or a rule or order issued under this chapter; and

(4) compel the production of any item relevant to an investigation under this chapter.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.7-1987, SEC.104.

IC 23-2-4-23
Violations; cease and desist orders; actions for injunctive relief

Sec. 23. (a) If the commissioner determines, after notice and hearing, that any person has violated any provision of this chapter or any rule or order issued under this chapter, the commissioner may issue an order requiring the person to cease and desist from the unlawful practice or to take such affirmative action as in the judgment of the commissioner will carry out the purposes of this chapter.

(b) If the commissioner makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing a cease and desist order, it may issue a temporary cease and desist order which shall include in its terms a provision that, upon request, a hearing shall be held within ten (10) days of such request to determine whether the order becomes permanent. A temporary cease and desist order shall be served on the person subject to it by certified mail, return receipt requested.

(c) If it appears that a person has engaged in an act or practice constituting a violation of any provision of this chapter or of a rule or order issued under this chapter, the commissioner may, with or without prior administrative proceedings, bring an action in the circuit court to enjoin such acts or practices or to enforce compliance with this chapter or any rule or order issued under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall

be granted. The commissioner shall not be required to post a bond in any court proceeding.
As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-4-24
Rules

Sec. 24. The commissioner shall adopt under IC 4-22-2 rules necessary to carry out the provisions of this chapter.
As added by Acts 1982, P.L.145, SEC.1.

IC 23-2-5

Chapter 5. Loan Brokers

IC 23-2-5-1

"Commissioner" defined

Sec. 1. As used in this chapter, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1(a).

As added by P.L.235-1985, SEC.1. Amended by P.L.27-2007, SEC.17.

IC 23-2-5-2

"Loan" defined

Sec. 2. As used in this chapter, "loan" means any agreement to advance money or property in return for the promise to make payments for the money or property.

As added by P.L.235-1985, SEC.1.

IC 23-2-5-3

Definitions

Sec. 3. (a) As used in this chapter, "loan broker license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(b) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(c) As used in this chapter, "loan broker" means any person who, in return for any consideration from any source procures, attempts to procure, or assists in procuring, a residential mortgage loan from a third party or any other person, whether or not the person seeking the loan actually obtains the loan. "Loan broker" does not include:

(1) any supervised financial organization (as defined in IC 26-1-4-102.5), including a bank, savings bank, trust company, savings association, or credit union;

(2) any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(3) any insurance company;

(4) any person arranging financing for the sale of the person's product; or

(5) a creditor that is licensed under IC 24-4.4-2-402.

(d) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(e) As used in this chapter, "mortgage loan origination activities" means performing any of the following activities for compensation or gain in connection with a residential mortgage loan:

(1) Receiving or recording a borrower's or potential borrower's residential mortgage loan application information in any form

for use in a credit decision by a creditor.

(2) Offering to negotiate or negotiating terms of a residential mortgage loan.

(f) As used in this chapter, "borrower's residential mortgage loan application information" means the address of the proposed residential real property to be mortgaged and borrower's essential personal and financial information necessary for an informed credit decision to be made on the borrower's mortgage loan application.

(g) As used in this chapter, "mortgage loan originator" means an individual engaged in mortgage loan origination activities. The term does not include a person who:

(1) performs purely administrative or clerical tasks on behalf of a mortgage loan originator or acts as a loan processor or underwriter;

(2) performs only real estate brokerage activities and is licensed in accordance with IC 25-34.1 or the applicable laws of another state, unless the person is compensated by a creditor, a loan broker, a mortgage loan originator, or any agent of a creditor, a loan broker, or a mortgage loan originator; or

(3) is involved only in extensions of credit relating to time share plans (as defined in 11 U.S.C. 101(53D)).

(h) As used in this chapter, "mortgage loan originator license" means a license issued by the commissioner authorizing an individual to act as a mortgage loan originator on behalf of a loan broker licensee.

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(j) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(k) As used in this chapter, "principal manager" means an individual who:

(1) has at least three (3) years of experience:

(A) as a mortgage loan originator; or

(B) in financial services;

that is acceptable to the commissioner; and

(2) is principally responsible for the supervision and management of the employees and business affairs of a loan broker licensee.

(l) As used in this chapter, "principal manager license" means a license issued by the commissioner authorizing an individual to act as:

(1) a principal manager; and

(2) a mortgage loan originator;

on behalf of a loan broker licensee.

(m) As used in this chapter, "bona fide third party fee", with respect to a residential mortgage loan, includes any of the following:

(1) Fees for real estate appraisals. However, if the residential mortgage loan is governed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331 through 3352), the fee for an appraisal performed in connection with the loan is not a bona fide third party fee unless the appraisal is performed by a person that is licensed or certified under IC 25-34.1-3-8.

(2) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.

(3) Notary and credit report fees.

(4) Fees for the services provided by a loan broker in procuring possible business for a creditor if the fees are paid by the creditor.

(n) As used in this chapter, "branch office" means any fixed physical location from which a loan broker licensee holds itself out as engaging in the loan brokerage business.

(o) As used in this chapter, "loan processor or underwriter" means an individual who:

(1) is employed by a loan broker licensee and acts at the direction of, and subject to the supervision of, the loan broker licensee or a licensed principal manager employed by the loan broker licensee; and

(2) performs solely clerical or support duties on behalf of the loan broker licensee, including any of the following activities with respect to a residential mortgage loan application received by the loan broker licensee:

(A) The receipt, collection, distribution, and analysis of information commonly used in the processing or underwriting of a residential mortgage loan.

(B) Communicating with a borrower or potential borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling borrowers or potential borrowers about residential mortgage loan rates or terms.

(p) As used in this chapter, "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including any of the following:

(1) Acting as a real estate broker for a buyer, seller, lessor, or lessee of real property.

(2) Bringing together parties interested in the sale, lease, or exchange of real property.

(3) Negotiating, on behalf of any party, any part of a contract concerning the sale, lease, or exchange of real property, other than in connection with obtaining or providing financing for the transaction.

(4) Engaging in any activity for which the person performing

the activity is required to be licensed under IC 25-34.1 or the applicable laws of another state.

(5) Offering to engage in any activity, or to act in any capacity with respect to any activity, described in subdivisions (1) through (4).

(q) As used in this chapter, "registered mortgage loan originator" means a mortgage loan originator who:

(1) is an employee of:

(A) a depository institution;

(B) a subsidiary that is:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or

(C) an institution regulated by the Farm Credit Administration; and

(2) is registered with and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry.

(r) As used in this chapter, "residential mortgage loan" means a loan that is or will be used primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) on a dwelling (as defined in Section 103(w) of the federal Truth in Lending Act (15 U.S.C. 1602(w)) or on residential real estate on which a dwelling is constructed or intended to be constructed.

(s) As used in this chapter, "personal information" includes any of the following:

(1) An individual's first and last names or first initial and last name.

(2) Any of the following data elements:

(A) A Social Security number.

(B) A driver's license number.

(C) A state identification card number.

(D) A credit card number.

(E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.

(3) With respect to an individual, any of the following:

(A) Address.

(B) Telephone number.

(C) Information concerning the individual's:

(i) income or other compensation;

(ii) credit history;

(iii) credit score;

(iv) assets;

(v) liabilities; or

(vi) employment history.

(t) As used in this chapter, personal information is "encrypted" if the personal information:

(1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of

assigning meaning without use of a confidential process or key; or

(2) is secured by another method that renders the personal information unreadable or unusable.

(u) As used in this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

(1) a Social Security number;

(2) a driver's license number;

(3) a state identification number; or

(4) an account number;

are accessible as part of the personal information.

(v) As used in this chapter, "depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(w) As used in this chapter, "state licensed mortgage loan originator" means any individual who:

(1) is a mortgage loan originator;

(2) is not an employee of:

(A) a depository institution;

(B) a subsidiary that is:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or

(C) an institution regulated by the Farm Credit Administration;

(3) is licensed by a state or by the Secretary of the United States Department of Housing and Urban Development under Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289); and

(4) is registered as a mortgage loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(x) As used in this chapter, "unique identifier" means a number or other identifier that:

(1) permanently identifies a mortgage loan originator; and

(2) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the federal financial institution regulatory agencies to facilitate:

(A) the electronic tracking of mortgage loan originators; and

(B) the uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.

(y) As used in this chapter, "residential real estate" means real property:

(1) that is located in Indiana; and

(2) upon which a dwelling is constructed or intended to be constructed.

As added by P.L.235-1985, SEC.1. Amended by P.L.247-1987,

SEC.1; P.L.1-1990, SEC.242; P.L.8-1993, SEC.314; P.L.79-1998, SEC.22; P.L.230-1999, SEC.1; P.L.14-2000, SEC.52; P.L.115-2001, SEC.1; P.L.73-2004, SEC.12; P.L.230-2007, SEC.6; P.L.145-2008, SEC.10; P.L.1-2009, SEC.130; P.L.156-2009, SEC.1; P.L.35-2010, SEC.4; P.L.85-2012, SEC.2; P.L.127-2012, SEC.3.

IC 23-2-5-4

License to engage in loan brokerage business required; license to act as mortgage loan originator or principal manager required; unique identifier required; evidence of compliance; criminal background check

Sec. 4. (a) A person may not engage in the loan brokerage business in Indiana unless the person first obtains a loan broker license from the commissioner. Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a loan broker license under this chapter.

(b) An individual may not act as a mortgage loan originator in Indiana on behalf of a person licensed or required to be licensed as a loan broker under this chapter unless the individual first obtains a unique identifier from the Nationwide Mortgage Licensing System and Registry and a mortgage loan originator license from the commissioner. An individual desiring to act as a mortgage loan originator on behalf of a person licensed or required to be licensed as a loan broker under this chapter shall apply to the commissioner for a mortgage loan originator license under this chapter.

(c) An individual may not act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this chapter unless the individual first obtains a unique identifier from the Nationwide Mortgage Licensing System and Registry and a principal manager license from the commissioner. Any individual desiring to act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this chapter shall apply to the commissioner for a principal manager license under this chapter.

(d) The commissioner may request evidence of compliance with this section at any of the following times:

(1) The time of application for an initial license.

(2) The time of renewal of a license.

(3) Any other time considered necessary by the commissioner.

(e) For purposes of subsection (d), evidence of compliance with this section must include a criminal background check, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

(f) A unique identifier obtained by an individual from the Nationwide Mortgage Licensing System and Registry under subsection (b) or (c) may not be used for purposes other than those set forth in the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289).

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.2; P.L.230-2007, SEC.7; P.L.145-2008, SEC.11; P.L.156-2009, SEC.2.

IC 23-2-5-5

Applications for licenses; contents; bond; expiration; service of process; criminal background checks; consumer reports; financial responsibility

Sec. 5. (a) An application for a loan broker license or renewal of a loan broker license must contain:

(1) consent to service of process under subsection (g);

(2) evidence of the bond required in subsection (d);

(3) an application fee of two hundred dollars ($200), plus one hundred dollars ($100) for each ultimate equitable owner;

(4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of:

(A) any felony within the previous seven (7) years; or

(B) an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment;

unless such an affidavit is waived by the commissioner under subsection (h);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;

(6) the name and license number for each mortgage loan originator to be employed by the licensee;

(7) the name and license number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

(A) The name of the ultimate equitable owner.

(B) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(C) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(D) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for licensure as a mortgage loan originator shall be made on a form prescribed by the commissioner. The application must include the following information for the individual that seeks to be licensed as a mortgage loan originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) loan broker licensee; or

(B) applicant for loan broker licensure;

for whom the individual seeks to be employed as a mortgage loan originator.

(6) Consent to service of process under subsection (g).
(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
(8) An application fee of fifty dollars ($50).
(9) All:
(A) registration numbers previously issued to the individual under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and
(B) license numbers previously issued to the individual under this chapter, if applicable.

(c) An application for licensure as a principal manager shall be made on a form prescribed by the commissioner. The application must include the following information for the individual who seeks to be licensed as a principal manager:
(1) The name of the individual.
(2) The home address of the individual.
(3) The home telephone number of the individual.
(4) The individual's Social Security number and date of birth.
(5) The name of the:
(A) loan broker licensee; or
(B) applicant for loan broker licensure;
for whom the individual seeks to be employed as a principal manager.
(6) Consent to service of process under subsection (g).
(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.
(8) Evidence that the individual has at least three (3) years of experience in the:
(A) loan brokerage; or
(B) financial services;
business.
(9) An application fee of one hundred dollars ($100).
(10) All:
(A) registration numbers previously issued to the individual under this chapter, if the applicant was registered as an originator or a principal manager under this chapter before July 1, 2009; and
(B) license numbers previously issued to the individual under this chapter, if applicable.

(d) A loan broker licensee must maintain a bond satisfactory to the commissioner, which must cover the activities of each licensed mortgage loan originator and licensed principal manager employed by the loan broker licensee. The bond must be in one (1) of the following amounts, depending on the total amount of residential mortgage loans originated by the loan broker in the previous calendar year:
(1) Fifty thousand dollars ($50,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was not greater than five million dollars

($5,000,000).

(2) Sixty thousand dollars ($60,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was greater than five million dollars ($5,000,000) but not greater than twenty million dollars ($20,000,000).

(3) Seventy-five thousand dollars ($75,000) if the total amount of residential mortgage loans originated by the loan broker in the previous calendar year was greater than twenty million dollars ($20,000,000).

The bond shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee or any licensed mortgage loan originator or licensed principal manager employed by the licensee.

(e) The commissioner shall issue a license and license number to an applicant for a loan broker license, a mortgage loan originator license, or a principal manager license if the applicant meets the applicable licensure requirements set forth in this chapter.

(f) Licenses issued by the commissioner under this chapter expire on December 31 of the year in which they are issued.

(g) Every applicant for licensure or for renewal of a license shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(h) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(i) Whenever an initial or a renewal application for a license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(j) At the time of application for an initial license under this chapter, the commissioner shall require each:

(1) equitable owner, in the case of an applicant for a loan broker license;

(2) individual described in subsection (a)(4), in the case of an applicant for a loan broker license; and

(3) applicant for licensure as:

(A) a mortgage loan originator; or

(B) a principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the applicant should be denied licensure under this chapter for any reason set forth in section 10(c) or 10(d) of this chapter. The equitable owner, individual described in subsection (a)(4), or

applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.

(k) Every three (3) years, beginning with the third calendar year following the calendar year in which an initial license is issued under this chapter, the commissioner shall require each:

(1) equitable owner, in the case of a loan broker licensee;

(2) individual described in subsection (a)(4), in the case of a loan broker licensee; and

(3) licensed:

(A) mortgage loan originator; or

(B) principal manager;

to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the licensee should be denied continued licensure under this chapter for any reason set forth in section 10(c) of this chapter. The equitable owner, individual described in subsection (a)(4), or licensee shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.

(l) The commissioner shall require each applicant for licensure as:

(1) a mortgage loan originator; or

(2) a principal manager;

to submit written authorization for the commissioner or an agent of the commissioner to obtain a consumer report (as defined in IC 24-5-24-2) concerning the applicant.

(m) In reviewing a consumer report obtained under subsection (l), the commissioner may consider one (1) or more of the following in determining whether an individual described in subsection (l) has demonstrated financial responsibility:

(1) Bankruptcies filed by the individual within the most recent ten (10) years.

(2) Current outstanding civil judgments against the individual, except judgments resulting solely from medical expenses owed by the individual.

(3) Current outstanding tax liens or other government liens or filings.

(4) Foreclosure actions filed within the most recent three (3) years against property owned by the individual.

(5) Any pattern of seriously delinquent accounts associated with the individual during the most recent three (3) years.

As added by P.L.235-1985, SEC.1. Amended by P.L.247-1987, SEC.2; P.L.113-1992, SEC.4; P.L.11-1996, SEC.18; P.L.230-1999, SEC.3; P.L.115-2001, SEC.2; P.L.230-2007, SEC.8; P.L.3-2008, SEC.167; P.L.145-2008, SEC.12; P.L.156-2009, SEC.3.

IC 23-2-5-5.5
Written examination; subject areas; passing and retaking examination

Sec. 5.5. (a) The commissioner shall require an applicant for licensure as:

(1) a mortgage loan originator under section 5(b) of this chapter; or

(2) a principal manager under section 5(c) of this chapter;

to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner and approved by the Nationwide Mortgage Licensing System and Registry.

(b) The written examination required by this section must measure the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics.

(2) Federal laws and regulations concerning the origination of residential mortgage loans.

(3) State laws and rules concerning the origination of residential mortgage loans.

(c) An individual who answers at least seventy-five percent (75%) of the questions on the written examination correctly is considered to have passed the examination.

(d) An individual who does not pass the written examination may retake the examination up to two (2) additional times, with each subsequent attempt occurring at least thirty (30) days after the individual last sat for the examination. If an individual fails three (3) consecutive examinations, the individual must wait to retake the examination until at least six (6) months after the individual sat for the third examination.

(e) If an individual who has been issued a mortgage loan originator license or a principal manager license under this chapter:

(1) allows the individual's license to lapse; or

(2) otherwise does not maintain a valid license under this chapter;

for a period of at least five (5) years, the individual must retake the written examination required by this section.

As added by P.L.156-2009, SEC.4.

IC 23-2-5-6
Renewal of licenses

Sec. 6. A loan broker licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed annually. A mortgage loan originator licensee or a principal manager licensee may not continue acting as:

(1) a mortgage loan originator; or

(2) a principal manager;

unless the licensee's license is renewed annually. A licensee under this chapter shall renew its license by filing with the commissioner, at least thirty (30) days before the expiration of the license, an

application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.
As added by P.L.235-1985, SEC.1. Amended by P.L.11-1996, SEC.19; P.L.230-1999, SEC.4; P.L.115-2001, SEC.3; P.L.145-2008, SEC.13; P.L.156-2009, SEC.5.

IC 23-2-5-7
Loan broker regulation account

Sec. 7. (a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers, mortgage loan originators, and principal managers under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.

(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.

(c) All expenses incurred in the administration of this chapter shall be paid from appropriations made from the state general fund. However, costs of investigations incurred under this chapter shall be paid from, and civil penalties recovered under this chapter shall be deposited in, the securities division enforcement account created under IC 23-19-6-1(f). The funds in the securities division enforcement account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter.
As added by P.L.235-1985, SEC.1. Amended by P.L.115-2001, SEC.4; P.L.27-2007, SEC.18; P.L.156-2009, SEC.6.

IC 23-2-5-8
Repealed

(Repealed by P.L.113-1992, SEC.10.)

IC 23-2-5-9
Statute of frauds; required statement

Sec. 9. (a) To be enforceable, every contract for the services of a loan broker shall be in writing and signed by the contracting parties.

(b) At the time a contract for the services of a loan broker is signed, the loan broker shall provide a copy of the signed contract to each of the other parties to the contract.

(c) Every contract for the services of a loan broker must include the following statement:

> "No statement or representation by a loan broker is valid or enforceable unless the statement or representation is in writing."

(d) This section does not apply to a contract that provides for the

payment of referral fees by a lender or a third party.
As added by P.L.235-1985, SEC.1. Amended by P.L.113-1992, SEC.5; P.L.230-2007, SEC.9.

IC 23-2-5-9.1
Real estate appraisals; improper influence; ownership interest in appraisal company

Sec. 9.1. (a) As used in this section, "appraisal company" means a business entity that:

(1) performs real estate appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or

(2) holds itself out to the public as performing real estate appraisals.

(b) As used in this section, "immediate family", with respect to an individual, refers to:

(1) the individual's spouse who resides in the individual's household; and

(2) any dependent child of the individual.

(c) As used in this section, "real estate appraiser" means a person who:

(1) is licensed as a real estate broker under IC 25-34.1 and performs real estate appraisals within the scope of the person's license;

(2) holds a real estate appraiser license or certificate issued under IC 25-34.1-3-8; or

(3) otherwise performs real estate appraisals in Indiana.

(d) A person licensed under this chapter, or a person required to be licensed under this chapter, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan.

(e) Except as provided in subsection (f):

(1) a person licensed under this chapter, or a person required to be licensed under this chapter;

(2) a member of the immediate family of:

(A) a person licensed under this chapter; or

(B) a person required to be licensed under this chapter; or

(3) a person described in subdivision (1) or (2) in combination with one (1) or more other persons described in subdivision (1) or (2);

may not own or control a majority interest in an appraisal company.

(f) This subsection applies to a person or combination of persons described in subsection (e) who own or control a majority interest in an appraisal company on June 30, 2007. The prohibition set forth in subsection (e) does not apply to a person or combination of persons described in this subsection, subject to the following:

(1) The interest in the appraisal company owned or controlled by the person or combination of persons described in subsection

(e) shall not be increased after June 30, 2007.

(2) The interest of a person licensed under this chapter, or of a person required to be licensed under this chapter, shall not be transferred to a member of the person's immediate family.

(3) If the commissioner determines that any person or combination of persons described in subsection (e) has violated this chapter, the commissioner may order one (1) or more of the persons to divest their interest in the appraisal company. The commissioner may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the commissioner under this chapter.

As added by P.L.230-2007, SEC.10. Amended by P.L.156-2009, SEC.7.

IC 23-2-5-10

Violations; investigation by commissioner; orders and notices; hearing; denial, suspension, or revocation of license; censure; summary orders; transfer or termination of license; change of material fact or statement

Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent and, if the subject of the order or notice is a mortgage loan originator licensee or a principal manager licensee, the loan broker licensee for whom the mortgage loan originator or principal manager is employed:

(1) that the order or notice has been issued;

(2) of the reasons the order or notice has been issued; and

(3) that upon the receipt of a written request the matter will be set for a hearing to commence not later than fifteen (15) business days after receipt of the request if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after receipt of the request for all other orders unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner,

after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny an application for an initial or a renewal license, and may suspend or revoke the license of a licensee if the applicant, the licensee, or an ultimate equitable owner of an applicant for a loan broker license or of a loan broker licensee:

(1) has, within the most recent ten (10) years:

(A) been the subject of an adjudication or a determination by:

(i) a court with jurisdiction; or

(ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;

in Indiana or in any other jurisdiction; and

(B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of Indiana or any other jurisdiction;

(2) except as provided in subsection (d)(1) with respect to the loan brokerage business, has:

(A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or

(B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended;

by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

(3) is insolvent;

(4) has violated any provision of this chapter;

(5) has knowingly filed with the commissioner any document or statement that:

(A) contains a false representation of a material fact;

(B) fails to state a material fact; or

(C) contains a representation that becomes false after the filing but during the term of a license as provided in subsection (j);

(6) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime, other than a felony, involving fraud or deceit;

(7) if the person is a loan broker licensee or a principal manager, has failed to reasonably supervise the person's mortgage loan originators or employees to ensure their compliance with this chapter;

(8) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or

(9) has engaged in dishonest or unethical practices in the loan brokerage business, as determined by the commissioner.

(d) The commissioner shall deny an application for an initial or a renewal license and shall revoke the license of a licensee if the

applicant, the licensee, or an ultimate equitable owner of an applicant for a loan broker license or of a loan broker licensee:

(1) has had a:

(A) loan broker license issued under this chapter;

(B) mortgage loan originator license issued under this chapter;

(C) principal manager license issued under this chapter; or

(D) license that is:

(i) equivalent to a license described in clause (A), (B), or (C); and

(ii) issued by another jurisdiction;

revoked by the commissioner or the appropriate regulatory agency in another jurisdiction, whichever applies;

(2) has been convicted of or pleaded guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(A) during the seven (7) year period immediately preceding the date of the application or review; or

(B) at any time preceding the date of the application or review if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;

(3) fails to maintain the bond required under section 5(d) of this chapter;

(4) fails to demonstrate the financial responsibility, character, and general fitness necessary to:

(A) command the confidence of the community in which the applicant or licensee engages or will engage in the loan brokerage business; and

(B) warrant a determination by the commissioner that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of this chapter;

(5) has failed to meet the education requirements set forth in section 21 of this chapter;

(6) has failed to pass the written examination required by section 5.5 of this chapter; or

(7) fails to:

(A) keep or maintain records in accordance with section 18 of this chapter; or

(B) allow the commissioner or an agent appointed by the commissioner to inspect or examine a loan broker licensee's books and records to determine compliance with section 18 of this chapter.

(e) The commissioner may do either of the following:

(1) Censure:

(A) a licensee;

(B) an officer, a director, or an ultimate equitable owner of a loan broker licensee; or

(C) any other person;

who violates or causes a violation of this chapter.

(2) Permanently bar any person described in subdivision (1) from being:

(A) licensed under this chapter; or

(B) employed by or affiliated with a person licensed under this chapter;

if the person violates or causes a violation of this chapter.

(f) The commissioner may not enter a final order:

(1) denying, suspending, or revoking the license of an applicant or a licensee; or

(2) imposing other sanctions;

without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license pending final determination of any proceeding under this section or before any proceeding is initiated under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that the summary order has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing to commence not later than forty-five (45) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(g) IC 4-21.5 does not apply to a proceeding under this section.

(h) If a mortgage loan originator licensee or a principal manager licensee seeks to transfer the licensee's license to another loan broker licensee who desires to have the mortgage loan originator licensee or principal manager licensee act as a mortgage loan originator or as a principal manager, whichever applies, the mortgage loan originator licensee or principal manager licensee shall, before the mortgage loan originator licensee or principal manager licensee acts as a mortgage loan originator or as a principal manager for the new employer, submit to the commissioner, on a form prescribed by the commissioner, a license application, as required by section 5 of this chapter.

(i) If the employment of a mortgage loan originator licensee or principal manager licensee is terminated, whether:

(1) voluntarily by the mortgage loan originator licensee or principal manager licensee; or

(2) by the loan broker licensee employing the mortgage loan originator licensee or principal manager licensee;

the loan broker licensee that employed the mortgage loan originator licensee or principal manager licensee shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

(j) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may deny, revoke, or refuse to renew a

license applied for or held by any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure under this chapter as a result of the change in a material fact or statement.

As added by P.L.235-1985, SEC.1. Amended by P.L.11-1996, SEC.20; P.L.230-1999, SEC.5; P.L.14-2000, SEC.53; P.L.270-2003, SEC.3; P.L.48-2006, SEC.7; P.L.230-2007, SEC.11; P.L.145-2008, SEC.14; P.L.156-2009, SEC.8.

IC 23-2-5-11

Powers and duties of commissioner; use immunity for witnesses; certificate of compliance or noncompliance; authority to compel compliance; multistate automated licensing system and repository

Sec. 11. (a) The commissioner may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Make investigations and examinations:

(A) in connection with any application for licensure under this chapter or with any license already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

(3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination if the party has violated this chapter.

(4) Issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under subdivision (2). The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set not later than fifteen (15) business days after the commissioner receives a written request from the person requesting a hearing if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after the commissioner receives a written request from the person requesting a hearing for all other orders.

(5) Sign all orders, official certifications, documents, or papers issued under this chapter or delegate the authority to sign any of those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or

employees of the state of Indiana or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(14) Order that each witness appearing under the commissioner's order to testify before the commissioner shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. The commissioner may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

(A) processing applications for:

(i) licenses under this chapter; and

(ii) renewals of licenses under this chapter; and

(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing system.

A multistate automated licensing system and repository described in this subdivision may include the Nationwide Mortgage Licensing System and Registry established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court

determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested.

A grant of use immunity does not prohibit evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44.1-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(c) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any person. This shall constitute prima facie evidence of compliance or noncompliance with this chapter and shall be admissible in evidence in any action at law or in equity to enforce this chapter.

(d) If:

(1) a person disobeys any lawful:

(A) subpoena issued under this chapter; or

(B) order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter about which the witness may be lawfully interrogated; or

(C) take or subscribe to any oath required by this chapter;

the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the commissioner or a hearing officer appointed by the commissioner, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

(f) The commissioner's authority to designate a multistate automated licensing system and repository under subsection (a)(16)

is subject to the following:

(1) The commissioner may not require any person that is not required to be licensed under this chapter, or any employee or agent of a person that is not required to be licensed under this chapter, to:

(A) submit information to; or

(B) participate in;

the multistate automated licensing system and repository.

(2) The commissioner may require a person required under this chapter to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the commissioner.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.6; P.L.48-2006, SEC.8; P.L.145-2008, SEC.15; P.L.156-2009, SEC.9; P.L.114-2010, SEC.6; P.L.126-2012, SEC.39.

IC 23-2-5-11.5

Authority of commissioner to bring civil action to enjoin violations and enforce compliance; remedies; bond not required; penalties

Sec. 11.5. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to:

(i) take charge and control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits;

(ii) collect debts; and

(iii) acquire and dispose of property;

(C) imposing a civil penalty of up to ten thousand dollars ($10,000) per violation and an order of rescission, restitution, or disgorgement directed to a person that has engaged in an

act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this chapter.

(d) Penalties collected under this section shall be deposited in the securities division enforcement account created under IC 23-19-6-1(f).

As added by P.L.114-2010, SEC.7.

IC 23-2-5-12

Certified copies of statements, documents, or records; admissibility

Sec. 12. Copies of any statement or document filed with the commissioner, and copies of any records of the commissioner, certified to by the commissioner or any deputy are admissible in any prosecution, action, suit, or proceeding based upon, or arising out of or under, the provisions of this chapter to the same effect as the original of the statement, document, or record would be if actually produced.

As added by P.L.235-1985, SEC.1.

IC 23-2-5-13

Court to compel obedience to subpoena, order, or demand

Sec. 13. Upon:

(1) disobedience on the part of any person to any lawful subpoena issued under this chapter, or to any lawful order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this chapter; or

(2) the refusal of any witness to appear when subpoenaed, to testify to any matter regarding which the witness may be lawfully interrogated, or to take or subscribe to any oath required by this chapter;

it shall be the duty of the circuit or superior court of the county in which the hearing or inquiry or investigation in question is being or is to be held, where demand is made, or where the production is ordered to be made, upon written petition of the commissioner, to compel obedience to the lawful requirements of the subpoena, order, or demand.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.7.

IC 23-2-5-14

Civil penalty; actions to enforce penalties

Sec. 14. (a) If the commissioner determines, after a hearing, that a person has violated this chapter, the commissioner may, in addition to all other remedies, impose a civil penalty upon the person in an

amount not to exceed ten thousand dollars ($10,000) for each violation.

(b) The commissioner may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under this section.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.8.

IC 23-2-5-15

Violation; liability for damages, interest, and attorney's fees; contract void

Sec. 15. Any person who violates this chapter or any rule or regulation adopted under this chapter, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this chapter, or any rule or regulation adopted under this chapter, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-1999, SEC.9; P.L.230-2007, SEC.12.

IC 23-2-5-16

Violations; felonies

Sec. 16. (a) Except as provided in subsection (b), a person who knowingly violates this chapter commits a Level 5 felony.

(b) A person who knowingly violates this chapter commits a Level 4 felony if the person damaged by the violation is at least sixty (60) years of age.

(c) A person commits a Level 5 felony if the person knowingly makes or causes to be made:

(1) in any document filed with or sent to the commissioner or the securities division; or

(2) in any proceeding, investigation, or examination under this chapter;

any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

As added by P.L.235-1985, SEC.1. Amended by P.L.230-2007, SEC.13; P.L.156-2009, SEC.10; P.L.158-2013, SEC.263.

IC 23-2-5-17

Rescission of transaction; limitations

Sec. 17. (a) If a transaction for which a loan broker has charged any fee is rescinded by any person under the provisions of the Truth-in-Lending Act (15 U.S.C. 1601-1667e) within twenty (20) calendar days after a notice of the rescission has been delivered to the creditor, the loan broker shall return to the person any consideration that has been given to the loan broker other than bona fide third party fees.

(b) For purposes of calculating the time period during which a person may avoid a contract under IC 24-5-10-8 or IC 24-4.5-2-502, a contract with a loan broker shall be considered to be a sale of services that occurs on the date on which the person signs the written contract required by section 9 of this chapter.
As added by P.L.247-1987, SEC.4. Amended by P.L.3-1990, SEC.82; P.L.113-1992, SEC.6.

IC 23-2-5-18
Account numbers; records; retention; breach of security of records; disclosure requirements; disposal of personal information

Sec. 18. (a) Each loan broker agreement shall be given an account number. Each person licensed as a loan broker or required to be licensed as a loan broker under this chapter shall keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in connection with the loan broker agreement and signed by the borrower or any proposed borrower.

(D) If a loan was obtained for the borrower, the name and address of the creditor.

(E) If a loan is accepted by the borrower, a copy of the loan agreement.

(F) The amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(2) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within thirty (30) days of the commissioner's request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(5) A report that lists all residential mortgage loans, including pending loans and loans that were not closed, originated by the loan broker. The report required by this subdivision must be searchable by, or organized according to, the borrower's last

name and must include the following information for each residential mortgage loan listed:

(A) The name and address of the borrower or potential borrower.

(B) The name of the creditor.

(C) The name of the mortgage loan originator.

(D) The loan amount.

(E) The status of the loan, including the date of closing or denial by the creditor.

(F) The interest rate for the loan.

The report required by this subdivision may be prepared or produced by or through the loan broker's loan origination software or other software used by the loan broker in its loan brokerage business.

(b) The records listed in subsection (a) shall be kept for a period of two (2) years in the office of the loan broker in which the loan was originated and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker. If the office in which any records are required to be kept under this subsection is located outside Indiana, the records must be:

(1) made available at a location that is:

(A) located in Indiana; and

(B) accessible to the securities division; or

(2) maintained electronically and made available to the securities division not later than ten (10) business days after a request by the securities division to inspect or examine the records.

(c) If a breach of the security of any records:

(1) maintained by a loan broker under this section; and

(2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;

occurs, the loan broker is subject to the disclosure requirements under IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.

(d) A person who is licensed or required to be licensed under this chapter may not dispose of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.

As added by P.L.247-1987, SEC.5. Amended by P.L.113-1992, SEC.7; P.L.230-1999, SEC.10; P.L.145-2008, SEC.16; P.L.156-2009, SEC.11.

IC 23-2-5-18.5

Possession of funds belonging to others; duties to prospective borrower

Sec. 18.5. Whenever a person licensed under this chapter, or a person required to be licensed under this chapter, has possession of funds belonging to others, including money received by or on behalf of a prospective borrower, the person licensed under this chapter, or

required to be licensed under this chapter, shall:

(1) upon request of the prospective borrower, account for any funds handled for the prospective borrower;

(2) follow any reasonable and lawful instructions from the prospective borrower concerning the prospective borrower's funds; and

(3) return any unspent funds of the prospective borrower to the prospective borrower in a timely manner.

As added by P.L.230-2007, SEC.14. Amended by P.L.156-2009, SEC.12.

IC 23-2-5-18.7
Reports of condition

Sec. 18.7. Each loan broker licensee shall submit, at such times as the commissioner may require, reports of condition to:

(1) the commissioner; and

(2) the Nationwide Mortgage Licensing System and Registry.

A report required by this section shall be in such form and contain such information as the commissioner may require.

As added by P.L.156-2009, SEC.13.

IC 23-2-5-19
Repealed

(Repealed by P.L.156-2009, SEC.25.)

Revisor's Note: See also P.L.230-2007, SEC.26, for the period beginning 7-1-2007, and ending 6-30-2008.

IC 23-2-5-20
Prohibited acts

Sec. 20. (a) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

(1) Employ any device, scheme, or artifice to defraud.

(2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.

(3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a residential mortgage loan until the loan has been closed.

(5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.

(6) File or cause to be filed with a county recorder any document that the person knows:

(A) contains:

(i) a misstatement; or

(ii) an untrue statement;

of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:

(A) The personal information is:

(i) included on an application form or another form; or

(ii) transmitted as part of an application process or an enrollment process.

(B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.

(C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.

However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan, as prohibited by section 9.1(d) of this chapter.

(10) Violate any of the following:

(A) The federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(B) The federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(C) The federal Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) Any other federal law or regulation concerning residential mortgage lending.

(b) A person who commits an act described in subsection (a) is subject to sections 10, 11.5, 14, 15, and 16 of this chapter.

As added by P.L.247-1987, SEC.7. Amended by P.L.113-1992, SEC.9; P.L.230-1999, SEC.12; P.L.115-2001, SEC.5; P.L.145-2008, SEC.18; P.L.156-2009, SEC.14; P.L.114-2010, SEC.8.

IC 23-2-5-20.5

Employment by loan broker; license required; licensed principal manager required at each location; supervision of employees; representation to the public

Sec. 20.5. (a) A person licensed or required to be licensed as a loan broker under this chapter shall not employ a person to act as a mortgage loan originator unless the person is licensed as a mortgage loan originator or a principal manager under this chapter. The license of a mortgage loan originator or a principal manager is not effective during any period in which the mortgage loan originator or principal manager is not employed by a loan broker licensed under this chapter.

(b) A person licensed or required to be licensed as a loan broker under this chapter shall not operate any principal or branch office of a loan brokerage business without employing a licensed principal manager at that location.

(c) The licensed principal manager employed at a principal or branch office of a loan brokerage business shall supervise all employees at that location. If a licensed mortgage loan originator works from a location that is not a principal or branch office of a loan brokerage business, the mortgage loan originator shall be supervised by the principal manager employed at the principal or branch office at which the mortgage loan originator's loan files are sent.

(d) An individual that acts solely as a loan processor or underwriter shall not represent to the public through:

(1) advertising; or

(2) other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items;

that the individual may or will perform mortgage loan origination activities or otherwise act as a mortgage loan originator.

As added by P.L.230-2007, SEC.16. Amended by P.L.156-2009, SEC.15.

IC 23-2-5-21

Academic instruction requirements

Sec. 21. (a) A person applying for an initial license must provide to the commissioner evidence that during the twenty-four (24) month period immediately preceding the application that the person completed at least twenty (20) hours of academic instruction, acceptable to the commissioner and approved by the Nationwide Mortgage Licensing System and Registry. The education hours required under this subsection must include the following:

(1) Three (3) hours of federal law and regulations concerning residential mortgage lending.

(2) Three (3) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.

(3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

(4) Two (2) hours of state law and rules concerning residential mortgage lending.

(b) To maintain a license under this chapter, a person must provide to the commissioner evidence that the person has completed at least eight (8) hours of academic instruction that is acceptable to the commissioner, and approved by the Nationwide Mortgage Licensing System and Registry, during each calendar year after the year in which the license was initially issued. The education hours required under this subsection must include the following:

(1) Three (3) hours of federal law and regulations concerning residential mortgage lending.

(2) Two (2) hours of ethics, including instruction on fraud, consumer protection, and fair lending practices.

(3) Two (2) hours of training concerning lending standards for nontraditional residential mortgage loan products.

(c) In determining the acceptability of academic instruction the commissioner shall give consideration to approval of a licensee's internal academic instruction programs completed by employees.

(d) In determining the acceptability of an education course, the commissioner may require a fee, in an amount prescribed by the commissioner by rule or order, for the commissioner's review of the course.

As added by P.L.230-1999, SEC.13. Amended by P.L.230-2007, SEC.17; P.L.156-2009, SEC.16.

IC 23-2-5-22

Appeals; service on commissioner; transcript

Sec. 22. (a) An appeal may be taken by:

(1) any person whose application for an initial or a renewal license under this chapter is granted or denied, from any final order of the commissioner concerning the application;

(2) any applicant for initial or renewed licensure as a principal manager or a mortgage loan originator, from any final order of the commissioner affecting the application;

(3) any person against whom a civil penalty is imposed under section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or

(4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter;

to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the commissioner shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and

(3) a bond in the penal sum of five hundred dollars ($500) to the

state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

As added by P.L.48-2006, SEC.9. Amended by P.L.145-2008, SEC.19; P.L.156-2009, SEC.17.

IC 23-2-5-23

Documents; license number required

Sec. 23. A loan broker agreement that is delivered or required to be delivered by a person licensed or required to be licensed under this chapter to a borrower or prospective borrower must contain:

(1) the license number of the loan broker; and

(2) the license number of each:

(A) mortgage loan originator; or

(B) principal manager;

who had contact with the file.

As added by P.L.230-2007, SEC.18. Amended by P.L.156-2009, SEC.18.

IC 23-2-5-24

Cooperation with department of financial institutions

Sec. 24. In the securities divisions' investigative, examination, and regulatory activities related to licensees under this article, the securities division may cooperate with the Indiana department of

financial institutions in the regulation of a licensee that conducts:

(1) business under this article; and

(2) business that requires licensure under IC 24-4.4.

As added by P.L.156-2009, SEC.19.

IC 23-2-5-25

Reporting by commissioner

Sec. 25. Subject to IC 5-14-3, the commissioner is required to regularly report:

(1) violations of this chapter; and

(2) enforcement actions and other relevant information;

to the Nationwide Mortgage Licensing System and Registry.

As added by P.L.156-2009, SEC.20.

IC 23-2-5-26

Process to challenge information reported

Sec. 26. The commissioner shall establish a process by which a mortgage loan originator may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

As added by P.L.156-2009, SEC.21.

IC 23-2-6

Chapter 6. Indiana Commodity Code

IC 23-2-6-1

"Board of trade" defined

Sec. 1. As used in this chapter, "board of trade" refers to a person or group of persons engaged in:

(1) buying or selling a commodity; or

(2) receiving a commodity for sale on consignment;

whether the person or group of persons is characterized as a board of trade, an exchange, or any other type of marketplace.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-2

"Commissioner" defined

Sec. 2. As used in this chapter, "commissioner" refers to the securities commissioner appointed under IC 23-19-6-1(a).

As added by P.L.177-1991, SEC.10. Amended by P.L.27-2007, SEC.20.

IC 23-2-6-3

"CFTC Rule" defined

Sec. 3. As used in this chapter, "CFTC Rule" means a rule, regulation, or order of the Commodity Futures Trading Commission that is in effect on July 1, 1991, and any subsequent amendment, addition, or revision to the rule, regulation, or order unless the commissioner disallows the application to this chapter of the amendment, addition, or revision not later than ten (10) days after the effective date of the amendment, addition, or revision.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-4

"Commodity" defined

Sec. 4. As used in this chapter, "commodity" means, except as otherwise specified by a rule, regulation, or order of the commissioner, any of the following:

(1) An agricultural, a grain, or a livestock product or byproduct.

(2) A metal or mineral, including a precious metal.

(3) A gem or gemstone, whether the gem or gemstone is characterized as precious, semiprecious, or another characterization.

(4) A fuel (whether liquid, gaseous, or otherwise).

(5) Foreign currency.

(6) All other goods, articles, products, or items of any kind, except the following:

(A) A numismatic coin whose fair market value is at least

fifteen percent (15%) higher than the fair market value of the metal contained in the coin.

(B) Real property.

(C) Any timber, agricultural, or livestock product that is grown or raised on real property and that is offered or sold by the owner or lessee of the real property.

(D) A work of art that is offered or sold by art dealers, offered or sold at a public auction, or offered or sold through a private sale by the owner of the work of art.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-5
"Commodity broker-dealer" defined

Sec. 5. As used in this chapter, "commodity broker-dealer" means a person engaged in the business of executing transactions in commodity contracts or commodity options for:

(A) the account of others; or

(B) the person's own account.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-6
"Commodity contract" defined

Sec. 6. As used in this chapter, "commodity contract" means an account, an agreement, or a contract that:

(1) is for the purchase or sale of at least one (1) commodity;

(2) is primarily for speculation or investment purposes; and

(3) is not primarily for the use or consumption by the offeree or purchaser;

regardless of whether the account, agreement, or contract is for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. For purposes of this chapter, any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. The term does not include a contract or agreement that requires, and under which the purchaser receives, physical delivery of the total amount of each commodity to be purchased under the contract or agreement not later than twenty-eight (28) calendar days after payment in good funds of any portion of the purchase price.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-7
"Commodity Exchange Act" defined

Sec. 7. As used in this chapter, "Commodity Exchange Act"

means the act of the United States Congress known as the Commodity Exchange Act (7 U.S.C. 1 et seq., as in effect June 30, 1991), and including all subsequent amendments, additions, or revisions to the act unless the commissioner by rule or order disallows the application of the amendments, additions, or revisions to this chapter or to any provision of this chapter not later than ten (10) days after the effective date of the amendment, addition, or revision.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-8
"Commodity Futures Trading Commission" defined

Sec. 8. As used in this chapter, "Commodity Futures Trading Commission" means the independent regulatory agency established to administer the Commodity Exchange Act.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-9
"Commodity merchant" defined

Sec. 9. As used in this chapter, "commodity merchant" means any of the following (as defined or described in the Commodity Exchange Act or in a CFTC rule):

(1) A futures commission merchant.
(2) A commodity pool operator.
(3) A commodity trading advisor.
(4) An introducing broker.
(5) A leverage transaction merchant.
(6) A person associated with a person described in subdivisions (1) through (5).
(7) A floor broker.
(8) Any other person, other than a futures association, that is required to register with the Commodity Futures Trading Commission.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-10
"Commodity option" defined

Sec. 10. As used in this chapter, "commodity option" means an account, an agreement, or a contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell:

(1) at least one (1) commodity; or
(2) at least one (1) commodity contract;

whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise. However, the term does not include an option traded on a national securities

exchange that is registered with the Securities and Exchange Commission.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-11
"Commodity sales representative" defined

Sec. 11. As used in this chapter, "commodity sales representative" means a person who:

(1) is acting for a commodity broker-dealer in executing or attempting to execute a transaction in a commodity contract or a commodity option; and

(2) is authorized to take those actions by the commodity broker-dealer.

As added by P.L.177-1991, SEC.10. Amended by P.L.1-1992, SEC.115.

IC 23-2-6-12
"Financial institution" defined

Sec. 12. As used in this chapter, "financial institution" means a bank, savings institution, or trust company that is organized or supervised under the laws of the United States or of any state.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-13
"Offer" defined

Sec. 13. As used in this chapter, "offer" means an offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-14
"Person" defined

Sec. 14. (a) As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(b) The term does not include a contract market designated by any of the following:

(1) The Commodity Futures Trading Commission.

(2) Any clearinghouse of the Commodity Futures Trading Commission.

(3) A national securities exchange that is registered with the Securities and Exchange Commission.

(4) An employee, an officer, or a director of a contract market

designated clearinghouse or exchange who is acting solely in that capacity.

As added by P.L.177-1991, SEC.10. Amended by P.L.8-1993, SEC.315.

IC 23-2-6-15
"Precious metal" defined

Sec. 15. As used in this chapter, "precious metal" means the following in coin, bullion, or other form:

(1) Silver.
(2) Gold.
(3) Platinum.
(4) Palladium.
(5) Copper.
(6) Any other items specified by a rule, a regulation, or an order of the commissioner.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-16
"Sale" defined

Sec. 16. As used in this chapter, "sale" means any:

(1) exchange;
(2) contract of sale;
(3) contract to sell; or
(4) disposition;

for value.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-17
Limitations; commodity contracts or options

Sec. 17. Except as provided in sections 18 and 19 of this chapter, a person may not:

(1) sell, purchase, or offer to sell or purchase a commodity under any commodity contract or under any commodity option; or
(2) offer to enter into as seller or purchaser any commodity contract or any commodity option.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-18
Persons permitted to offer transactions under IC 23-2-6-17

Sec. 18. (a) The prohibitions set forth in section 17 of this chapter do not apply to any transaction offered by any of the following persons (or any employee, officer, or director of the person who is acting solely in that capacity) if the person is the purchaser or seller in the transaction:

(1) A person:
(A) who is registered with the Commodity Futures Trading Commission as a futures commission merchant, a leverage transaction merchant, an introducing broker, or an associated person of an introducing broker; and
(B) whose activities require that registration.
(2) A person registered with the Securities and Exchange Commission as a broker-dealer whose activities require that registration.
(3) A person:
(A) who is affiliated with; and
(B) whose obligations and liabilities under the transaction are guaranteed by;
a person described in subdivision (1) or (2).
(4) A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse of the Commodity Futures Trading Commission.
(5) A financial institution.
(6) A person registered in Indiana as a securities broker-dealer whose activities require that registration.

(b) The exemption provided by subsection (a) does not apply to any transaction or activity that is prohibited by the Commodity Exchange Act or by a CFTC rule.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-19

Contracts or transactions permitted under IC 23-2-6-17

Sec. 19. (a) The prohibitions set forth in section 17 of this chapter do not apply to any of the following:
(1) An account, an agreement, or a transaction that is within the exclusive jurisdiction of the Commodity Futures Trading Commission as provided under the Commodity Exchange Act.
(2) A commodity contract:
(A) that is for the purchase of at least one (1) precious metal;
(B) that requires physical delivery of the quantity of the precious metals purchased not later than twenty-eight (28) calendar days after payment of any portion of the purchase price; and
(C) under which the purchaser receives physical delivery of the quantity of precious metals purchased not later than twenty-eight (28) calendar days after payment of any portion of the purchase price.
(3) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants:
(A) each commodity subject to the contract; or

(B) any byproduct of the commodity subject to the contract.

(4) A commodity contract under which the offeree or the purchaser is any of the following:

(A) A person described in section 18(a) of this chapter.

(B) An insurance company.

(C) An investment company (as defined in the Investment Company Act of 1940).

(b) For purposes of this section, physical delivery is considered to have occurred if both of the following occur:

(1) The quantity of precious metals purchased is delivered (in specifically segregated or fungible bulk form) within the twenty-eight (28) day period to the possession of a depository that:

(A) is not the seller; and

(B) is any of the following:

(i) A depository that issues warehouse receipts that are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission.

(ii) A storage facility that is licensed or regulated by the United States or any agency of the United States.

(iii) A depository designated by the commissioner.

(2) The depository, any other person described in subdivision (1)(B), or a qualified seller issues and the purchaser receives a certificate, document of title, confirmation, or other instrument that evidences that the quantity of precious metals:

(A) has been delivered to the depository; and

(B) is held and will continue to be held:

(i) by the depository on the purchaser's behalf; and

(ii) free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses that have previously been disclosed to the purchaser.

(c) For the purposes of this section, a qualified seller is a person who meets the following conditions:

(1) Is a seller of precious metals.

(2) Has:

(A) a tangible net worth of at least five million dollars ($5,000,000); or

(B) has an affiliate who:

(i) has unconditionally guaranteed the obligations and liabilities of the person; and

(ii) has a tangible net worth of at least five million dollars ($5,000,000).

(3) Has stored precious metals with at least one (1) depository on behalf of customers for at least the preceding three (3) years.

(4) Before any offer, and annually after any offer, files with the commissioner a sworn notice of intent to act as a qualified seller under this section that contains the following:

(A) The person's name and address.

(B) The names of the person's directors, officers, controlling shareholders, partners, principals, and other controlling persons.

(C) The address of the person's principal place of business.

(D) The state and date of the person's incorporation or organization.

(E) The name and address of the person's registered agent in Indiana.

(F) A statement that:

(i) the person; or

(ii) an affiliate of the person who has guaranteed the obligations and liabilities of the person;

has a tangible net worth of at least five million dollars ($5,000,000).

(G) Depository information required by the commissioner, including the following:

(i) The name and address of any depository that the person intends to use.

(ii) The name and address of each depository in which the person has stored precious metals on behalf of customers at any time during the preceding three (3) years.

(iii) Independent verification from each depository named in item (ii) that the person has in fact stored precious metals on behalf of the person's customers in the depository during the preceding three (3) years and a statement by each depository showing the total deposits made by the person during the three (3) years.

(H) A financial statement, audited by an independent certified public accountant, for:

(i) the person; or

(ii) an affiliate of the person who has guaranteed the obligations and liabilities of the person;

for the past three (3) years.

(I) The certified public accountant's audit report of the financial statement described in clause (H).

(J) A statement describing the details of any civil, criminal, or administrative proceedings currently pending or adversely resolved against the person or the person's directors, officers, controlling shareholders, partners, principals, or other controlling persons during the preceding ten (10) years, including the following:

(i) Civil litigation and administrative proceedings

involving securities or commodities violations or fraud.

(ii) Criminal proceedings.

(iii) Denials, suspensions, or revocations of securities or commodities licenses or registrations.

(iv) Suspensions or expulsions from membership in or associations with a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodities Exchange Act.

(K) A statement declaring that proceedings described in clause (J) have not occurred if there have been no proceedings of that type.

(5) Notifies the commissioner of any material changes in the information provided in the notice of intent under subdivision (4) not later than fifteen (15) days after the changes occur or are made.

(6) Annually furnishes to:

(A) each purchaser for whom the seller is currently storing precious metals; and

(B) the commissioner;

a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-20

Waiver of requirements; qualified sellers; limitation on authority to engage in business

Sec. 20. (a) The commissioner may unconditionally or conditionally waive any of the requirements under section 19(c) of this chapter that a person must otherwise satisfy to be considered a qualified seller.

(b) The commissioner may by order deny, suspend, revoke, or limit a person's authority to engage in business as a qualified seller under section 19 of this chapter if the commissioner determines that:

(1) the order is in the public interest; and

(2) the person, the person's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing similar functions, any person who directly or indirectly controls or is controlled by the person or other person listed in this subdivision, or the person's affiliates or subsidiaries meet any of the following conditions:

(A) Has filed a notice of intention under section 19(c) of this chapter that:

(i) is incomplete in any material respect; or

(ii) contains a statement that, under the circumstances in which the statement was made, is false or misleading with

respect to a material fact.

(B) Has during the preceding ten (10) years:

(i) pled guilty or nolo contendere to a crime; or

(ii) been convicted of a crime;

indicating a lack of fitness to engage in the investment commodity business.

(C) Has been permanently enjoined or temporarily enjoined by a court from engaging in or continuing any conduct or practice that indicates a lack of fitness to engage in the investment commodities business.

(D) Is the subject of an order of the commissioner denying, suspending, or revoking the person's license as:

(i) a securities broker-dealer;

(ii) a sales representative; or

(iii) an investment adviser.

(E) Is the subject of any of the following orders that are in effect and that were issued during the preceding five (5) years.

(i) An order by the commissioner, by a securities agency or the securities administrator of any other state, Canadian province, or territory, by the Securities and Exchange Commission, or by the Commodity Futures Trading Commission, that was entered after notice and opportunity for hearing and that denied, suspended, or revoked the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, investment adviser, or any substantially similar occupation.

(ii) An order suspending or expelling the person from membership in or association with a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act.

(iii) A United States postal service fraud order.

(iv) A cease and desist order entered after notice and opportunity for hearing by a person described in item (i).

(v) An order entered by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act.

(F) Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business.

(G) Has failed to reasonably supervise sales representatives or employees.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-21

Summary denial or suspension of exemption; qualified sellers

Sec. 21. (a) To protect the public interest or to protect investors, the commissioner may by order summarily deny or suspend an exemption provided under section 19 of this chapter for a qualified seller. Upon the entry of an order denying or suspending an exemption for a qualified seller, the commissioner shall promptly notify the person claiming the exemption:

(1) that an order has been entered;

(2) of the reasons for the entry of the order; and

(3) that a date for a hearing concerning the order will be determined not later than thirty (30) days after the commissioner receives a written request for a hearing.

(b) The provisions of sections 39 and 40 of this chapter apply to all subsequent proceedings after the entry of an order under this section.

(c) The commissioner may by order deny or revoke an exemption provided under section 19 of this chapter for a qualified seller if the commissioner finds that an applicant or qualified seller:

(1) is no longer in existence;

(2) has ceased to do business;

(3) is subject to:

(A) an adjudication of mental incompetence; or

(B) the control of a committee, conservator, or guardian; or

(4) cannot be located after reasonable search.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-22

Rules; orders

Sec. 22. The commissioner may adopt rules and issue orders to do the following:

(1) Prescribe terms and conditions of all transactions and contracts that:

(A) are covered by this chapter; and

(B) are not within the exclusive jurisdiction of the Commodity Futures Trading Commission, as granted by the Commodity Exchange Act.

(2) Exempt persons from this chapter.

(3) Implement the provisions of this chapter for the protection of purchasers and sellers of commodities.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-23

Registration of commodity merchants; places for trading commodities or options

Sec. 23. (a) A person may not engage in the commodities trade or business or otherwise act as a commodity merchant unless the person:

(1) is registered or temporarily licensed with the Commodity

Futures Trading Commission for each activity causing the person to be considered a commodity merchant and the registration or temporary license has not expired or been revoked or suspended; or

(2) is exempt from registration with the Commodity Futures Trading Commission under:

(A) the Commodity Exchange Act; or

(B) a CFTC rule.

(b) A board of trade may not trade or provide a place for the trading of any commodity contract or commodity option if the commodity contract or commodity option must be traded on a contract market or commodity market designated by the Commodity Futures Trading Commission or is subject to the rules of a contract market or commodity market designated by the Commodity Futures Trading Commission, unless:

(1) the board of trade has been designated for the commodity contract or commodity option by the Commodity Futures Trading Commission; and

(2) the designation has not been vacated, suspended, or revoked.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-24

Fraud

Sec. 24. A person may not directly or indirectly:

(1) cheat or defraud or attempt to cheat or defraud any person;

(2) employ any device, scheme, or artifice to defraud any person;

(3) make a false report, enter a false record, or make an untrue statement of a material fact;

(4) fail to state a material fact that is necessary to make a report, record, or statement made, under the circumstances in which the report, record, or statement was made, not misleading;

(5) engage in a transaction, act, practice, or course of business, including any form of advertising or solicitation, that operates or would operate as a fraud or deceit upon any person; or

(6) misappropriate or convert the funds, security, or property of any person;

in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to section 18, 19(a)(2), or 19(a)(4) of this chapter.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-25

Liability; violation of chapter

Sec. 25. (a) The act, omission, or failure of any official, agent, or

other person acting for an individual, an association, a partnership, a limited liability company, a corporation, or a trust within the scope of the official's, agent's, or person's employment or office constitutes the act, omission, or failure of both:

(1) the individual, association, partnership, limited liability company, corporation, or trust; and

(2) the official, agent, or person.

(b) Except as provided in subsection (c), the following are jointly and severally liable for the violation of this chapter by a person and are liable to the same extent as the person:

(1) Each person who directly or indirectly controls the person who committed the violation.

(2) Each partner, officer, and director of the person who committed the violation.

(3) Each person occupying a similar status or performing a similar function as a partner, officer, or director described in subdivision (2).

(4) Each person who:

(A) is an employee of the person who committed the violation; and

(B) materially aids in the violation.

(c) A person is not liable under subsection (b) if the person proves that the person:

(1) did not know; and

(2) in exercise of reasonable care could not have known;

of the existence of the facts on which the liability is alleged to exist.

As added by P.L.177-1991, SEC.10. Amended by P.L.8-1993, SEC.316.

IC 23-2-6-26

Effect of chapter on securities law

Sec. 26. This chapter does not impair, derogate, or otherwise affect any of the following:

(1) The authority or powers of the commissioner under the Indiana securities law.

(2) The application of any provision of the Indiana securities law to any person or transaction subject to the Indiana securities law.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-27

Construction and implementation of chapter

Sec. 27. (a) This chapter shall be construed and implemented to carry out the chapter's general purpose to do the following:

(1) Protect investors.

(2) Prevent and prosecute illegal and fraudulent schemes

involving commodity contracts.

(3) Maximize coordination with federal law and the law of other states and the administration and enforcement of those laws.

(b) This chapter does not create any rights or remedies upon which actions may be brought by private persons against persons who violate this chapter.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-28

Investigations; examinations; hearings; civil penalties

Sec. 28. (a) The commissioner may make investigations in or outside Indiana that the commissioner finds necessary or appropriate to:

(1) determine whether any person has violated or is about to violate this chapter or any rule or order of the commissioner; or

(2) aid in the enforcement of this chapter.

(b) The commissioner may charge as costs of an investigation or examination all reasonable expenses, including a per diem prorated on the salary of the commissioner or an employee. All reasonable expenses of investigation, examination, or hearing shall be paid by the party under investigation or examination.

(c) The commissioner may publish information concerning any violation of this chapter or any rule or order of the commissioner. The commissioner shall upon request make available for inspection and copying under IC 5-14-3 information concerning any violation of this chapter or any rule or order of the commissioner.

(d) For purposes of an investigation or a proceeding under this chapter, the commissioner or an officer or employee designated by rule or order may do any of the following:

(1) Administer oaths and affirmations.

(2) Subpoena witnesses and compel the attendance of witnesses.

(3) Take evidence.

(4) Require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner finds to be relevant or material to the investigation or proceeding.

(e) If a person does not give testimony or produce the documents required by the commissioner or the commissioner's designee under an administrative subpoena, the commissioner or the designee may petition for a court order compelling compliance with the subpoena or the giving of the required testimony.

(f) A petition for an order of compliance under subsection (e) may be filed in any of the following:

(1) The circuit or superior court of a county containing a consolidated city.

(2) The circuit or superior court where service may be obtained

on the person refusing to comply with the subpoena if the person is within Indiana.

(3) The appropriate court of the state having jurisdiction over the person refusing to comply with the subpoena if the person is outside Indiana.

(g) Costs of investigations, examinations, and hearings and civil penalties recovered under this chapter shall be deposited in the securities division enforcement account established under IC 23-19-6-1(f). With the approval of the budget agency, the funds in the securities division enforcement account may be used to augment and supplement the funds appropriated for the administration of this chapter.

As added by P.L.177-1991, SEC.10. Amended by P.L.27-2007, SEC.21.

IC 23-2-6-29

Cease and desist orders; civil remedies

Sec. 29. (a) If the commissioner believes, whether or not based upon an investigation conducted under section 28 of this chapter, that a person has engaged or is about to engage in any act or practice that violates this chapter or any rule or order adopted or issued by the commissioner, the commissioner may do any of the following:

(1) Issue a cease and desist order.

(2) Issue an order imposing a civil penalty of not more than ten thousand dollars ($10,000) for any single violation.

(3) Initiate any of the actions specified in subsection (b).

(b) In addition to any other legal or equitable remedies, the commissioner may bring any of the following actions in circuit or superior court or in the appropriate courts of another state:

(1) An action for declaratory judgment.

(2) An action for a prohibitory injunction or mandatory injunction to:

(A) enjoin any violation; and

(B) ensure compliance with this chapter or any rule or order adopted or issued by the commissioner.

(3) An action for disgorgement.

(4) An action for the appointment of a receiver or conservator for the defendant or the defendant's assets.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-30

Violations; special remedies

Sec. 30. (a) Upon a showing by the commissioner that a person has violated or is about to violate this chapter or any rule or order adopted or issued by the commissioner, a court may grant appropriate legal or equitable remedies.

(b) Upon a showing by the commissioner of a violation of this chapter or a rule or order adopted or issued by the commissioner, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may order the following special remedies:

(1) A civil penalty of not more than ten thousand dollars ($10,000) for any single violation.

(2) Disgorgement.

(3) Declaratory judgment.

(4) Restitution to investors that request restitution.

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) If the commissioner shows only that a person is about to violate this chapter or a rule or order issued or adopted by the commissioner, appropriate remedies under this chapter are limited to the following:

(1) A temporary restraining order.

(2) A temporary injunction or permanent injunction.

(3) A writ of prohibition or writ of mandamus.

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-31

Commodity codes of other states; violations; remedies

Sec. 31. (a) Upon a showing by the commissioner or by a securities or commodity agency of another state that a person, other than a government or a governmental agency, has violated or is about to violate the commodity code of that state or any rule or order of the securities commissioner or the securities agency or commodity agency of that state, the court may grant appropriate legal and equitable remedies.

(b) Upon a showing of a violation of the securities or commodity act of another foreign state or a rule or an order of the securities commissioner or securities agency or commodity agency of that state, a court, in addition to traditional legal or equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may order the following special remedies:

(1) Disgorgement.

(2) Appointment of a receiver, a conservator, or an ancillary receiver or conservator for the defendant or for the defendant's assets located in Indiana.

(c) If the commissioner shows only that a person is about to violate the securities act or commodities act of another state or a rule

or order issued or adopted by the administrator of the securities act or commodities act of another state, appropriate remedies under this chapter are limited to the following:

(1) A temporary restraining order.

(2) A temporary injunction or permanent injunction.

(3) A writ of prohibition or writ of mandamus.

(4) An order appointing a receiver, a conservator, or an ancillary receiver or conservator for the defendant or for the defendant's assets located in Indiana.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-32

Bonds; official actions

Sec. 32. A court may not require the commissioner to post a bond in any official action under this chapter.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-33

Penalties

Sec. 33. (a) A person who knowingly violates:

(1) this chapter; or

(2) any rule or order issued or adopted by the commissioner under this chapter;

commits a Level 5 felony.

(b) A person who violates a rule or an order issued or adopted under this chapter may be assessed a civil penalty of up to ten thousand dollars ($10,000).

(c) The commissioner may refer any evidence concerning violations of this chapter or violations of any rule or order issued or adopted by the commissioner to any prosecuting attorney in Indiana.

As added by P.L.177-1991, SEC.10. Amended by P.L.158-2013, SEC.264.

IC 23-2-6-34

Administration of chapter

Sec. 34. (a) The securities division of the office of the secretary of state shall administer this chapter.

(b) The commissioner and any employees of the commissioner may not do the following:

(1) Use for personal gain or benefit any information that:

(A) is filed with the commissioner or obtained by the commissioner; and

(B) is not public information.

(2) Conduct securities dealings or commodity dealings based on public or confidential information that is filed with the commissioner or obtained by the commissioner if there has not

been a sufficient time for the securities markets or commodity markets to assimilate the information.

(c) Except as provided in subsection (d), all information that is collected, assembled, or maintained by the commissioner:

(1) is public information; and

(2) is available for inspection by the public.

(d) The following information is not public information and may not be made available by the commissioner for public inspection:

(1) Information obtained in private investigations under section 28(a) or 28(d) of this chapter.

(2) Information that:

(A) is obtained from a federal agency; and

(B) may not be disclosed under federal law.

(e) The commissioner shall have the discretion to disclose any information that is confidential under subsection (d)(1) to a person described in section 35(a) of this chapter.

(f) This chapter does not create or derogate any privilege that exists at common law, by statute, or otherwise, when any documentary evidence or other evidence is sought under subpoena directed to the commissioner or any employee of the commissioner.
As added by P.L.177-1991, SEC.10.

IC 23-2-6-35
Cooperation with other authorities

Sec. 35. (a) In order to encourage uniform application and interpretation of this chapter and in order to encourage securities regulation and enforcement, the commissioner and the commissioner's employees may cooperate with any of the following:

(1) A securities or commodities agency or the securities commissioner of any other jurisdiction, including any foreign jurisdiction.

(2) An agency administering any laws similar to this chapter.

(3) The Commodity Futures Trading Commission.

(4) The Securities and Exchange Commission.

(5) A self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934.

(6) A national or international organization of commodities or securities officials or agencies.

(7) A governmental law enforcement agency.

(b) The cooperation authorized by subsection (a) may include the following if the information sought would be subject to lawful subpoena for conduct occurring in Indiana:

(1) Bearing the expense of any type of cooperation described in this subsection.

(2) Making joint examinations or investigations.

(3) Holding joint administrative hearings.
(4) Filing and prosecuting joint litigation.
(5) Sharing and exchanging personnel.
(6) Sharing and exchanging information and documents.
(7) Writing and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.
(8) Issuing and enforcing subpoenas at the request of any of the following:
(A) An agency in another jurisdiction that administers a law similar to this chapter.
(B) A securities or commodities agency of another jurisdiction.
(C) The Commodity Futures Trading Commission.
(D) The Securities and Exchange Commission.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-36
Rules; forms; orders

Sec. 36. (a) In addition to specific authority granted under this chapter, the commissioner may make, amend, and rescind rules, forms, and orders necessary to carry out this chapter.

(b) Unless specifically provided in this chapter, a rule, a form, or an order may not be adopted, amended, or rescinded unless the commissioner finds that the action is:
(1) necessary or appropriate for the public interest or for the protection of investors; and
(2) consistent with the purposes fairly intended by the policy and provisions of this chapter.

(c) All rules and forms of the commissioner must be published.

(d) A provision of this chapter imposing any liability does not apply to an act that is:
(1) committed or omitted in good faith; and
(2) in conformity with a rule, an order, or a form adopted or issued by the commissioner;

even if the rule, order, or form is later amended, rescinded, or is determined to be invalid for any reason by judicial authority or other authority.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-37
Service of process

Sec. 37. (a) If a person, including a person that is not a resident of Indiana, engages in conduct prohibited or made actionable by this chapter or any rule or order adopted or issued by the commissioner, the commissioner shall be considered the person's attorney for the purpose of receiving service of any lawful process in a noncriminal

proceeding that is:

(1) brought against the person, a successor of the person, or a personal representative of the person;

(2) related to the prohibited or actionable conduct; and

(3) brought under this chapter or any rule or order issued or adopted by the commissioner.

(b) Process served on the commissioner under subsection (a) has the same force and validity as personal service on the person engaging in the prohibited or actionable conduct.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-38

Application of sections IC 23-2-6-17, IC 23-2-6-23, and IC 23-2-6-24

Sec. 38. (a) Sections 17, 23, and 24 of this chapter apply to a person who sells or offers to sell if:

(1) the offer to sell is made in Indiana; or

(2) an offer to buy is made and accepted in Indiana.

(b) Sections 17, 23, and 24 of this chapter apply to a person who buys or offers to buy if:

(1) the offer to buy is made in Indiana; or

(2) an offer to sell is made and accepted in Indiana.

(c) For purposes of this section:

(1) an offer to sell or an offer to buy is made in Indiana, whether or not any party is present in Indiana, if the offer:

(A) originates from Indiana; or

(B) is directed by the offeror to Indiana and is received at:

(i) the place to which the offer is directed; or

(ii) any post office in Indiana, in the case of a mailed offer; and

(2) an offer to sell or to buy is accepted in Indiana if the acceptance:

(A) is communicated to the offeror in Indiana; and

(B) has not previously been communicated to the offeror, orally or in writing, outside Indiana.

(d) For purposes of this section, acceptance is communicated to an offeror in Indiana, whether or not any party is then present in Indiana, if:

(1) the offeree:

(A) directs the acceptance to the offeror in Indiana; and

(B) reasonably believes that the offeror is present in Indiana; and

(2) the acceptance is received at:

(A) the place to which the acceptance is directed; or

(B) any post office in Indiana, in the case of a mailed acceptance.

(e) For purposes of this section, an offer to sell or to buy is not made in Indiana if:

(1) a publisher circulates in Indiana, or there is circulated in Indiana on the behalf of the publisher, a newspaper or other publication of general, regular, and paid circulation that:

(A) is not published in Indiana; or

(B) is published in Indiana, but has had more than two-thirds (2/3) of the newspaper's circulation outside Indiana during the past twelve (12) months; or

(2) a newspaper or a radio or television program originating outside Indiana is received in Indiana.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-39

Administrative proceedings

Sec. 39. (a) The commissioner shall initiate an administrative proceeding under this chapter by entering a notice of intent to take a specific act or by entering a summary order. The notice of intent or summary order:

(1) may be entered without notice;

(2) may be entered without opportunity for a hearing;

(3) is not required to be supported by findings of fact or conclusions of law; and

(4) must be in writing.

(b) After entering a notice of intent or summary order, the commissioner shall promptly notify all interested parties that the notice of intent or summary order has been entered and of the reasons for the entry.

(c) If a proceeding is under a notice of intent, the commissioner shall inform all interested parties of the date, time, and place set for the hearing on the notice.

(d) If the proceeding is under a summary order, the commissioner shall inform all interested parties that:

(1) the parties have thirty (30) business days from the entry of the order to file with the commissioner a written request for a hearing on the matter; and

(2) a hearing will be scheduled to begin not later than thirty (30) business days after the receipt of a written request.

(e) If the proceeding is under a summary order, the commissioner may, by the commissioner's own motion, set a hearing for the proceeding, whether or not a written request for a hearing is received from an interested party.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-40

Summary orders; final orders

Sec. 40. (a) A summary order becomes a final order if:

(1) thirty (30) business days have passed since the summary order was entered; and

(2) a hearing on the order is not:

(A) requested under section 39(d) of this chapter; or

(B) ordered by the commissioner under section 39(e) of this chapter.

(b) If a hearing on an order is requested or ordered under section 39 of this chapter, the commissioner may modify, vacate, or extend the order until final determination after the commissioner has provided:

(1) a notice of a hearing to all interested persons; and

(2) an opportunity for a hearing by all interested persons.

(c) A final order or an order after a hearing may not be returned without:

(1) appropriate notice to all interested persons;

(2) opportunity for hearing by all interested persons; and

(3) entry of written findings of fact and conclusions of law.

(d) All hearings in an administrative proceeding under this chapter shall be subject to IC 5-14-1.5.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-41

Review; final orders of commissioner

Sec. 41. (a) Any person aggrieved by a final order of the commissioner may obtain a review of the order in a circuit or superior court of Marion County by filing in court, not later than sixty (60) days after the entry of the order, a written petition requesting the order to be modified or set aside in whole or in part. A copy of a petition for review shall be served on the commissioner.

(b) Except where the taking of additional evidence is ordered by a court under subsections (e) and (f), after the filing of a petition for review:

(1) the court shall have exclusive jurisdiction of the matter; and

(2) the commissioner may not modify or set aside the order, in whole or in part.

(c) Unless specifically ordered by the court:

(1) the filing of a petition for review under subsection (a) does not operate as a stay of the commissioner's order; and

(2) the commissioner may enforce or ask the court to enforce an order pending the outcome of the review proceedings.

(d) Upon receipt of a petition for review, the commissioner shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which the order was based. If the order became final by operation of law under section 40(a) of this chapter, the commissioner shall certify and file in court:

(1) a certified copy of the summary order;
(2) evidence of service of the summary order on the parties to the order; and
(3) an affidavit certifying that:
(A) a hearing on the summary order has not been held; and
(B) the summary order became final under section 40(a) of this chapter.

(e) The court may order additional evidence to be taken by the commissioner under conditions the court considers proper if an aggrieved party or the commissioner:
(1) applies to the court for leave to enter additional evidence; and
(2) shows to the satisfaction of the court that:
(A) there were reasonable grounds for failure to enter the evidence in the hearing before the commissioner; or
(B) good cause exists to allow the additional evidence to be taken.

(f) If the court orders new evidence to be taken, the commissioner:
(1) may modify the findings and order by reason of the additional evidence; and
(2) shall file in the court the additional evidence and any modified or new findings or order.

(g) The court shall review the petition based on the original record before the commissioner and any additions or modifications under subsections (e) and (f). The commissioner's findings of facts are conclusive if those findings are supported by competent, material, and substantive evidence. Based on review under this subsection, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-42
Burden of proof; exemptions

Sec. 42. If a person claims an exemption in any complaint, information, indictment, writ, or proceeding under this chapter:
(1) the commissioner is not required to disprove the exemption; and
(2) the party claiming the exemption bears the burden of proof concerning the existence of the exemption.

As added by P.L.177-1991, SEC.10.

IC 23-2-6-43
Failure to make physical delivery; defenses

Sec. 43. In any complaint, information, indictment, writ, or proceeding brought under this chapter that alleges a violation of section 17 of this chapter solely on the failure in an individual case

to make physical delivery within the applicable time under section 19(a)(2) of this chapter, it is a defense if both of the following are shown:

(1) Failure to make physical delivery was due solely to factors beyond the control of all of the following:

(A) The seller.

(B) Officers, directors, partners, agents, servants, or employees of the seller.

(C) Each person occupying a similar status or performing similar functions as a person described in clause (B).

(D) Each person who directly or indirectly controls or is controlled by the seller or by any person described in clause (B) or (C).

(E) The seller's affiliates, subsidiaries, and successors.

(2) Physical delivery was completed within a reasonable time under the applicable circumstances.

As added by P.L.177-1991, SEC.10.

IC 23-3

ARTICLE 3. REPEALED

(Repealed by P.L.149-1986, SEC.65.)

IC 23-4

ARTICLE 4. PARTNERSHIPS

IC 23-4-1

Chapter 1. Uniform Partnership Act

IC 23-4-1-1

Short title

Sec. 1. This chapter may be cited as the Uniform Partnership Act. *(Formerly: Acts 1949, c.114, s.1.) As amended by P.L.34-1987, SEC.286.*

IC 23-4-1-2

Definitions

Sec. 2. In this chapter:

"Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, limited liability companies, corporations, and other associations.

"Bankrupt" includes bankrupt under federal bankruptcy laws or insolvent under any state insolvent statute.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Foreign limited liability partnership" means a limited liability partnership formed under an agreement governed by the laws of a jurisdiction other than Indiana and registered under the laws of the jurisdiction.

"Limited liability partnership" means a partnership formed under an agreement governed by the laws of this state, registered under and complying with sections 45 through 52 of this chapter, and having a name that contains the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

"Real property" includes land and any interest or estate in land. *(Formerly: Acts 1949, c.114, s.2.) As amended by P.L.34-1987, SEC.287; P.L.8-1993, SEC.317; P.L.230-1995, SEC.1.*

IC 23-4-1-3

Interpretation of knowledge and notice

Sec. 3. (1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) states the fact to such person; or

(b) delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

(Formerly: Acts 1949, c.114, s.3.) As amended by P.L.34-1987, SEC.288.

IC 23-4-1-4
Rules of construction

Sec. 4. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing on January 1, 1950, nor to affect any action or proceedings begun or right accrued before January 1, 1950.

(Formerly: Acts 1949, c.114, s.4.) As amended by P.L.34-1987, SEC.289.

IC 23-4-1-5
Rules for cases not provided for in chapter

Sec. 5. In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

(Formerly: Acts 1949, c.114, s.5.) As amended by P.L.34-1987, SEC.290.

IC 23-4-1-6
Partnership defined

Sec. 6. (1) A partnership is an association of two (2) or more persons to carry on as co-owners a business for profit and includes for all purposes of the laws of this state a limited liability partnership.

(2) An association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to January 1, 1950; but this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent with this chapter.

(Formerly: Acts 1949, c.114, s.6.) As amended by P.L.34-1987, SEC.291; P.L.230-1995, SEC.2.

IC 23-4-1-7
Rules for determining existence of partnership

Sec. 7. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 16 of this chapter, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of

itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that the person is a partner in the business, but no such inference shall be drawn if such profits were received in payment for the following:

(a) As a debt by installments or otherwise.

(b) As wages of an employee or rent to a landlord.

(c) As an annuity to a widow or representative of a deceased partner.

(d) As interest on a loan though the amount of payment varies with the profits of the business.

(e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

(5) The existence of a partnership is not affected by the following:

(a) The filing or failure or omission to file an original or renewal registration as a limited liability partnership under section 45 of this chapter.

(b) The expiration of a partnership's status as a limited liability partnership.

(c) The filing of a notice of withdrawal under section 45 of this chapter.

(Formerly: Acts 1949, c.114, s.7.) As amended by P.L.34-1987, SEC.292; P.L.230-1995, SEC.3; P.L.34-1997, SEC.7.

IC 23-4-1-8

Partnership property

Sec. 8. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

(Formerly: Acts 1949, c.114, s.8.)

IC 23-4-1-9

Partner as agent

Sec. 9. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently

carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one (1) or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the good will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

(Formerly: Acts 1949, c.114, s.9.)

IC 23-4-1-10

Conveyance of real property of partnership

Sec. 10. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of section 9(1) of this chapter, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of section 9(1) of this chapter.

(3) Where title to real property is in the name of one (1) or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of section 9(1) of this chapter, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one (1) or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the

partnership, provided the act is one within the authority of the partner under the provisions of section 9(1) of this chapter.

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

(Formerly: Acts 1949, c.114, s.10.) As amended by P.L.34-1987, SEC.293.

IC 23-4-1-11

Partnership bound by admission of partner

Sec. 11. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

(Formerly: Acts 1949, c.114, s.11.) As amended by P.L.34-1987, SEC.294.

IC 23-4-1-12

Partnership charged with knowledge of or notice to partner

Sec. 12. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

(Formerly: Acts 1949, c.114, s.12.)

IC 23-4-1-13

Partnership bound by partner's wrongful act

Sec. 13. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

(Formerly: Acts 1949, c.114, s.13.)

IC 23-4-1-14

Partnership bound by partner's breach of trust

Sec. 14. The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

(Formerly: Acts 1949, c.114, s.14.)

IC 23-4-1-15

Nature of partner liability; partnerships; limited liability partnerships

Sec. 15. (1) Except as provided in paragraph (2), all partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14 of this chapter.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

(2) A partner of a limited liability partnership is not personally liable, directly or indirectly, including by way of indemnification, contribution, or otherwise, for:

(a) the debts, obligations, or liabilities of, or chargeable to, the limited liability partnership or other partner or partners, whether arising in tort, contract, or otherwise; or

(b) the acts or omissions of any other partner;

solely by reason of being a partner, acting or failing to act as a partner, or participating as an employee, a consultant, a contractor, or otherwise in the conduct of the business or activities of the limited liability partnership while the partnership is a limited liability partnership.

(3) A partner of a limited liability partnership may be personally liable for the partner's own acts or omissions.

(4) A limited liability partnership is liable out of partnership assets for partnership debts, obligations, and liabilities.

(5) A partner in a limited liability partnership is not a proper party to a proceeding by or against the limited liability partnership, the object of which is to recover any debts, obligations, or liabilities of, or chargeable to, the partnership, unless the partner is personally liable under paragraph (3).

(6) The laws of Indiana or another jurisdiction may not impose personal liability on a partner in a limited liability partnership. The only actions required of a limited liability partnership or of individual partners in such a partnership in order to avail themselves of the limited liability provisions of this chapter are those required by this chapter.

(Formerly: Acts 1949, c.114, s.15.) As amended by P.L.34-1987, SEC.295; P.L.230-1995, SEC.4.

IC 23-4-1-16

Partner by estoppel

Sec. 16. (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him or any one, as a partner in an existing partnership or with one (1) or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such

person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one (1) or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

(Formerly: Acts 1949, c.114, s.16.)

IC 23-4-1-17

Liability of incoming partner

Sec. 17. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

(Formerly: Acts 1949, c.114, s.17.)

IC 23-4-1-18

Rules determining rights and duties of partners

Sec. 18. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and except as provided in section 15(2) of this chapter, each partner must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct

of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

(Formerly: Acts 1949, c.114, s.18.) As amended by P.L.230-1995, SEC.5.

IC 23-4-1-19

Partnership books

Sec. 19. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

(Formerly: Acts 1949, c.114, s.19.)

IC 23-4-1-20

Duty of partners to render information

Sec. 20. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

(Formerly: Acts 1949, c.114, s.20.)

IC 23-4-1-21

Partner accountable as fiduciary

Sec. 21. (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

(Formerly: Acts 1949, c.114, s.21.)

IC 23-4-1-22

Right to account

Sec. 22. Any partner shall have the right to a formal account as to partnership affairs:

(a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners.

(b) If the right exists under the terms of any agreement.

(c) As provided by section 21 of this chapter.

(d) Whenever other circumstances render it just and reasonable.

(Formerly: Acts 1949, c.114, s.22.) As amended by P.L.34-1987, SEC.296.

IC 23-4-1-23

Continuation of partnership beyond fixed term

Sec. 23. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

(Formerly: Acts 1949, c.114, s.23.)

IC 23-4-1-24

Extent of property rights of partner

Sec. 24. The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

(Formerly: Acts 1949, c.114, s.24.)

IC 23-4-1-25

Nature of partner's right in specific partnership property

Sec. 25. (1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner, his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership

property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to allowances to surviving spouses, heirs, or next of kin.

(Formerly: Acts 1949, c.114, s.25.) As amended by P.L.34-1987, SEC.297.

IC 23-4-1-26

Nature of partner's interest in partnership

Sec. 26. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

(Formerly: Acts 1949, c.114, s.26.)

IC 23-4-1-27

Assignment of partner's interest

Sec. 27. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

(Formerly: Acts 1949, c.114, s.27.)

IC 23-4-1-28

Partner's interest subject to charging order

Sec. 28. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charge may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) with separate property, by any one (1) or more of the partners; or

(b) with partnership property, by any one (1) or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the

partnership.
(Formerly: Acts 1949, c.114, s.28.) As amended by P.L.34-1987, SEC.298.

IC 23-4-1-29
Dissolution defined

Sec. 29. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.
(Formerly: Acts 1949, c.114, s.29.)

IC 23-4-1-30
Partnership not terminated by dissolution

Sec. 30. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.
(Formerly: Acts 1949, c.114, s.30.)

IC 23-4-1-31
Causes of dissolution

Sec. 31. Dissolution is caused:

(1) Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement.

(b) By the express will of any partner when no definite term or particular undertaking is specified.

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking.

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners.

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time.

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership.

(4) By the death of any partner.

(5) By the bankruptcy of any partner or the partnership.

(6) By decree of court under section 32 of this chapter.

(Formerly: Acts 1949, c.114, s.31.) As amended by P.L.34-1987, SEC.299.

IC 23-4-1-32
Dissolution by decree of court

Sec. 32. (1) On application by or for a partner, the court shall decree a dissolution whenever:

(a) A partner has been declared mentally incompetent in any judicial proceeding.

(b) A partner becomes in any other way incapable of performing the partner's part of the partnership contract.

(c) A partner has been guilty of conduct that tends to affect prejudicially the carrying on of the business.

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise acts in matters relating to the partnership business so that it is not reasonably practicable to carry on the business in partnership with that partner.

(e) The business of the partnership can only be carried on at a loss.

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 27 or 28 of this chapter:

(a) After the termination of the specified term or particular undertaking.

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

(Formerly: Acts 1949, c.114, s.32.) As amended by P.L.34-1987, SEC.300; P.L.33-1989, SEC.21.

IC 23-4-1-33

General effect of dissolution on authority of partner

Sec. 33. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

(1) With respect to the partners:

(a) When the dissolution is not by the act, bankruptcy, or death of a partner; or

(b) When the dissolution is by such act, bankruptcy, or death of a partner, in cases where section 34 of this chapter so requires.

(2) With respect to persons not partners, as declared in section 35 of this chapter.

(Formerly: Acts 1949, c.114, s.33.) As amended by P.L.34-1987, SEC.301.

IC 23-4-1-34

Right of partner to contribution from copartners after dissolution

Sec. 34. Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved except in the case of one (1) of the following:

(a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution.

(b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the

death or bankruptcy.

(c) The liability is for a debt, an obligation, or a liability for which the partner is not liable as provided in section 15(2) of this chapter. *(Formerly: Acts 1949, c.114, s.34.) As amended by P.L.230-1995, SEC.6.*

IC 23-4-1-35

Power of partner to bind partnership to third person after dissolution

Sec. 35. (1) After dissolution a partner can bind the partnership except as provided in paragraph (3):

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution.

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(I) had an extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(II) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1)(b)(II).

(4) Nothing in this section shall affect the liability under section 16 of this chapter of any person who after dissolution represents

himself or consents to another representing him as a partner in a partnership engaged in carrying on business.
(Formerly: Acts 1949, c.114, s.35.) As amended by P.L.34-1987, SEC.302.

IC 23-4-1-36
Effect of dissolution on partner's existing liability

Sec. 36. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts and for which the partner was liable under section 15 of this chapter.
(Formerly: Acts 1949, c.114, s.36.) As amended by P.L.230-1995, SEC.7.

IC 23-4-1-37
Right to wind up

Sec. 37. Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: Provided, however, That any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.
(Formerly: Acts 1949, c.114, s.37.)

IC 23-4-1-38
Rights of partners to application of partnership property

Sec. 38. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 36(2) of this chapter, he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(I) All the rights specified in paragraph (1) of this section, and

(II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2)(a)(II) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2)(b) all the rights of a partner under paragraph (1), subject to clause (2)(a)(II), of this section.

(II) If the business is continued under paragraph (2)(b) of this section the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered.

(Formerly: Acts 1949, c.114, s.38.) As amended by P.L.34-1987, SEC.303.

IC 23-4-1-39

Rights where partnership is dissolved for fraud or misrepresentation

Sec. 39. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. *(Formerly: Acts 1949, c.114, s.39.)*

IC 23-4-1-40
Rules for distribution

Sec. 40. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are:

(I) The partnership property.

(II) The contribution of the partners specified in clause (d) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners.

(II) Those owing to partners other than for capital and profits.

(III) Those owing to partners in respect of capital.

(IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) Except as provided in section 15(2) of this chapter, the partners shall contribute, as provided by section 18(a) of this chapter, the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in

the following order:

(I) Those owing to separate creditors.

(II) Those owing to partnership creditors.

(III) Those owing to partners by way of contribution.

(Formerly: Acts 1949, c.114, s.40.) As amended by P.L.34-1987, SEC.304; P.L.230-1995, SEC.8.

IC 23-4-1-41

Liability of persons continuing business in certain cases

Sec. 41. (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two (2) or more of the partners, or to one (1) or more of the partners and one (1) or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one (1) partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one (1) or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38(2)(b) of this chapter, either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is

continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partners, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person of partnership continuing the business of the partnership name, or the name of a deceased partner, as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

(Formerly: Acts 1949, c.114, s.41.) As amended by P.L.34-1987, SEC.305.

IC 23-4-1-42

Rights of retiring or estate of deceased partner when business is continued

Sec. 42. When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41(1), 41(2), 41(3), 41(5), 41(6), or (38)(2)(b) of this chapter, without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner shall have priority on any claim arising under this section, as provided by section 41(8) of this chapter.

(Formerly: Acts 1949, c.114, s.42.) As amended by P.L.34-1987, SEC.306.

IC 23-4-1-43

Accrual of actions

Sec. 43. The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding-up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

(Formerly: Acts 1949, c.114, s.43.)

IC 23-4-1-44
Limited liability partnerships; legislative intent and policy

Sec. 44. (1) It is the intent of the legislature that the legal existence of limited liability partnerships formed under an agreement governed by this chapter be recognized outside the boundaries of this state and that the laws of this state governing such limited liability partnerships transacting business outside this state be granted the protection of full faith and credit of the Constitution of the United States.

(2) It is the policy of this state that the internal affairs of partnerships, including limited liability partnerships, formed under an agreement governed by this chapter, including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership, a partner, or partners, are subject to and governed by the laws of this state.

As added by P.L.230-1995, SEC.9.

IC 23-4-1-45
Limited liability partnerships; registration; notice

Sec. 45. (a) To qualify as a limited liability partnership, a partnership under this chapter must do the following:

(1) File a registration with the secretary of state in a form determined by the secretary of state that satisfies the following:

(A) Is signed by one (1) or more partners authorized to sign the registration. A signature on a document under this clause that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(i) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(ii) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(B) States the name of the limited liability partnership, which must:

(i) contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of the name; and

(ii) be distinguishable upon the records of the secretary of state from the name of a limited liability partnership or other business entity registered to transact business in Indiana.

(C) States the address of the partnership's principal office.

(D) States the name of the partnership's registered agent and the address of the partnership's registered office for service of process as required to be maintained by section 50 of this chapter.

(E) Contains a brief statement of the business in which the partnership engages.

(F) States any other matters that the partnership determines to include.

(G) States that the filing of the registration is evidence of the partnership's intention to act as a limited liability partnership.

(2) Except as provided in subdivision (3), file a ninety dollar ($90) registration fee with the registration.

(3) If the registration required under subdivision (1) is filed electronically, file a filing fee of seventy-five dollars ($75).

(b) The secretary of state shall grant limited liability partnership status to any partnership that submits a completed registration with the required fee.

(c) Registration is effective and a partnership becomes a limited liability partnership on the date a registration is filed with the secretary of state or at any later date or time specified in the registration. The registration remains effective until it is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice under section 45.2 of this chapter.

(d) The status of a partnership as a limited liability partnership and the liability of a partner of a limited liability partnership is not adversely affected by errors or subsequent changes in the information stated in a registration under subsection (a).

(e) A registration on file with the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the registration.

As added by P.L.230-1995, SEC.10. Amended by P.L.11-1996, SEC.21; P.L.34-1997, SEC.8; P.L.277-2001, SEC.6; P.L.178-2002, SEC.101; P.L.60-2007, SEC.2; P.L.40-2013, SEC.2.

IC 23-4-1-45.1

Limited liability partnerships; amendment of registration

Sec. 45.1. (a) As used in this section, "limited liability partnership" refers to a:

(1) limited liability partnership; or

(2) foreign limited liability partnership;

as defined in section 2 of this chapter.

(b) The registration of a limited liability partnership may be amended by filing in the office of the secretary of state a certificate of amendment executed by at least one (1) partner authorized to execute an amendment to the registration.

(c) A certificate of amendment must contain the following:

(1) The name of the limited liability partnership.

(2) The date the registration was filed.

(3) The amendment to the registration.

(d) A certificate of amendment must be accompanied by a thirty dollar ($30) filing fee.

(e) Subject to subsection (f), the registration of a limited liability partnership may be amended at any time.

(f) An amended registration must contain only provisions that may be lawfully contained in the registration when the amendment is made.

As added by P.L.34-1997, SEC.9.

IC 23-4-1-45.2
Limited liability partnerships; withdrawal of registration

Sec. 45.2. (a) As used in this section, "limited liability partnership" refers to a:

(1) limited liability partnership; or

(2) foreign limited liability partnership;

as defined in section 2 of this chapter.

(b) The registration of a limited liability partnership may be withdrawn by filing in the office of the secretary of state a withdrawal notice executed by at least one (1) partner authorized to execute a withdrawal notice.

(c) A withdrawal notice must contain the following:

(1) The name of the limited liability partnership.

(2) The date the registration was filed.

(3) A brief statement regarding the reason for filing the withdrawal notice.

(4) Any other information considered appropriate by the limited liability partnership.

(d) A withdrawal notice must be accompanied by a thirty dollar ($30) filing fee.

(e) The withdrawal notice is effective and the partnership ceases to be a limited liability partnership on the date a withdrawal notice is filed with the secretary of state or at any later date or time specified in the notice.

As added by P.L.34-1997, SEC.10.

IC 23-4-1-45.3
Limited liability partnerships; reservation of name

Sec. 45.3. (a) A person may reserve the exclusive right to the use of a name, including a fictitious name for a foreign limited liability partnership whose name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the exclusive use of the applicant for renewable one hundred twenty (120) day periods.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

As added by P.L.34-1997, SEC.11. Amended by P.L.277-2001, SEC.7.

IC 23-4-1-45.4
Foreign limited liability partnerships; registration of name

Sec. 45.4. (a) A foreign limited liability partnership may register its name, or its name with any addition required by section 45 of this chapter, if the name is distinguishable upon the records of the secretary of state as provided in section 45 of this chapter.

(b) A foreign limited liability partnership registers its name, or its name with any addition required by section 45 of this chapter, by

delivering to the secretary of state for filing an application setting forth:

(1) its name, or its name with any addition required by section 45 of this chapter; and

(2) the state or country and date of its formation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign limited liability partnership whose registration is effective may renew the registration for successive years by delivering to the secretary of state for filing a renewal application that complies with subsection (b). The renewal application must be filed between October 1 and December 31 of the preceding year. The filing of the renewal application renews the registration for the following calendar year.

(e) A foreign limited liability partnership whose registration is effective may thereafter qualify as a foreign limited liability partnership under that name or consent in writing to the use of that name by a limited liability partnership thereafter formed under this article or by another foreign limited liability partnership thereafter authorized to transact business in Indiana. The registration terminates when the domestic limited liability partnership is formed or the foreign limited liability partnership qualifies or consents to the qualification of another foreign limited liability partnership under the registered name.

As added by P.L.277-2001, SEC.8.

IC 23-4-1-45.5

Fees for reservation or registration of name

Sec. 45.5. The secretary of state shall collect the following fees when the documents described in this chapter are delivered to the secretary of state for filing:

(1) Application for reservation of name. $20

(2) Application for renewal of reservation. $20

(3) Notice of transfer of reserved name. $20

(4) Application of registered name. $30

(5) Application for renewal of registered name. $30

As added by P.L.277-2001, SEC.9.

IC 23-4-1-46

Limited liability partnerships; continuation of partnership and successor partnership registration

Sec. 46. A partnership that has registered as a limited liability partnership is for all purposes the same entity that existed before the registration and continues to be a partnership under the laws of this state. If a limited liability partnership dissolves under section 29 of this chapter, a partnership that is a successor to the limited liability partnership and that intends to be a limited liability partnership is not required to file a new registration and is considered to have filed any documents required or permitted under this section that were filed by the predecessor partnership.

As added by P.L.230-1995, SEC.11.

IC 23-4-1-47
Repealed
(Repealed by P.L.34-1997, SEC.27.)

IC 23-4-1-48
Repealed
(Repealed by P.L.34-1997, SEC.27.)

IC 23-4-1-49
Foreign limited liability partnerships; requirements for transacting business; jurisdiction

Sec. 49. (a) Before transacting business in this state, a foreign limited liability partnership shall do the following:

(1) Comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged.

(2) File a registration with the secretary of state in a form determined by the secretary of state that satisfies the following:

(A) Is signed at least by one (1) partner authorized to sign the registration. A signature of an authorized partner on a document under this clause that is transmitted and filed electronically is sufficient if the authorized partner transmitting and filing the document:

(i) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(ii) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(B) States the name of the limited liability partnership which must contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" or other similar words or abbreviations as may be required or authorized by the laws of the jurisdiction where the partnership is registered as the last words or letters of the name.

(C) States the jurisdiction in which the partnership is registered as a limited liability partnership.

(D) States the address of the partnership's principal office.

(E) States the name of the partnership's registered agent and the address of the partnership's registered office for service of process as required to be maintained by section 50 of this chapter.

(F) Contains a brief statement of the business in which the partnership engages.

(G) States any other matters that the partnership determines to include.

(H) States that the filing of the registration is evidence of the partnership's intention to act as a limited liability partnership.

(3) Except as provided in subdivision (4), file a ninety dollar ($90) registration fee with the registration.

(4) If the registration required under subdivision (2) is filed electronically, file a filing fee of seventy-five dollars ($75).

(b) The secretary of state shall permit a foreign limited liability partnership that:

(1) submits a completed registration;

(2) submits the fees required under subsection (a); and

(3) otherwise complies with this chapter;

to transact business in the state. A registration remains effective until the registration is voluntarily withdrawn under section 45.2 of this chapter.

(c) The internal affairs of foreign limited liability partnerships, including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership or a partner or partners, are subject to and governed by the laws of the jurisdiction in which the foreign limited liability partnership is registered.

As added by P.L.230-1995, SEC.14. Amended by P.L.34-1997, SEC.12; P.L.277-2001, SEC.10; P.L.60-2007, SEC.3.

IC 23-4-1-50

Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation; changing registered office or agent

Sec. 50. (a) A limited liability partnership and a foreign limited liability partnership must continuously maintain in Indiana the following:

(1) A registered office.

(2) A registered agent, who must be one (1) of the following:

(A) An individual who resides in Indiana and whose business office is identical with the registered office.

(B) A domestic limited liability partnership, domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office.

(C) A foreign limited liability partnership, foreign limited liability company, foreign corporation, or nonprofit foreign corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each limited liability partnership formed after June 30, 2014, under the laws of Indiana and each foreign limited liability partnership that qualifies, after June 30, 2014, to do business in Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each limited liability partnership and each foreign limited liability partnership shall provide to its registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of

the partnership; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the partnership.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a partnership under subsection (c).

(e) If a limited liability partnership or a foreign limited liability partnership fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 51 of this chapter, as the registered agent for the partnership.

(f) A limited liability partnership or a foreign limited liability partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

(1) The name of the partnership.

(2) The street address of the partnership's current registered office.

(3) If the current registered office is to be changed, the street address of the new registered office.

(4) The name of the partnership's current registered agent.

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent or a representation that the new registered agent has consented either on the statement or attached to the statement to the appointment.

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(g) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability partnership or foreign limited liability partnership that the registered agent serves by notifying the partnership in writing of the change and signing and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (f) and states that the partnership has been notified of the change.

As added by P.L.230-1995, SEC.15. Amended by P.L.63-2014, SEC.10.

IC 23-4-1-51

Limited liability and foreign limited liability partnerships; resignation of agency; discontinuance of office

Sec. 51. (1) A registered agent may resign the agency appointment by signing and delivering to the secretary of state for filing the signed original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail one

(1) copy to the limited liability partnership or foreign limited liability partnership at the partnership's principal office and the other copy to the registered office, if the registered office has not been discontinued.

(3) The agency appointment is terminated and the registered office discontinued, if discontinued under the statement, thirty-one (31) days after the statement was filed.

(4) A limited liability partnership or foreign limited liability partnership notified under paragraph (2) shall notify the secretary of state of a new registered agent and provide a new registered office not later than the end of the thirty-first day under paragraph (3).

As added by P.L.230-1995, SEC.16.

IC 23-4-1-52

Limited liability and foreign limited liability partnerships; service of process; perfection; nonexclusive means

Sec. 52. (1) The registered agent of a limited liability partnership and foreign limited liability partnership is the partnership's registered agent for service of process, notice, or demand required or permitted by law to be served on the partnership.

(2) If a limited liability partnership or a foreign limited liability partnership does not have a registered agent or the agent cannot with reasonable diligence be served, the partnership may be served by registered or certified mail, return receipt requested, addressed to the partnership at the partnership's principal office. Service is perfected under this subsection at the earliest of the following:

(a) The date the partnership receives the mail.

(b) The date shown on the return receipt, if signed on behalf of the partnership.

(c) Five (5) days after the deposit of the service in the United States mail, if mailed postpaid and correctly addressed.

(3) This section does not prescribe the only means or necessarily the required means of serving a limited liability partnership or foreign limited liability partnership.

As added by P.L.230-1995, SEC.17.

IC 23-4-1-53

Merger of domestic limited liability partnerships and other business entities

Sec. 53. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited liability partnerships may merge with or into one (1) or more other business entities formed,

organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic limited liability partnership that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited liability partnership and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic limited liability partnership or other business entity into which each other domestic limited liability partnership or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the partnership shares of the limited liability partnership that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or

incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic limited liability partnership that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(f) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited liability partnerships with or into one (1) or more other business entities.

(g) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited liability partnerships with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

As added by P.L.178-2002, SEC.102.

IC 23-4-1-54

Entity conversion

Sec. 54. (a) As used in this section, "other entity" has the meaning set forth in IC 23-1-38.5-1.

(b) A domestic corporation, domestic other entity, foreign corporation, or foreign other entity may convert to a domestic partnership under IC 23-1-38.5.

(c) A domestic partnership may convert to a domestic corporation, domestic other entity, foreign corporation, or foreign other entity under IC 23-1-38.5.

As added by P.L.130-2006, SEC.21.

IC 23-4-1-59

Signing false documents for filing

Sec. 59. A person who signs a document that the person knows is false in a material respect, with the intent that the document be

delivered to the secretary of state for filing, commits a Class A misdemeanor.

As added by P.L.63-2014, SEC.11.

IC 23-4-2
Repealed

(Repealed by P.L.147-1988, SEC.2.)

IC 23-4-3

Chapter 3. Accounting by Surviving Partners

IC 23-4-3-1

Settling and closing affairs

Sec. 1. In case of the death of one (1) partner, the surviving partner or partners shall proceed to settle and close up, as speedily as may be practicable, the partnership affairs, in accordance with the law in force and the provisions of this chapter.

(Formerly: Acts 1877, c.86, s.1.) As amended by P.L.34-1987, SEC.320.

IC 23-4-3-2

Inventory and appraisal

Sec. 2. Such surviving partner or partners, within sixty (60) days after such death, shall proceed to make a full, true, and complete inventory of the estate, goods, chattels, rights, credits, moneys, and effects within the knowledge of the partner or partners, and shall cause the same to be appraised by:

(1) one (1) disinterested freeholder of the county; and

(2) one (1) disinterested appraiser licensed under IC 25-34.1;

who are residents of Indiana, one (1) of whom shall be selected by the surviving partner or partners and the other by the clerk of the court having probate jurisdiction, making a full and complete schedule thereof; which said schedule and appraisement shall be sworn to by said appraisers before the clerk of such court, specifying that the property described in said schedule is appraised at its true cash value; which schedule shall, by said appraisers, be filed in the office of the clerk of the court having probate jurisdiction, immediately after the completion thereof.

(Formerly: Acts 1877, c.86, s.2.) As amended by P.L.113-2006, SEC.17.

IC 23-4-3-3

Affidavit of correctness of inventory; list of liabilities

Sec. 3. It shall be the duty of such surviving partner or partners, immediately upon the filing of such schedule of appraisement, to file with the clerk of the court having probate jurisdiction, his or their affidavit that the schedule filed by said appraisers contains a full, true and complete list of all property, rights, credits, moneys and effects belonging to said firm; and, at the same time, shall file a full, true and complete list of all the liabilities of said firm at the time of the death of said deceased partner, to which said list of liabilities said surviving partner or partners shall also append his or their affidavits testifying to the correctness thereof.

(Formerly: Acts 1877, c.86, s.3.)

IC 23-4-3-4

Bond

Sec. 4. Upon the filing of the inventory, appraisement, and list of

liabilities, as in this chapter provided, such surviving partner or partners shall execute a bond, payable to the state of Indiana, in a sum double the amount of the interest of said decedent, as shown by said inventory, appraisement, and list of liabilities on file, conditioned for the faithful performance of his or their trust, signed by at least two (2) good and sufficient freehold sureties, to be approved by the clerk of said court. If such surviving partner or partners shall fail to file such bond within ten (10) days after the filing of such inventory and appraisement, the judge of the court having probate jurisdiction shall appoint a receiver to take charge of the assets of such firm, who shall proceed to settle the same as though a voluntary assignment of the assets of said firm had been made for the benefit of creditors.
(Formerly: Acts 1877, c.86, s.4.) As amended by P.L.34-1987, SEC.321.

IC 23-4-3-5
Appointment of receiver on failure to comply with act

Sec. 5. If such surviving partner or partners shall fail to file such inventory, appraisement, and list of liabilities, and bond, as in this chapter provided, or shall fail or refuse to take upon him or themselves the settlement of the business of such firm, the judge of the court having probate jurisdiction, upon petition filed by anyone interested in the settlement of such partnership, shall appoint a receiver to settle the affairs of such partnership, who shall proceed to settle the same as though a voluntary assignment for the benefit of the creditors had been made by the surviving partner or partners of such firm.
(Formerly: Acts 1877, c.86, s.5.) As amended by P.L.34-1987, SEC.322.

IC 23-4-3-6
Petition to appoint receiver; notice

Sec. 6. Any person interested in the settlement of such partnership business may file a petition in the court having probate jurisdiction to have a receiver appointed to settle the same, and shall give the surviving partner or partners ten (10) days notice of the time and place of hearing such petition; and if, upon the hearing thereof, the judge of such court shall be convinced that such partnership business is not being properly settled, or that the assets of such firm are being wasted, he shall appoint a receiver to settle the same, as provided in this chapter.
(Formerly: Acts 1877, c.86, s.6.) As amended by P.L.34-1987, SEC.323.

IC 23-4-3-7
Disposition of surplus

Sec. 7. Upon the settlement of such partnership business, the surviving partner or partners shall report the same to the proper court and pay the surplus belonging to such deceased partner into court, to

be paid out, on the order of the judge, to such person or persons as may be entitled to the same by law; and such surviving partner or partners shall settle such partnership business within two (2) years from the filing of such inventory and appraisement, unless the court for good cause shown shall grant a longer time.
(Formerly: Acts 1877, c.86, s.7.)

IC 23-4-3-8
Release of sureties

Sec. 8. The sureties upon the bond of such surviving partner or partners may be released as in cases of sureties upon the bond of executors and administrators.
(Formerly: Acts 1877, c.86, s.8.)

IC 23-5

ARTICLE 5. OTHER BUSINESS ASSOCIATIONS

IC 23-5-1

Chapter 1. Indiana Business Trust Act

IC 23-5-1-1

Short title

Sec. 1. This chapter may be cited as the Indiana Business Trust Act of 1963.

(Formerly: Acts 1963, c.353, s.1.) As amended by P.L.34-1987, SEC.324.

IC 23-5-1-2

Definitions

Sec. 2. For the purpose of this chapter:

(a) A "business trust" is an unincorporated business association which is created by a trust instrument, pursuant to common law or enabling legislation, under which property is held, managed, administered, controlled, invested, reinvested, or operated, or business or professional activities for profit are carried on, by a trustee or trustees for the benefit and profit of such person or persons as are or may become the holders of transferable certificates, issued pursuant to the provisions of the trust instrument, which have either restricted or unrestricted transferability, evidencing beneficial interests in the trust estate, including but not limited to a trust of the type known at common law as a business trust, or Massachusetts trust, or a trust qualifying as a real estate investment trust under Section 856 of the Internal Revenue Code or under any similar statute. Such business trust may provide that the holders of such certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations for profit. A business trust shall not be construed to include, and this chapter shall not apply to, the form of trust known as a land trust, under which a trustee or trustees holds the legal or equitable title to real estate, which does not issue transferable certificates of beneficial interest and which has less than one hundred beneficiaries. Nothing in the specific exclusion shall be construed to enlarge the operation or application of this chapter.

(b) A "domestic business trust" is one created under the laws of this state.

(c) A "foreign business trust" is one created under the laws of a territory or state other than Indiana.

(d) The "corpus" of any business trust shall consist of its net worth and shall be equivalent to the capital, paid-in surplus, and accumulated earnings or earned surplus of a corporation.

(Formerly: Acts 1963, c.353, s.2.) As amended by P.L.2-1987, SEC.33.

IC 23-5-1-3

Business trust created prior to chapter

Sec. 3. A business trust is hereby declared to be a permitted form of association for the conduct of business in this state, provided the provisions of this chapter are complied with, except that nothing contained in this chapter shall be construed to limit, prohibit, or invalidate the existence, acts, or obligations to the state or to any person, of any business trust created or doing business in this state prior to August 12, 1963.

(Formerly: Acts 1963, c.353, s.3.) As amended by P.L.34-1987, SEC.325.

IC 23-5-1-4

Required filings; recordation

Sec. 4. (a) Any business trust, whether domestic or foreign, desiring to transact business in this state, shall file the following documents and information in the office of the secretary of state, on such forms, if any, as such secretary may prescribe:

(1) An executed copy of the trust instrument by which the trust was created and of all amendments thereto or a true and correct copy thereof certified to be such by a trustee thereof before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file.

(2) A verified list of the names and addresses of its trustees.

(3) A balance sheet, certified by an independent certified or public accountant or firm of accountants as of the date no earlier than sixty (60) days prior to such date of filing, fairly and truly reflecting its assets and liabilities and specifically setting out its corpus and showing a net worth of not less than one thousand dollars ($1,000). A foreign business trust shall also file a statement showing the same information required of a foreign corporation under IC 23-1.

(4) The location of its registered office in this state and the name of its resident agent in charge of such registered office.

(b) A foreign business trust shall comply with and be subject to all the provisions of IC 23-1 as though it were a foreign corporation. Before commencement of business in Indiana every trust, domestic or foreign, shall record in the office of the county recorder of the county in which the principal office of said business trust in this state is located a copy of the trust instrument duly bearing the file mark of the secretary of state.

(Formerly: Acts 1963, c.353, s.4.) As amended by P.L.149-1986, SEC.48; P.L.34-1997, SEC.13.

IC 23-5-1-5

Application and filing fees

Sec. 5. Contemporaneously with the filing in the office of the secretary of state of the instruments required by section 4 of this chapter, domestic and foreign business trusts shall pay to the secretary of state an application fee of twenty dollars ($20).

(Formerly: Acts 1963, c.353, s.5.) As amended by P.L.34-1987, SEC.326; P.L.34-1997, SEC.14.

IC 23-5-1-6
Conditions precedent to beginning business; liability for violations

Sec. 6. No business trust shall transact any business in this state, except such as may be incident to its organization, until it has fully complied with sections 4 and 5 of this chapter, and in event of any violation of this section, all trustees of such business trust, except those who filed their written dissent in the office of the secretary of state before such business was transacted, shall be jointly and severally liable for all debts and obligations of the business trust arising from the business so transacted in this state prior to compliance with sections 4 and 5 of this chapter.
(Formerly: Acts 1963, c.353, s.6.) As amended by P.L.34-1987, SEC.327.

IC 23-5-1-7
Amendments to trust instruments; filing; fees; recordation

Sec. 7. The trust instrument by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the common or statutory law applicable to such business trust; provided, that no such amendment adopted subsequent to the preliminary filings required by section 4 of this chapter shall be legally effective in this state until an executed copy thereof has been filed in the office of the secretary of state accompanied by a fee of thirteen dollars ($13) and a file-marked copy thereof recorded in the office of the county recorder of the county in which the principal office of said business trust in this state is located.
(Formerly: Acts 1963, c.353, s.7.) As amended by P.L.34-1987, SEC.328.

IC 23-5-1-8
Powers; construction of instruments; terms and conditions; binding effect

Sec. 8. The power and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created as amended, including but not limited to general grants of power to act and limitations upon individual liability of stockholders, which instrument shall be construed and interpreted in accordance with the common and statutory law applicable to business trusts. Any such trust shall have the right to sue and be sued and if incidental to its purposes the right in its own name, or in the name of the person or persons or corporation or corporations who are from time to time its trustee or trustees, to acquire, hold title to, mortgage, sell, convey, lease, operate, invest in, lend on the security of, and otherwise deal in or with real and personal property; provided, that no business trust shall engage in the business of operating a savings association or

credit union or have the power or authority to conduct a banking, railroad, insurance, surety, safe deposit, mortgage guaranty, or building and loan business, or in the business of mining or manufacturing, or in any business regulated under the utility regulatory commission, or take any action which is in violation of this chapter. Subject to the limitations in this section on power and authority, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the trust was created and by any amendments thereto which have been filed and recorded in compliance with section 7 of this chapter.
(Formerly: Acts 1963, c.353, s.8.) As amended by P.L.34-1987, SEC.329; P.L.23-1988, SEC.112; P.L.79-1998, SEC.23.

IC 23-5-1-9
Applicability of general corporate laws

Sec. 9. Business trusts and certificates of beneficial interests in business trusts are subject to all applicable provisions of law, relating to domestic and foreign corporations, respectively, with regard to the issuance and transfer of securities, merger into a domestic corporation, and the filing of required statements, reports and service of process.
(Formerly: Acts 1963, c.353, s.9.) As amended by P.L.34-1987, SEC.330; P.L.80-1989, SEC.16; P.L.226-1989, SEC.4.

IC 23-5-1-9.1
Adoption of provisions of general corporate law

Sec. 9.1. (a) A business trust, by resolution of the trustees, may adopt a provision of law related to domestic and foreign corporations not listed under section 9 of this chapter.

(b) If a business trust adopts a provision of law under subsection (a), the business trust shall:

(1) file notice of the adoption in the office of the secretary of state; and

(2) record notice of the adoption in the office of the county recorder of the county in which the principal office of the business trust is located.

As added by P.L.226-1989, SEC.5.

IC 23-5-1-10
Repealed

(Repealed by P.L.34-1997, SEC.28.)

IC 23-5-1-10.1
Biennial report; fee

Sec. 10.1. (a) As used in this section, “trust” means a:

(1) domestic business trust; or

(2) foreign business trust;

as defined in section 2 of this chapter.

(b) Each trust authorized to transact business in Indiana shall

deliver a biennial report to the secretary of state for filing that sets forth the following:

(1) The name of the trust and the state or country under whose law the trust is created.

(2) The address of the trust's registered office and the name of its registered agent at that office in Indiana.

(3) The address of the trust's principal office.

(c) When a biennial report is filed, it must be accompanied by the following:

(1) A verified list of the names and addresses of the trustees of the business trust.

(2) Executed copies of all amendments to:

(A) the original trust instrument; and

(B) amendments to the trust instrument that:

(i) were adopted not later than December 31 of the preceding year; and

(ii) have not been filed under section 7 of this chapter.

(3) A fee of fifteen dollars ($15) per year to be paid biennially.

(d) Information in the biennial report must be current as of the date the biennial report is executed on behalf of the trust.

(e) The first biennial report must be delivered to the secretary of state in the second year following the calendar year in which a domestic business trust was created or a foreign business trust was authorized to transact business. The biennial report is due during the same month as the month in which the trust was created or authorized to transact business.

(f) Subsequent biennial reports must be delivered to the secretary of state every second year following the year in which the last biennial report was filed. The secretary of state may accept reports during the two (2) months before the month that they are due.

(g) If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting trust in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is considered to be timely filed.

As added by P.L.34-1997, SEC.15.

IC 23-5-1-11

Surrender of authority to transact business; closing out business; effect of withdrawal

Sec. 11. (a) Any business trust, domestic or foreign, which has obtained authority under this chapter to transact business in Indiana may surrender its said authority at any time by:

(1) filing in the office of the secretary of state a file-marked copy of a resolution duly adopted by its trustees declaring its intention to withdraw, accompanied by a withdrawal fee of thirteen dollars ($13);

(2) recording a copy thereof in the office of the county recorder of the county in which the principal office of said business trust

in this state is located; and

(3) filing all annual reports and paying all annual fees required by section 10 of this chapter and not theretofore filed and paid.

(b) During a period of five (5) years following the effective date of such withdrawal, the business trust shall nevertheless be entitled to convey and dispose of its property and assets in this state, settle and close out its business in this state, and perform any other act or acts pertinent to the liquidation of its business, property, and assets in this state, and to prosecute and defend all suits filed prior to the expiration of said five (5) year period involving causes of action prior to the effective date of such withdrawal or arising out of any action or transactions occurring during said five (5) year period in the course of the liquidation of its business, property, or assets. The withdrawal of a business trust as provided in this section shall have no effect upon any suit filed by or against it prior to the expiration of said five (5) year period until such suit has been finally determined or otherwise finally concluded and all judgments, orders, and decrees entered therein have been fully executed, even though such final determination, conclusion, or execution occurs after the expiration of said five (5) year period.

(c) With respect to a foreign business trust, withdrawal under this section shall not affect its written consent to be sued in the courts of this state, or the jurisdiction over public foreign business trusts of the courts of this state, with respect to any cause of action which arose prior to the effective date of its withdrawal.

(Formerly: Acts 1963, c.353, s.11.) As amended by P.L.34-1987, SEC.331.

IC 23-5-2

Chapter 2. Boards of Trade, Exchanges, and Chambers of Commerce

IC 23-5-2-1

Formation of association

Sec. 1. Any number of persons not less than ten (10) may voluntarily associate themselves by written articles, to be signed and acknowledged by them before some disinterested person authorized by law to take acknowledgment of deeds, specifying therein the objects of the organization, the corporate name they may adopt, the amount of capital stock and numbers of shares into which the same shall be divided, the names and number of the officers to be elected to manage the business and prudential concerns of such association, the manner of their election, the name and place of residence of each member or stockholder, and, (if a stock capital is subscribed), the amount and number of shares subscribed by each.

(Formerly: Acts 1875, c.5, s.1.)

IC 23-5-2-2

Purpose of association

Sec. 2. Such association may be formed, either on the basis of capital stock or by requiring annual membership fees, for the purpose of maintaining boards of trade, commercial or real estate exchanges, chambers of commerce or other commercial organizations, under such name as the incorporation may see proper to adopt.

(Formerly: Acts 1875, c.5, s.2.)

IC 23-5-2-3

Filing and recording articles of incorporation; amendment

Sec. 3. Every such association shall file their articles of incorporation in the recorder's office of the county in which such association may be formed; and, upon the expense of filing and recording being paid, the recorder shall record the same in the miscellaneous book of records in his office, and such records, or a certified copy thereof, as against the subscribers of such articles of incorporation, shall be conclusive evidence of the matters and things therein recited; such articles may be amended from time to time in such manner as may be prescribed in the original articles of association; and amendments so made shall go into effect when filed and recorded in the recorder's office of such county: Provided, however, That no such amendments shall be allowed or made which shall change the objects of any such association as defined in the original articles of association, nor add another and different object than those originally specified as herein required.

(Formerly: Acts 1875, c.5, s.3.)

IC 23-5-2-4

Rights, powers, and privileges of associations

Sec. 4. Every such association shall, from the time such articles

are filed in the proper recorder's office be deemed and held to be a corporation, and shall have and possess all the rights, powers and privileges given to corporations by common law; to sue and be sued; and to rent, lease, purchase, hold and convey such real and personal property as may be necessary and proper for the purpose of erecting and maintaining buildings thereon and to carry out the objects of any such corporation.
(Formerly: Acts 1875, c.5, s.4; Acts 1913, c.295, s.1.)

IC 23-5-2-5
Shares of corporation

Sec. 5. Every such corporation may, at its discretion, divide its corporate property into shares and designate and prescribe the manner and under what conditions the said stock or shares thereof may be held, sold, transferred, conveyed, voted, retired, cancelled or forfeited.
(Formerly: Acts 1875, c.5, s.5; Acts 1913, c.295, s.2.)

IC 23-5-2-6
Officers, directors, and agents; books and records

Sec. 6. Every such corporation shall, in the manner specified in its articles of incorporation, elect such officers, directors and agents as may be necessary to carry into operation the objects of its organization. It may adopt and prescribe rules and by-laws for the government of its officers, directors, agents and members, and shall keep a record of its proceedings, and books in which shall be kept correct accounts of all receipts and expenditures of such corporation, and semiannually a balance sheet containing a full, true and complete account of all such receipts and expenditures, shall be made out, signed by the president, attested by the clerk or secretary and recorded in a book to be kept for that purpose, and such book, and all other books in which the accounts of such corporation may be kept, shall be, during business hours, open to the examination and inspection of the members thereof, and shall keep a corporate seal, and such records or copies thereof, duly signed by the president, and attested by the secretary or clerk under its corporate seal, and verified by the affidavit of such president or clerk thereto annexed, may be given and read in evidence in any court when the interests of such corporation are concerned.
(Formerly: Acts 1875, c.5, s.6.)

IC 23-5-2-7
Settlement of disputes

Sec. 7. Every such corporation may adopt rules, by-laws and regulations relating to the arbitration and settlement of business controversies and misunderstanding between its members, and may appoint, annually, or oftener, committees to whom such disputes may be referred for settlement, and all arbitrations and settlements thus made, and the awards of such committees shall be final and binding upon the parties only who may have signed a written agreement to

abide by such awards, and such corporation may expel any of its members for violations of its regulations, or for dishonorable transactions in business.
(Formerly: Acts 1875, c.5, s.7.)

IC 23-5-2-8
Violations; penalties

Sec. 8. Any willful violation of any of the provisions of this chapter, by any association or corporation organized under or by virtue of this chapter, shall forfeit all rights of such corporation or association acquired under this chapter, and it may be proceeded against by information as, by law, in other cases provided.
(Formerly: Acts 1875, c.5, s.8.) As amended by P.L.34-1987, SEC.332.

IC 23-5-2-9
Mutual mortuary benefits

Sec. 9. (a) This chapter shall not authorize the organization of any banking, insurance, telegraph, mining, manufacturing, warehouse, or transportation company, but any board of trade or other commercial organization organized under this chapter may create and operate among its members a system of mutual mortuary benefits and may raise the benefits, after the death of each member who is a subscriber to the mortuary benefit fund, by an assessment of not more than four dollars ($4) upon each living member for the benefit of the beneficiaries of such deceased member described in the articles of association or bylaws of the corporation or for the benefit of the beneficiaries named by the member conformably to the articles of association or bylaws.

(b) The corporation may make continued membership in the corporation itself, of a living member, conditional upon the member's paying such assessments promptly.

(c) The corporation shall only be liable to any beneficiary to the extent for the assessment in the beneficiary's favor that has been received by it, and the fund so collected shall not be depleted by any salary of officers or other expenses, but the whole thereof shall be paid to the beneficiary.
(Formerly: Acts 1875, c.5, s.9; Acts 1901, c.191, s.1.) As amended by P.L.34-1987, SEC.333; P.L.1-1989, SEC.47.

IC 23-5-2-10
Report to general assembly

Sec. 10. Any and all associations or corporations organized under or having existence by virtue of this chapter shall remain subject to the control of the general assembly of the state of Indiana, and may be, by law, required and compelled to make a report of all its proceedings to any general assembly of this state, and any general assembly of this state may, by law, repeal this chapter, and require and compel the dissolution and settling up of all corporations or associations organized under this chapter within any period not less

than three (3) years after the passage of such repealing law. A report under this section to the general assembly must be in an electronic format under IC 5-14-6.

(Formerly: Acts 1875, c.5, s.10.) As amended by P.L.34-1987, SEC.334; P.L.28-2004, SEC.161.

IC 23-6

ARTICLE 6. PUBLIC CORPORATIONS AND ASSOCIATIONS

IC 23-6-1

Repealed

(Repealed by P.L.236-1985, SEC.3.)

IC 23-6-2
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-6-3

Chapter 3. Indiana Historical Society

IC 23-6-3-1

Body politic and corporate; powers

Sec. 1. The Indiana historical society is a body politic and corporate that may:

(1) have perpetual succession;

(2) hold, purchase, receive, enjoy and transfer any property, real and personal;

(3) have and use a common seal; and

(4) sue and be sued, plead and be impleaded, defend and be defended in all courts of judicature whatever.

(Formerly: Acts 1831, c.34, s.1.) As added by Acts 1982, P.L.146, SEC.1.

IC 23-6-3-2

Objects

Sec. 2. The objects of the society are:

(1) the collection and preservation of all materials calculated to shed light on the natural, civil, and political history of Indiana;

(2) the publication and circulation of historical documents;

(3) the promotion of useful knowledge; and

(4) the friendly and profitable intercourse of such citizens as are disposed to promote these ends.

(Formerly: Acts 1831, c.34, s.1.5; Acts 1978, P.L.152, SEC.1.) As added by Acts 1982, P.L.146, SEC.1.

IC 23-6-3-3

Annual meeting; governing body; election; resolutions

Sec. 3. (a) There shall be an annual meeting of the members of the society at a time and place to be specified in the bylaws.

(b) At each annual meeting one-third (1/3) of the members of the governing body shall be elected by the members of the society in a manner and for terms to be specified in the bylaws.

(c) The number of members of the governing body shall be fixed by the bylaws.

(d) The members of the society, at the annual meeting, may adopt such resolutions for the government of the society as they think proper and as are not inconsistent with this chapter and with the laws and constitution of this state.

(Formerly: Acts 1831, c.34, s.2; Acts 1969, c.88, s.1; Acts 1978, P.L.152, SEC.2.) As added by Acts 1982, P.L.146, SEC.1.

IC 23-6-3-4

Bylaws

Sec. 4. (a) The governing body of the society may make such bylaws as it thinks proper for the government of the society and for carrying into effect the objects of the society not inconsistent with this chapter or with any resolution that is adopted at an annual

meeting of the members of the society.

(b) The bylaws adopted by the governing body and a statement of the receipts and disbursements of the society shall be reported to the annual meetings of the society.

(Formerly: Acts 1831, c.34, s.3; Acts 1978, P.L.152, SEC.3.) As amended by Acts 1982, P.L.146, SEC.1.

IC 23-6-3-5

Delivery of laws and journals to society; delivery of books and other articles

Sec. 5. (a) The legislative services agency shall deliver to the society one (1) copy of the laws of this state and one (1) copy of the journals of the senate and house of representatives, which are published each year.

(b) The secretary of state shall deliver to the society all books and other articles that have been or may be transmitted to his office for the use of the society.

(Formerly: Acts 1831, c.34, s.4; Acts 1978, P.L.152, SEC.4.) As added by Acts 1982, P.L.146, SEC.1.

IC 23-6-4

Chapter 4. Indiana Business Development Credit Corporation Law

IC 23-6-4-1

"Credit corporation" defined

Sec. 1. As used in this chapter, "credit corporation" means a corporation to which the secretary of state has issued a certificate of election under section 8 of this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-2

"Lending agreement" defined

Sec. 2. As used in this chapter, "lending agreement" means an agreement between a credit corporation and a lending institution, under which the lending institution agrees to lend funds to the credit corporation in accordance with section 13 of this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-3

"Lending institution" defined

Sec. 3. As used in this chapter, "lending institution" means a bank or trust company, industrial loan and investment company, credit union, savings bank, bank of discount and deposit, small loan company, savings association, insurance company or related corporation, partnership, limited liability company, foundation, pension fund, or other institution engaged primarily in lending or investing funds.

As added by P.L.236-1985, SEC.1. Amended by P.L.42-1993, SEC.16; P.L.79-1998, SEC.24.

IC 23-6-4-4

"Loan limit" defined

Sec. 4. As used in this chapter, "loan limit" means, for any member, the maximum amount permitted to be outstanding at any one (1) time on loans made by that member to a credit corporation, as determined by the credit corporation's board of directors.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-5

"Member" defined

Sec. 5. As used in this chapter, "member" means a lending institution authorized to do business in Indiana that enters into a lending agreement with, and undertakes to make member loans to, a credit corporation organized or operated under this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-6

"Member loan" defined

Sec. 6. As used in this chapter, "member loan" means a loan made

by a member upon the call of the credit corporation under its lending agreement with the member and section 13 of this chapter.
As added by P.L.236-1985, SEC.1.

IC 23-6-4-7
"Small business concern" defined

Sec. 7. As used in this chapter, "small business concern" means any business entity that qualifies as a small business concern under the applicable section of the federal Aid to Small Business Act (15 U.S.C. 632) and accompanying regulations.
As added by P.L.236-1985, SEC.1.

IC 23-6-4-8
Election to accept chapter; amendment of articles of incorporation; resolution; vote of shareholders; approval; certificate of election

Sec. 8. (a) Any corporation organized before January 1, 1985, under IC 23-1 (the Indiana General Corporation Act) may elect to accept this chapter, and avail itself of the rights, privileges, immunities, and franchises provided by this chapter, by filing in the office of the secretary of state the election described in subsection (b), together with amended articles of incorporation allowing it to operate under this chapter.

(b) The board of directors of a corporation desiring to accept this chapter shall, by a resolution adopted by a majority vote of the board, approve a written election setting forth:

(1) the name of the corporation;
(2) the location of its principal office;
(3) the name and post office address of its resident agent;
(4) the date of its incorporation; and
(5) a declaration that it accepts all of the terms and provisions of this chapter.

(c) The resolution of the board of directors electing to accept this chapter and the corporation's amended articles of incorporation shall be submitted to a vote of the shareholders of the corporation entitled to vote on those proposals at a designated meeting called for that purpose. The affirmative votes of the holders of at least two-thirds (2/3) of the outstanding voting shares of the corporation are required for adoption of the election and the amended articles of incorporation. If the election and the amended articles of incorporation are adopted, they shall be signed in duplicate by a current officer of the corporation, verified and affirmed subject to penalties for perjury, and presented in duplicate to the secretary of state at the secretary of state's office.

(d) Upon the presentation of an election and amended articles of incorporation adopted under this section, the secretary of state shall endorse an approval upon both of the duplicate copies of each document, if the secretary determines that they conform to law. If all fees have been paid as required by law, the secretary shall also:

(1) file one (1) copy of each document in the secretary's office;
(2) issue a certificate of election to the corporation; and

(3) return the remaining copies bearing the endorsement of the secretary's approval to the corporation.

(e) Upon the issuance of a certificate of election to a corporation by the secretary of state under subsection (d):

(1) the election becomes effective;

(2) the corporation is entitled to all of the rights, privileges, immunities, powers, and franchises, and is subject to all of the penalties, liabilities, and restrictions granted to or imposed upon credit corporations organized by this chapter; and

(3) the amendments to the corporation's articles of incorporation become effective.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-9

Purposes of corporations

Sec. 9. The purposes for which a credit corporation may exist must include the following:

(1) To assist, promote, encourage, and, through the cooperative efforts of the institutions and corporations that from time to time become members of the credit corporation, develop and advance the business prosperity and economic welfare of Indiana.

(2) To encourage and assist in the location of new business and industry in Indiana and to rehabilitate existing Indiana business and industry.

(3) To stimulate and assist in the expansion of all kinds of business activity, primarily through the making of loans and other extensions of credit to small business concerns, for purposes of:

(A) promoting the business development and maintaining the economic stability of Indiana;

(B) providing maximum opportunities for employment;

(C) encouraging thrift; and

(D) improving the standard of living of the citizens of Indiana.

(4) To cooperate with other organizations, public or private, the objectives of which are the promotion and advancement of industrial, commercial, agricultural, or recreational developments in Indiana.

(5) To furnish money and credit to approved and deserving applicants, primarily small business concerns, for the promotion, development, and conduct of all kinds of business activity in Indiana, and to thereby establish a source of credit not otherwise readily available to those applicants.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-10

Powers of corporations

Sec. 10. In furtherance of its purposes and in addition to the powers conferred on corporations by IC 23-1, a credit corporation may:

(1) borrow money from any lending institution or from any agency established under the Small Business Investment Act of 1958 (Public Law 85-699, 72 Stat. 689), as amended, or under other federal or state statutes;
(2) do all things necessary or desirable to secure aid, assistance, loans, and other financing from its members (whether as member loans or otherwise);
(3) issue bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and secure any of those instruments by a mortgage, pledge, deed of trust, or other lien on any property, franchise, rights, or privileges of the credit corporation, without securing member or shareholder approval;
(4) lend money to, and guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation, limited liability company, or association;
(5) establish and regulate the terms and conditions of transactions entered into under subdivision (4) and the charges for interest and services connected with those transactions;
(6) acquire any interest in the goodwill, business rights, real and personal property, and other assets of any persons or corporations and assume, undertake, or pay the obligations, debts, and liabilities of that person or corporation;
(7) acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments;
(8) acquire, construct, reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;
(9) acquire, subscribe for, own, sell, hold, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person or corporation and, while the owner or holder of such a property interest, exercise all the rights, powers, and privileges of ownership, including the right to vote;
(10) acquire and dispose of an interest in any other type of real or personal property, including any real or personal property acquired by the corporation from time to time in the satisfaction of debts or as a result of the enforcement of obligations;
(11) mortgage, pledge, or otherwise encumber any property, right, or thing of value acquired by the credit corporation as security for the payment of any part of the purchase price for the acquired item;
(12) cooperate with and avail itself of the facilities of the United States Department of Commerce, the Indiana economic development corporation, and any other similar state or federal governmental agencies;
(13) cooperate with, assist, and otherwise encourage organizations in the various communities of Indiana in the

promotion, assistance, and development of the business prosperity and economic well-being of those communities, Indiana, or any political subdivision of Indiana;

(14) make, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with the laws of Indiana, for the administration and regulation of the affairs of the corporation, which bylaws may:

(A) establish internal governance procedures and standards, including procedures for voting by proxy at and for giving notice of meetings of directors and of members and shareholders, procedures and standards for the payment of dividends, and procedures for the delegation by the board of directors of its authority under the articles of incorporation and this chapter to one (1) or more committees of the board or to officers of the corporation; and

(B) give the board of directors or committees of the board the power to pass resolutions necessary or convenient to carrying out the purposes of the corporation; and

(15) do all acts and things necessary or convenient to carrying out the powers expressly granted in this chapter.

As added by P.L.236-1985, SEC.1. Amended by P.L.8-1993, SEC.318; P.L.4-2005, SEC.132.

IC 23-6-4-11

Persons or entities qualified to participate; shareholders' rights; amount of capital stock acquired

Sec. 11. (a) Notwithstanding any other law, any person, domestic or foreign corporation, public utility company, insurance company, lending institution, or trust may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, other evidence of indebtedness, or shares of the capital stock of a credit corporation. While a shareholder of a credit corporation, such a person or entity may exercise all the rights, powers, and privileges granted other shareholders of the credit corporation, including the right to vote. Except as otherwise specifically provided in this chapter, such a person or entity may take any action authorized by this section without the approval of any Indiana regulatory authority.

(b) The amount of capital stock of a credit corporation that a member may acquire under this section is in addition to the amount of capital stock in corporations that the member may otherwise acquire.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-12

Lending institutions as members; loans

Sec. 12. Notwithstanding any other law, lending institutions may become members of a credit corporation and make loans to the credit corporation as provided in this chapter.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-13

Lending agreements; time of membership; evidence of loans; interest

Sec. 13. Any lending institution may become a member of a credit corporation by entering into a lending agreement with the credit corporation on such form and in such manner as the board of directors of the credit corporation may require. Membership in a credit corporation becomes effective upon execution of such an agreement. Each member shall lend funds to the credit corporation according to the terms of the lending agreement. The board of directors of the credit corporation shall determine and approve the terms for lending agreements, subject to the following conditions:

(1) The total amount outstanding on loans to the credit corporation made by any member under its lending agreement or otherwise at any time, when added to the amount of the investment in the capital stock of the credit corporation then held by that member, may not exceed the lesser of:

(A) any limit established by applicable state or federal law; or

(B) the loan limit for that member.

(2) All loans made to the credit corporation by members must be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the credit corporation.

(3) The board of directors of the credit corporation shall determine the interest rate for the debt instruments referred to in subdivision (2).

As added by P.L.236-1985, SEC.1.

IC 23-6-4-14

Duration of membership; withdrawal of membership

Sec. 14. The board of directors of a credit corporation shall determine the duration of membership in the credit corporation. However, upon written notice given to the credit corporation ninety (90) days in advance, a member may withdraw from membership in the credit corporation. After notice of the intended withdrawal of a member has been received by the credit corporation, the member is not obligated to make any further loans to the credit corporation.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-15

Powers of members and shareholders; voting rights

Sec. 15. (a) Only the members and shareholders of a credit corporation may exercise the following powers of the credit corporation:

(1) To elect directors of the credit corporation as provided in section 16 of this chapter.

(2) To amend the credit corporation's articles of incorporation as provided in section 17 of this chapter.

(3) To dissolve the credit corporation as provided in section 19 of this chapter.

(4) To exercise such other of the powers of the credit corporation, consistent with this chapter, as may be conferred on the members and shareholders by the bylaws of the credit corporation.

(b) As to any matter requiring action by the members and shareholders of the credit corporation, the members and shareholders shall vote separately on that matter by classes. Except as otherwise provided in this chapter, such a matter requires the affirmative vote of at least a majority of the votes to which the members present or represented at the meeting are entitled and the affirmative vote of at least a majority of the votes to which the shareholders present or represented at the meeting are entitled.

(c) Each shareholder has one (1) vote for each share of stock held by the shareholder, and each member has one (1) vote. However, additional votes may be granted to any member or group of members by the articles of incorporation of the credit corporation.

(d) As to any matter requiring action by the members and shareholders of a credit corporation, the members and shareholders may vote either in person or by proxy.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-16

Board of directors; loan committees

Sec. 16. (a) Except as otherwise provided in section 15 of this chapter, the corporate powers of a credit corporation shall be exercised by its board of directors. The board of directors of a credit corporation consists of:

(1) thirteen (13) individuals who are elected to serve as directors by the shareholders and members of the credit corporation; and

(2) two (2) ex officio directors as provided in subsection (c).

Each elected director must be at least eighteen (18) years of age, a citizen of the United States, and a resident of Indiana.

(b) The number of directors to be elected by the shareholders of a credit corporation and the number of directors to be elected by the members of the corporation must be included in the articles of incorporation of the credit corporation.

(c) The treasurer of state and the director of the department of financial institutions shall each serve as an ex officio director of a credit corporation, with the same authority as an elected director, but without liability for that service, except for gross negligence or willful misconduct.

(d) If an elected director of a credit corporation ceases being a citizen of the United States or a resident of Indiana, the individual's position as a director of the credit corporation immediately becomes vacant.

(e) If a vacancy occurs in the elected membership of the board of directors of a credit corporation through death, resignation, or otherwise, the vacancy shall be filled in the manner prescribed in this subsection. A vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and

a vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

(f) The board of directors of a credit corporation, by resolution adopted by a majority of the actual number of directors holding office, may establish a loan committee. Except as otherwise provided in this chapter, such a loan committee, to the extent provided in the resolution, may exercise all the authority of the board of directors over the lending operations of the credit corporation. However, only an individual who is a member of the credit corporation's board of directors or who has significant commercial lending experience may serve on the loan committee.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-17

Amendment of articles of incorporation

Sec. 17. (a) Subject to subsection (b), a credit corporation's articles of incorporation may be amended by the members and shareholders of the corporation. The members and shareholders shall vote on proposed amendments in the manner prescribed by section 15 of this chapter. However, the affirmative vote of at least two-thirds (2/3) of the votes to which each class is entitled is required for adoption of an amendment.

(b) An amendment to the articles of incorporation that is inconsistent with the general purposes expressed in this chapter or that authorizes any additional class of capital stock to be issued may not be adopted. In addition, an amendment of the articles of incorporation that:

(1) increases the obligation of a member to make loans to the credit corporation;

(2) makes any change in the principal amount, interest rate, maturity date, or security or credit position of any outstanding loan of a member to the credit corporation; or

(3) affects a member's voting rights;

may not be made without the consent of each member affected by the amendment.

(c) An amendment to the articles of incorporation of a credit corporation shall be filed with the secretary of state. The amendment takes effect on the date of that filing.

As added by P.L.236-1985, SEC.1.

IC 23-6-4-18

Deposits of funds

Sec. 18. (a) A credit corporation may deposit its funds only in a financial institution that has been designated as a depository by a vote of a majority of the directors of the credit corporation present at an authorized meeting of the board of directors. However, a director of the credit corporation who is also an officer or director of a financial institution may not vote on a proposal to designate that financial institution as a depository and may not be counted as being present when a vote on such a proposal is taken.

(b) A credit corporation may not receive money on deposit.
As added by P.L.236-1985, SEC.1.

IC 23-6-4-19
Period of existence; dissolution of corporation

Sec. 19. (a) The period of existence of a credit corporation must be perpetual, subject to the right of the members and shareholders to dissolve the corporation under subsection (b).

(b) The members and shareholders of a credit corporation may dissolve the credit corporation. The members and shareholders shall vote on a proposal to dissolve the credit corporation in the manner prescribed by section 15 of this chapter. However, the affirmative vote of at least two-thirds (2/3) of the votes to which each class is entitled is required to dissolve the credit corporation.

(c) Upon dissolution of a credit corporation, none of the credit corporation's assets may be distributed to the shareholders until all sums due the members and creditors of the credit corporation have been paid in full.
As added by P.L.236-1985, SEC.1.

IC 23-6-4-20
State development company

Sec. 20. A credit corporation is a state development company, as defined in the Small Business Investment Act of 1958 (P.L.85-699, 72 Stat.689) or any similar federal statute, and is authorized to operate on a statewide basis.
As added by P.L.236-1985, SEC.1.

IC 23-6-4-21
Exemptions; securities registration; taxation; financial institutions regulation

Sec. 21. (a) Any securities issued by a credit corporation are exempt from registration under, or compliance with, IC 23-19.

(b) Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, trust companies, and other financial institutions by Indiana law are granted to a credit corporation.

(c) A credit corporation is exempt from regulation under, or compliance with, IC 28-1-1 through IC 28-1-23. However, the department of financial institutions shall conduct an annual examination of the credit corporation for the purpose of determining its financial condition.
As added by P.L.236-1985, SEC.1. Amended by P.L.27-2007, SEC.22.

IC 23-6-4-22
Reports

Sec. 22. Each credit corporation shall make an annual report of its condition to the governor and the general assembly before March 2 of each year. An annual report under this section to the general

assembly must be in an electronic format under IC 5-14-6.
As added by P.L.236-1985, SEC.1. Amended by P.L.28-2004, SEC.162.

IC 23-6-4-23
Application of IC 23-1

Sec. 23. IC 23-1 applies to a credit corporation. However, if there is a conflict between IC 23-1 and this chapter, this chapter controls.
As added by P.L.236-1985, SEC.1.

IC 23-7

ARTICLE 7. GENERAL CIVIL OR CHARITABLE CORPORATIONS

IC 23-7-1

Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-7-1.1
Repealed

(Repealed by P.L.179-1991, SEC.34.)

IC 23-7-2
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-7-3
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-7-4
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-7-5

Chapter 5. Acceptance Into Homes for the Aged

IC 23-7-5-1

Right to accept men in homes for aged females

Sec. 1. It shall be lawful for any incorporated voluntary association heretofore incorporated or hereafter to be incorporated under the laws of this state, for the purpose of establishing and maintaining a home for the care and support of aged females, who can not support themselves from their own means and by their own industry, to receive into such home and support and care for aged men of the same class also.

(Formerly: Acts 1885, c.35, s.1.)

IC 23-7-6
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-7-7

Chapter 7. Acquisition of Historical Sites

IC 23-7-7-1

Application of chapter

Sec. 1. This chapter applies to all cities, all towns, and all corporations formed under IC 23-7-1.1 (before its repeal on August 1, 1991) or IC 23-17.

As added by Acts 1981, P.L.11, SEC.129. Amended by P.L.179-1991, SEC.28; P.L.1-1992, SEC.116.

IC 23-7-7-2

Authorization to acquire sites; eminent domain

Sec. 2. Each corporation to which this chapter applies may acquire and hold battlegrounds or other historic sites for the purpose of maintaining or improving them for historical purposes. The acquisition of property under this section is for a public use, and title may be taken under the power of eminent domain.

As added by Acts 1981, P.L.11, SEC.129.

IC 23-7-7-3

Exemption from taxation

Sec. 3. Property acquired under this chapter is exempt from taxation.

As added by Acts 1981, P.L.11, SEC.129.

IC 23-7-8

Chapter 8. Professional Fundraiser Consultant and Solicitor Registration

IC 23-7-8-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to sections 1 and 8 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

As added by P.L.220-2011, SEC.379.

IC 23-7-8-1

Definitions

Sec. 1. As used in this chapter:

"Bona fide employee" means a person who is a regular, nontemporary employee of a charitable organization under the direct and exclusive control of the organization. The term does not include a person that:

(1) solicits contributions for a charitable organization under the direction, supervision, instruction, or employ of a professional solicitor;

(2) is engaged or employed as a professional solicitor by any other person; or

(3) solicits contributions for more than one (1) charitable organization.

"Charitable organization" means any organization described in Section 501 of the federal Internal Revenue Code.

"Contribution" means a promise or pledge of money, a payment, or any other rendition of property or service. It does not include the payment of membership dues, fines or assessments, or payments for property sold or services rendered by the charitable organization, if not sold or rendered in connection with a solicitation, and does not include a charitable organization that resells used clothing or household items.

"Division" means the consumer protection division, office of the attorney general.

"Person" includes any individual, organization, trust foundation, association, partnership, limited liability company, or corporation.

"Professional fundraiser consultant" means any person who is hired for a fee to plan, manage, advise, or act as a consultant in connection with soliciting contributions for, or on behalf of, a charitable organization, but who does not actually solicit contributions as a part of the person's services or employ, procure, or engage a compensated person to solicit contributions. The term does not include a charitable organization, or a bona fide officer, employee, member, or volunteer of a charitable organization, that solicits on its own behalf.

"Professional solicitor" means a person who, for a financial consideration, solicits contributions for, or on behalf of, a charitable organization, either personally or through agents or employees

specifically employed for that purpose, including agents or employees specifically employed by or for a charitable organization who solicit contributions under the direction, supervision, or instruction of a professional solicitor. The term does not include a charitable organization, or an officer, a bona fide employee, or a volunteer of a charitable organization, that solicits on its own behalf.

"Solicit" means:

(1) to request, other than as described in subdivision (2), directly or indirectly, financial assistance in any form on the representation that the financial assistance will be used for a charitable purpose; or

(2) to sell, offer, or attempt to sell any advertisement, advertising space, membership, or tangible item:

(A) in connection with which any appeal is made for any charitable organization or purpose;

(B) where the name of any charitable organization is used or referred to in any appeal made for any charitable organization as an inducement or reason for making a sale described in this subdivision; or

(C) when or where in connection with a sale described in this subdivision any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or benefit any charitable organization.

A solicitation shall be considered to have taken place whether or not the person making the solicitation receives any contribution.

As added by P.L.245-1983, SEC.1. Amended by P.L.12-1986, SEC.2; P.L.248-1987, SEC.1; P.L.24-1989, SEC.2; P.L.8-1993, SEC.319; P.L.135-1999, SEC.7; P.L.245-2005, SEC.1.

IC 23-7-8-2

Registration; required disclosure of information; term; renewal; contract; notice

Sec. 2. (a) A person may not act as a professional fundraiser consultant or professional solicitor for a charitable organization unless the person has first registered with the division. A person who applies for registration shall disclose the following information while under oath:

(1) The names and addresses of all officers, employees, and agents who are actively involved in fundraising or related activities.

(2) The names and addresses of all persons who own a ten percent (10%) or more interest in the registrant.

(3) A description of any other business related to fundraising conducted by the registrant or any person who owns ten percent (10%) or more interest.

(4) The name or names under which it intends to solicit contributions.

(5) Whether the organization has ever had its registration denied, suspended, revoked, or enjoined by any court or other governmental authority.

(b) A registrant shall notify the division in writing within one hundred eighty (180) days of any change in the information contained in the registration. However, if requested by the division, the solicitor has fifteen (15) days to notify the division of any change in the information.

(c) Before acting as a professional fundraiser consultant for a particular charitable organization, the consultant must enter into a written contract with the organization and file this contract with the division. The contract must identify the services that the professional fundraiser consultant is to provide, including whether the professional fundraiser consultant will at any time have custody of contributions.

(d) Before a professional solicitor engages in a solicitation, the professional solicitor must have a contract which is filed with the division. This contract must specify the percentage of gross contributions which the charitable organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable organization will receive. The amount of gross revenue from the solicitation campaign that the charitable organization will receive must be expressed as a fixed percentage of the gross revenue or expressed as a reasonable estimate of the percentage of the gross revenue. If a reasonable estimate is used, the contract must clearly disclose the assumptions or a formula upon which the estimate is based. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as expenses of the solicitation campaign, including the cost of the merchandise or services sold. If requested by the charitable organization, the person who solicits must at the conclusion of a charitable appeal provide to the charitable organization a final accounting of all expenditures. The final accounting may not be used in violation of any trade secret laws. The contract must disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from the professional solicitor for the three (3) years preceding the year in which the contract is formed. The contract also must specify that, at least every ninety (90) days, the professional solicitor shall provide the charitable organization with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of contributor information.

(e) Before beginning a solicitation campaign, a professional solicitor must file a solicitation notice with the division. The notice must include the following:

(1) A copy of the contract described in subsection (d).

(2) The projected dates when soliciting will begin and end.

(3) The location and telephone number from where solicitation will be conducted.

(4) The name and residence address of each person responsible

for directing and supervising the conduct of the campaign. However, the division shall not divulge the residence address unless ordered to do so by a court of competent jurisdiction, or in furtherance of the prosecution of a violation under this chapter.

(5) If the solicitation is one described under section 7(a)(3) of this chapter, the solicitation notice must include a copy of the required written authorization.

(f) Not later than ninety (90) days after a solicitation campaign has ended and not later than ninety (90) days after the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, a professional solicitor shall submit the following information concerning the campaign to the division:

(1) The total gross amount of money raised by the professional solicitor and the charitable organization from donors.

(2) The total amount of money paid to or retained by the professional solicitor.

(3) The total amount of money, not including the amount identified under subdivision (2), paid by the charitable organization as expenses as part of the solicitation campaign.

(4) The total amount of money paid to or retained by the charitable organization after the amounts identified under subdivisions (2) and (3) are deducted.

The division may deny or revoke the registration of a professional solicitor who fails to comply with this subsection.

(g) The charitable organization on whose behalf the professional solicitor is acting must certify that the information filed under subsections (e) and (f) is true and complete to the best of its knowledge.

(h) At the beginning of each solicitation call, a professional fundraiser consultant and a professional solicitor must state all of the following:

(1) The name of the company for whom the professional fundraiser consultant or professional solicitor is calling.

(2) The name of the professional fundraiser consultant or professional solicitor.

(3) The phone number and address of the location from which the professional fundraiser consultant or professional solicitor is making the telephone call.

(4) The percentage of the charitable contribution that will be expended for charitable purposes after administrative costs and the costs of making the solicitation have been satisfied.

(i) At least every ninety (90) days, a professional solicitor shall provide each charitable organization on whose behalf the professional solicitor is acting with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of information provided under this subsection.

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987,

SEC.2; P.L.24-1989, SEC.3; P.L.48-1998, SEC.1; P.L.135-1999, SEC.8; P.L.155-2003, SEC.1; P.L.97-2004, SEC.86; P.L.245-2005, SEC.2.

IC 23-7-8-3
Public records; inspection

Sec. 3. All registration statements and information required to be filed under this chapter with the division, are public records. The division shall maintain these records for at least two (2) years, and shall make them available to the general public for inspection and photocopying for a charge, during the normal business hours.
As added by P.L.245-1983, SEC.1.

IC 23-7-8-4
Registration fees; disposition; update to registration

Sec. 4. (a) A professional fundraiser consultant or professional solicitor who applies for registration shall pay a fee of one thousand dollars ($1,000). A partnership, limited liability company, corporation, or other entity that intends to act as a professional fundraiser consultant, or professional solicitor, may register for and pay a single registration fee of one thousand dollars ($1,000) on behalf of its members, officers, agents, and employees.

(b) The fees collected shall be used, in addition to funds appropriated by the general assembly, for the administration of this chapter.

(c) Before July 2 of each year, a professional fundraiser consultant or professional solicitor registered under this chapter must file an update to the registration. A renewal fee of fifty dollars ($50) must accompany this update.
As added by P.L.245-1983, SEC.1. Amended by P.L.24-1989, SEC.4; P.L.8-1993, SEC.320; P.L.48-1998, SEC.2.

IC 23-7-8-5
Accurate fiscal records; requirement

Sec. 5. (a) Every professional fundraiser consultant and professional solicitor required to register under this chapter shall keep accurate fiscal records regarding its activities in Indiana. A professional fundraiser consultant or professional solicitor shall retain the records for at least three (3) years after the end of the period of registration to which they relate.

(b) Records maintained under subsection (a) shall be made available for inspection and copying by the division upon oral or written request of the division at any time during the normal business hours of the professional fundraiser consultant or professional solicitor.
As added by P.L.245-1983, SEC.1. Amended by P.L.24-1989, SEC.5; P.L.48-1998, SEC.3.

IC 23-7-8-6
Required disclosures at time of solicitation; written confirmation

Sec. 6. (a) A professional solicitor subject to registration under this chapter or a person who is employed to solicit or act on behalf of a professional solicitor subject to registration under this chapter shall disclose at the time of the solicitation and before the donor agrees to make a contribution:

(1) the name and, upon request, the address of the charitable organization that is being represented;

(2) the fact that the person soliciting the contribution is, or is employed by, a professional solicitor, and the fact that the professional solicitor is compensated;

(3) the full name of the professional solicitor and, upon request, the telephone number the person being solicited can call to confirm the information provided under this section; and

(4) the charitable purpose for which the funds are being raised.

(b) If a person solicits in writing or in person, the disclosures required by subsection (a)(1) and (a)(2) shall be in writing. If a person solicits by telephone, the disclosures required by subsection (a)(1) and (a)(2) shall be made orally.

(c) A written confirmation shall be mailed within ten (10) days after each solicitation in which a contribution has been given. This confirmation must include the disclosures required under subsection (a)(1) and (a)(2).

(d) All disclosures required by this section must be clear and conspicuous.

(e) A contributor has the right to cancel a pledge for monetary contribution at any time prior to making the contribution.

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987, SEC.3; P.L.24-1989, SEC.6; P.L.48-1998, SEC.4.

IC 23-7-8-7

Prohibited acts

Sec. 7. (a) A person who solicits charitable contributions may not:

(1) use the fact of registration as an endorsement by the state;

(2) misrepresent that the person is an officer or employee of a public safety agency;

(3) use the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter" unless a bona fide police, law enforcement, rescue squad, or fire department authorizes its use in writing;

(4) misrepresent to anyone that the contribution will be used for a charitable purpose if the person has reason to believe the contribution will not be used for a charitable purpose;

(5) misrepresent to anyone that another person endorses the solicitation unless that person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation;

(6) misrepresent to anyone that the contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation; or

(7) collect or attempt to collect a contribution in person or by

means of a courier unless:

(A) the solicitation is made in person and the collection or attempt to collect is made at the time of the solicitation; or

(B) the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.

(b) A person who solicits charitable contributions shall not represent that tickets to events will be donated for use by another, unless the following requirements have been met:

(1) The paid solicitor has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(2) No more contributions for donated tickets are solicited than the number of ticket commitments received from charitable organizations.

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987, SEC.4; P.L.24-1989, SEC.7; P.L.48-1998, SEC.5; P.L.155-2003, SEC.2.

IC 23-7-8-8

Complaints; injunctive relief; violations; fines

Sec. 8. (a) The division may receive, investigate, and prosecute complaints concerning the activities of professional fundraiser consultants and professional solicitors who:

(1) may be subject to this chapter; or

(2) have or may have violated this chapter.

All complaints must be in writing, signed by the complainant, and filed with the division.

(b) The attorney general may subpoena witnesses, send for and compel the production of books, records, papers, and documents of professional fundraiser consultants and professional solicitors who are subject to registration under this chapter, for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the attorney general.

(c) The attorney general may bring an action to enjoin a violation of this chapter. In this action, the court may order a person who has violated this chapter to pay the reasonable costs of investigation and prosecution incurred by the attorney general, may award the state civil penalties up to five hundred dollars ($500) for each violation, and may order the professional fundraiser consultant or professional solicitor to repay money unlawfully received from aggrieved solicitees. In ordering injunctive relief, the division is not required to establish irreparable harm but only a violation of a statute or that the requested order promotes the public interest. It is an affirmative defense to the assessment of civil penalties under this subsection that the defendant acted pursuant to a good faith misunderstanding concerning the requirements of this chapter.

(d) A person who knowingly or intentionally:

(1) fails to file a registration statement or other information;

(2) files a statement or other information which is materially false; or

(3) fails to make a disclosure;

as required by this chapter, commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.

(e) A local unit of government may adopt an ordinance which regulates professional fundraisers and solicitors if the ordinance does not conflict with this chapter.

(f) A professional fundraiser consultant, or a professional solicitor, who has the person's principal place of business outside of Indiana, or who has organized under the laws of another state, and who solicits contributions from persons in Indiana, is subject to this chapter and shall be considered to have appointed the secretary of state as his agent. All service of process under this subsection shall be made on the secretary of state under Rule 4.10 of the Indiana Rules of Trial Procedure.

(g) Under rules adopted by the attorney general, the attorney general may impose fines on professional fundraiser consultants and professional solicitors for the late filing of information required to be filed under this chapter.

As added by P.L.245-1983, SEC.1. Amended by P.L.248-1987, SEC.5; P.L.24-1989, SEC.8; P.L.1-1998, SEC.128; P.L.48-1998, SEC.6; P.L.135-1999, SEC.9.

IC 23-7-8-9

Assurance of voluntary compliance; form; filing

Sec. 9. (a) In the administration of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any violation of this chapter. The assurance of voluntary compliance may include any of the following:

(1) Stipulation for the voluntary payment by the person of the costs of investigation.

(2) Payment of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons.

The assurance of voluntary compliance must be in writing. It must be filed with the court having jurisdiction over the violation and is subject to the court's approval.

(b) The giving of an assurance of voluntary compliance under this section is not, for any purpose, considered an admission of a solicitation or failure to register in violation of this chapter. However, any violation of the terms of the assurance constitutes prima facie evidence of a violation of this chapter. An investigation or court action terminated on the basis of the giving of an assurance of compliance under this section may be reopened by the attorney general at any time for further proceedings that are in the public interest.

As added by P.L.12-1986, SEC.3. Amended by P.L.24-1989, SEC.9.

IC 23-8

ARTICLE 8. REPEALED

(Repealed by P.L.1-1993, SEC.191.)

IC 23-9

ARTICLE 9. REPEALED

(Repealed by P.L.1-1993, SEC.191.)

IC 23-10

ARTICLE 10. FRATERNAL AND OTHER SIMILAR ASSOCIATIONS

IC 23-10-1

Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-10-2

Chapter 2. Land Acquisition and Construction of Buildings for Benevolent Purposes

IC 23-10-2-1

Acquisition of land; purposes

Sec. 1. Any persons, congregation, society, church or any grand or subordinate lodge of Free Masons, or Odd Fellows, or Knights of Pythias, or any grand or subordinate chapter, council or encampment of Free Masons, or Odd fellows, or Knights of Pythias, or any temple or division of the Sons or Daughters of Temperance, and any voluntary association for religious, educational, scientific or benevolent purposes may take by purchase, grant or devise lots or tracts of land not exceeding one hundred sixty (160) acres, upon which to erect buildings for religious worship or for such other purposes as will best attain the objects of said several organizations, and, for that purpose, may elect not less than three (3) nor more than nine (9) trustees, who shall possess the power and perform the duties herein named.

(Formerly: Acts 1852, 1RS, c.101, s.1; Acts 1895, c.10, s.1.)

IC 23-10-2-2

Society; definition

Sec. 2. The word "society" in this chapter shall be deemed to include churches, associations, congregations, grand and subordinate lodges, chapters, councils, encampments, divisions, and all other orders enumerated in section 1 of this chapter.

(Formerly: Acts 1852, 1RS, c.101, s.2; Acts 1895, c.10, s.2.) As amended by P.L.34-1987, SEC.337.

IC 23-10-2-3

Election of trustees; notice

Sec. 3. Notice of the first election of trustees shall be given at least ten (10) days previous thereto by publication in a newspaper of the county, if any be published therein, otherwise by posting such notices in three (3) public places in the township where such election is to take place, one (1) of which notices shall be posted at the place where the proposed election is to be held. Such notice shall state the time, place and object of such election; and the same shall be held at the usual place of worship or meeting of such society, if any there be: Provided, That at any subsequent election of such trustees, no such notice shall be necessary where such lodge or society shall, in its rules, by-laws or constitution, provide and fix the time and place for the election of its trustees.

(Formerly: Acts 1852, 1RS, c.101, s.3; Acts 1895, c.10, s.3.)

IC 23-10-2-4

Election certificate; recording; duties of clerk

Sec. 4. Such society, at the first and every subsequent election, shall appoint a clerk thereof, who shall take, count and make a

poll-list of the votes given for trustees; and, within ten (10) days thereafter, shall deposit in the recorder's office of the county where the real estate granted is situate, a certificate setting forth the notice of such election, the time and place where the same was held, the name of the society and persons elected as trustees thereof; and the recorder of such county shall record the same among the records of deeds in his office.
(Formerly: Acts 1852, 1RS, c.101, s.4.)

IC 23-10-2-5
Certificate; conclusive and presumptive evidence
Sec. 5. As between such society, the trustees thereof, and all other persons claiming under them, and any person granting real estate thereto, and all persons claiming under him, such certificate shall be conclusive evidence of the matters and things therein recited; and as between such society, the trustees thereof, and all persons claiming under them, and all other persons, it shall be presumptive evidence of such matters.
(Formerly: Acts 1852, 1RS, c.101, s.5.)

IC 23-10-2-6
Succession of trustees
Sec. 6. Such trustees shall severally hold their offices until their successors are duly chosen according to the rules of such society; and any society, by a majority vote, at a meeting of one-third (1/3) of the resident members thereof notice being given as aforesaid, may remove such trustees, and elect others in their stead.
(Formerly: Acts 1852, 1RS, c.101, s.6.)

IC 23-10-2-7
By-laws
Sec. 7. Such society, or the trustees thereof, when organized for that purpose, may establish all necessary by-laws to carry out the objects of its organization.
(Formerly: Acts 1852, 1RS, c.101, s.7.)

IC 23-10-2-8
Selection of appointment of trustees according to custom
Sec. 8. Any society may select or appoint trustees according to its common usage or custom, if they desire it; but a certificate of such selection or appointment, and the record of the same, as in case of their election, shall not be dispensed with.
(Formerly: Acts 1852, 1RS, c.101, s.8.)

IC 23-10-2-9
Powers of trustees
Sec. 9. Such trustees shall be deemed a body politic and corporate, under such name and style as the society may elect; and, by that name, shall have power to contract, sue, be contracted with and sued with like effect as other persons or corporations.

(Formerly: Acts 1852, 1RS, c.101, s.9.)

IC 23-10-2-10
Change of corporate name

Sec. 10. Such society may, at any meeting, by giving ten (10) days' notice of the time and purpose thereof, change their corporate name; but the name chosen by such society shall not be assumed until a record has first been made of the fact in the recorder's office of the proper county. Such change shall not affect the rights or liabilities of the society or of other persons or parties.
(Formerly: Acts 1852, 1RS, c.101, s.10.)

IC 23-10-2-11
Receiving and holding conveyances of land

Sec. 11. The trustees chosen as herein provided, after record of their election or appointment is made in the recorder's office of the proper county, shall have power and authority, as such trustees, to receive conveyances of lands, whether the same be by purchase, gift or otherwise, and to hold the same to their successors, as such trustees, in perpetuity, for the sole and exclusive benefit of such society and for the uses declared in such conveyance or grant.
(Formerly: Acts 1852, 1RS, c.101, s.11.)

IC 23-10-2-12
Acquiring and possessing of personal property

Sec. 12. Such trustees and their successors in office may also acquire and possess personal property for the use of any such society, and may appropriate the same, and the income or interest thereof, and all other funds and incomes in their hands as such trustees, for the purposes designated by such society, not inconsistent with the trust.
(Formerly: Acts 1852, 1RS, c.101, s.12; Acts 1925, c.68, s.1.)

IC 23-10-2-13
Sale or other disposition of corporate property

Sec. 13. Such trustees, to more effectually carry out the objects of their trust, may sell, loan or otherwise dispose of their corporate property; and any conveyance thereof by such trustees, or a majority of them, in behalf of such society, shall vest in the purchaser of the same, all the right, title and interest thereto; but the provisions of this section shall not be construed to affect any gift, bequest or devise to such society, or to trustees for its use, nor to defeat the intentions of the grantor, donor or testator.
(Formerly: Acts 1852, 1RS, c.101, s.13.)

IC 23-10-2-14
Revival of dissolved corporation

Sec. 14. When any society within the meaning of this chapter shall have been dissolved from any cause, a majority of the persons interested therein may revive the same, within five (5) years after such dissolution, by electing a new board of trustees, and making

record of such election in the recorder's office of the proper county, as provided in this chapter. And whenever, from any cause, any church or religious society holding and possessing property within the meaning of this chapter shall have been dissolved, the annual or quarterly conference, or other ecclesiastical body to which such church or religious society is directly subordinate, shall have power to appoint trustees, in accordance with the customs and usages of said church, to take charge and control of the property of said church or society until it shall be revived as contemplated by this chapter.
(Formerly: Acts 1852, 1RS, c.101, s.14; Acts 1855, c.107, s.1.) As amended by P.L.34-1987, SEC.338.

IC 23-10-2-15
Applicability of chapter to prior acquisitions

Sec. 15. The provisions of this chapter shall extend to every society, educational or religious, which, previous to May 6, 1853, had acquired land for the purpose of erecting a house of worship, or other appropriate building, not exceeding five (5) acres, upon condition that the consent of two-thirds (2/3) of the persons interested in the land is first obtained, the trustees are elected and certified, and other proceedings had as directed in this chapter for the election of trustees.
(Formerly: Acts 1852, 1RS, c.101, s.15.) As amended by P.L.34-1987, SEC.339; P.L.1-1991, SEC.161.

IC 23-10-2-16
Performance of trustees' duties by officers

Sec. 16. The officers of any society, by whatever name such officers may be designated, elected in the manner prescribed by this chapter, or according to the rules of any such church, society, or order, may, whenever the laws or usages of the same require it, perform the duties of trustees, and, in their proper name and title, shall possess all the powers and be subject to the same liabilities as trustees; and the certificate of the election of such officers shall be recorded in the recorder's office of the proper county as in the case of trustees.
(Formerly: Acts 1852, 1RS, c.101, s.16.) As amended by P.L.34-1987, SEC.340.

IC 23-10-2-17
Applicability of chapter to cemetery associations

Sec. 17. All the provisions of this chapter are hereby extended, so far as the same may be applicable, to any individuals who may unite themselves together for the purpose of receiving donations of lands or purchasing the same for cemeteries.
(Formerly: Acts 1852, 1RS, c.101, s.17.) As amended by P.L.34-1987, SEC.341.

IC 23-10-2-18
Donations and purchases; rights and privileges

Sec. 18. When such donations or purchases shall be made to or by

any such individuals, and a certificate thereof or conveyance therefor, together with the articles of association by which such individuals have become united for such purpose, shall be filed in the office of the recorder of the proper county, and by him recorded, such individuals shall enjoy all the privileges necessary for the preservation and protection of such cemetery, in the same manner as if such individuals were regularly incorporated by law, and such cemetery shall forever remain a burial place for the dead.
(Formerly: Acts 1852, 1RS, c.101, s.18.)

IC 23-10-2-19
Conveyance for cemetery purposes; holding in trust
Sec. 19. Lands conveyed to the board of county commissioners, by deed duly recorded, for the purpose of a public or private cemetery, shall be held by such board forever in trust for such purpose.
(Formerly: Acts 1852, 1RS, c.101, s.19.)

IC 23-10-2-20
Designated burial lots
Sec. 20. In all cases where the donors or donees of any public burying ground shall lay the same off into lots, plainly designated by corner stones or posts, and record a plat thereof in the recorder's office, then persons interring in said burying place shall bury within the lots so designated, and not out of them.
(Formerly: Acts 1852, 1RS, c.101, s.20.)

IC 23-10-2-21
Donor of private burying ground; exclusive right of admitting
Sec. 21. The donor of a private burying ground, his heirs and assigns forever, shall have the exclusive right of admitting corpses for interment, and shall direct where the same shall be buried; and may grant any right of burial in such ground as shall not interfere with the graves already there or the rights of persons who have buried their dead in such ground.
(Formerly: Acts 1852, 1RS, c.101, s.21.)

IC 23-10-2-22
Subsequent disposition by donor; applicability of chapter
Sec. 22. No burying ground specified in this chapter shall pass or be held contrary to the intent or meaning of this chapter by virtue of any subsequent devise, purchase, descent, or conveyance of the donor.
(Formerly: Acts 1852, 1RS, c.101, s.22.) As amended by P.L.34-1987, SEC.342.

IC 23-10-3
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-11

ARTICLE 11. REPEALED

(Repealed by P.L.1-1993, SEC.191.)

IC 23-12

ARTICLE 12. REPEALED

(Repealed by P.L.1-1993, SEC.191.)

IC 23-13

ARTICLE 13. EDUCATIONAL INSTITUTIONS

IC 23-13-1

Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-13-2
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-13-3
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-13-4
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-13-5

Chapter 5. Management of Educational Institutions Established Under General Laws and Special Enactments

IC 23-13-5-1

Election of governing or administrative body by board of directors

Sec. 1. Any university, college or other institution of learning heretofore organized and now existing under special enactments of the general assembly of the state of Indiana, constituting the charter of the institution, or which now is or hereafter may be organized under the general laws of the state of Indiana, may provide that the board of directors, trustees or other governing or administrative body thereof may from time to time be elected by such board of directors instead of by stockholders or otherwise.

(Formerly: Acts 1909, c.52, s.1.)

IC 23-13-5-2

Articles of association; contents

Sec. 2. In all cases of corporations organized after March 3, 1909, desiring to accept the provisions of this chapter, the corporation shall in its articles of association specifically set forth the number of trustees, directors, or other members of its governing or administrative board, the manner of election, their powers, and the system adopted for administering their respective funds.

(Formerly: Acts 1909, c.52, s.2.) As amended by P.L.34-1987, SEC.343.

IC 23-13-5-3

Procedure for accepting provisions of chapter

Sec. 3. (a) All such corporations created before March 3, 1909, and existing on March 3, 1909, desiring to accept the provisions of this chapter may do so in the manner following, that is to say: At any regular meeting of the stockholders or others authorized to elect trustees or directors, such election shall be held in the usual manner; and thereupon such stockholders or electors may upon the affirmative vote of not less than two-thirds (2/3) in value of all the stock of such institution accept the provisions of this chapter for such corporation and may vote and declare that the board so elected and their successors shall be authorized and empowered thereafter from time to time to elect the directors, trustees, or other governing body of such institution; provided, also, that any university, college, or other institution of learning, the graduates of which university, college, or other institution of learning have and maintain an active alumni association, organized and operating under a constitution and bylaws and which constitution defines who shall be the active members of such alumni association and which university, college, or institution of learning is operating on March 3, 1909, under this chapter, by resolution duly passed at any regular meeting of the board of directors, trustees, or other governing body of such university, college, or institution of learning, or at a special meeting of such

board of directors, trustees, or other governing body of such institution, called for that purpose, of which meeting, and the time, place, and the purpose thereof, ten (10) days notice, in writing, shall be given to all directors, trustees, or other governing body, and by a majority vote of the directors, trustees, or other governing body, may provide:

(1) that, after a date to be fixed in said resolution, and which date so fixed shall not be less than one hundred twenty (120) days from the date on which such resolution shall be passed, the number of directors, trustees, or members of the governing board thereof shall be nine (9);

(2) that five (5) of such members shall be selected by the said governing body;

(3) that four (4) of such members shall be selected by the active members of the alumni association of such university, college, or institution of learning;

(4) that of the five (5) to be selected by such governing body, one (1) shall be elected to serve for the term of one (1) year, one (1) for the term of two (2) years, and three (3) for the term of three (3) years;

(5) that of the four (4) to be elected by the alumni association, one (1) shall be elected for the term of one (1) year, one (1) for the term of two (2) years, and two (2) for the term of three (3) years, and that thereafter the term of office of all members of such governing body shall be three (3) years, except when an election is had to fill a vacancy, in which case the election shall be only for the unexpired term;

(6) that the annual meeting of such board of trustees, directors, or other governing body shall be held on the first Monday of July in each year and that the term of office of outgoing directors, trustees, or other officers of such governing body shall expire on the date of such annual meeting and that the terms of the newly elected trustees, directors, or other officers of such governing body shall commence on said date;

(7) that the officers to be elected by said alumni association shall be elected by ballot, to be cast and taken at such time and in such manner, at such time and for such candidates as may be selected by the members of such alumni association, all in accordance with a resolution duly passed by such board of directors, trustees, or other governing body of such university, college, or other educational institution.

(b) A certified copy of the resolution of the board of trustees, directors, or other governing body of such university, college, or other institution of learning, duly attested as to its passage and its correctness, filed with the secretary of state and with the recorder of the county in which such university, college, or other institution of learning is situated, shall constitute an amendment of its said charter conformable to the provisions of this chapter.

(Formerly: Acts 1909, c.52, s.3; Acts 1929, c.210, s.1.) As amended by P.L.34-1987, SEC.344.

IC 23-13-5-4
Perpetual existence; merger

Sec. 4. Any postsecondary educational institution which may be organized before, on, or after March 3, 1909, under or which may otherwise become subject to the provisions of this chapter shall be deemed to have a perpetual existence by operation of law. Any two (2) or more postsecondary educational institutions incorporated under the provisions of this chapter may be merged into one (1) corporation by the action of the boards of trustees of the respective corporations.
(Formerly: Acts 1909, c.52, s.3a; Acts 1953, c.17, s.1.) As amended by P.L.34-1987, SEC.345; P.L.2-2007, SEC.315.

IC 23-13-5-5
Assignment of capital stock of institution to board of directors or trustees

Sec. 5. And at the same meeting of stockholders mentioned in section 3 of this chapter, or at any meeting of stockholders called for the purpose by the board of directors or trustees of such institution, upon not less than four (4) advertisements therefor, once a week for four (4) successive weeks preceding such meeting, printed in two (2) newspapers of general circulation published in the city of Indianapolis, Indiana, giving the date and place of such meeting, and the matters to be considered and acted upon thereat, the stockholders of said corporation created before March 3, 1909, and existing on March 3, 1909, may, by the vote of two-thirds (2/3) in value of all the stock of such corporation, vote that all the capital stock of the corporation shall be assigned and turned over to the directors or trustees of the corporation to be held by said directors for the benefit of the corporation. Upon such vote, the directors or trustees and their successors are and shall be authorized to hold for the benefit of said corporation exclusively and to vote any stock that may be so assigned and turned over to them. And when all the stock of said corporation shall, by virtue of the provisions of this chapter or otherwise, have come under the control or ownership of said directors or trustees, then they shall cancel the entire capital stock of such corporation, and such corporation shall cease to be represented in any sense by capital stock.
(Formerly: Acts 1909, c.52, s.4.) As amended by P.L.34-1987, SEC.346.

IC 23-13-5-6
Purchasing shares of dissatisfied stockholders; determination of value

Sec. 6. The board of directors of any such corporation is hereby authorized to buy in for the corporation the share or shares of stock of any person or persons dissatisfied with the action of the majority of stockholders provided for in section 3 or 4 of this chapter, provided such dissatisfied stockholders did not vote with the majority at such meeting or meetings. If any such dissatisfied stockholder shall not be satisfied with the price offered for his stock by said directors

or trustees, then he may apply by petition to one (1) of the judges of the circuit or superior courts, if any, of the county where such institution is located, making the corporation defendant therein, praying said court to appoint three (3) disinterested persons to estimate and appraise the fair cash value of the shares of such stock owned by the petitioner, and shall at the same time file with the clerk his certificate of stock in said corporation. And the value of such shares having been so appraised by said commissioners, by a vote of a majority thereof, shall be reported to said court, and when confirmed by the court, shall be final and conclusive on all parties, and thereupon said corporation shall be decreed to be the owner of such shares, and the petitioner shall assign his said stock to said corporation and deliver to said board of directors or trustees the certificate therefor and shall be paid the appraised value thereof out of the endowment or other funds of said corporation. Should any such petitioner fail after such appraisement to so assign and deliver said stock and the certificate therefor within sixty (60) days after the confirmation of such appraisal therefor, the said directors or trustees may make payment of the amount of such award to the clerk of the court for the party entitled thereto and, upon such payment, the clerk shall assign and deliver to said directors or trustees the said stock and certificate. The costs of such proceeding and appraisement shall be paid by the corporation in case the appraised value of such stock exceeds the sum offered therefor by such directors or trustees; otherwise such costs shall be paid by the petitioner.
(Formerly: Acts 1909, c.52, s.5.) As amended by P.L.34-1987, SEC.347.

IC 23-13-5-7
Nonappearing stockholders; determination of value of shares

Sec. 7. Whenever a majority in value of the capital stock of any such corporation existing on March 3, 1909, shall have been assigned and turned over to the directors or trustees, as provided for in sections 5 and 6 of this chapter, the directors or trustees of such corporation may, if they see fit, cause to be filed in the circuit court or superior court, if any, of the county where the institution is located the petition of said institution, making defendant thereto any known stockholder or stockholders, as shown by the stock register of the corporation, or the stockholder's administrator and heirs (if the stockholder is dead) including the surviving spouse and any unknown heirs of such stockholder, and praying the court to appoint three (3) disinterested persons to estimate and appraise the fair cash value of the stock held by such persons. If it appear by affidavit that the name or residence of any stockholder or defendant is unknown or that the person is a nonresident of the state of Indiana, or that the person is believed to be dead and that the names of the person's surviving spouse and heirs or either are unknown, the clerk, by order of the court, shall cause a notice of the pendency of such action and the term at which the same will stand for trial to be published for three (3) weeks successively in some newspaper of general circulation printed in the English

language and published in said county. And the value of such shares having been so appraised by said commissioners, by a vote of a majority thereof, when confirmed by the court, shall be final and conclusive upon all parties. And thereupon said corporation shall be decreed to be the purchaser and owner of such shares as against all parties served with notice or against whom or the unknown surviving spouse or heirs of whom publication was made as provided in this section, at and for the value of their respective shares as fixed by such appraisement; and said directors or trustees shall thereupon cause entry of such purchase and ownership to be noted upon the stock register of the corporation, and shall pay to the respective owners of such stock the value thereof as fixed by said appraisement whenever the owners shall present the certificate for such shares owned and assign the same to such corporation or the directors or trustees thereof.

(Formerly: Acts 1909, c.52, s.6.) As amended by P.L.34-1987, SEC.348.

IC 23-13-5-8

Nullifying action of board regarding corporate stock; vesting property and assets in local public school corporation; vesting in county; bonds

Sec. 8. (a) Should for any cause any action of the board of directors or trustees of a corporation be invalid or ineffective in whole or in part as and for a cancellation or retirement of capital stock as provided in this chapter, then the entire act of cancellation or retirement as to all other stock shall be held null and void. If at any time after the transfer of any stock to the corporation or to the trustees or directors it becomes no longer possible for the corporation to operate the postsecondary educational institution as a postsecondary educational institution, and the fact is found to exist by the board of trustees or directors, the property and assets of the corporation vest in and belong absolutely to the local public school corporation within whose territorial limits the postsecondary educational institution is situated unless the local public school corporation elects to refuse to accept the property and assets in writing served upon the board of trustees or an officer thereof within one hundred twenty (120) days. If the local public school corporation elects to refuse to accept the property and assets, then the property and assets of the corporation vest in and belong absolutely to the county within whose territorial limits the postsecondary educational institution is situated unless the county, acting by its legislative body, elects to refuse to accept the property and assets in writing served upon the board of trustees or an officer within one hundred twenty (120) days. If the county refuses to accept the property and assets, the property and assets vest in and belong absolutely to the state general fund. If the postsecondary educational institution is situated in a school township, the election shall be made by the township executive with the approval of the township legislative body. If situated in a school city or town corporation, the election shall be

made by the school board of the municipality.

(b) The local school corporation receiving the property or assets is responsible for the payment of the lawful debts and liabilities of the corporation. For the purpose of raising funds to pay the debts and liabilities, the township executive, with the concurrence and sanction of the township legislative body, or the city or town school board, as the case may be, is authorized and empowered to issue and sell bonds of the school township, school city, or school town. The debt created by the bonds, together with all other indebtedness of the school corporation, may not exceed two percent (2%) of the adjusted value of the taxable property within the school corporation as determined under IC 36-1-15. If the building or property of the corporation vested in the school corporation is suitable for instructing students of the township in the arts of agriculture, domestic science, or physical or practical mental culture, and in which to hold school or civic entertainments or be used for township, town, or city purposes, then the township executive, with the concurrence and sanction of the township, city, or town legislative body, as the case may be, is authorized and empowered to issue and sell bonds of the civil township, city, or town, as the case may be, and apply the proceeds to the payment of the debts and liabilities of the corporation. The proceeds of the bonds, together with all other indebtedness of the civil township, city, or town, may not exceed two percent (2%) of the adjusted value of the taxable property within the civil township, city, or town, as determined under IC 36-1-15. If the county receives the property, it is authorized to issue its general obligation bonds to pay the debts and liabilities as general obligation bonds of counties are issued under the general law. Unless the school and civil townships and school and civil cities and towns can liquidate the debts and liabilities without violating Article 13, Section 1 of the Constitution of the State of Indiana and IC 36-1-15, they shall elect to refuse to accept the property. Unless the county can liquidate the debts and liabilities without violating the constitutional provision, it shall elect to refuse the property. If a civil township, city, or town uses its funds or the proceeds of the sale of its bonds to liquidate the debts and liabilities, it shall have an interest in the property in the proportion the funds expended by it bear to the funds expended by the school township, school city, or school town.

(c) Any bonds issued under this chapter shall be payable in not more than twenty (20) years after the date of their issuance. The municipal corporation issuing the bonds shall annually levy a tax on all of the taxable property within the municipal corporation in an amount sufficient to pay the interest on and the principal of such bonds as they mature. The bonds may mature and be payable either semiannually or annually. Notice of sale of the bonds shall be published once each week for two (2) weeks in a newspaper published in the municipal corporation issuing the bonds, or in a newspaper published in the county seat of the county in which the municipal corporation is located. Additional notices may be published.

(d) If the corporation ceases to exist or winds up its affairs without its board of trustees or directors finding that it is no longer possible for the corporation to operate the university, college, or institution of learning as a postsecondary educational institution, this shall have the same effect as such a finding.
(Formerly: Acts 1909, c.52, s.7; Acts 1949, c.147, s.1; Acts 1951, c.78, s.1.) As amended by P.L.8-1987, SEC.74; P.L.8-1989, SEC.83; P.L.1-1993, SEC.192; P.L.6-1997, SEC.196; P.L.246-2005, SEC.208; P.L.2-2007, SEC.316.

IC 23-13-5-9
Certificate regarding assignment of shares

Sec. 9. Whenever this chapter shall have been accepted by a vote of the stockholders, as provided in section 3 of this chapter, and not less than two-thirds (2/3) of all outstanding stock of the corporation shall have been assigned and turned over to the directors or trustees for the corporation, or directly to the corporation, then a certificate containing a copy of the resolutions or other proceedings and votes in said matter had and done at such stockholders' meeting, and also stating that such two-thirds (2/3) of all such stock has been so duly assigned and turned over, signed by the president of the directors or other chief executive officer of such corporation, and attested by the secretary thereof and the corporate seal of such institution attached thereto, shall be filed with the secretary of state for the state of Indiana, and thereupon, the same shall be taken and deemed as an amendment to and part and parcel of the charter of such institution, but such charter shall not be taken or deemed as altered or amended in any other respect than as specified in such resolution or votes.
(Formerly: Acts 1909, c.52, s.8.) As amended by P.L.34-1987, SEC.349.

IC 23-13-5-10
Presumption of assignment

Sec. 10. After one (1) year from the date of any such stockholders' meeting, all stockholders shall be conclusively presumed to have assented to the action thereof and to have assigned their stock to said directors or trustees accordingly, unless, within such year, they shall have filed their respective petitions as provided for the valuation and sale of their stock. After one (1) year from the entry of any decree of court hereinbefore provided for, no appeal shall lie therefrom.
(Formerly: Acts 1909, c.52, s.9.)

IC 23-13-6

Chapter 6. Management of Educational Institutions by Church or Ecclesiastical Bodies

IC 23-13-6-1

Election and power of governing body

Sec. 1. Any university, college, or other institution of learning organized before April 9, 1907, and existing on April 9, 1907, under special enactments of the general assembly of the state of Indiana constituting the charter of the institution, or which is organized on or after April 9, 1907, under the general laws of the state of Indiana, may provide that the board of trustees, or other governing or administrative body thereof may be elected in whole or in part by conferences, synods, presbyteries, or other church or ecclesiastical bodies; in part by graduates of such institution, and that the remainder shall be elected by the board of trustees of the institution, and define the powers of such governing or administrative body, and may further provide for such a system of holding, accounting for, and administering the funds of such institution as will divide such funds into independent classes representing endowment and general funds, with a separate custodian, manager, or treasurer of each of said funds.
(Formerly: Acts 1907, c.79, s.1.) As amended by P.L.34-1987, SEC.350.

IC 23-13-6-2

Articles of association; contents

Sec. 2. In all cases of corporations organized after April 9, 1907, desiring to accept the provisions of this chapter, the corporation shall, in its articles of association, specifically set forth the number of the trustees or other members of its governing or administrative board, the manner of their election, their powers, and the system adopted for administering their respective funds.
(Formerly: Acts 1907, c.79, s.2.) As amended by P.L.34-1987, SEC.351.

IC 23-13-6-3

Existing corporations; procedure for accepting provisions of chapter; exception

Sec. 3. All corporations created before April 9, 1907, and existing on April 9, 1907, desiring to accept the provisions of this chapter, may do so in the manner following, that is to say: The board of trustees, or the joint board of trustees and visitors, or other governing body of such institution, shall adopt a resolution specifying the number of trustees, or other officers, who shall constitute the governing body thereof, the manner of their election, their powers, and the system adopted for administering the respective funds of such institutions. After such resolution shall have been adopted by said governing body, the same shall be submitted to each conference, synod, presbytery, or other church or ecclesiastical body and society of alumni, if any, theretofore authorized to elect any or all of the

members of such governing body. Each such conference, synod, presbytery, or other church or ecclesiastical body and society of alumni, shall, by formal resolution, either confirm or reject such resolution, and shall transmit such action, certified to by the presiding officer and secretary thereof, to the president of such board of trustees or other governing body. In the event each and all of said conferences, synods, presbyteries, or other church or ecclesiastical body and society of alumni theretofore entitled to elect any of the members of such board of trustees or other governing body of such institution shall have adopted such resolution confirming the original action of such board of trustees or such joint board of trustees and visitors, or other governing body of the institution, the president thereof shall transmit to the secretary of state for the state of Indiana, a copy of the original resolutions of such board of trustees or joint board of trustees and visitors of said institution, and also a copy of the resolution adopted by each of said conferences, synods, presbyteries, or other church or ecclesiastical body and society of alumni confirming such action, if any, duly certified under his hand as such president and duly attested by the signature of the secretary of such governing body and the corporate seal of such institution attached thereto, which certificate shall also certify that no church or ecclesiastical body or society of the alumni other than those shown to have confirmed such resolution of the board of trustees or other governing body were heretofore entitled or accustomed to elect any members of such governing board. Upon the filing of such resolution with the secretary of state for the state of Indiana, it shall be taken and deemed as an amendment to and part and parcel of the charter of such institution. But said charter shall not be taken or deemed as altered or amended in any other respect than as specified in such resolution. Thereupon said secretary of state for the state of Indiana shall issue his certificate under the great seal of the state of Indiana, certifying that a copy of such resolution has been lodged in his office, and that the same constitutes such amendment to the charter of such institution. Provided, nothing in this chapter shall be construed as applying to any educational institution in this state receiving state aid. *(Formerly: Acts 1907, c.79, s.3.) As amended by P.L.34-1987, SEC.352.*

IC 23-13-7
Repealed

(Repealed by P.L.2-2007, SEC.390.)

IC 23-13-8
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-13-9

Chapter 9. Special Provisions Relating to Educational Trustees

IC 23-13-9-1

Board of directors; membership in church or religious denomination designated in resolution

Sec. 1. Any university or college organized or existing as a corporation under the provision of any special law, or special charter, enacted or granted by the general assembly of this state, and having a board of directors, and being a corporation having capital stock, may, by a vote of a majority of its capital stock, at any stockholders' meeting, whether regular or special, of the stockholders of such corporation, by by-law or resolution enacted or adopted at such meeting, provided that at least four-fifths (4/5) of the members of such board of directors shall be members in good standing and full fellowship of and in any church or religious denomination as may be named or designated in such by-law or resolution, and in such by-law or resolution provide that at any election of members of such board of directors, there shall first be elected persons to the number of at least four-fifths (4/5) of the total number of members comprising such board in good standing and in full fellowship in such church or denomination: Provided, That such by-law or resolution shall be enacted or adopted by, on or before the first day of January, 1907: And provided, further, That a certified copy of such by-law or resolution, under the hand of the president of such university or college, or of its board of directors, with the corporate seal of such university or college annexed, and attested by the secretary of such university or college, be filed with the secretary of state of the state of Indiana within three (3) months from the date of the enacting or adoption of such by-law or resolution, and, upon being thus filed, such by-law or resolution shall be taken and deemed to be and as a part of the charter of such university or college.

(Formerly: Acts 1905, c.83, s.1.)

IC 23-13-10
Chapter 10. Alumni Trustees

IC 23-13-10-1
Election of alumni trustees

Sec. 1. Any educational institution, university or college, incorporated under any law of the state of Indiana, may admit to membership in its board of trustees any number of additional trustees, not exceeding four (4), who may be chosen or elected such trustees by the alumni of such institution, university or college, whenever the existing boards of trustees, or their successors in office, may determine such action to be expedient: Provided, That all persons or bodies of persons entitled under the charter of said institution to choose the trustees thereof, shall have first signified their assent to such action. The manner of electing such trustees by such alumni shall, in each instance, be determined by the board of trustees of such educational institution, university or college.
(Formerly: Acts 1897, c.125, s.1.)

IC 23-13-10-2
Addition or reduction in number of trustees

Sec. 2. Any existing board of trustees of any such institution, university or college may add to or diminish the number of trustees thereof: Provided, The minimum number of such trustees shall be seven (7) and the maximum number twenty-five (25), said reduction or addition to be determined by a two-thirds (2/3) vote of the trustees.
(Formerly: Acts 1897, c.125, s.2.)

IC 23-13-10-3
Existing institutions; accepting provisions of chapter

Sec. 3. Whenever the board of trustees of any such institution, university, or college, incorporated under any law of the state of Indiana, which has been pursuing the purposes of its charter since March 6, 1892, shall file with the secretary of state a resolution, duly adopted by such board, signifying formal acceptance of the provisions of this chapter, the same shall be taken and held as part of the original charter of such institution, university, or college.
(Formerly: Acts 1897, c.125, s.3.) As amended by P.L.34-1987, SEC.353.

IC 23-13-11

Chapter 11. Merger, Consolidation, and Use of Assumed Common Names

IC 23-13-11-1

Adoption of common names

Sec. 1. Whenever any boards of trustees or any number thereof, organized before August 17, 1855, under any general or special law of this state for the purpose of establishing a high school, academy, college, or university, may desire to assume a common name, it shall and may be lawful for such board or boards, by resolution, to be entered upon its or their respective record or records, to adopt such common name as shall be agreed upon.

(Formerly: Acts 1855, c.89, s.1.) As amended by P.L.34-1987, SEC.354.

IC 23-13-11-2

Merger and consolidation of common stock or other evidence of property

Sec. 2. Said boards of trustees shall have power and are hereby authorized to merge and consolidate their stock or other means, into one (1) common stock, whether the same shall consist of real estate, moneys, bonds, bills, notes, mortgages or other evidences of property or debts, upon such terms as may be mutually agreed upon.

(Formerly: Acts 1855, c.89, s.2.)

IC 23-13-11-3

Recording resolution causing change of name

Sec. 3. It shall be the duty of such boards of trustees to cause a copy of the resolutions changing their name and consolidating their property, as above prescribed, to be recorded in the office of the clerk of the circuit court of the county in which such high school, academy, college or university may be located, and a duplicate thereof with the secretary of state.

(Formerly: Acts 1855, c.89, s.3.)

IC 23-13-11-4

Effect of change

Sec. 4. The change of name and the consolidation of property, as provided in this chapter, shall not be so construed as to deprive such board or boards of trustees of any of the powers and franchises granted in the original act or acts of incorporation, or amendments thereto, nor shall any thing contained in this chapter be so construed as to prevent any such board or boards of trustees so changing their name or names, for all the rights and liabilities which may have accrued previous to changing their name and consolidating their property.

(Formerly: Acts 1855, c.89, s.4.) As amended by P.L.34-1987, SEC.355.

IC 23-13-12

Chapter 12. Borrowing by Educational Institutions

IC 23-13-12-1

Right to borrow; security for loan

Sec. 1. Any incorporated university, college, academy, theological institution, or high school existing on November 1, 1851, under either a special charter or a general law, is hereby authorized to borrow money for the benefit and use of such corporation, and to secure the same by mortgage of any of the property, real or personal, of any such corporation.

(Formerly: Acts 1855, c.60, s.1.) As amended by P.L.34-1987, SEC.356.

IC 23-13-12-2

Increase or diminution in number of directors or trustees

Sec. 2. Any such corporation may, by a vote of a majority of the board of trustees or directors, or by a vote of the stockholders at any general meeting, if it be a stock corporation, either increase or diminish the number of directors or trustees of such corporation, so that they shall not be less than five (5) nor more than twenty-one (21).

(Formerly: Acts 1855, c.60, s.2.)

IC 23-13-13
Repealed

(Repealed by Acts 1982, P.L.1, SEC.71.)

IC 23-13-14
Repealed

(Repealed by Acts 1982, P.L.1, SEC.71.)

IC 23-13-15

Chapter 15. Acquiring, Holding, and Disposing of Real Estate

IC 23-13-15-1

Universities and colleges; authorization; acceptance of section

Sec. 1. Any university or college, incorporated by and under the laws of the state of Indiana, shall have the right to acquire and hold real estate by donation, devise, or purchase on foreclosure of mortgage given to secure any part of the endowment fund of said university or college, and the same to dispose of for the use and purposes of such university or college, such real estate not to exceed in value the sum of five hundred thousand dollars ($500,000), exclusive of the realty used and occupied for university and college grounds and buildings; provided, that all such real estate shall be disposed of within twenty (20) years after the same has been so acquired; and provided, further, that any such university or college shall, no later than September 9, 1885, file with the secretary of state of Indiana a certified copy of the proceedings of the board of trustees of such university or college accepting the provisions of this section as part of the organic laws of such university or college.

(Formerly: Acts 1885, c.49, s.1.) As amended by P.L.34-1987, SEC.357.

IC 23-13-16

Chapter 16. Holding of Excess Property Legalized

IC 23-13-16-1

Repealed

(Repealed by P.L.1-1989, SEC.75.)

IC 23-13-16-2

Amendment of charter to remove limitations

Sec. 2. Any university or college organized before July 8, 1941, under the laws of the state of Indiana, whether by special law or under general laws, whose charter, whether by virtue of the special law creating such university or college or by virtue of general laws whose provisions have been accepted by it, contains a limitation or limitations upon the amount of property which may be owned by such university or college at any given time, may have and is hereby given the right to amend its charter so as to remove all such limitations by accepting the provisions of this chapter as provided in section 3 of this chapter.

(Formerly: Acts 1941, c.62, s.2.) As amended by P.L.34-1987, SEC.359.

IC 23-13-16-3

Procedure to remove limitations in charter

Sec. 3. (a) Any university or college described in section 2 of this chapter desiring to amend its charter so as to remove the limitations upon the amount of property ownership as referred to in section 2 of this chapter and desiring to accept this chapter may do so by the adoption by its board of directors or board of trustees of a resolution to that effect and by filing proof of such adoption, verified by at least a majority of the board, in the office of the secretary of state.

(b) The charter shall be deemed amended to remove such limitations as of the date when such proof is filed in the office of the secretary of state.

(Formerly: Acts 1941, c.62, s.3.) As amended by P.L.34-1987, SEC.360; P.L.1-1989, SEC.48.

IC 23-13-16-4

Amendment of charter provisions relating to number of trustees or directors; procedure

Sec. 4. Any university or college organized before July 8, 1941, under the laws of this state, whether by special law or under general laws, whose charter, whether by virtue of the special law creating such university or college or by virtue of general laws whose provisions have been accepted by it, contains provisions concerning the appointment and number of the board of trustees or board of directors of such university or college may have and is hereby given the right to amend its charter in respect to the number of persons on its board of trustees or board of directors by the adoption of a resolution passed by a majority vote of its board to that effect, and by

filing proof of such adoption, verified by at least a majority of its directors and sworn to before a notary public or other officer authorized by law to administer oaths, in the office of the secretary of state of Indiana. Said charter shall be deemed to be amended as of the date when such proof is filed in the office of the secretary of state; provided, however, that the provision of this section shall not apply to any state college or university.

(Formerly: Acts 1941, c.62, s.4; Acts 1947, c.30, s.1.) As amended by P.L.34-1987, SEC.361.

IC 23-13-17
Repealed

(Repealed by P.L.2-2007, SEC.390.)

IC 23-13-18
Repealed

(Repealed by P.L.2-2007, SEC.390.)

IC 23-13-19

Chapter 19. Wabash College

IC 23-13-19-1

Body corporate and politic; appointment of faculty; powers and duties

Sec. 1. (a) Wabash College is a body corporate and politic that has perpetual succession.

(b) The board of trustees of Wabash College shall have power to appoint a faculty in said college consisting of a president, professors, and tutors, as the necessities of the institution may demand. The faculty so appointed, by and with the approbation of the board of trustees, shall have power to grant and confer such degrees in the liberal arts and sciences as are usually granted and conferred in other colleges in the United States. However, no degrees shall be conferred, or diplomas granted, except to students who have acquired the same proficiency in the liberal arts and sciences as is customary in other colleges in the United States.

(c) The board of trustees shall also have power to:

(1) contract, and be contracted with;

(2) acquire, hold, enjoy, and transfer property, real or personal, in their corporate capacity;

(3) have and use a common seal, and alter the same at pleasure;

(4) sue and be sued, plead and be impleaded, in any court of law or equity;

(5) receive and accept any grant, gift, donation, bequest or conveyance, by any person, company, or corporation of any property, real or personal: and hold and enjoy and dispose of the same as may be deemed best for the interests of said college;

(6) make, ordain, establish, and execute such bylaws, rules, and ordinances, not inconsistent with the Constitution and laws of the United States, or of this state, as they shall deem necessary for the welfare of said institution; and

(7) do all other acts in pursuance thereof necessary for the prosperity of said college.

(Formerly: Acts 1834, c.18, s.1.) As added by Acts 1982, P.L.146, SEC.3.

IC 23-13-19-2

Board of trustees; members; elections; alumni trustees

Sec. 2. The board of trustees of Wabash College shall consist of twenty-one (21) members, one (1) of whom shall be the president of the college, and whose term of office as trustee shall be of equal duration with his incumbency of the presidency of the college. The other twenty (20) members shall be elected for a term of four (4) years, in classes of five (5) each year, as the successors of the trustees whose terms of office will expire in that year. A trustee may succeed himself in office. All of such elections shall be by a majority vote of the trustees in office present and voting at the election meeting. However, two (2) trustees in each even-numbered year and one (1)

trustee in each odd-numbered year shall be chosen by the alumni of the college by the process provided in section 3 of this chapter and shall be known as "alumni trustees".
(Formerly: Acts 1834, c.18, s.2; Acts 1851, c.102, s.5; Acts 1901, c.19, s.1,2; Acts 1933, c.197, s.1; Acts 1973, P.L.337, SEC.1; Acts 1978, P.L.153, SEC.1.) As added by Acts 1982, P.L.146, SEC.3.

IC 23-13-19-3
Selection of alumni trustees

Sec. 3. (a) The alumni trustees shall be selected as provided in this section.

(b) At the annual meeting of the alumni association of Wabash College, a committee of canvassers consisting of three (3) alumni, at least one (1) of whom shall be a resident of Montgomery County, Indiana, shall be elected to serve for the ensuing year and until their successors are elected. The board of directors of the National Association of Wabash Men shall nominate at least four (4) persons in even-numbered years and at least three (3) persons in odd-numbered years, all of such persons to be alumni of the college, as its choice of candidates for the position or positions of alumni trustee to be voted for by the alumni in the election.

(c) On the fourth Tuesday of February in each year, the registrar shall mail from Crawfordsville, Indiana, to each alumnus of the college a ballot which lists the names of the candidates selected by the board of directors of the National Association of Wabash Men, along with spaces for two (2) "write-in" candidates in even-numbered years and a space for a "write-in" candidate in odd-numbered years. The ballot shall also contain information and instructions concerning the time and manner of voting. Each alumnus is entitled to vote for two (2) candidates in even-numbered years, and for one (1) candidate in odd-numbered years. Each alumnus, having designated on his ballot his two (2) choices or his one (1) choice for the positions or position of alumni trustee, as the case may be, shall sign this ballot and mail it to the committee of canvassers in care of the registrar's office, Wabash College, Crawfordsville, Indiana. Alternatively, each alumnus may vote for the alumnus' choice or choices of candidates by use of a secure electronic agent that creates an electronic record with the capability of including an electronic signature, consistent with the definitions provided in IC 26-2-8-102, as established by the registrar and identical in substance to the mailed ballot. On the fourth Tuesday of April in each year, the ballots (including ballots cast electronically) shall be opened and canvassed by the committee of canvassers. Within three (3) days thereafter the committee shall certify to the secretary of the board of trustees the names of the two (2) candidates in even-numbered years and the name of the one (1) candidate in odd-numbered years, receiving the highest number of votes. At its next meeting following the fourth Tuesday in April of each year, the board of trustees shall elect to its membership the two (2) candidates or the one (1) candidate, as the case may be, whose names or name has been so certified to the board's secretary by the

committee of canvassers.

(d) If, in any year, for any cause, the alumni fail to select the alumni trustee or trustees as provided in this section, the board of trustees shall elect, by a majority vote of the trustees in office present and voting at the election meeting, two (2) alumni in even-numbered years or one (1) alumnus in odd-numbered years, as the case may be, to serve as alumni trustees of Wabash College. Subject to the provisions of this chapter, the trustees shall, by a majority vote of their number present and voting at the time of such election, elect successor trustees in the event of the death or resignation of any of their number. Any vacancies so filled shall be for the unexpired term of the trustee whose death or resignation has caused such vacancy.

(e) The word "alumnus", as used throughout this section, means any person holding a degree in a course from the college and any person who has been in residence at the college one (1) year or more. The word "alumnus" does not include any person actively on the rolls of the college as an undergraduate at the time of any annual election of trustees, or any person without a degree who entered the college with a class which has not yet graduated at the time of any annual election.

(Formerly: Acts 1834, c.18, s.2; Acts 1851, c.102, s.5; Acts 1901, c.19, s.1,2; Acts 1933, c.197, s.1; Acts 1973, P.L.337, SEC.1; Acts 1978, P.L.153, SEC.1.) As added by Acts 1982, P.L.146, SEC.3. As amended by P.L.31-2013, SEC.1.

IC 23-13-20

Chapter 20. University of Evansville

IC 23-13-20-1

Body corporate and politic; powers of board

Sec. 1. The University of Evansville is a body corporate and politic. The board of trustees of the university has perpetual succession and has full power to do the following:

(1) Make contracts.

(2) Sue and be sued.

(3) Plead and to be impleaded.

(4) Acquire, hold, and convey real and personal property, manage and dispose of property and all money belonging to the corporation in the manner that seems to the trustees to be best adapted to promote the objects and purposes of the university.

(5) Own, lease, mortgage, pledge, sell, exchange, or otherwise dispose of real and personal property, to borrow money, and to issue, sell, and pledge its obligations and evidences of indebtedness, and to mortgage its property to secure the payment of indebtedness.

(6) Have and to use a common seal and to alter and renew the seal at pleasure.

(7) Make bylaws consistent with the charter of the university.

(8) In conjunction with the faculty, confer upon those whom they deem worthy all honors and degrees usually conferred by colleges and universities.

As added by P.L.1-1989, SEC.49.

IC 23-13-20-2

Objects of corporation

Sec. 2. The objects of the corporation are to promote the general interests of education, and to qualify men and women to engage in the employments and professions of society and to discharge honorably and usefully the various duties of life. The profession of a particular religious faith shall not be required of a person who becomes a student.

As added by P.L.1-1989, SEC.49.

IC 23-13-20-3

Location of university

Sec. 3. The university shall be located at or near the city of Evansville, Vanderburgh County, Indiana.

As added by P.L.1-1989, SEC.49.

IC 23-13-20-4

Board of trustees; members; amendment of charter; bylaws

Sec. 4. (a) The university has forty-one (41) trustees.

(b) The board of trustees consists of the following members:

(1) Twenty-four (24) members elected at large by the members of the board of trustees.

(2) Six (6) members elected by the South Indiana Conference of The United Methodist Church.
(3) Three (3) members elected by the Alumni Association of the university.
(4) Three (3) members elected by the members of the freshman, sophomore, junior, and senior classes of the university, voting jointly.
(5) Three (3) members elected by the North Indiana Conference of The United Methodist Church.
(6) The Bishop of the Indiana Area of The United Methodist Church, who serves as an ex officio member.
(7) The president of the university, who serves as an ex officio member.

(c) A trustee serves a term of three (3) years and until the trustee's successor is elected and qualified.

(d) The university may amend its charter concerning the following:
(1) The number of persons on its board of trustees.
(2) The structure, composition, and organization of its board of trustees.
(3) The authority and procedure for and the manner of electing or appointing members of the board of trustees.

(e) The university may amend its charter under subsection (d) by:
(1) the adoption of a resolution by a majority vote of its board of trustees; and
(2) filing proof of the adoption, verified by at least a majority of the board of trustees, and sworn to before a person authorized to administer oaths, in the office of the secretary of state.

(f) The charter is amended as of the date the required proof is filed in the office of the secretary of state.

(g) Except as provided in this chapter, the bylaws adopted by the board of trustees may prescribe the following:
(1) The qualifications required for members of the board.
(2) The manner of election of the members of the board.
(3) The terms of the members of the board.
(4) The duties and powers of the board.
(5) The manner of conducting the business of the board.
(6) The time and place for conducting meetings of the board.
(7) The manner for filling vacancies on the board.
(8) The method and procedure for altering the current number of members of the board.

As added by P.L.1-1989, SEC.49.

IC 23-13-20-5
Board of trustees; officers; bonds; quorum; majority rule

Sec. 5. (a) The trustees shall elect the following officers:
(1) A chairman.
(2) One (1) or more vice chairmen.
(3) A secretary.
(4) A treasurer.

(5) The assistant secretaries, assistant treasurers, and other officers provided for in the bylaws.

(b) The treasurer and all assistant treasurers shall give a bond in the penal sum and with securities approved by the trustees before entering upon the duties of office.

(c) Fourteen (14) trustees constitute a quorum for the transaction of all official business. The majority of the members present at a meeting determine the action of the board.

As added by P.L.1-1989, SEC.49.

IC 23-13-20-6

Board of trustees; election of president and instructors; courses; tuition; ex officio and faculty members

Sec. 6. (a) The board of trustees has full power to elect in the manner and for the time it deems expedient, a president of the university, together with the professors and instructors necessary to form an efficient faculty for the instruction of the various courses taught. The courses shall be arranged and determined by the trustees in conjunction with the faculty and the university senate.

(b) A professor or instructor may not be elected by the board of trustees except upon nomination of the president of the university. The trustees and faculty shall fix the rate of tuition and fees to be paid by the students.

(c) The ex officio members of the board of trustees have the rights, privileges, and duties of the elected trustees, including the right to vote. Except for the president of the university, a member of the board may not be a member of the faculty. If an elected member of the board becomes a member of the faculty, the member is removed from the board. The vacancy shall be filled by the board of trustees until the next regular election.

As added by P.L.1-1989, SEC.49.

IC 23-13-20-7

Meetings; notice of special meetings; removal of trustee

Sec. 7. (a) The board of trustees shall meet each May or June in the city of Evansville on a date determined by the board. The president of the university, the chairman of the board of trustees, the faculty of the university, any five (5) of the trustees, or the executive committee appointed by the board may call a special meeting of the board. Ten (10) days written notice of a special meeting must be mailed to each member of the board of trustees at the member's last known address.

(b) A working majority of the board of trustees may, at any time, for good cause, declare a vacancy on the board due to lack of interest or otherwise by a member, and appoint a successor. The retired member shall receive notice of the removal by mail sent to the last known address of the member. The trustee appointed to fill the vacancy serves until the next election by the appointing authority.

As added by P.L.1-1989, SEC.49. Amended by P.L.3-1989, SEC.139.

IC 23-13-20-8
Application of funds; donations, devises, and bequests

Sec. 8. The board of trustees shall faithfully apply all funds collected by the board according to its best judgment, in the erection of suitable buildings, purchase of equipment, care of buildings and grounds, the purchase of real and personal property, and in payment of salaries to instructors, officers, and agents. The trustees may receive for and on behalf of the university, donations, devises, and bequests made either generally for the benefit of the university or for purposes in harmony with the objects of the university.
As added by P.L.1-1989, SEC.49.

IC 23-13-20-9
Patronage of United Methodist Church

Sec. 9. The university is under the patronage of the Indiana Area of The United Methodist Church and is entitled to all the privileges and benefits accruing from time to time to institutions of The United Methodist Church from patronizing conferences.
As added by P.L.1-1989, SEC.49.

IC 23-13-20-10
John C. Moore building

Sec. 10. A major building on the campus of the university must bear the name of John C. Moore to honor and perpetuate the memory of the founder of Moores Hill College.
As added by P.L.1-1989, SEC.49.

IC 23-14

ARTICLE 14. CEMETERY ASSOCIATIONS

IC 23-14-1

Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-2
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-3
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-4
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-5
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-6
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-7
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-8
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-9
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-10
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-11
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-12
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-13
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-14
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-15
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-16
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-17
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-18
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-19
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-20
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-21
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-22
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-23
Repealed
(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-24
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-25
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-26
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-27
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-28
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-29
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-30
Repealed

(Repealed by P.L.52-1997, SEC.58.)

IC 23-14-31
Chapter 31. Cremation

IC 23-14-31-1
"Alternative container" defined

Sec. 1. As used in this chapter, "alternative container" means a rigid or nonrigid receptacle or other enclosure that:

(1) is made of a nonmetallic material;
(2) does not have ornamentation or an inner lining;
(3) may be closed adequately to provide a complete covering for human remains;
(4) is resistant to leakage or spillage;
(5) is rigid enough for handling with ease; and
(6) provides protection for the health, safety, and personal integrity of crematory personnel.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-2
"Authorizing agent" defined

Sec. 2. As used in this chapter, "authorizing agent" means a person legally entitled to order the cremation and final disposition of specific human remains.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-3
"Board" defined

Sec. 3. As used in this chapter, "board" means the state board of funeral and cemetery service established by IC 25-15-9-1.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-4
"Body part" defined

Sec. 4. As used in this chapter, "body part" means:

(1) a limb or other part of the human anatomy that is removed for medical purposes, treatment, surgery, biopsy, autopsy, or medical research; or
(2) a human body or a portion of a human body that has been donated to science for medical research purposes.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-5
"Burial transit permit" defined

Sec. 5. As used in this chapter, "burial transit permit" means a permit for the transportation and disposition of a dead human body required under IC 16-37-3-10 or IC 16-37-3-12.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-6
"Casket" defined

Sec. 6. As used in this chapter, "casket" means a rigid enclosure

that:

(1) is made of wood, metal, or other material;
(2) is ornamented;
(3) has a fixed or nonfixed inner lining; and
(4) is designed to encase human remains.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-7
"Cremated remains" defined

Sec. 7. As used in this chapter, "cremated remains" means all human remains recovered after the completion of the cremation of a human body or body part, including the residue of any foreign materials, nonmetallic casket material, dental work, or eyeglasses that were cremated with the human remains but excluding any prosthetic or medical device.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-8
"Cremation" defined

Sec. 8. As used in this chapter, "cremation" means the incineration of the body of a deceased person or a body part of a nondeceased person and the mechanical or manual reduction of identifiable bone fragments to unidentifiable bone fragments.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-9
"Cremation chamber" defined

Sec. 9. As used in this chapter, "cremation chamber" means the enclosed space where the cremation takes place.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-10
"Cremation room" defined

Sec. 10. As used in this chapter, "cremation room" means the room where the cremation chamber is located.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-11
"Crematory" defined

Sec. 11. As used in this chapter, "crematory" means a building or structure, including a holding facility where human remains are or are intended to be cremated.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-12
"Crematory authority" defined

Sec. 12. As used in this chapter, "crematory authority" means the legal entity or the entity's authorized representative that is registered by the board to operate a crematory and to perform cremations.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-13
"Disposition" defined

Sec. 13. As used in this chapter, "disposition" means the cremation or other disposition of a dead human body or a part of a dead human body.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-14
"Funeral home" defined

Sec. 14. As used in this chapter, "funeral home" means a place that is licensed under IC 25-15 where:

(1) human remains are prepared for a funeral or disposition;
(2) human remains are held for disposition; and
(3) funerals are conducted or provided.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-15
"Holding facility" defined

Sec. 15. As used in this chapter, "holding facility" means an area that:

(1) is designated for the retention of human remains before cremation, including a cremation room;
(2) complies with all applicable public health laws; and
(3) preserves the health and safety of the crematory authority personnel.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-16
"Human remains" defined

Sec. 16. As used in this chapter, "human remains" means the body or a part of the body of an individual, including human remains that have been cremated.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-17
"Niche" defined

Sec. 17. As used in this chapter, "niche" means a space in a columbarium that is used or intended to be used for the interment of cremated human remains of one (1) or more deceased individuals.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-18
"Scattering" defined

Sec. 18. As used in this chapter, "scattering" means the final disposition of cremated human remains under section 44(a)(3) of this chapter.

As added by P.L.231-1995, SEC.2. Amended by P.L.173-1996, SEC.1.

IC 23-14-31-19

"Scattering area" defined

Sec. 19. As used in this chapter, "scattering area" means a designated area on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with or placed on top of the soil or ground cover.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-20

"Temporary container" defined

Sec. 20. As used in this chapter, "temporary container" means a receptacle:

(1) for cremated remains;

(2) that is composed of cardboard, plastic, or similar material;

(3) that can be secured to prevent leakage or spillage of the cremated remains or the entrance of foreign material; and

(4) that is a single container of sufficient size to hold the cremated remains.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-21

"Urn" defined

Sec. 21. As used in this chapter, "urn" means a receptacle designed to encase cremated remains.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-22

Operating crematories; registration application

Sec. 22. (a) A person, a corporation, a limited liability company, a partnership, or any other business entity that is registered under this section may erect, maintain, and operate a crematory.

(b) To register to erect, maintain, or operate a crematory, an applicant must complete an application for registration as a crematory authority on a form furnished by the board that contains the following information:

(1) The name and address of the applicant as follows:

(A) If the applicant is an individual, the full name and address, including both residential and business addresses, of the applicant.

(B) If the applicant is a partnership, the full name and address of each partner.

(C) If the applicant is a limited liability company, the full name and address of each manager and member.

(D) If the applicant is a corporation, the name and address of each officer, director, and shareholder holding at least twenty-five percent (25%) of the corporation's stock.

(2) The address and location of the crematory.

(3) Any other information the board may reasonably require.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-23

Licenses and permits; construction of crematories

Sec. 23. (a) A crematory shall obtain all necessary licenses and permits from appropriate local, state, or federal agencies.

(b) A crematory may be constructed on or adjacent to a cemetery, a funeral home, or another location if allowed by local zoning ordinances.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-24

Annual report

Sec. 24. (a) Each crematory authority shall file an annual report with the board. The report must include any changes in the information required under section 22 of this chapter or a statement indicating that no changes have occurred.

(b) Except as provided in subsection (c), the annual report must be filed not later than ninety (90) days after the end of the fiscal year of the crematory authority.

(c) If the fiscal year of a crematory authority is not the calendar year, the crematory authority shall file the annual report within seventy-five (75) days after the end of the crematory authority's fiscal year.

(d) If a crematory authority files a written request for an extension and demonstrates good cause for the extension, the board shall grant an extension of not more than sixty (60) days for filing the annual report.

(e) If a crematory authority fails to submit an annual report to the board within the time specified in subsection (c) or (d), the board may take any of the actions allowed by IC 25-15-9.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-25

Inspection of records

Sec. 25. Upon reasonable notice, the board may inspect all records relating to the registration and annual report of the crematory authority required to be filed under this chapter.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-26

Priority among persons having right to serve as authorizing agent; persons who may not serve; disputes

Sec. 26. (a) Except as provided in subsection (c), the following persons, in the priority listed, have the right to serve as an authorizing agent:

(1) A person:

(A) granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19; or

(B) named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the

United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.

(2) An individual specifically granted the authority to serve in a power of attorney or a health care power of attorney executed by the decedent under IC 30-5-5-16.

(3) The individual who was the spouse of the decedent at the time of the decedent's death, except when:

(A) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death, unless a court finds that the decedent and spouse were reconciled before the decedent's death; or

(B) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(4) The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the adult children. However, less than half of the surviving adult children have the rights under this subdivision if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.

(5) The decedent's surviving parent or parents. If one (1) of the parents is absent, the parent who is present has authority under this subdivision if the parent who is present has used reasonable efforts to notify the absent parent.

(6) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this subdivision if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.

(7) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree is surviving, the majority of those who are of the same degree. However, less than half of the individuals who are of the same degree of kinship have the rights under this subdivision if they have used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship.

(8) If none of the persons described in subdivisions (1) through (7) are available, any other person willing to act and arrange for the final disposition of the decedent's remains, including a funeral home that:

(A) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent's remains; and

(B) attests in writing that a good faith effort has been made to contact any living individuals described in subdivisions (1) through (7).

(9) In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1) through (8) are available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

However, an indigent decedent may not be cremated if a surviving family member objects to the cremation or if cremation would be contrary to the religious practices of the deceased individual as expressed by the individual or the individual's family.

(10) In the absence of any person under subdivisions (1) through (9), any person willing to assume the responsibility as the authorizing agent, as specified in this article.

(b) When a body part of a nondeceased individual is to be cremated, a representative of the institution that has arranged with the crematory authority to cremate the body part may serve as the authorizing agent.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not serve as the authorizing agent.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the crematory authority of the determination referred to in subsection (c)(2).

(e) If a person vested with a right under subsection (a) does not exercise that right not later than seventy-two (72) hours after the person receives notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent's remains, and the right to determine final disposition passes to the next person described in subsection (a).

(f) A crematory authority owner has the right to rely, in good faith, on the representations of a person listed in subsection (a) that any

other individuals of the same degree of kinship have been notified of the final disposition instructions.

(g) If there is a dispute concerning the disposition of a decedent's remains, a crematory authority is not liable for refusing to accept the remains of the decedent until the crematory authority receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent's remains. If a crematory authority agrees to shelter the remains of the decedent while the parties are in dispute, the crematory authority may collect any applicable fees for storing the remains, including legal fees that are incurred.

(h) Any cause of action filed under this section must be filed in the probate court in the county where the decedent resided, unless the decedent was not a resident of Indiana.

(i) A spouse seeking a judicial determination under subsection (a)(3)(A) that the decedent and spouse were reconciled before the decedent's death may petition the court having jurisdiction over the dissolution or separation proceeding to make this determination by filing the petition under the same cause number as the dissolution or separation proceeding. A spouse who files a petition under this subsection is not required to pay a filing fee.

As added by P.L.231-1995, SEC.2. Amended by P.L.102-2007, SEC.1; P.L.143-2009, SEC.5; P.L.101-2010, SEC.1; P.L.34-2011, SEC.1; P.L.6-2012, SEC.161.

IC 23-14-31-27

Authorization procedure; immunity from liability; exceptions

Sec. 27. (a) Except as provided in subsection (c), a crematory authority shall not cremate human remains until the authority has received the following:

(1) A cremation authorization form provided by the crematory authority, signed by an authorizing agent, containing the following information:

(A) The identity of the human remains and the time and date of death.

(B) The name of the funeral director who obtained the cremation authorization.

(C) The name of the authorizing agent and the relationship between the authorizing agent and the decedent.

(D) A statement by the authorizing agent that the authorizing agent:

(i) has the right to authorize the cremation of the decedent;

(ii) is not aware of any person who has a superior priority right to that of the authorizing agent; or

(iii) if the authorizing agent is aware that there is another person who has a superior priority right to that of the authorizing agent, a statement that the authorizing agent has made all reasonable efforts to contact the person, has been unable to contact the person, and has no reason to

believe that the person would object to the cremation of the decedent.

(E) Authorization for the crematory authority to cremate the human remains.

(F) A statement that the human remains do not contain a pacemaker or any other material or implant or radiation producing device that may be potentially hazardous or cause damage to the cremation chamber or the individual performing the cremation. The authorization form may state that the funeral director is not liable for damages caused by a pacemaker or other implanted device that was not disclosed to the funeral director or of which the funeral director could not reasonably be aware.

(G) The name of the funeral director authorized to receive the cremated remains from the crematory authority or, if the crematory is on cemetery property, the cemetery authorized to receive cremated remains.

(H) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, niche, or scattering area, the form may indicate that the cremated remains will be held by the crematory authority for not longer than thirty (30) days from the date of cremation before the remains are released. The form may indicate that the crematory authority shall return cremated remains that have not been disposed of within thirty (30) days to the funeral director or funeral home of record who shall hold them for not longer than sixty (60) days from the date of cremation before disposing of the cremated remains either as previously authorized or, if there is no authorization, in any legal manner. The funeral home has no liability for:

(i) disposing of cremated remains in any manner permitted by law if the remains have been held; or

(ii) holding the cremated remains;

in excess of the sixty (60) days permitted under this clause if the authorizing agent fails to claim the remains during the sixty (60) day period. The funeral home must first send written notice by certified mail return receipt requested to the authorizing agent explaining the intentions of the funeral home regarding the disposal of or holding of the cremated remains in order for the funeral home to be immune from liability under this clause.

(I) A statement confirming the identity of the valuables belonging to the decedent previously taken and being held by the funeral director or the funeral home.

(J) A statement prohibiting the crematory from selling nonorganic material recovered from the human remains.

(K) A statement that the authorizing agent has made specific arrangements for any viewing of the decedent before

cremation, or for a service with the decedent present before cremation. If a viewing or service is planned, the date and time of the viewing or service and whether the crematory authority is authorized to proceed with the cremation upon receipt of the human remains.

(L) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.

(2) A completed and executed burial transit permit provided by the local health officer to the funeral director indicating that the human remains are to be cremated.

(3) A copy of:

(A) the completed and executed certificate of death; or

(B) a release for cremation by the coroner if an investigation of the circumstances of the deceased person's death came under the authority of the coroner, but the release does not constitute an authorization as required by this chapter.

(b) The cremation authorization form required under subsection (a)(1) must be signed by the funeral director who obtained the cremation authorization. The funeral director shall execute the cremation authorization form as a witness and is not responsible for the representations made by the authorizing agent unless the funeral director has actual knowledge of a false or inaccurate representation. The funeral director shall certify to the crematory that the human remains delivered to the crematory authority are the human remains identified by the authorizing agent on the cremation authorization form.

(c) Notwithstanding subsection (a)(3)(A), a death certificate is not required for the cremation of the remains of a person:

(1) who died in another state; and

(2) whose remains are transported to Indiana by:

(A) a licensed funeral director; or

(B) the agent of a licensed funeral director;

for the purpose of cremation at an Indiana crematory;

if the funeral director or funeral director's agent obtains the documents required for cremation by the state in which the death occurred. However, if final disposition of the human remains is to occur in Indiana, the provisions of subsection (a)(3)(A) shall apply.

As added by P.L.231-1995, SEC.2. Amended by P.L.174-1996, SEC.1; P.L.52-1997, SEC.5; P.L.169-2003, SEC.1.

IC 23-14-31-28

Delegation of authority; immunity for reliance on cremation authorization form

Sec. 28. (a) If the authorizing agent is not available to execute a cremation authorization form in person, the authorizing agent may delegate the authority to another person in writing, including a facsimile transmission, telegram, or other electronic transmission.

(b) A written delegation of authority of an authorizing agent must include:

(1) the name, address, and relationship of the authorizing agent to the decedent; and

(2) the name and address of the person to whom authority is delegated.

(c) A person authorized under subsections (a) and (b) may serve as the authorizing agent and execute the cremation authorization form.

(d) A crematory authority is not liable for relying on a cremation authorization form executed in compliance with this section.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-29

Effect of signing cremation authorization form; responsibility for final disposition

Sec. 29. (a) Except for the information required under section 27(a)(1)(F) of this chapter, an authorizing agent who signs a cremation authorization form certifies that the facts on the cremation authorization form are true and that the authorizing agent has authority to order the cremation.

(b) An authorizing agent who signs a cremation authorization form is personally liable for damages resulting from authorizing the cremation.

(c) The authorizing agent is responsible for the final disposition of a decedent's cremated remains. The crematory authority may hold the cremated remains for not longer than the thirty (30) day period under section 45 of this chapter.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-30

Crematory authority; liability for cremation or disposition

Sec. 30. (a) Except as provided in section 36 of this chapter, a crematory authority may cremate human remains upon receipt of a cremation authorization form signed by an authorizing agent.

(b) In the absence of gross negligence or noncompliance with this chapter, a crematory authority is not liable for:

(1) cremating human remains according to an authorization; or

(2) releasing or disposing of the cremated remains according to an authorization form.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-31

Cancellation by authorizing agent and instructions for alternative disposition

Sec. 31. After an authorizing agent has executed a cremation authorization form, the authorizing agent may revoke the authorization and instruct the crematory authority to cancel the cremation and to release or deliver the human remains to another crematory authority or funeral home. The instructions must be provided to the crematory authority in writing. A crematory authority must comply with instructions given to the authority by an

authorizing agent under this section if the crematory authority receives the instructions before beginning the cremation of the human remains.
As added by P.L.231-1995, SEC.2.

IC 23-14-31-32
Receipts provided by crematory authority

Sec. 32. (a) The crematory authority shall furnish a receipt to the funeral director or the funeral director's representative who delivers human remains to the crematory authority. The receipt must:

(1) be signed by both the crematory authority and the funeral director or the funeral director's representative who delivers the human remains; and

(2) contain the following information:

(A) The date and time of the delivery.

(B) The type of casket or alternative container that was delivered.

(C) The name of the person from whom the human remains were received and the name of the funeral home or other entity with whom the person is affiliated.

(D) The name of the person who received the human remains on behalf of the crematory authority.

(E) The name of the decedent.

(b) Upon the release of cremated remains, the crematory authority shall furnish a receipt to the person who receives the cremated remains from the crematory authority. The receipt must be signed by both the crematory authority and the person who receives the cremated remains and must contain the following information:

(1) The date and time of the release.

(2) The name of the person who received the cremated remains and the name of the funeral home, cemetery, or other entity with whom the person is affiliated.

(3) The name of the person who released the cremated remains on behalf of the crematory authority.

(4) The name of the decedent.

(c) The crematory authority shall retain a copy of each receipt under this section in the authority's permanent records.
As added by P.L.231-1995, SEC.2.

IC 23-14-31-33
Crematory authority records

Sec. 33. (a) A crematory authority shall maintain at the authority's place of business a permanent record of each cremation that took place at the facility. The record must contain the name of the decedent and the date of the cremation.

(b) The crematory authority shall maintain a record of all cremated remains disposed of by the crematory authority under section 49 of this chapter.
As added by P.L.231-1995, SEC.2.

IC 23-14-31-34
Cemetery records

Sec. 34. Each cemetery shall maintain a record of all cremated remains:

(1) that are disposed of on the cemetery's property;
(2) that have been properly transferred to the cemetery; and
(3) for which the cemetery has issued a receipt acknowledging the transfer of the cremated remains.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-35
Casket requirements; acceptance of human remains

Sec. 35. (a) A crematory authority shall not require that human remains be placed in a casket before cremation or that human remains be cremated in a casket.

(b) A crematory authority shall not accept human remains unless the remains are delivered to the crematory authority in a casket or an alternative container. However, a crematory authority may not require that the human remains be delivered in a casket.

(c) A crematory authority shall not refuse to accept human remains for cremation because the human remains are not embalmed.

(d) A crematory authority shall not accept a casket or an alternative container if there is evidence of the leakage of body fluids.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-36
Time; human remains containing hazardous materials; exceptions

Sec. 36. (a) Except:

(1) when waived in writing by the city or county health officer where the death occurred; or
(2) as provided in subsection (d);

human remains shall not be cremated less than forty-eight (48) hours after the time of death as indicated on the medical certificate of death or the coroner's certificate.

(b) Except as provided in subsection (a), unless the crematory authority has received specific instructions to the contrary on the cremation authorization form, a crematory authority may schedule the actual cremation to be performed at the authority's convenience at any time after the human remains have been delivered to the crematory authority.

(c) A crematory authority shall not cremate human remains when the authority has actual knowledge that the human remains contain a pacemaker or other material or implant that may be potentially hazardous to the individual performing the cremation.

(d) The mandatory delay of forty-eight (48) hours imposed by subsection (a) does not apply to the cremation of the remains of a person:

(1) who died in another state; and
(2) whose remains are transported to Indiana by:
    (A) a licensed funeral director; or

(B) the agent of a licensed funeral director;

for the purpose of cremation at an Indiana crematory;

if the funeral director or funeral director's agent obtains the documents required for cremation by the state in which the death occurred.

As added by P.L.231-1995, SEC.2. Amended by P.L.52-1997, SEC.6.

IC 23-14-31-37

Use of holding facilities

Sec. 37. When a crematory authority is unable to or unauthorized to cremate human remains immediately upon taking custody of the remains, the crematory authority shall place the human remains in a holding facility.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-38

Destruction or cremation of casket or alternative container

Sec. 38. The casket or the alternative container containing the human remains must be cremated with the human remains or destroyed unless the crematory authority has notified the authorizing agent to the contrary on the cremation authorization form and obtained the written consent of the authorizing agent.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-39

Simultaneous cremations

Sec. 39. (a) A crematory authority shall not perform the simultaneous cremation of the human remains of more than one (1) individual within the same cremation chamber unless it has obtained the prior written consent of the authorizing agents.

(b) Subsection (a) does not prevent the simultaneous cremation within the same cremation chamber of body parts delivered to the crematory authority from multiple sources, or the use of cremation equipment that contains more than one (1) cremation chamber.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-40

Removal of recoverable residue

Sec. 40. After each cremation, all the recoverable residue of the cremation process that it is practical to recover must be removed from the cremation chamber.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-41

Additional containers for cremated remains

Sec. 41. If all of the recovered cremated remains will not fit in the receptacle that has been selected, the remainder of the cremated remains must be placed in a separate, additional container and returned to the funeral home or funeral director for return to the authorizing agent.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-42
Shipment of cremated remains

Sec. 42. (a) Cremated remains may only be shipped by a method that has an internal tracing system that provides a receipt signed by the person accepting delivery.

(b) A crematory authority shall maintain an identification system that ensures that the authority can identify the human remains in the authority's possession throughout all phases of the cremation process.
As added by P.L.231-1995, SEC.2.

IC 23-14-31-43
Responsibility for final disposition

Sec. 43. The authorizing agent is responsible for the decision concerning final disposition of the cremated remains in accordance with sections 44 and 45 of this chapter. The funeral director is not liable for an act of the authorizing agent.
As added by P.L.231-1995, SEC.2.

IC 23-14-31-44
Legal control and disposition; forms concerning disposal

Sec. 44. (a) Cremated remains may be retained by the person having legal control over the remains or may be disposed of in any of the following manners:

(1) Placing the remains in a grave, niche, or crypt.
(2) Scattering the remains in a scattering area.
(3) Disposing of the remains in any manner if:
(A) the remains are reduced to a particle size of one-eighth (1/8) inch or less; and
(B) the disposal is made on the property of a consenting owner, on uninhabited public land, or on a waterway.

(b) The state department of health shall adopt forms for recording the following information concerning the disposal of cremated human remains on the property of a consenting owner:

(1) The date and manner of the disposal of the remains.
(2) The legal description of the property where the remains were disposed of.

The owner of the property where the cremated remains were disposed of and the person having legal control over the remains shall attest to the accuracy of the information supplied on the forms. The owner of the property where the cremated remains were disposed of shall record the forms with the county recorder of the county in which the property is located and shall return the form and the burial transit permit described in IC 16-37-3, within ten (10) days after the remains are disposed of.
As added by P.L.231-1995, SEC.2.

IC 23-14-31-45
Disposition of cremated remains where no instructions exist

Sec. 45. (a) After completion of the cremation process, if a crematory authority existing on cemetery property has not been instructed to arrange for the interment, entombment, inurnment, or scattering of the cremated remains, the crematory authority shall deliver the cremated remains to the funeral director of record not later than thirty (30) days after the date of cremation. After delivery of the cremated remains, the crematory authority is discharged from any legal obligation or liability concerning the disposition of the cremated remains.

(b) A funeral director may hold remains returned by a crematory authority for not longer than sixty (60) days from the date of cremation and may dispose of the remains as previously arranged, or if no arrangement has been made, at the end of sixty (60) days, in any legal manner.

(c) A funeral director and crematory authority shall observe religious practices or preferences specified by the authorizing agent.
As added by P.L.231-1995, SEC.2. Amended by P.L.112-2014, SEC.3.

IC 23-14-31-46
Commingling of cremated remains

Sec. 46. Except with the express written permission of the authorizing agent, a person shall not do the following:

(1) Dispose of cremated remains in a manner or location that commingles the cremated remains with the cremated remains of another individual. This prohibition does not apply to the scattering of cremated remains at sea or in the air.

(2) Place the cremated remains of more than one (1) individual in the same temporary container or urn.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-47
Liability for cremation designated by authorization

Sec. 47. A crematory authority that has received an executed cremation authorization form and any additional documentation required under section 27 of this chapter is not liable for civil damages arising from the cremation of the human remains designated by the cremation authorization form if the cremation is performed in accordance with this chapter.
As added by P.L.231-1995, SEC.2.

IC 23-14-31-48
Liability for nonacceptance or nonperformance

Sec. 48. (a) A crematory authority is not liable for civil damages for refusing to accept human remains or refusing to perform a cremation until the crematory authority receives a court order or other suitable confirmation that a dispute has been settled, if the authority:

(1) is aware of a dispute concerning the cremation of the human remains;

(2) has a reasonable basis for questioning any of the

representations made by the authorizing agent; or

(3) refuses to accept the human remains for any other lawful reason.

(b) A crematory authority is not required to accept human remains for cremation.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-49

Disputes concerning cremated remains; liability for refusing release

Sec. 49. (a) If a crematory authority is aware of a dispute concerning the release or disposition of cremated remains, the crematory authority shall release the remains to the funeral director or funeral home until the dispute has been resolved.

(b) A crematory authority is not liable for refusing to release or dispose of cremated remains in accordance with this section.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-50

Responsibility for prosthetic devices or valuables; resale of caskets or medical devices

Sec. 50. A crematory authority is not responsible or liable for prosthetic devices or valuables delivered to the crematory authority with or integral to human remains, unless the crematory authority has received written instructions under section 27(a)(1)(I) or 27(a)(1)(J) of this chapter. A crematory authority shall not resell caskets or prosthetic or medical devices obtained as a result of cremation or from cremated remains.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-51

Liability of cemeteries

Sec. 51. A cemetery is not liable for cremated remains that are dumped, scattered, or otherwise deposited at the cemetery in violation of this chapter if the action is taken without the cemetery's consent.

As added by P.L.231-1995, SEC.2.

IC 23-14-31-52

Violations; offenses

Sec. 52. (a) Except as provided in subsections (b), (c), and (d), a person that knowingly or intentionally violates this chapter commits a Class B misdemeanor.

(b) A person that knowingly or intentionally:

(1) performs a cremation without receipt of a cremation authorization form signed by an authorizing agent;

(2) signs a cremation authorization form that the individual knows contains false or incorrect information; or

(3) violates a cremation procedure under sections 36 through 42 of this chapter;

commits a Level 6 felony.

(c) A crematory authority that knowingly represents to an authorizing agent or the agent's designee that a temporary container or urn contains the cremated remains of a specific decedent when the container or urn does not commits a Level 6 felony.

(d) A person:

(1) who:

(A) professes to the public to be a crematory authority; or

(B) operates a building or structure in Indiana as a crematory;

without being registered under section 22 of this chapter; or

(2) who fails to file an annual report required under section 24 of this chapter;

commits a Class A misdemeanor.

As added by P.L.231-1995, SEC.2. Amended by P.L.169-2003, SEC.2; P.L.158-2013, SEC.265.

IC 23-14-31-53

Injunction actions

Sec. 53. If a crematory authority:

(1) refuses to file or neglects to file an annual report under section 24 of this chapter;

(2) fails to comply with the registration requirements under section 22 of this chapter; or

(3) refuses to comply with the record inspection requirements under section 25 of this chapter;

the board may maintain an action in the name of the state of Indiana to enjoin the crematory authority from performing cremations.

As added by P.L.231-1995, SEC.2.

IC 23-14-32

Chapter 32. Curfews

IC 23-14-32-1

Curfews to memorialize the dead

Sec. 1. A county, city, or town may impose a curfew specific to cemeteries or other facilities used to memorialize the dead under IC 31-37-3-5.

As added by P.L.103-1996, SEC.3. Amended by P.L.1-1997, SEC.108.

IC 23-14-33

Chapter 33. Application and Definitions of Cemetery Law

IC 23-14-33-1

Citation of chapters

Sec. 1. This chapter through IC 23-14-76 may be referred to as the Indiana general cemetery law.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-2

Application of provisions

Sec. 2. The provisions of this chapter through IC 23-14-76 apply to all:

(1) cemeteries;
(2) community or public mausoleums;
(3) community or public garden crypts; and
(4) columbaria;

located within Indiana, except as otherwise provided in this chapter through IC 23-14-76.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-3

Rules of cemetery owner

Sec. 3. (a) Notwithstanding any provision of IC 23-14-33 through IC 23-14-76 to the contrary, but subject to subsection (b):

(1) a cemetery that is owned by:
  (A) a church or other religious organization; or
  (B) a fraternal beneficiary society; and
(2) all burial rights held in the cemetery;

are subject in all things to the rules and regulations of the owner of the cemetery that are enacted by the governing head or body of the cemetery.

(b) A cemetery described in subsection (a) is subject to all the provisions of this chapter through IC 23-14-76 that do not conflict with the rules or regulations of the cemetery owner.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-4

Application of definitions

Sec. 4. The definitions set forth in this chapter apply to this chapter through IC 23-14-76.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-5

"Burial"

Sec. 5. "Burial" means the opening and closing of a grave, grave space, burial space, crypt, or niche for purposes of:

(1) interment;
(2) entombment; or
(3) inurnment.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-6
"Burial right"

Sec. 6. "Burial right" means a right of interment, entombment, or inurnment granted by the owner of a cemetery and unless otherwise stated in the deed, certificate, or license given by the owner of the cemetery, is an easement for the specific purpose of burial.
As added by P.L.52-1997, SEC.7.

IC 23-14-33-7
"Cemetery"

Sec. 7. "Cemetery" means any land or structure in Indiana that is:
(1) dedicated to; and
(2) used for, or intended to be used for;
the interment, entombment, or inurnment of human remains.
As added by P.L.52-1997, SEC.7.

IC 23-14-33-8
"Cemetery owner" or "owner of a cemetery"

Sec. 8. "Cemetery owner" or "owner of a cemetery" means the person that:
(1) owns; or
(2) operates and conducts the business of;
a cemetery.
As added by P.L.52-1997, SEC.7.

IC 23-14-33-9
"Cemetery purposes"

Sec. 9. "Cemetery purposes" means all things necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement, and conduct of a cemetery, the preparation of cemetery property for interment, entombment, or inurnment and the interment, entombment, or inurnment of the human dead, and the care, preservation, and embellishment of cemetery property.
As added by P.L.52-1997, SEC.7.

IC 23-14-33-10
"Columbarium"

Sec. 10. "Columbarium" means a structure or room or space in a building or structure used or intended to be used for the inurnment of cremated human remains.
As added by P.L.52-1997, SEC.7.

IC 23-14-33-11
"Community columbarium"

Sec. 11. "Community columbarium" means a columbarium in which inurnment rights are or have been offered for sale to the general public.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-12
"Community garden crypt"

Sec. 12. "Community garden crypt" means a garden crypt in which entombment or inurnment rights are or have been offered for sale to the general public.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-13
"Community mausoleum"

Sec. 13. "Community mausoleum" means a mausoleum in which entombment or inurnment rights are or have been offered for sale to the general public.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-14
"Cremation"

Sec. 14. "Cremation" means:

(1) the incineration of:

(A) the body of a deceased individual; or

(B) a body part of a nondeceased individual; and

(2) the mechanical or manual reduction of identifiable bone fragments to unidentifiable bone fragments.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-15
"Crematory"

Sec. 15. "Crematory" means a building or structure, including a holding facility, within which the remains of deceased individuals:

(1) are; or

(2) are intended to be;

cremated.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-16
"Crypt"

Sec. 16. "Crypt" means a chamber in a mausoleum or garden crypt that is of sufficient size to entomb the uncremated remains of a deceased individual.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-17
"Disinterment"

Sec. 17. "Disinterment" means the recovery of human remains by exhumation, disentombment, or disinurnment. The term does not include:

(1) the raising and lowering of human remains to accommodate two (2) interments within a single grave: or

(2) the repositioning of human remains or the repositioning of

an outside burial container or vault that encroaches on an adjoining grave, grave space, or burial space.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-18
"Entombment"

Sec. 18. "Entombment" means any lawful disposition of the remains of a deceased individual in a mausoleum or garden crypt as provided by IC 23-14-54.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-19
"Financial institution"

Sec. 19. "Financial institution" means a state or national:

(1) bank;
(2) bank and trust company;
(3) trust company;
(4) savings bank; or
(5) savings association;

that maintains a principal place of business in Indiana and is qualified to serve as a trustee.

As added by P.L.52-1997, SEC.7. Amended by P.L.79-1998, SEC.25.

IC 23-14-33-20
"Garden crypt"

Sec. 20. (a) "Garden crypt" means a structure or building that is:

(1) used; or
(2) intended to be used;

for the entombment or inurnment of human remains in crypts, vaults, or niches, in which entombment or inurnment is done from the exterior of the structure or building.

(b) The term includes a columbarium within a garden crypt.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-21
"Human remains" or "remains"

Sec. 21. (a) "Human remains" or "remains" means the body of a deceased individual.

(b) The term includes:

(1) the body in any stage of decomposition; and
(2) cremated remains.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-22
"Interment"

Sec. 22. "Interment" means any lawful disposition in the earth of the remains of a deceased individual as provided by IC 23-14-54.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-23

"Inurnment"

Sec. 23. "Inurnment" means any lawful disposition of the cremated remains of a deceased individual in a mausoleum, garden crypt, niche, or scattering garden area as provided by IC 23-14-54.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-24

"Lawn crypt"

Sec. 24. "Lawn crypt" means a vault that is:

(1) preset into the earth; and

(2) sold as a part of the sale of the lot, plot, burial space, or grave.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-25

"Lot", "plot", "burial space", or "section"

Sec. 25. (a) "Lot", "plot", "burial space", or "section" means any space within a cemetery that is:

(1) used; or

(2) intended to be used;

for interment, entombment, or inurnment, irrespective of where the space is located.

(b) The term includes a crypt, a niche, and a grave space.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-26

"Lot owner", "lot holder", "plot owner", "plot holder", "burial right owner", "burial right holder", "burial space owner", or "burial space holder"

Sec. 26. "Lot owner", "lot holder", "plot owner", "plot holder", "burial right owner", "burial right holder", "burial space owner", or "burial space holder" means a person:

(1) under whose name a burial space is listed; or

(2) who is identified as the owner or holder of a burial space;

in the records of the office of the cemetery owner.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-27

"Mausoleum"

Sec. 27. (a) "Mausoleum" means a structure or building that:

(1) is used; or

(2) is intended to be used;

for the entombment or inurnment of human remains in crypts, vaults, or niches, in which entombment or inurnment is done from the interior of the building or structure.

(b) The term includes a columbarium within a mausoleum.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-28

"Niche"

Sec. 28. "Niche" is a space in a columbarium that is:
(1) used; or
(2) intended to be used;
for the inurnment of the cremated remains of one (1) or more deceased individuals.
As added by P.L.52-1997, SEC.7.

IC 23-14-33-29
"Owner"
Sec. 29. (a) "Owner", when used in reference to a:
(1) lot owner;
(2) lot holder;
(3) plot owner;
(4) plot holder;
(5) burial right owner;
(6) burial right holder;
(7) burial space owner; or
(8) burial space holder;
includes a holder of a lot, plot, burial right, or burial space.
(b) "Owner", when used in reference to a:
(1) lot owner;
(2) lot holder;
(3) plot owner;
(4) plot holder;
(5) burial right owner;
(6) burial right holder;
(7) burial space owner; or
(8) burial space holder;
does not include a cemetery owner or an owner of a cemetery.
As added by P.L.52-1997, SEC.7.

IC 23-14-33-30
"Perpetual care" or "endowment care"
Sec. 30. (a) "Perpetual care" or "endowment care" means, within the limits permitted by the net income received from the perpetual care fund or endowment care fund required by IC 23-14-48 and from other care funds or endowments, the maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including the following:
(1) Cutting the grass on cemetery plots at reasonable intervals.
(2) Raking and cleaning of cemetery plots at reasonable intervals.
(3) Pruning of shrubs and trees.
(4) Procuring, maintaining, and keeping in workable condition the machinery, tools, and equipment needed for maintenance purposes, and replacing the machinery, tools, and equipment when necessary.
(5) Keeping in repair and preserving the drains, water lines, roads, buildings, fences, and other structures, including cemetery owned statues and embellishments of a general

character applicable to the cemetery as a whole or a particular area.

(6) The administration of the cemetery, including:

(A) the payment of insurance premiums;

(B) the payment of pensions; and

(C) maintaining the necessary records of lot ownership or holdership, burial right ownership or holdership, burials, and other necessary information, and making the records available to the public authorities and interested persons.

(b) When used in connection with a mausoleum, garden crypt, columbarium, crematory, or other structure, the term "perpetual care" or "endowment care" means, in addition to the meaning set forth in subsection (a):

(1) the general upkeep of the structure and the ground surrounding the structure;

(2) the repair, replacement, and improvement of the structure;

(3) the procuring, maintaining, and keeping in reasonable condition the machinery, tools, and equipment needed for the purposes set forth in subdivisions (1) through (2); and

(4) replacing the machinery, tools, and equipment when necessary.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-31
"Person"

Sec. 31. "Person" means an individual, an association, a limited liability company, a corporation, a firm, or another legal entity.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-32
"Religious cemetery"

Sec. 32. "Religious cemetery" means a cemetery that is owned, operated, controlled, or managed by:

(1) any recognized church, religious society, association, or denomination; or

(2) any cemetery authority or corporation:

(A) that administers; or

(B) through which is administered;

the temporalities of any recognized church, religious society, association, or denomination.

As added by P.L.52-1997, SEC.7.

IC 23-14-33-33
"Vault"

Sec. 33. (a) "Vault" means:

(1) an outer burial container that is designed for placement in a burial space or grave around a casket or alternative container; or

(2) the container that forms the chamber of a crypt.

(b) The term includes a burial vault, grave box, or grave liner.

As added by P.L.52-1997, SEC.7.

IC 23-14-34

Chapter 34. Mandatory Recording of Survey and Plat

IC 23-14-34-1

Mandatory recording of survey and plat for certain cemeteries

Sec. 1. Before granting or selling any burial right in any part of a cemetery developed and platted after March 6, 1953, the owner of the cemetery shall cause to be recorded in the recorder's office of the county in which the cemetery is located an accurate survey and plat of that part of its property in which it proposes to grant or sell burial rights.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-2

Duties after violations; Class C infraction

Sec. 2. (a) The owner of a cemetery that has violated section 1 of this chapter shall, not later than January 1, 1998, record in the office of the recorder of the county in which the cemetery is located:

(1) the original plat of the cemetery; and

(2) the plats of all additions to the cemetery.

(b) The plats recorded under subsection (a) must:

(1) be referenced with respect to the section lines of the cemetery (if section lines have been established); and

(2) show a sufficient number of permanent monuments so there would be no difficulty in making resurveys.

(c) A cemetery owner who violates this section commits a Class C infraction. If the cemetery owner is required by this chapter to record a plat, each period of thirty (30) days after the time allowed by this chapter for the recording of the plat during which the plat remains unrecorded constitutes a separate infraction.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-3

Transfers to include reference to recorded plat

Sec. 3. Each transfer of interment, entombment, or inurnment rights issued by the cemetery owner under this chapter must include a reference to the recorded plat.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-4

Issuance of deeds, certificates, or licenses

Sec. 4. The owner of a cemetery shall issue a deed, certificate, or license to each purchaser of a burial right in the cemetery. Each deed, certificate, or license issued under this section must be properly signed and acknowledged before a notary public.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-5

Requirements for recorded surveys and plats

Sec. 5. A survey and plat recorded under this chapter must:

(1) show all lots, walks, and drives in the cemetery, all with descriptive names and numbers; and

(2) include a proper instrument in writing, duly executed and acknowledged by the owner, dedicating the property to cemetery purposes.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-6

Use of property after recording

Sec. 6. Except as provided in section 7 of this chapter, the property described in a survey and plat recorded under this chapter shall be held, occupied, and used exclusively for cemetery purposes after the recording of the survey and plat.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-7

Vacation or alteration of recorded plat

Sec. 7. (a) Subject to subsection (b), the owner of property described in a survey and plat recorded under this chapter by an instrument properly executed, acknowledged, and recorded may vacate the recorded plat and make and file a new or altered plat and survey of:

(1) the property described in a survey and plat; or

(2) a part of the property described in the survey and plat.

(b) The vacation or alteration of a recorded plat under subsection (a) is not valid if it affects burial rights previously granted in the property described in the plat, unless each owner of affected burial rights has consented to the vacation or alteration.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-8

Defective or incomplete surveys or plats

Sec. 8. If:

(1) the owner of a cemetery has recorded an accurate survey and plat of a part of its property in which it has:

(A) granted or sold burial rights for at least thirty (30) years; and

(B) actually managed and controlled the land as a cemetery for at least thirty (30) years; but

(2) the survey or plat is defective and incomplete because of a failure to comply with the formalities required by law in force at the time of the recording;

the recorded survey and plat are considered to comply fully with the law as of July 1, 1997.

As added by P.L.52-1997, SEC.8.

IC 23-14-34-9

Violation of chapter; Class B misdemeanor

Sec. 9. A person who knowingly violates:

(1) section 1;

(2) section 3; or
(3) section 4;
of this chapter commits a Class B misdemeanor.
As added by P.L.52-1997, SEC.8.

IC 23-14-35

Chapter 35. Requirements Applying to Cemetery Plats

IC 23-14-35-1

Lost or destroyed plats

Sec. 1. If:

(1) the original plat of a cemetery; or

(2) the plat of an addition to a cemetery;

has been lost or destroyed, the cemetery owner required to record the plat shall have a new plat made by a competent engineer to correspond in every way to the original plat.

As added by P.L.52-1997, SEC.9.

IC 23-14-35-2

Replacement plats

Sec. 2. A replacement plat made under section 1 of this chapter must designate:

(1) the exact location, length, and width of all vehicle drives, paths, walks, sections and lots; and

(2) the number of each lot in the cemetery.

As added by P.L.52-1997, SEC.9.

IC 23-14-36

Chapter 36. Commencement of the Sale of Burial Rights

IC 23-14-36-1

Sale or grant of burial rights

Sec. 1. After recording the plat under IC 23-14-34-1, the owner of the cemetery may sell and grant burial rights in the cemetery.

As added by P.L.52-1997, SEC.10.

IC 23-14-36-2

Requirements for transfer or assignment of burial rights

Sec. 2. Burial rights sold or granted under section 1 of this chapter shall not be transferred or assigned without the written consent of the owner of the cemetery.

As added by P.L.52-1997, SEC.10.

IC 23-14-36-3

Violation of chapter; Class B misdemeanor

Sec. 3. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.10.

IC 23-14-37

Chapter 37. Unlawful Inducements in the Sale of Burial Rights

IC 23-14-37-1

Unlawful inducements for purchase of burial rights

Sec. 1. Except as provided in section 2 of this chapter, it is unlawful for a person, as inducement for the purchase of burial rights in a cemetery, to directly or indirectly do the following:

(1) Offer, promise, or agree to resell or repurchase the burial rights.

(2) Pay or offer to pay any sum of money as interest or as a premium for the privilege of reselling or repurchasing the burial rights.

As added by P.L.52-1997, SEC.11.

IC 23-14-37-2

Repurchase of burial rights under lot exchange plan

Sec. 2. A cemetery owner may offer or agree to repurchase burial rights under a lot exchange plan that:

(1) is entered into with other cemetery owners or through an association of cemetery owners; and

(2) provides for the repurchase of burial rights in case the purchaser should change legal residence to another community and purchases burial rights in a cemetery located in the community of the purchaser's new place of residence.

As added by P.L.52-1997, SEC.11.

IC 23-14-37-3

Violation of chapter; Class B misdemeanor

Sec. 3. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.11.

IC 23-14-38

Chapter 38. Construction of Mausoleums and Vaults

IC 23-14-38-1

Construction of crypts; ventilation

Sec. 1. (a) A crypt placed in a mausoleum, vault, or other structure shall be so constructed that all parts of it may be readily examined by the state department of health or any other health officer.

(b) All ventilation from a crypt constructed after March 15, 1945, may be released at a height of the lowest roof level.

As added by P.L.52-1997, SEC.12.

IC 23-14-38-2

Removal and reinterment of bodies from burial structure declared to be public nuisance; removal of mausoleum or vault; costs

Sec. 2. (a) This section applies if:

(1) a person fails to maintain a mausoleum, garden crypt, vault, or other burial structure in a good state of repair; and

(2) by reason of the failure referred to in subdivision (1), a court of competent jurisdiction declares the mausoleum, garden crypt, vault, or other burial structure to be a public nuisance.

(b) The deceased body or bodies interred in the mausoleum, garden crypt, vault, or other burial structure shall be removed and properly interred:

(1) within thirty (30) days after the judgment declaring the mausoleum, garden crypt, vault, or other burial structure to be a nuisance, if the judgment is not appealed; or

(2) if the judgment is appealed, within thirty (30) days after the judgment is upheld on appeal.

(c) The mausoleum, garden crypt, vault, or other burial structure shall be removed:

(1) within one hundred eighty (180) days after the judgment declaring the mausoleum, garden crypt, vault, or other burial structure to be a nuisance, if the judgment is not appealed; or

(2) if the judgment is appealed, within one hundred eighty (180) days after the judgment is upheld on appeal.

(d) The cost of reinterring the bodies under subsection (b) and removing the mausoleum, garden crypt, vault, or other burial structure under subsection (c) shall be paid:

(1) by the person who owns the mausoleum, garden crypt, vault, or other burial structure; or

(2) if the person who owns the mausoleum, garden crypt, vault, or other burial structure is not found, by the county in which the mausoleum, garden crypt, vault, or structure is located.

As added by P.L.52-1997, SEC.12.

IC 23-14-38-3

Violation of chapter; Class B misdemeanor

Sec. 3. A person who recklessly fails to comply with this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.12.

IC 23-14-39

Chapter 39. Burial Rights in MultiSpace Plots

IC 23-14-39-1

Application of chapter

Sec. 1. This chapter applies to:

(1) all burial rights in cemeteries organized or created after June 14, 1939; and

(2) cemeteries that:

(A) were in existence on June 14, 1939; and

(B) do not have a rule or regulation in conflict with this chapter.

As added by P.L.52-1997, SEC.13.

IC 23-14-39-2

Individual property rights

Sec. 2. Except as provided in section 3 of this chapter, the burial rights in a lot, plot, burial space, crypt, or niche granted to an individual are the sole and separate property of the individual named as grantee in the instrument of grant.

As added by P.L.52-1997, SEC.13.

IC 23-14-39-3

Vested rights of spouse of grantee; effect of dissolution of marriage

Sec. 3. (a) If the grantee of a burial plot containing more than one (1) interment, entombment, or inurnment space is married at the time of the grant of the burial plot, the spouse of the grantee has a vested right of interment, entombment, or inurnment of the spouse's remains in the burial plot, unless the terms of the grant are inconsistent with burial rights of the grantee's spouse.

(b) If:

(1) a burial plot containing more than one (1) interment, entombment, or inurnment space is granted; and

(2) the grantee becomes married after the grant of the burial plot;

the grantee's spouse has a vested right of interment, entombment, or inurnment in the plot if more than one (1) interment, entombment, or inurnment space in the plot remains unoccupied when the individual becomes the spouse of the grantee.

(c) No transfer or other action of a grantee referred to in subsection (a) or (b) divests the grantee's spouse of the vested right of interment, entombment, or inurnment recognized in subsection (a) or (b) unless:

(1) the spouse joins in the transfer or other action; or

(2) the written consent of the spouse is endorsed on or attached to the transfer or other action.

(d) A final dissolution of marriage decree between a grantee referred to in subsection (a) or (b) and the grantee's spouse terminates the spouse's vested right of interment, entombment, or inurnment recognized in subsection (a) or (b) unless the dissolution of marriage

decree provides otherwise.
As added by P.L.52-1997, SEC.13.

IC 23-14-40

Chapter 40. Joint Burial Rights in MultiSpace Plots

IC 23-14-40-1

Application of chapter

Sec. 1. This chapter applies to:

(1) all burial rights in cemeteries organized or created after June 14, 1939; and

(2) cemeteries that:

(A) were in existence on June 14, 1939; and

(B) do not have a rule or regulation in conflict with this chapter.

As added by P.L.52-1997, SEC.14.

IC 23-14-40-2

Application of chapter; multispace plots

Sec. 2. This chapter applies to burial rights in a burial plot containing more than one (1) interment, entombment, or inurnment space.

As added by P.L.52-1997, SEC.14.

IC 23-14-40-3

Certain burial rights owned with right of survivorship

Sec. 3. Any burial rights that are held in joint tenancy by two (2) or more persons who are not husband and wife are owned with the right of survivorship.

As added by P.L.52-1997, SEC.14.

IC 23-14-40-4

Burial rights held in joint tenancy by husband and wife

Sec. 4. If the owners of burial rights held in joint tenancy are husband and wife, the title shall be recognized as a tenancy by the entirety, and the right of interment, entombment, or inurnment shall be vested and controlled equally by both while living, or, after the death of one (1) spouse, by the surviving spouse or the surviving spouse's successor in interest.

As added by P.L.52-1997, SEC.14.

IC 23-14-40-5

Burial rights of joint tenants

Sec. 5. In a grant of burial rights to two (2) or more persons as joint tenants, each joint tenant has a vested right of interment, entombment, or inurnment of the joint tenant's remains in the burial plot. Upon the death of a joint tenant, the title to the burial rights previously held in joint tenancy immediately vests in the survivor or survivors, subject to the vested right of interment, entombment, inurnment for the remains of the deceased joint tenant owner.

As added by P.L.52-1997, SEC.14.

IC 23-14-40-6

Rights of surviving joint tenant

Sec. 6. If an affidavit by a competent person that:

(1) sets forth the fact of the death of one (1) joint tenant; and

(2) establishes the identity of the surviving joint tenant, who is named in the instrument of grant of burial right in a cemetery plot;

is filed with the cemetery in which the plot is located, the affidavit is complete authority to the cemetery to permit the use of the unoccupied portion of the plot in accordance with the direction of the surviving joint tenant or the successor in interest of the surviving joint tenant.

As added by P.L.52-1997, SEC.14.

IC 23-14-40-7

Waiver or termination of burial rights

Sec. 7. If an individual has a vested right of interment, entombment, or inurnment of the remains of the individual in a particular plot under this chapter, the right:

(1) may be waived by the individual in a written instrument; or

(2) is terminated upon the interment, entombment, or inurnment of the remains of the individual in a location other than the plot.

As added by P.L.52-1997, SEC.14.

IC 23-14-40-8

Restrictions on burial rights

Sec. 8. A vested right of interment, entombment, or inurnment under this chapter does not give any individual the right to:

(1) have the individual's remains interred, entombed, or inurned in any interment, entombment, or inurnment space in which the remains of a deceased individual having a prior vested right of interment, entombment, or inurnment have been deposited; or

(2) have the remains of more than one (1) deceased individual interred, entombed, or inurned in a single interment or entombment space or niche in violation of the rules and regulations of the cemetery in which the interment or entombment space or inurnment niche is located.

As added by P.L.52-1997, SEC.14.

IC 23-14-41
Chapter 41. Family Burial Lots

IC 23-14-41-1
Application of chapter
Sec. 1. This chapter applies to all burial rights in:
(1) cemeteries organized or created after June 14, 1939; and
(2) cemeteries that:
(A) were in existence on June 14, 1939; and
(B) do not have a rule or regulation in conflict with this chapter.
As added by P.L.52-1997, SEC.15.

IC 23-14-41-2
"Burial plot" defined
Sec. 2. As used in this chapter, "burial plot" means the unit of space, consisting of one (1) or more:
(1) grave spaces;
(2) mausoleum crypts;
(3) garden crypts; or
(4) niches;
originally conveyed by the cemetery and remaining after any transfers made by the record owner during the record owner's life.
As added by P.L.52-1997, SEC.15.

IC 23-14-41-3
Holding of family burial plot
Sec. 3. Upon the death of the record owner of the burial rights in a burial plot, the burial plot shall be held as the family burial plot of the deceased owner, if:
(1) the remains of the record owner have been interred, entombed, inurned, or disposed of;
(2) the record owner did not dispose of the burial rights by a specific devise in the owner's last will and testament or by a written designation or transfer of ownership recorded with the cemetery under IC 23-14-42; and
(3) there is at least one (1) interment, entombment, or inurnment in the burial plot.
As added by P.L.52-1997, SEC.15.

IC 23-14-41-4
Use of family burial plot
Sec. 4. (a) In a family burial plot:
(1) one (1) grave, crypt, or niche may be used for the record owner's interment, entombment, or inurnment;
(2) after the record owner's interment, entombment, or inurnment, one (1) grave, crypt, or niche may be used for the surviving spouse of the record owner; and
(3) in the spaces remaining, if any, the parents and children of the deceased record owner, in order of need, may be interred,

entombed, or inurned without the consent of any person claiming an interest in the family burial plot.

(b) If there is no parent or child who survives the deceased record owner, the right of interment, entombment, or inurnment in a family burial plot shall go in order of need to:

(1) the heirs at law of the deceased record owner, or the spouse of the heir if the heir is already interred, entombed, or inurned, as specified by the statutes of descent; or

(2) the spouse of any heir at law of the deceased record owner.

As added by P.L.52-1997, SEC.15. Amended by P.L.113-2007, SEC.1.

IC 23-14-41-5
Waiver of burial rights

Sec. 5. (a) A:

(1) surviving spouse; or

(2) parent, child, or heir;

of the deceased record owner of a family burial plot who has a right of interment, entombment, or inurnment in the plot may waive that right in favor of another relative or spouse of the deceased record owner through a written instrument that is recorded with the cemetery.

(b) After a written waiver is recorded under subsection (a), the body of the individual in whose favor the waiver is made may be interred, entombed, or inurned in the family burial plot.

As added by P.L.52-1997, SEC.15.

IC 23-14-41-6
Affidavit permitting use of family burial plot

Sec. 6. An affidavit that sets forth:

(1) the fact of the death of the record owner of the burial rights in a family burial plot; and

(2) the name of the individual or individuals who are entitled to use the family burial plot in accordance with this chapter;

is complete authority to the cemetery to permit the use of the unoccupied portions of the family burial plot by the individual or individuals who are shown by the affidavit to be entitled to use the family burial plot.

As added by P.L.52-1997, SEC.15.

IC 23-14-41-7
Termination and transfer of family burial plot

Sec. 7. If a family burial plot has been established under section 3 of this chapter and all the living children and parents of the deceased record owner consent in writing, the status as a family burial plot may be terminated and the remaining lots may be transferred, conveyed, or sold to the cemetery owner or any other person designated in the agreement.

As added by P.L.113-2007, SEC.2.

IC 23-14-42

Chapter 42. Burial Rights by Designation, Bequest, or Descent, and Rights of Co-Owners

IC 23-14-42-1

"Burial plot" defined

Sec. 1. As used in this chapter, "burial plot" means the unit of space consisting of one (1) or more:

(1) grave spaces;
(2) mausoleum crypts;
(3) garden crypts; or
(4) niches;

that was originally conveyed by the cemetery and remaining after any transfers made by the record owner during the record owner's life.
As added by P.L.52-1997, SEC.16.

IC 23-14-42-2

Designation of remains permitted to be interred

Sec. 2. The owner of the burial rights in any burial plot has the right by a proper instrument recorded with the cemetery to designate specifically whose remains only shall be interred, entombed, or inurned in the burial plot after the owner's death.
As added by P.L.52-1997, SEC.16.

IC 23-14-42-3

Transfer of burial rights

Sec. 3. The owner of the burial rights in any burial plot may, during the life of the owner, transfer all rights and interest in the burial plot to any other person through sale or another method. However, a transfer under this section:

(1) must be recorded with the cemetery to be valid; and
(2) is subject to the rules and regulations of the cemetery owner.

As added by P.L.52-1997, SEC.16.

IC 23-14-42-4

Burial rights passing as part of estate

Sec. 4. Upon the death of the record owner of the burial rights in a burial plot, the burial rights pass as part of the estate of the owner if:

(1) the record owner did not dispose of the burial rights by:
  (A) a specific devise in the last will and testament of the record owner; or
  (B) a written designation or transfer of ownership recorded with the cemetery under section 2 or 3 of this chapter;
(2) the burial rights have not become vested in another individual under IC 23-14-39 or IC 23-14-40;
(3) the burial plot does not become a family burial plot under IC 23-14-41 before the instrument referred to in subdivision (4) is recorded with the cemetery; and
(4) an instrument that:

(A) is prepared in accordance with IC 29-1; and

(B) documents the person or persons entitled to become the new record owner or owners of the burial plot and to receive the burial rights as part of the deceased record owner's estate;

is recorded with the cemetery.

As added by P.L.52-1997, SEC.16.

IC 23-14-42-5

Liability of cemetery acting upon request of registered co-owner of burial rights

Sec. 5. (a) If there are several owners of burial rights in a burial plot, the owners may:

(1) designate in writing one (1) or more persons to represent them; and

(2) file the written designation with the owner of the cemetery in which the plot is located.

(b) In the absence of:

(1) the filing of a written designation of one (1) or more representatives under subsection (a); or

(2) a written objection to the interment, entombment, or inurnment;

a cemetery is not liable to any owner of burial rights in a burial plot for interring, entombing, or inurning, or permitting an interment, entombment, or inurnment in the burial plot upon the request or direction of a registered co-owner of the burial rights.

As added by P.L.52-1997, SEC.16.

IC 23-14-43

Chapter 43. Assessments to Improve Cemetery Roads

IC 23-14-43-1

Improvements to approaches or roads

Sec. 1. The officers, owners, or directors in charge of a public or private cemetery that is organized and incorporated under Indiana law may use any funds arising from:

(1) the sale of; or

(2) assessments upon;

lots in the cemetery to improve the approaches or roads to the cemetery.

As added by P.L.52-1997, SEC.17.

IC 23-14-43-2

Restrictions on improvements

Sec. 2. The part of an approach or road that is improved under section 1 of this chapter may not exceed a distance of one-half (1/2) mile from the cemetery.

As added by P.L.52-1997, SEC.17.

IC 23-14-44

Chapter 44. Prohibition on Road and Utility Construction in Cemeteries

IC 23-14-44-1

Restrictions on road or utility construction

Sec. 1. (a) This section applies to a cemetery from the time interment, entombment, or inurnment spaces in the cemetery are ready for immediate use and bona fide sales have been made.

(b) A railroad, street, road, alley, pipeline, pole line, or other public thoroughfare or utility shall not be laid out through, over, or across any part of the cemetery within one hundred (100) feet of:

(1) a space in which burial rights have been transferred;

(2) a mausoleum in the cemetery;

(3) a garden crypt in the cemetery; or

(4) a columbarium in a cemetery;

without the consent of the owner of the cemetery.

As added by P.L.52-1997, SEC.18.

IC 23-14-44-2

Injunctions

Sec. 2. Upon the complaint of any person, a permanent injunction shall be issued to prevent any other person from locating or constructing a railroad, street, road, alley, pipeline, pole line, or other public thoroughfare or utility on any ground that is:

(1) held, used, or occupied as a cemetery; or

(2) held for cemetery purposes.

As added by P.L.52-1997, SEC.18.

IC 23-14-44-3

Violation of chapter; Class B misdemeanor

Sec. 3. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.18.

IC 23-14-45

Chapter 45. Construction of Railroads on Cemetery Property Prohibited

IC 23-14-45-1

Construction of railroad on cemetery property prohibited

Sec. 1. A person shall not locate or construct a railroad on any real estate held, used, or occupied as a cemetery.

As added by P.L.52-1997, SEC.19.

IC 23-14-45-2

Injunctions

Sec. 2. Upon the complaint of any person, another person shall be perpetually enjoined from locating or constructing a railroad on any ground that is:

(1) held, used, or occupied as a cemetery; or

(2) held for cemetery purposes.

As added by P.L.52-1997, SEC.19.

IC 23-14-45-3

Violation of chapter; Class C infraction

Sec. 3. A person who violates this chapter commits a Class C infraction.

As added by P.L.52-1997, SEC.19.

IC 23-14-46

Chapter 46. Cemetery Rules and Regulations and Exclusive Rights

IC 23-14-46-1

Powers of owner

Sec. 1. (a) Subject to subsection (b), the owner of a cemetery:

(1) may make, adopt, and enforce rules and regulations:

(A) for the use, care, control, management, restriction, and protection of all parts and subdivisions of the cemetery;

(B) for restricting, limiting, and regulating the use of all property within the cemetery;

(C) for regulating the care of plants or shrubs within the grounds and preventing the introduction of certain types of plants or shrubs;

(D) for regulating the conduct of persons and preventing improper assemblages in the cemetery; and

(E) for all other purposes considered necessary by the owner of the cemetery for the proper conduct of the business of the cemetery and the protection and safeguarding of the premises and the principles, plans, and ideals on which the cemetery was organized; and

(2) may periodically amend, add to, revise, change, modify, or abolish the rules and regulations.

(b) A cemetery to which this chapter applies may not adopt a rule or regulation in conflict with IC 23-14-33 through IC 23-14-57, except as expressly permitted by IC 23-14-39, IC 23-14-40, or IC 23-14-41.

As added by P.L.52-1997, SEC.20.

IC 23-14-46-2

Penalties for rule violation

Sec. 2. The owner of a cemetery may:

(1) prescribe penalties for the violation of a rule or regulation adopted under section 1 of this chapter; and

(2) recover penalties prescribed under subdivision (1) in a civil action.

As added by P.L.52-1997, SEC.20.

IC 23-14-46-3

Requirements

Sec. 3. Rules and regulations adopted by a cemetery under section 1 of this chapter shall be:

(1) plainly printed or typewritten; and

(2) kept available for inspection and copying at the usual place for transacting the regular business of the cemetery.

As added by P.L.52-1997, SEC.20.

IC 23-14-46-4

Restrictions on imposition of monetary penalty

Sec. 4. The owner of a cemetery may not, because of the nonpayment of periodic care charges, impose a monetary penalty that attaches against a burial space if:

(1) the burial space was conveyed by the cemetery after June 14, 1939, and the conveyance was subject to IC 23-14-48 or IC 23-14-1-12 (before its repeal); or

(2) the owner of the burial space or the owner's heirs or representatives can document previous payment of perpetual care or endowed care charges.

As added by P.L.52-1997, SEC.20.

IC 23-14-46-5

Restrictions on public notice

Sec. 5. A public notice, including a notice of nonpayment, may not be attached to any lot, grave, gravestone, marker, or memorial upon a lot for the purpose of enforcing a penalty for the nonpayment of perpetual care charges.

As added by P.L.52-1997, SEC.20.

IC 23-14-46-6

Powers and duties of person in charge of cemetery

Sec. 6. The sexton, superintendent, manager, director, or other person in charge of a cemetery has the same powers, functions, duties, and authority granted by law to a peace officer within the jurisdiction in which the cemetery is located for the purpose of:

(1) maintaining order; and

(2) enforcing:

(A) the rules and regulations of the cemetery;

(B) the laws of Indiana; and

(C) the ordinances of the city or town in which the cemetery is situated;

within the cemetery and within an area immediately outside the cemetery as large as necessary to protect the property of the cemetery.

As added by P.L.52-1997, SEC.20.

IC 23-14-46-7

Exclusive rights of owner

Sec. 7. Because the owner of a cemetery is responsible for the performance of the care and maintenance of the cemetery, a cemetery owner has the exclusive right to:

(1) open and close a grave or grave space, burial space, crypt, or niche in the cemetery;

(2) set or install a:

(A) marker;

(B) monument; or

(C) any type of memorial;

in the cemetery; and

(3) install any kind of foundation or other type of base for the marker, monument, or any type of memorial in the cemetery.

This exclusive right may also be exercised by the authorized representative of the owner of the cemetery.
As added by P.L.52-1997, SEC.20.

IC 23-14-46-8
Violation of chapter; Class B misdemeanor

Sec. 8. A person who knowingly violates this chapter commits a Class B misdemeanor.
As added by P.L.52-1997, SEC.20.

IC 23-14-47

Chapter 47. Use, Sale, and Installation of Monuments and Other Commodities

IC 23-14-47-1

Establishment of rules and regulations

Sec. 1. A cemetery owner has the right to establish reasonable rules and regulations regarding the:

(1) type;
(2) material;
(3) design;
(4) composition; and
(5) finish;

of any commodity to be used or installed in the cemetery.

As added by P.L.52-1997, SEC.21.

IC 23-14-47-2

Duties of owner

Sec. 2. A cemetery owner shall not prevent the use of or installation in the cemetery of any commodity purchased from any source if the commodity meets the rules and regulations established under section 1 of this chapter.

As added by P.L.52-1997, SEC.21.

IC 23-14-47-3

Fees for services

Sec. 3. The fee that a cemetery owner charges for services in connection with the installation or use of commodities in the cemetery shall be the same to all regardless of who furnishes the commodities.

As added by P.L.52-1997, SEC.21. Amended by P.L.113-2007, SEC.3.

IC 23-14-47-4

Schedule of charges

Sec. 4. At the usual place for transacting the regular business of each cemetery, the cemetery owner shall maintain a complete schedule of all charges that the cemetery imposes for services in connection with the installation or use of commodities in the cemetery. The schedule must be:

(1) plainly printed or typewritten; and
(2) subject to inspection and copying.

As added by P.L.52-1997, SEC.21.

IC 23-14-47-5

Violation of chapter; Class B misdemeanor

Sec. 5. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.21.

IC 23-14-48
Chapter 48. Cemetery Perpetual Care Fund

IC 23-14-48-0.1
Repealed
(Repealed by P.L.63-2012, SEC.26.)

IC 23-14-48-1
Application of chapter
Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to:
(1) a cemetery owned by a municipal corporation or other governmental unit;
(2) a religious cemetery; or
(3) a cemetery:
(A) that is ten (10) acres or less in size;
(B) that is owned and operated entirely and exclusively by a nonprofit mutual association in existence on June 14, 1939; and
(C) in which burials have taken place before June 14, 1939.
(b) If a cemetery described in subsection (a)(3) directly or indirectly:
(1) constructs or permits to be constructed any structure, above or below ground, and offers interment rights in the structure for sale to the general public; or
(2) acquires:
(A) additional land; or
(B) an interest in additional land;
causing the cemetery to exceed ten (10) acres in size;
this chapter applies to the whole of the cemetery.
As added by P.L.52-1997, SEC.22.

IC 23-14-48-2
Duties of owner
Sec. 2. (a) The owner of each cemetery shall provide for the creation and establishment of an irrevocable perpetual care fund.
(b) The principal of a perpetual care fund established under this section shall permanently remain intact, except as provided in this chapter. The principal shall be known as the "perpetual care fund" or "endowment care fund" of the cemetery.
(c) Fifty percent (50%) of any appreciation of the principal of the fund may be withdrawn annually not more than forty-five (45) days after the end of the fund's fiscal year.
(d) Any income earned by the fund during the fiscal year may be withdrawn quarterly during the fund's fiscal year.
(e) The income from a fund established under this section and any withdrawal of the appreciation of the principal under subsection (c) shall be devoted to the perpetual care of the cemetery.
(f) The fund established by this chapter is not subject to attachment by a creditor unless the underlying debt was incurred for

the perpetual care or endowment care (as defined in IC 23-14-33-30) of the cemetery for which the fund was established.
As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.1.

IC 23-14-48-3
Establishment; payment; fund segregated

Sec. 3. (a) A perpetual care fund shall be established under this chapter as follows:

(1) In the case of a cemetery for earth burials, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) fifteen percent (15%) of the sale price; or

(B) eighty cents ($0.80) per square foot of area;

of each burial plot sold or transferred, whichever is greater.

(2) In the case of a community or public mausoleum, or community or public garden crypt, by the application and payment to the perpetual care fund of an amount at least equal to:

(A) eight percent (8%) of the sale price; or

(B) one hundred dollars ($100) per crypt sold or transferred;

whichever is greater.

(3) In the case of a community columbarium, by the application and payment to the perpetual care fund of an amount at least equal to twenty dollars ($20) per niche sold or transferred.

(b) From the sale price, any payment on the sale price, or in a nonmonetary transfer, the owner shall pay an amount in proportion to the requirements of subsection (a)(1) through (a)(3) to the care fund. The payment must be in cash and shall be deposited with the trustee of the fund:

(1) not more than thirty (30) days after the end of the month in which payments on the sale are received; or

(2) not more than thirty (30) days after the end of the month in which there was a transfer which did not involve a sale.

(c) The payments required by this section are required to be paid only on the original sale or transfer and not again for any subsequent resale or transfer of the same ground interment rights, crypt, or niche.

(d) The trustee of a fund established under this chapter must keep the fund segregated from any other fund or account belonging to the owner of the cemetery.
As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.2; P.L.65-2007, SEC.1; P.L.61-2008, SEC.1.

IC 23-14-48-4
Duties of cemetery organized after March 6, 1953, and before July 1, 1997

Sec. 4. (a) In addition to meeting the requirements of sections 1 through 3 of this chapter, a cemetery that:

(1) is organized after March 6, 1953, and before July 1, 1997, by incorporation, association, individually, or any other means; or

(2) has its first burial after March 6, 1953, and before July 1, 1997;

shall, before disposing of a burial lot or right, making a sale of a burial lot or right, or making its first burial, cause to be deposited in a financial institution the sum of twenty-five thousand dollars ($25,000) in cash in the perpetual care fund or endowment care fund established under this chapter for the maintenance of the cemetery.

(b) The cemetery owner shall designate the financial institution as trustee of the fund. The financial institution must execute an affidavit stating that it has accepted the trusteeship of the fund and that the twenty-five thousand dollars ($25,000) has been deposited in the fund. The cemetery shall:

(1) exhibit the affidavit in the principal office of the cemetery;
(2) keep the affidavit available at all times for examination; and
(3) record the affidavit in the miscellaneous records in the office of the recorder in the county in which the cemetery is located.

(c) When the cemetery has deposited in the perpetual care fund or endowment care fund, as required by this section, fifty thousand dollars ($50,000):

(1) the cemetery shall submit proof of this fact to its trustee; and
(2) the trustee shall pay over to the cemetery the amount of twenty-five thousand dollars ($25,000) that the cemetery deposited in the fund under subsection (a).

As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.3; P.L.3-2008, SEC.168.

IC 23-14-48-5
Duties of cemetery organized after June 30, 1997

Sec. 5. (a) In addition to meeting the requirements of sections 1 through 3 of this chapter, a cemetery that:

(1) is organized after June 30, 1997, by incorporation, or any other means; or
(2) has its first burial, entombment, or inurnment after June 30, 1997;

shall, before disposing of a burial lot or right, making a sale of a burial lot or right, or making its first burial, entombment, or inurnment cause to be deposited in a financial institution one hundred thousand dollars ($100,000) in cash in the perpetual care fund or endowment care fund established under this chapter for the maintenance of the cemetery.

(b) The cemetery owner shall designate the financial institution as trustee of the fund. The financial institution must execute an affidavit stating that it has accepted the trusteeship of the fund and that the one hundred thousand dollars ($100,000) has been deposited in the fund. The cemetery shall:

(1) exhibit the affidavit in the principal office of the cemetery;
(2) keep the affidavit available at all times for examination; and
(3) record the affidavit in the miscellaneous records in the office of the recorder of the county in which the cemetery is located.

(c) When the cemetery has deposited in the perpetual care fund or

endowment care fund, as required by this section, two hundred thousand dollars ($200,000):

(1) the cemetery shall submit proof of this fact to its trustee; and

(2) the trustee shall pay over to the cemetery one hundred thousand dollars ($100,000) that the cemetery deposited in the fund under subsection (a).

As added by P.L.52-1997, SEC.22. Amended by P.L.66-1999, SEC.4; P.L.3-2008, SEC.169.

IC 23-14-48-6
Increases

Sec. 6. A perpetual care or endowment care fund may be increased by adding to the fund surplus money or property that the cemetery receives by will, deed, gift, or otherwise.

As added by P.L.52-1997, SEC.22.

IC 23-14-48-7
Accounting and report; audit

Sec. 7. (a) Not more than ninety (90) days after the end of the fiscal year of a cemetery to which this chapter applies, the custodian or trustee of the perpetual care fund of the cemetery shall prepare and file with the owner of the cemetery a detailed accounting and report of the perpetual care fund for the preceding fiscal year. The report:

(1) must include, among other things, a properly itemized listing of the securities in which the funds are invested; and

(2) shall be available for inspection and copying at all times by any owner of or holder of a burial right in the cemetery at the usual place at which the regular business of the cemetery is transacted.

(b) Not more than one hundred five (105) days after the end of the fiscal year of a cemetery to which this chapter applies, the trustee of the perpetual care fund of the cemetery shall file the report required under subsection (a) with the state board of funeral and cemetery service.

(c) The state board of funeral and cemetery service may audit or order an audit of the perpetual care fund of a cemetery if the state board of funeral and cemetery service determines that the trustee of the perpetual care fund is not complying with the requirements set forth in subsections (a) and (b). The cemetery that is the subject of the audit shall pay all costs associated with the audit.

(d) The owner of a cemetery shall maintain a report required by this section for the longer of:

(1) ten (10) years; or

(2) three (3) years after the date the owner sells or otherwise transfers the cemetery.

As added by P.L.52-1997, SEC.22. Amended by P.L.65-2007, SEC.2; P.L.61-2008, SEC.2.

IC 23-14-48-8
Separate and distinct cemeteries

Sec. 8. Each geographic location used as a cemetery constitutes a separate and distinct cemetery for the purpose of this chapter.
As added by P.L.52-1997, SEC.22.

IC 23-14-48-9
Violation of chapter

Sec. 9. (a) Except as provided in subsections (b) and (c), a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who makes a false or fraudulent representation as to the existence, amount, investment, control, or condition of a perpetual care fund of a cemetery for the purpose of inducing another to purchase any burial right commits a Class C infraction.

(c) A person who knowingly or intentionally uses funds in a perpetual care fund or an endowment care fund established under this chapter for purposes other than the perpetual care of the cemetery for which the perpetual care fund or endowment fund was established commits a Level 5 felony.
As added by P.L.52-1997, SEC.22. Amended by P.L.113-2007, SEC.4; P.L.158-2013, SEC.266.

IC 23-14-48-10
Formation of association for management, care, and supervision of cemetery

Sec. 10. (a) This section applies to a corporation that:

(1) is organized under Indiana law for the purpose of establishing and maintaining a cemetery; or

(2) is organized for another purpose but has established and maintains a cemetery.

(b) If:

(1) a corporation described in subsection (a) has not provided a general perpetual care fund after having sold all of the lots in a cemetery; and

(2) at least twenty-five (25) owners of lots in the cemetery or next of kin of owners of lots in the cemetery:

(A) form an association for the purpose of taking over the management, care, and general supervision of the cemetery; and

(B) sign and submit to the corporation a petition seeking authority for the management, care, and general supervision of the cemetery;

the corporation shall turn over to the association the complete authority for the management, care, and supervision of the cemetery.

(c) An association to which subsection (b) applies shall assume all responsibility and liability for the proper care and management of the cemetery, subject to the following:

(1) If a cemetery has been under the control of a certain religious denomination, sect, or creed that has observed certain religious customs or rules with reference to the burying of the dead in the cemetery, the association shall observe those

religious customs or rules.

(2) The transfer of authority under this section does not affect the reversion of the title to the lands occupied by the cemetery if the land ever ceases to be used as a cemetery or burial place for the dead.

As added by P.L.52-1997, SEC.22.

IC 23-14-48.5

Chapter 48.5. Consumer Protection Fund for Cemetery Maintenance

IC 23-14-48.5-1

Application

Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to:

(1) a cemetery owned by a municipal corporation or other governmental unit;

(2) a religious cemetery; or

(3) a cemetery:

(A) that is ten (10) acres or less in size;

(B) that is owned and operated entirely and exclusively by a nonprofit mutual association in existence on June 14, 1939; and

(C) in which burials took place before June 14, 1939.

(b) This chapter applies to the whole of a cemetery described in subsection (a)(3) if, directly or indirectly:

(1) any structure is constructed above or below ground in the cemetery and interment rights in the structure are offered for sale to the general public; or

(2) the acquisition of:

(A) additional land; or

(B) an interest in additional land;

causes the cemetery to exceed ten (10) acres in size.

As added by P.L.65-2007, SEC.3.

IC 23-14-48.5-2

"Board"

Sec. 2. As used in this chapter, "board" means the state board of funeral and cemetery service established by IC 25-15-9-1.

As added by P.L.65-2007, SEC.3.

IC 23-14-48.5-3

"Fund"

Sec. 3. As used in this chapter, "fund" refers to the consumer protection fund for cemetery maintenance established by section 4 of this chapter.

As added by P.L.65-2007, SEC.3.

IC 23-14-48.5-4

Consumer protection fund for cemetery maintenance; establishment; funding; continuously appropriated

Sec. 4. (a) The consumer protection fund for cemetery maintenance is established. The board shall administer the fund and shall deposit contributions remitted under section 5 of this chapter in the fund.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The money in the fund and the interest accruing to the fund remain in the fund and do not revert to the state general fund.

(d) Money in the fund is continuously appropriated for the purposes of this chapter.

As added by P.L.65-2007, SEC.3.

IC 23-14-48.5-5

Duties of cemetery owner; payment

Sec. 5. (a) The owner of a cemetery shall contribute the following to the fund:

(1) In the case of a cemetery for earth burials, an amount equal to one percent (1%) of the sale price of each burial plot sold or transferred.

(2) In the case of a community or public mausoleum or a community or public garden crypt, an amount equal to one percent (1%) of the sale price of each sale of entombment or inurnment rights.

(3) In the case of a community columbarium, an amount equal to two dollars ($2) per niche sold or transferred.

The owner shall remit the contributions required under this subsection to the board for deposit in the fund.

(b) In the case of a payment to a cemetery owner of part of the sale price for a burial plot, entombment or inurnment rights, or a niche, the cemetery owner shall pay to the fund an amount proportional to the amount required by subsection (a)(1) through (a)(3). In the case of a nonmonetary transfer in the sale of a burial plot, entombment or inurnment rights, or a niche, the cemetery owner shall pay to the fund the cash equivalent of the amount that would be required by subsection (a)(1) through (a)(3) if the sale were for cash. The payment by the cemetery owner under this section must be in cash and shall be remitted to the board:

(1) not later than March 1 of each year for payments received in the preceding calendar year; or

(2) not later than March 1 of each year for nonmonetary transfers in the preceding calendar year.

(c) Payments are required under this section only on the original sale or transfer and are not required for any subsequent resale or transfer of the same plot, rights, or niche.

As added by P.L.65-2007, SEC.3.

IC 23-14-48.5-6

Use of money in fund

Sec. 6. Money in the fund may be used to provide cemetery maintenance when the board finds that:

(1) the owner of a cemetery is unable to maintain the cemetery;

(2) money in the perpetual care fund of the cemetery is depleted, subject to a dispute that prevents distribution of the money, or otherwise unavailable for the purposes of the perpetual care fund; and

(3) interested persons are unable to take over the management,

care, and general supervision of the cemetery under IC 23-14-48-10.

As added by P.L.65-2007, SEC.3.

IC 23-14-48.5-7

Filing verified complaint for maintenance assistance; investigation; contracting for maintenance; recovering funds; annual review

Sec. 7. (a) The:

(1) owner of a cemetery; or

(2) if the owner of a cemetery is unable to be determined:

(A) the owner of a lot in the cemetery;

(B) the next of kin of an owner of a lot in the cemetery; or

(C) another interested person;

may request maintenance assistance from the fund by filing a verified complaint with the board.

(b) The board shall investigate each verified complaint. Within thirty (30) days after a verified complaint is filed, the board shall complete its investigation and issue findings of fact. If the board makes the findings required under section 6 of this chapter concerning a cemetery, the board may enter into a contract with any suitable person to provide maintenance at the cemetery until a responsible person is able to provide care and maintenance for the cemetery.

(c) If the cost of maintaining a cemetery is paid from the fund, the fund is entitled to recover the amount paid from the owner of the cemetery, and the board shall ask the attorney general to take all reasonable steps to collect that amount from the cemetery owner. Any amount collected from a cemetery owner under this subsection shall be deposited in the fund.

(d) The board shall annually review the status of the fund. If the board determines during its annual review that the fund balance equals or exceeds two hundred fifty thousand dollars ($250,000), the board shall suspend the requirement to make payments to the fund under section 5 of this chapter until after the next annual review in which the board determines that the fund balance is less that two hundred fifty thousand dollars ($250,000).

As added by P.L.65-2007, SEC.3.

IC 23-14-49

Chapter 49. Cemetery Escrow or Trust Accounts

IC 23-14-49-1

Application of chapter; placement of certain proceeds

Sec. 1. (a) This chapter does not apply to the proceeds from the sales of burial spaces.

(b) All proceeds received by anyone selling floral tributes, vaults, memorials of any type, or services that:

(1) are to be installed in or provided in a cemetery; but

(2) are not to be delivered or provided until the death of the person or persons for whom the vault, memorial, floral tribute, or service is to be used or provided;

shall be placed in escrow or trust in a separate account and held for the specific purpose intended until the time of burial or completion of the services.

As added by P.L.52-1997, SEC.23.

IC 23-14-49-2

Powers of owner

Sec. 2. The owner of a cemetery may:

(1) take and hold any property devised, bequeathed, granted, or given to the owner in trust; and

(2) apply:

(A) the property; or

(B) the proceeds or income from the property;

according to the terms of the devise, bequest, grant, or gift.

As added by P.L.52-1997, SEC.23.

IC 23-14-49-3

Violation of chapter; Class A misdemeanor

Sec. 3. A person who knowingly violates this chapter commits a Class A misdemeanor.

As added by P.L.52-1997, SEC.23.

IC 23-14-50

Chapter 50. The Nature of Cemetery Funds

IC 23-14-50-1

Application of chapter

Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to:

(1) a cemetery owned by a municipal corporation or other governmental unit;

(2) a religious cemetery; or

(3) a cemetery:

(A) that is ten (10) acres or less in size;

(B) that is owned and operated entirely and exclusively by a nonprofit mutual association in existence on June 14, 1939; and

(C) in which burials have taken place before June 14, 1939.

(b) If a cemetery described in subsection (a)(3) directly or indirectly:

(1) constructs or permits to be constructed any structure, above or below ground, and offers interment rights in the structure for sale to the general public; or

(2) acquires:

(A) additional land; or

(B) an interest in additional land;

causing the cemetery to exceed ten (10) acres in size;

this chapter applies to the whole of the cemetery.

As added by P.L.52-1997, SEC.24.

IC 23-14-50-2

Charitable and eleemosynary purpose of funds

Sec. 2. (a) The accumulation and holding of:

(1) the funds authorized by IC 23-14-48 and IC 23-14-49-2; and

(2) contributions to those funds;

are expressly permitted and shall be considered to be for a charitable and eleemosynary purpose.

(b) The funds and contributions referred to in subsection (a) are considered to be a provision:

(1) for the discharge of a duty due from the person or persons contributing to the fund to the person or persons whose remains are or will be interred in the cemetery; and

(2) for the benefit and protection of the public by preserving, beautifying, and keeping cemeteries from becoming places of reproach and desolation in the communities in which they are situated.

(c) A fund referred to in subsection (a) or a payment, gift, grant, bequest, or other contribution to the fund:

(1) is not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund; and

(2) is not invalid as violating any law against perpetuities or

suspension of the power of alienation of title to property.
As added by P.L.52-1997, SEC.24.

IC 23-14-50-3
Trustee's relief from duties

Sec. 3. If:

(1) any gift, grant, bequest, donation, or other property held by the owner of a cemetery for cemetery purposes is held by the cemetery owner as a trust of any kind; or

(2) the owner of a cemetery is a beneficiary of any trust estate for cemetery purposes;

the trustee of the trust is relieved of the duties otherwise imposed upon the trustee by IC 30-4-5-12 through IC 30-4-5-15.
As added by P.L.52-1997, SEC.24.

IC 23-14-51

Chapter 51. The Investment and Use of Cemetery Funds

IC 23-14-51-1

Application of chapter

Sec. 1. (a) Except as provided in subsection (b), this chapter does not apply to:

(1) a cemetery owned by a municipal corporation or other governmental unit;

(2) a religious cemetery; or

(3) a cemetery:

(A) that is ten (10) acres or less in size;

(B) that is owned and operated entirely and exclusively by a nonprofit mutual association in existence on June 14, 1939; and

(C) in which burials have taken place before June 14, 1939.

(b) If a cemetery described in subsection (a)(3) directly or indirectly:

(1) constructs or permits to be constructed any structure, above or below ground, and offers interment rights in the structure for sale to the general public; or

(2) acquires:

(A) additional land; or

(B) an interest in additional land;

causing the cemetery to exceed ten (10) acres in size;

this chapter applies to the whole of the cemetery.

As added by P.L.52-1997, SEC.25.

IC 23-14-51-2

Investment and reinvestment of money and assets

Sec. 2. After June 14, 1939, a cemetery to which IC 23-14-48 applies shall invest and reinvest:

(1) all money in the perpetual care fund of the cemetery; and

(2) all other assets held in trust by the cemetery;

in property or securities that qualify for trust investments under IC 30-4-3-3(c).

As added by P.L.52-1997, SEC.25.

IC 23-14-51-3

Loans from perpetual care fund prohibited

Sec. 3. No loans or pledges of money or property shall be made from the perpetual care fund of a cemetery:

(1) to or for the benefit of the owner of the cemetery; or

(2) to any shareholder, officer, director, or employee of the cemetery.

As added by P.L.52-1997, SEC.25.

IC 23-14-51-4

Fidelity bond

Sec. 4. (a) This section applies to a cemetery if a perpetual care

fund or other trust account of the cemetery is not held in trust for the cemetery by a corporate trustee.

(b) The treasurer of the cemetery or other person or persons having custody of the fund or account shall furnish to a cemetery to which this section applies a fidelity bond that is:

(1) issued by a corporate surety; and

(2) payable to the cemetery in a penal sum at least equal to one hundred twenty-five percent (125%) of the value of the principal of the trust estate at the beginning of each calendar year.

(c) The bond required by this section shall be deposited with the auditor of the county in which the cemetery is located. The auditor shall do the following:

(1) Examine the bond and ascertain that it complies with this chapter.

(2) Annually examine the sufficiency of the bond and report to the prosecuting attorney of the county any failure of the cemetery owner to comply with this chapter.

(d) For the services provided under subsection (c), the auditor shall receive from each cemetery owner five dollars ($5) per year. Money that the auditor receives under this subsection is the property of the office of the auditor.

As added by P.L.52-1997, SEC.25.

IC 23-14-51-5

Violation of chapter; Class A misdemeanor

Sec. 5. A person who knowingly violates this chapter commits a Class A misdemeanor.

As added by P.L.52-1997, SEC.25.

IC 23-14-52

Chapter 52. Conditions Applying to the Sale of a Cemetery

IC 23-14-52-1

Application and exceptions to conditions

Sec. 1. (a) Except as provided in subsection (b), the sale of:

(1) a cemetery;

(2) any part of a cemetery; or

(3) any personal property related to a cemetery;

by a cemetery owner to a purchaser is subject to the conditions set forth in section 2 of this chapter.

(b) The sale of burial rights, services, or merchandise to an individual for the interment of the individual or members of the individual's family is not subject to the conditions set forth in section 2 of this chapter.

As added by P.L.52-1997, SEC.26.

IC 23-14-52-2

Liability and duties of purchaser

Sec. 2. The following conditions apply to a sale referred to in section 1(a) of this chapter:

(1) The purchaser is liable for any shortages existing before or after the sale in the perpetual care fund required by IC 23-14-48 or in an escrow fund or trust account required by IC 23-14-49-1.

(2) The purchaser shall perform:

(A) all obligations imposed on cemetery owners under this article;

(B) all obligations imposed on the cemetery owner under contracts made by the selling cemetery owner or any prior cemetery owner relating to:

(i) burial or interment rights; or

(ii) the sale of the personal property or services described in IC 23-14-49-1; and

(C) any other related obligation.

As added by P.L.52-1997, SEC.26.

IC 23-14-53

Chapter 53. Bequests for Care

IC 23-14-53-1

Receipt of deposit or legacy of money

Sec. 1. (a) Any church, corporation, or association that owns a cemetery may receive from any person a deposit or legacy of money to be held in trust:

(1) in perpetuity; or

(2) for a period that the donor or testator designates in writing.

(b) The earnings of the deposit or legacy shall be used for the purpose of keeping in good condition any lot or lots, monument, vault, or gravestone in the cemetery that is designated by the donor or testator.

As added by P.L.52-1997, SEC.27.

IC 23-14-53-2

Duties upon receipt of deposit or legacy of money

Sec. 2. (a) A church, corporation, or association that receives a deposit or legacy of money to be held in trust under section 1 of this chapter shall:

(1) adopt rules concerning the investment and safekeeping of any deposit or bequest; and

(2) designate a financial institution as the depository of the funds.

(b) The depository designated under subsection (a) must:

(1) agree upon the rate of interest it will pay on the funds; and

(2) pay interest on the funds to the church, corporation, or association:

(A) on a basis agreed upon by the depository and the church, corporation, or association; but

(B) not less frequently than quarterly;

for the purpose of taking care of the particular lot or lots, monument, vault, or gravestone for which the money was given or donated.

(c) The money on deposit in the depository under this section shall not be used for any purpose other than taking care of the particular lot or lots, monument, vault, or gravestone, and only the interest earned on the deposit or legacy may be used.

(d) The:

(1) deposit or legacy placed on deposit; and

(2) interest earned on the deposited funds;

are exempt from taxation under IC 6. However, this chapter does not repeal or modify IC 23-14-65.

As added by P.L.52-1997, SEC.27.

IC 23-14-54

Chapter 54. Disposition of Dead Human Bodies

IC 23-14-54-1

Time period for disposition

Sec. 1. Subject to the rights of transportation and removal of dead human bodies or other disposition of dead human bodies, as provided by law, the remains of all individuals who die in Indiana or are shipped into Indiana shall be deposited:

(1) in the earth in an established cemetery;
(2) in a mausoleum;
(3) in a garden crypt; or
(4) in a columbarium;

within a reasonable time after death, except as ordered by the state department of health.

As added by P.L.52-1997, SEC.28.

IC 23-14-54-2

Depth of cover

Sec. 2. All dead human bodies interred in the earth shall have a cover of at least two (2) feet of earth at the shallowest point over the outer receptacle in which the body is placed.

As added by P.L.52-1997, SEC.28.

IC 23-14-54-3

Ventilation of mausoleums

Sec. 3. All private or family mausoleums shall be constructed in such manner as to admit proper ventilation.

As added by P.L.52-1997, SEC.28.

IC 23-14-54-4

Cremated remains

Sec. 4. The remains of dead human bodies that have been cremated may be deposited in mausoleums, garden crypts, or columbaria or deposited in or on the earth.

As added by P.L.52-1997, SEC.28.

IC 23-14-54-5

Violation of chapter; Class B misdemeanor

Sec. 5. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.28.

IC 23-14-55

Chapter 55. Authorization for Interment, Entombment, or Inurnment

IC 23-14-55-1

Warranty and liability of individual signing authorization

Sec. 1. (a) An individual who signs an authorization for the cremation, interment, entombment, or inurnment of any human remains:

(1) is considered to warrant the truthfulness of:

(A) any fact set forth in the authorization;

(B) the identity of the person for whose remains cremation, interment, entombment, or inurnment is sought; and

(C) the individual's authority to order the cremation, interment, entombment, or inurnment; and

(2) is personally and individually liable to pay damages in compensation for harm that:

(A) is caused by; or

(B) results from;

the signing of the authorization for cremation, interment, entombment, or inurnment.

(b) A cemetery or crematory that relies in good faith on a signed authorization for the cremation, interment, entombment, or inurnment of human remains is not civilly or criminally liable or subject to disciplinary actions for carrying out the disposition of the decedent's remains in accordance with the instructions in the authorization.

As added by P.L.52-1997, SEC.29. Amended by P.L.34-2011, SEC.2; P.L.6-2012, SEC.162.

IC 23-14-55-2

Cemetery owner's authority to inter remains upon written authorization; priority among individuals as to power to authorize interment; persons who may not authorize; disputes

Sec. 2. (a) Except as provided in subsection (c), the owner of a cemetery is authorized to inter, entomb, or inurn the body or cremated remains of a deceased human upon the receipt of a written authorization of an individual who professes either of the following:

(1) To be (in the priority listed) one (1) of the following:

(A) An individual granted the authority to serve in a funeral planning declaration executed by the decedent under IC 29-2-19, or the person named in a United States Department of Defense form "Record of Emergency Data" (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces (as defined in 10 U.S.C. 1481) and completed the form.

(B) An individual specifically granted the authority in a power of attorney or a health care power of attorney executed by the decedent under IC 30-5-5-16.

(C) The individual who was the spouse of the decedent at the

time of the decedent's death, except when:

(i) a petition to dissolve the marriage or for legal separation of the decedent and spouse is pending with a court at the time of the decedent's death, unless a court finds that the decedent and spouse were reconciled before the decedent's death; or

(ii) a court determines the decedent and spouse were physically and emotionally separated at the time of death and the separation was for an extended time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(D) The decedent's surviving adult child or, if more than one (1) adult child is surviving, the majority of the adult children. However, less than half of the surviving adult children have the rights under this clause if the adult children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children.

(E) The decedent's surviving parent or parents. If one (1) of the parents is absent, the parent who is present has authority under this clause if the parent who is present has used reasonable efforts to notify the absent parent.

(F) The decedent's surviving sibling or, if more than one (1) sibling is surviving, the majority of the surviving siblings. However, less than half of the surviving siblings have the rights under this clause if the siblings have used reasonable efforts to notify the other surviving siblings of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the surviving siblings.

(G) The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent or, if more than one (1) individual of the same degree of kinship is surviving, the majority of those who are of the same degree. However, less than half of the individuals who are of the same degree of kinship have the rights under this clause if they have used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to the final disposition instructions by more than half of the individuals who are of the same degree of kinship.

(H) If none of the persons described in clauses (A) through (G) are available, any other person willing to act and arrange for the final disposition of the decedent's remains, including a funeral home that:

(i) has a valid prepaid funeral plan executed under IC 30-2-13 that makes arrangements for the disposition of the decedent's remains; and

(ii) attests in writing that a good faith effort has been made

to contact any living individuals described in clauses (A) through (G).

(2) To have acquired by court order the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (c), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(c) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(d) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (c)(2).

(e) If a person vested with a right under subsection (a) does not exercise that right not less than seventy-two (72) hours after the person receives notification of the death of the decedent, the person forfeits the person's right to determine the final disposition of the decedent's remains and the right to determine final disposition passes to the next person described in subsection (a).

(f) A cemetery owner has the right to rely, in good faith, on the representations of a person listed in subsection (a) that any other individuals of the same degree of kinship have been notified of the final disposition instructions.

(g) If there is a dispute concerning the disposition of a decedent's remains, a cemetery owner is not liable for refusing to accept the remains of the decedent until the cemetery owner receives:

(1) a court order; or

(2) a written agreement signed by the disputing parties;

that determines the final disposition of the decedent's remains. If a cemetery agrees to shelter the remains of the decedent while the

parties are in dispute, the cemetery may collect any applicable fees for storing the remains, including legal fees that are incurred.

(h) Any cause of action filed under this section must be filed in the probate court in the county where the decedent resided, unless the decedent was not a resident of Indiana.

(i) A spouse seeking a judicial determination under subsection (a)(1)(C)(i) that the decedent and spouse were reconciled before the decedent's death may petition the court having jurisdiction over the dissolution or separation proceeding to make this determination by filing the petition under the same cause number as the dissolution or separation proceeding. A spouse who files a petition under this subsection is not required to pay a filing fee.

As added by P.L.52-1997, SEC.29. Amended by P.L.102-2007, SEC.2; P.L.3-2008, SEC.170; P.L.143-2009, SEC.6; P.L.101-2010, SEC.2; P.L.34-2011, SEC.3; P.L.6-2012, SEC.163.

IC 23-14-56

Chapter 56. Record Keeping

IC 23-14-56-1

Duties

Sec. 1. A cemetery owner shall keep a record of each interment, entombment, and inurnment in the cemetery. The record must:

(1) show:

(A) the date on which the body was received;

(B) the date of interment, entombment, or inurnment;

(C) the name and marital status of the person whose remains are interred, entombed, or inurned; and

(D) the plot and the grave in which the interment or inurnment was made or the location within the building or structure in which the entombment or inurnment was made; and

(2) include the permit for burial issued by the division of public health of Indiana.

As added by P.L.52-1997, SEC.30.

IC 23-14-56-2

Permanent preservation of record

Sec. 2. The cemetery in which an interment, entombment, or inurnment takes place shall permanently preserve the record required by this chapter either:

(1) in the form of the original record; or

(2) in alternative form such as microfilm, microfiche, computer disk, or compact disk.

As added by P.L.52-1997, SEC.30.

IC 23-14-56-3

Violation of chapter; Class B misdemeanor

Sec. 3. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.30.

IC 23-14-57

Chapter 57. Disinterment, Disentombment, and Disinurnment

IC 23-14-57-1

Requirements for disinterment

Sec. 1. (a) As used in this section, "removal" or "removed" refers to the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(b) Except as provided in subsection (e) and sections 4 and 5 of this chapter, the remains, either cremated or uncremated, of a deceased human shall not be removed from a cemetery without:

(1) a written order:

(A) that is issued by the state department of health; and

(B) that authorizes the removal of the deceased's remains;

(2) the written consent of:

(A) the owner of the cemetery; or

(B) the owner's representative; and

(3) the written consent of a person or persons referred to in one (1) of the following clauses, which are listed according to priority:

(A) The individual who was the spouse of the deceased at the time of the deceased's death.

(B) The surviving adult child of the deceased. If there is more than one (1) surviving adult child of the deceased, the requirement for written consent under this subdivision is satisfied if:

(i) any one (1) of the surviving adult children provides written consent to the removal of the deceased's remains;

(ii) the consent provided under item (i) confirms that all other surviving adult children of the deceased have been notified of the proposed removal of the deceased's remains; and

(iii) the state department of health does not receive a written objection to the proposed removal from any of the deceased's surviving adult children.

(C) The surviving parent of the deceased. If the deceased is survived by both parents, the requirement for written consent under this subdivision is satisfied if:

(i) either surviving parent provides written consent to the removal of the deceased's remains; and

(ii) the state department of health does not receive a written objection to the proposed removal from the other surviving parent.

(D) The individual in the next degree of kinship to the deceased under IC 29-1-2-1. If more than one (1) individual of the same degree of kinship is surviving, the requirement for written consent under this subdivision is satisfied if:

(i) any individual of that degree of kinship provides written consent to the removal of the deceased's remains; and

(ii) the state department of health does not receive a

written objection to the proposed removal from any other surviving individual in the same degree of kinship.

(c) Before issuing a written authorization under subsection (b), the state department of health shall do the following:

(1) Obtain written evidence that a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal occurs.

(2) Obtain a copy of:

(A) the written consent required under subsection (b)(3); or

(B) a court order obtained by a person under subsection (d).

(d) If the written consent of an individual authorized under subsection (b)(3) to give consent is not available, a person who has made a request under this section to the state department of health may petition a court to determine whether to waive the consent requirement of subsection (b)(3). In determining whether to waive the requirement, the court shall consider the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased. In a proceeding under this subsection, the court may not order the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(e) This subsection applies only if the human remains are on property owned or leased by a coal company. The remains, either cremated or uncremated, of a deceased human may be removed from a cemetery by a coal company if the coal company obtains a court order authorizing the disinterment, disentombment, or disinurnment. Before issuing a court order under this subsection, a court must conduct a hearing and be satisfied as to the following:

(1) That the property is owned or leased by the coal company.

(2) That the coal company has obtained the written consent of an individual authorized to give consent under subsection (b)(3). If the consent of an individual authorized to give consent under subsection (b)(3) is not available, the court may waive the requirement after considering the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased.

(3) That the department of natural resources, division of historic preservation and archeology, has received at least five (5) days written notice of the time, date, and place of any hearing under this subsection. The notice must describe the proposed place from which the remains will be removed.

(4) That a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal occurs.

(5) That the coal company has caused a notice of the proposed removal to be published at least five (5) days before the hearing

in a newspaper of general circulation in the county where the removal will occur.

(6) That the coal company will notify the department of natural resources, division of historic preservation and archeology, after the hearing of the proposed time and date when the remains will be removed.

(f) A:

(1) licensed funeral director; or

(2) cemetery owner;

is not liable in an action brought by any person because of the removal of a deceased's remains under a written consent described in subsection (b)(3) or (e)(2) unless the licensed funeral director or the cemetery owner had actual notice before or at the time of the removal that a representation made in the consent described in subsection (b)(3) or (e)(2) was untrue.

(g) The state department of health may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.52-1997, SEC.31. Amended by P.L.155-2002, SEC.11; P.L.113-2007, SEC.5.

IC 23-14-57-2

Orders authorizing removal of human remains

Sec. 2. (a) When the state department of health issues a written order authorizing the removal of human remains from a cemetery, it shall issue the order in duplicate.

(b) The state department of health shall deliver one (1) copy of the order to the cemetery from which the human remains are removed and the other copy of the order to the cemetery to which the human remains are delivered for reinterment, reentombment, or reinurnment.

(c) Each cemetery to which a copy of an order is delivered under subsection (b) shall retain the copy of the order permanently.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-3

Removal of human remains for nonpayment; liability of owner

Sec. 3. (a) This chapter does not prohibit:

(1) the removal of human remains by a cemetery owner from a plot, building, or structure for which the purchase price is past due and unpaid; and

(2) the reinterment, reentombment, or reinurnment of the remains in some other suitable plot in the cemetery.

(b) For a removal and reinterment, reentombment, or reinurnment (at the discretion of the cemetery owner) referred to in subsection (a), the cemetery owner is not liable in any action unless the owner fails to exercise reasonable care in the removal or reinterment, reentombment, or reinurnment. There is a rebuttable presumption that the owner exercised reasonable care in the removal or reinterment, reentombment, or reinurnment.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-4
Applicability of chapter

Sec. 4. This chapter does not apply to the following:

(1) The disinterment, disentombment, or disurnment of remains upon the written order of the coroner of the county in which the cemetery is situated.

(2) The removal of human remains under a plan approved by the division of historic preservation and archeology under IC 14-21-1.

As added by P.L.52-1997, SEC.31. Amended by P.L.26-2008, SEC.18.

IC 23-14-57-5
Removal for autopsy or reinterment

Sec. 5. (a) The remains of a deceased human interred, entombed, or inurned in a plot in a cemetery may be removed from the plot for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery with:

(1) the consent of the owner of the cemetery; and

(2) the written consent of an individual authorized to give consent under section 1(b)(3) of this chapter.

(b) If the:

(1) consent of the owner of the cemetery cannot be obtained; or

(2) identity of a person from whom consent is required under subsection (a)(2) cannot be determined;

the remains of a deceased human can be removed for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery only under a judgment of the circuit or superior court with jurisdiction in the county in which the cemetery is located.

As added by P.L.52-1997, SEC.31. Amended by P.L.113-2007, SEC.6; P.L.132-2011, SEC.1.

IC 23-14-57-6
Payment of costs and expenses

Sec. 6. Before any disinterment, disentombment, or disinurnment may take place under this chapter, the reasonable costs and expenses of the disinterment, disentombment, or disinurnment, including attorney's fees, must be paid by the person or persons applying for the disinterment, disentombment, or disinurnment.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-7
Violation of chapter; Class B misdemeanor

Sec. 7. A person who knowingly violates this chapter commits a Class B misdemeanor.

As added by P.L.52-1997, SEC.31.

IC 23-14-57-8
Liability of cemetery owner

Sec. 8. The owner of a cemetery is not liable in any action for a

removal or reinterment, reentombment, or reinurnment described in this chapter unless the owner fails to exercise reasonable care in the removal or reinterment, reentombment, or reinurnment. There is a rebuttable presumption that the owner exercised reasonable care in the removal or reinterment, reentombment, or reinurnment.
As added by P.L.52-1997, SEC.31.

IC 23-14-58

Chapter 58. Abandonment and Reburial

IC 23-14-58-1

Authority to abandon certain cemeteries; removal of bodies

Sec. 1. If a cemetery in Indiana:

(1) is under the ownership or control of any church or religious society;

(2) is located within a city or town;

(3) may have been, for at least twenty (20) years, abandoned as a place of burial of the dead; and

(4) has become, in the judgment of the members or governing body of the church or religious society, impracticable and undesirable to maintain due to the growth of the city or town in which it is located;

the church or religious society may abandon the cemetery and cause the bodies buried within the cemetery to be removed under the conditions set forth in this chapter.

As added by P.L.52-1997, SEC.32.

IC 23-14-58-2

Abandonment of cemetery; removal and interment of bodies in suitable cemetery

Sec. 2. If:

(1) a church or religious society has the ownership or control of a cemetery; and

(2) it is determined, in accordance with the rules, regulations, and usages of the church or religious society, that it is impracticable and undesirable for the church or religious society to maintain the cemetery or burial ground;

the church or religious society may abandon the cemetery and cause the bodies buried in the cemetery to be removed and interred in a suitable cemetery.

As added by P.L.52-1997, SEC.32.

IC 23-14-58-3

Reinterment

Sec. 3. A church or religious society that takes action under section 1 or 2 of this chapter shall, at its own expense:

(1) provide the place for the reinterment of all bodies in the abandoned cemetery;

(2) cause the reinterment in a cemetery of all the bodies removed from the abandoned cemetery that can practically be reburied; and

(3) preserve and cause to be replaced at the grave of each deceased person reinterred in another cemetery any gravestone or other marker found at the grave from which the body was removed.

As added by P.L.52-1997, SEC.32.

IC 23-14-58-4
Lawfulness of actions

Sec. 4. Actions taken under this chapter by any person acting under the direction of:

(1) a church or religious society; or

(2) the officers or governing body of a church or religious society;

are lawful.

As added by P.L.52-1997, SEC.32.

IC 23-14-58.5

Chapter 58.5. Disposition of Abandoned Burial Spaces

IC 23-14-58.5-0.1

Repealed

(Repealed by P.L.63-2012, SEC.27.)

IC 23-14-58.5-1

Termination of ownership rights in an unused and unimproved burial space

Sec. 1. (a) Subject to this chapter, if a burial space in a cemetery that is subject to IC 23-14-41 or any other Indiana law:

(1) has remained unused for a period of at least fifty (50) years from the date of sale or last recorded designation or transfer; and

(2) has no improvements on the burial space, including the placement of a monument, memorial, or other permanent appurtenance;

the person or entity having jurisdiction over the cemetery may terminate the rights and interests of the owner of the burial space.

(b) After July 1, 2007, a contract for the purchase of a burial space must include notice that the contract is subject to termination as provided in subsection (a).

As added by P.L.113-2007, SEC.7.

IC 23-14-58.5-2

Notice

Sec. 2. (a) If the person or entity having jurisdiction over the cemetery:

(1) desires to terminate the rights and interests of the owner of the burial space; and

(2) determines that the conditions specified in section 1 of this chapter have been met;

the person or entity must send to the owner a notice of the intent to terminate the owner's rights to the burial space.

(b) The notice required under subsection (a) must be sent by certified mail with return receipt requested to the owner's last known address.

As added by P.L.113-2007, SEC.7.

IC 23-14-58.5-3

Duties of owner; request for purchase

Sec. 3. (a) An owner who has received a termination notice under section 2 of this chapter may inform the person or entity having jurisdiction over the cemetery of the owner's continued intent to use the burial space. If the person or entity having jurisdiction over the cemetery has been informed of the owner's intent, the person or entity having jurisdiction over the cemetery may not terminate the rights and interests of the owner of the burial space.

(b) An owner who has received a termination notice under section 2 of this chapter may request the person or entity having jurisdiction

over the cemetery to purchase the burial space for the amount originally paid for the burial space.
As added by P.L.113-2007, SEC.7.

IC 23-14-58.5-4
Failure to respond to notice; termination of owner's rights; remedies

Sec. 4. (a) If the person or entity having jurisdiction over the cemetery has not received a response from the owner of the burial space within sixty (60) days after sending the notice required in section 2 of this chapter, the person or entity having jurisdiction over the cemetery shall advertise in a newspaper of general circulation in the county of the owner's last known address seeking the owner's current address.

(b) If a new address for the owner of the burial space is obtained after the advertising required in subsection (a), the notice requirement under section 2 of this chapter must be repeated.

(c) If the person or entity having jurisdiction over the cemetery has not received a response regarding the owner of the burial space within sixty (60) days after placing the advertisement required in subsection (a), the owner's rights and interests in the burial space are terminated. After the rights and interests in a burial space are terminated under this chapter, the person or entity having jurisdiction over the cemetery may sell a burial space to a new owner.

(d) If the owner of a burial space contacts the person or entity having jurisdiction over the cemetery after the owner's rights and interests in the burial space are terminated under this chapter, the owner is entitled to select one (1) of the following remedies:

(1) The original burial space, if it has not been resold.

(2) If a person or an entity having jurisdiction over the cemetery has resold the burial space, reimbursement for the amount for which the burial space was resold minus the following:

(A) The costs paid by the person or entity having jurisdiction over the cemetery in providing notice and advertising as required under this chapter.

(B) The sales commission costs in the resale of the burial space.

(3) A comparable burial space in the cemetery.
As added by P.L.113-2007, SEC.7.

IC 23-14-58.5-5
Penalty

Sec. 5. A person who:

(1) knowingly terminates an owner's rights and interests in a burial space;

(2) knows or should have known the identity of the owner; and

(3) fails to give the owner notice as required under this chapter;

commits a Class A misdemeanor.
As added by P.L.113-2007, SEC.7.

IC 23-14-59

Chapter 59. Potential Liability of Cemetery Owner

IC 23-14-59-1

Immunity from liability

Sec. 1. A cemetery owner or anyone acting on behalf of a cemetery owner is not liable in any action for:

(1) a burial, entombment, or inurnment in the wrong lot, grave, grave space, burial space, crypt, crypt space, or niche;

(2) a disinterment, disentombment, or disinurnment of the wrong deceased remains;

(3) a repositioning of the remains of a deceased that encroach upon an adjacent lot, space, grave, grave space, or burial space;

(4) setting or installing a marker, monument, any type of memorial, or an outer burial container on the wrong lot, space, grave, grave space, or burial space; or

(5) installing any kind of foundation or other type of base for a marker, monument, or any type of memorial on the wrong lot or burial space.

As added by P.L.52-1997, SEC.33.

IC 23-14-59-2

Duties of owner upon wrongful burial

Sec. 2. When a wrongful burial, entombment, inurnment, disinterment, disentombment, or disinurnment referred to in section 1(1), 1(2), 1(4), or 1(5) of this chapter occurs, the cemetery owner shall:

(1) at the expense of the cemetery owner, correct the wrongful burial, entombment, inurnment, disinterment, disentombment, or disinurnment as soon as practical after becoming aware of the error; and

(2) notify:

(A) the spouse, if living, of the deceased person whose remains were wrongfully buried, entombed, inurned, disinterred, disentombed, or disinurned, or whose outer burial container was wrongfully placed;

(B) the parents, if living, of a deceased minor child whose remains were wrongfully buried, entombed, inurned, disinterred, disentombed, or disinurned, or whose outer burial container was wrongfully placed;

(C) the person or persons whose marker, monument, memorial, foundation, or base was wrongfully placed; or

(D) the person or persons who authorized the original burial, entombment, inurnment, disinterment, disentombment, or disinurnment;

of the occurrence.

As added by P.L.52-1997, SEC.33.

IC 23-14-59-3

Errors caused by improper description

Sec. 3. A cemetery owner or anyone acting on behalf of a cemetery owner is not liable in any action for any error made by placing an improper description, including an incorrect name or date, on:

(1) a marker;

(2) a monument;

(3) any type of memorial; or

(4) the container for cremated remains.

As added by P.L.52-1997, SEC.33.

IC 23-14-60

Chapter 60. Legalization of Defectively Formed Cemetery Associations and Corporations

IC 23-14-60-1

Defective cemetery associations and corporations; rights and powers

Sec. 1. (a) If:

(1) any number of persons have:

(A) acted together as an association or corporation;

(B) acquired, as an association or corporation, land for cemetery purposes;

(C) sold and granted to persons the right to bury the dead in lots located on the land; and

(D) actually managed and controlled the land as a cemetery for at least thirty (30) years; but

(2) the organization that the persons attempted to establish as a corporation or cemetery association is defective and incomplete because of a failure to comply with the formalities required by law in force at some time since the original parties first assumed to act as an association or corporation;

the owners of the right to bury the dead on lots in the cemetery and those who may acquire the right become and continue to be a cemetery association or corporation from March 14, 1913.

(b) The owners of the right to bury the dead on lots in a cemetery referred to in subsection (a) have all the rights and powers of a cemetery association or corporation organized under this article, IC 23-1, or IC 23-17.

As added by P.L.52-1997, SEC.34. Amended by P.L.2-2002, SEC.74; P.L.163-2006, SEC.2.

IC 23-14-61

Chapter 61. Conflicts of Interests by Cemetery Employees

IC 23-14-61-1

Prohibition against acting as agent or representative; approval to act as agent or representative

Sec. 1. (a) This section applies to a sexton, superintendent, manager, director, grounds keeper, caretaker, or other employee of:

(1) a person, firm, association, limited liability company, or corporation that operates or maintains a cemetery for profit; or

(2) a nonprofit cemetery that is supported in whole or in part by the use of public funds.

(b) A sexton, superintendent, manager, director, grounds keeper, caretaker or other employee referred to in subsection (a) shall not:

(1) act as an agent or representative for a manufacturer or dealer of any commodity that is to be used or installed on cemetery property, including monuments or markers; and

(2) receive for those services any consideration, either cash or otherwise;

unless the representation is approved in writing by the governing board of the cemetery.

(c) The written approval given by the governing board of a cemetery under subsection (b) must be:

(1) made a matter of public record; and

(2) prominently displayed in a public place on the cemetery property where it can be easily seen by persons visiting the cemetery property.

As added by P.L.52-1997, SEC.35.

IC 23-14-61-2

Unlawful discrimination or unfair trade practice prohibited

Sec. 2. A sexton, superintendent, manager, director, grounds keeper, caretaker, or other employee who:

(1) is referred to in section 1(a) of this chapter; and

(2) acts as an agent or representative for a manufacturer or dealer of any commodity that is to be used or installed on cemetery property;

is prohibited from engaging in any unlawful discrimination or unfair trade practice in violation of this article or any other related law against a manufacturer or dealer of a commodity used or installed on cemetery property whom the employee does not represent.

As added by P.L.52-1997, SEC.35.

IC 23-14-61-3

Writs of prohibition

Sec. 3. (a) Upon proper proof of a violation of section 1 or section 2 of this chapter, a court of competent jurisdiction may issue writs of prohibition.

(b) After the issuance of writs of prohibition under subsection (a), a fiscal officer who disburses public money to any:

(1) person;
(2) firm;
(3) association;
(4) limited liability company; or
(5) corporation;

against whom or which a writ of prohibition is in effect is liable on the fiscal officer's bond.

As added by P.L.52-1997, SEC.35.

IC 23-14-62

Chapter 62. Conveyance of County Cemeteries to Private Corporations

IC 23-14-62-1

Application of chapter

Sec. 1. This chapter applies whenever a majority of the heads of families of a county whose dead are buried in a cemetery owned by the county, either by themselves or with others, organize a corporation for the burial of the dead and the maintenance of a cemetery.

As added by P.L.52-1997, SEC.36.

IC 23-14-62-2

Petition for conveyance of cemetery

Sec. 2. The persons referred to in section 1 of this chapter may file with the board of commissioners of the county in which the cemetery is located a petition asking for the conveyance of the cemetery to the corporation.

As added by P.L.52-1997, SEC.36.

IC 23-14-62-3

Notice of filing of petition; agreement to care and manage cemetery

Sec. 3. (a) The persons filing the petition under section 2 of this chapter must give notice of the filing in accordance with IC 5-3-1-2 at least three (3) weeks before the filing by publishing a notice concerning the filing of the petition in a weekly newspaper published in the county in which the cemetery is located.

(b) The persons filing the petition under section 2 of this chapter must also file an agreement, with security to be approved by the board, that the corporation will keep the cemetery in good order and honestly and faithfully manage it.

As added by P.L.52-1997, SEC.36.

IC 23-14-62-4

Powers of board of commissioners

Sec. 4. The board of commissioners presented with a petition under section 2 of this chapter, if satisfied:

(1) as to the propriety of granting the request;

(2) as to the sufficiency of the surety;

(3) as to the good faith of the petitioners; and

(4) that a majority of the heads of families of the county are taking part;

may convey the cemetery to the cemetery corporation.

As added by P.L.52-1997, SEC.36.

IC 23-14-62-5

Powers of cemetery corporation

Sec. 5. After a petition is granted under section 4 of this chapter, the cemetery corporation formed by the petitioners may:

(1) control the cemetery;
(2) ornament, beautify, and improve the cemetery;
(3) purchase additions and sell lots in the cemetery;
(4) assess all lots for the care, improvement, and beautification of the cemetery; and
(5) exercise all the powers of a corporation organized under any statute for the purpose of maintaining or managing cemeteries.

As added by P.L.52-1997, SEC.36.

IC 23-14-63

Chapter 63. Conveyance of Township Cemeteries to Private Corporations

IC 23-14-63-1

Application of chapter

Sec. 1. This chapter applies whenever ten (10) or more heads of families:

(1) who reside in:

(A) a township; or

(B) the immediate vicinity of a cemetery owned by a township; and

(2) who own lots in and whose dead relatives are buried in a cemetery owned by the township;

organize, either by themselves or with others, as a corporation for the burial of the dead and the maintenance of a cemetery.

As added by P.L.52-1997, SEC.37.

IC 23-14-63-2

Petition asking for conveyance; notice

Sec. 2. (a) The persons described in section 1 of this chapter may file with the township trustee a petition asking for the conveyance of the cemetery owned by the township to the corporation.

(b) The persons filing the petition under subsection (a) must give notice of the filing at least three (3) weeks before the filing in accordance with IC 5-3-1-2 by publishing a notice concerning the petition in a newspaper:

(1) that is published in the township; or

(2) if there is no newspaper published in the township, in the newspaper published nearest to the township.

As added by P.L.52-1997, SEC.37.

IC 23-14-63-3

Requirements of petitioners

Sec. 3. The persons filing a petition under section 2 of this chapter must:

(1) state in the petition that the corporation would have at the time of taking over the cemetery an endowment or perpetual care fund of at least one thousand dollars ($1,000);

(2) agree to increase the balance in the fund to an amount sufficient to produce enough interest to keep the cemetery in proper condition; and

(3) agree to:

(A) keep the cemetery in good order; and

(B) honestly and faithfully manage the cemetery.

As added by P.L.52-1997, SEC.37.

IC 23-14-63-4

Duties of township trustee

Sec. 4. The township trustee, if satisfied that the petition is signed

by a majority of the owners of lots in the cemetery who are residents of the township or of the immediate vicinity of the cemetery, shall convey the cemetery to the corporation formed by the petitioners.
As added by P.L.52-1997, SEC.37.

IC 23-14-63-5
Powers and duties of corporation

Sec. 5. (a) A corporation to which a cemetery is conveyed under section 4 of this chapter:

(1) shall control the cemetery;
(2) shall ornament, beautify, and improve the cemetery;
(3) may purchase additions and sell lots in the cemetery;
(4) may assess all lots for the care, improvement, and beautification of the cemetery;
(5) may receive and hold in trust gifts, donations, and legacies to be devoted to the purposes referred to in subdivisions (1) through (4); and
(6) may exercise all the powers of a corporation organized under any statute for the purpose of owning, managing, and maintaining cemeteries.

(b) All actions that the corporation takes in accordance with statutes concerning cemeteries before the cemetery is conveyed by the township trustee to the corporation are valid and binding on all parties involved in the actions.
As added by P.L.52-1997, SEC.37.

IC 23-14-64

Chapter 64. Conveyance of Cemetery Association Land to Townships

IC 23-14-64-1

Application of chapter

Sec. 1. This chapter applies whenever the board of directors of a cemetery association existing under any Indiana statute before March 9, 1939, determines by a majority vote to convey the real estate belonging to the association to the township in which the association's cemetery is located.

As added by P.L.52-1997, SEC.38.

IC 23-14-64-2

Public cemetery

Sec. 2. A township trustee may accept a conveyance of real estate described in section 1 of this chapter. After the conveyance, the township trustee shall maintain the cemetery as a public cemetery.

As added by P.L.52-1997, SEC.38.

IC 23-14-64-3

Payment and use of cash, securities, or other assets

Sec. 3. (a) If a cemetery association that conveys real estate to a township under this chapter has endowment funds, cash, securities, or other assets, the funds, cash, securities, or other assets shall be paid over to the township trustee when the real estate owned by the association is conveyed to the township.

(b) A township trustee who receives cash, securities, endowment funds, or other assets under subsection (a) may use them only:

(1) to purchase additional land for the cemetery;

(2) to make permanent improvements to the cemetery; or

(3) for the upkeep and maintenance of the cemetery.

As added by P.L.52-1997, SEC.38.

IC 23-14-64-4

Payment of administration expenses

Sec. 4. All expenses incurred by the trustee in administering this chapter shall be paid out of the township fund of the township.

As added by P.L.52-1997, SEC.38.

IC 23-14-65
Chapter 65. City and Town Cemeteries

IC 23-14-65-1
"Cemetery board" defined
Sec. 1. As used in this chapter, "cemetery board" means:
(1) the board to which the power to govern cemeteries is transferred under this chapter; or
(2) if the power to govern cemeteries is not transferred under this chapter, the legislative body of a municipality.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-2
"Executive" defined
Sec. 2. As used in this chapter, "executive" means:
(1) the mayor of a city; or
(2) the president of the town council of a town.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-3
"Legislative body" defined
Sec. 3. As used in this chapter, "legislative body" means:
(1) the common council or city-county council of a city; or
(2) the town council of a town.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-4
"Municipality" defined
Sec. 4. As used in this chapter, "municipality" means a city or town.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-5
Application of chapter
Sec. 5. This chapter applies to all public cemeteries that are:
(1) owned by a municipality; and
(2) located within five (5) miles of the municipality.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-6
Powers and duties of legislative body
Sec. 6. (a) The legislative body of a municipality has control and management of a cemetery that is:
(1) owned by the municipality; and
(2) located within five (5) miles of the municipality.
(b) The powers and duties of the legislative body under this section include the following:
(1) The collection, preservation, and payment of all money, funds, securities, obligations, and property of any kind related to cemetery purposes.

(2) The protection of cemeteries and the sanctity of the dead.
(3) The regulation or prohibition of the interment of bodies.
(4) The authorization of the removal of buried bodies or whole cemeteries to some other place.

(c) The powers of the legislative body of a municipality under this section remain in effect by ordinance or resolution despite the repeal of Acts 1927, c. 7.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-7

Permanent maintenance fund

Sec. 7. (a) Part of the proceeds derived from the sale of lots within a cemetery to which this chapter applies may be set aside as a permanent maintenance fund.

(b) Not more than fifty percent (50%) of the proceeds from the sale of lots may be set aside as a permanent maintenance fund under this section.

(c) The income from a permanent maintenance fund established under this section shall remain in the fund, except as provided in subsection (d).

(d) If the revenue from the sale of lots and other income from a cemetery to which this chapter applies becomes insufficient to meet the expense of maintaining the cemetery, income derived from the fund and its accretions may be used in whole or in part as the needs of the cemetery require, after appropriation by the legislative body according to statute.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-8

Gifts, donations, bequests, or devises

Sec. 8. (a) The legislative body of a municipality may by ordinance or resolution accept gifts, donations, bequests, or devises of money or real or personal property for the use of the:

(1) cemetery; or
(2) permanent maintenance fund of the cemetery.

(b) Except as provided in subsection (c), a municipality shall use:

(1) gifts, donations, bequests, or devises accepted under subsection (a); and
(2) income or interest derived from the gifts, donations, bequests, or devises;

in the same manner as the municipality uses proceeds from the sale of lots.

(c) If a gift, donation, bequest, or devise of money or real or personal property is given or made for the use of a particular lot or plot of ground, the income from the gift, donation, bequest, or devise may be used only for the upkeep and maintenance of that particular lot or plot of ground.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-9

Transfer of control and management to public works or public works and safety board

Sec. 9. A city may, by ordinance, transfer the control and management of a cemetery to which this chapter applies to the:

(1) board of public works; or

(2) board of public works and safety;

of the city.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-10

Transfer of control and management to board of trustees

Sec. 10. (a) A city or a town may, by ordinance, transfer the control and management of a cemetery to which this chapter applies to a board of trustees.

(b) The ordinance transferring the control and management of a cemetery under subsection (a) must prescribe:

(1) the organization of the board; and

(2) the duties of the officers and members of the board.

(c) Members of a board of trustees established under subsection (a) shall be appointed from the lot owners of the cemetery who are residents of the county in which the cemetery is located.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-11

Transfer of control and management to board of cemetery regents; board members

Sec. 11. (a) A city or town may, by ordinance, transfer the control and management of a cemetery to which this chapter applies to a board composed of four (4) residents of the municipality. Not more than two (2) of the residents appointed may be members of the same political party.

(b) Each board member appointed to the board established under subsection (a) must:

(1) own a lot in the cemetery or cemeteries to which this chapter applies; or

(2) be a freeholder of the municipality.

(c) The executive of the municipality shall appoint the members of the board established under subsection (a) to initial terms as follows:

(1) one (1) member for a term of one (1) year;

(2) one (1) member for a term of two (2) years;

(3) one (1) member for a term of three (3) years; and

(4) one (1) member for a term of four (4) years.

(d) Each member appointed under this section serves until the member's successor is appointed and qualified. After the initial term referred to in subsection (c), the member, if reappointed, or the member's successor serves for a term of four (4) years.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-12

Board of cemetery regents; members; vacancy; quorum; removal

Sec. 12. (a) A board appointed under section 11 of this chapter is known as "The Board of Cemetery Regents of the City (Town) of _____, Indiana".

(b) The officers of a board of cemetery regents consist of:

(1) a president;

(2) a vice president; and

(3) a secretary;

who shall be elected by the board members at the first meeting of the board and in each subsequent year.

(c) A vacancy on a board of cemetery regents shall be filled by appointment by the executive of the city or town. The person appointed serves until the expiration of the term of the member whom the appointee is appointed to replace.

(d) Each member of a board of cemetery regents:

(1) must take and subscribe to the usual oath of office before beginning the duties of office; and

(2) shall be issued a certificate of appointment, upon which the member's oath of office must be endorsed.

(e) A new member of a board of cemetery regents shall file the certificate of appointment with the clerk or clerk-treasurer of the municipality within thirty (30) days after the beginning of the new member's term. If an individual who is appointed to a board of cemetery regents violates this subsection, the individual is considered to have declined the appointment and, the office to which the individual was appointed is vacant.

(f) A majority of the members of a board of cemetery regents constitutes a quorum. An action of the board is binding only if:

(1) it is authorized by a vote taken at a regular or special meeting of the board; and

(2) a majority of all the members of the board vote in favor of the action.

(g) If there is a tie vote or equal division among the members of the board upon any motion, resolution, or action, the executive of the municipality is entitled to vote on the matter under consideration.

(h) The executive of a municipality may, at any time, remove a member of the board from office upon filing the reasons for the removal in writing with the clerk or clerk-treasurer of the municipality.

(i) The legislative body of the municipality may authorize compensation for actual expenses incurred by members of the cemetery board in performance of their official duties, including any additional compensation that the legislative body determines.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-13

Notice of proposed transfer of management and control; hearing

Sec. 13. (a) Before adopting an ordinance transferring its powers and duties over a cemetery under section 9, 10, or 11 of this chapter, the legislative body of a municipality must first give notice of its

intention by notice published once each week for two (2) weeks in accordance with IC 5-3-1. The notice must announce a hearing at which the legislative body will hear any objections by any taxpayer or owner of a lot in the cemeteries.

(b) The hearing referred to in subsection (a) must:

(1) be set for a date at least two (2) weeks after the first publication of the notice;

(2) be held at a designated location; and

(3) provide all taxpayers or owners of lots in the cemeteries an opportunity to be heard.

(c) The legislative body shall give careful consideration to the views of the lot owners and taxpayers as expressed at the hearing referred to in subsection (a). Not less than five (5) days after the hearing, the legislative body shall adopt or defeat the ordinance under which its powers and duties over a cemetery would be transferred.

(d) If the ordinance referred to in subsection (c) is adopted, all papers and documents appropriate for the transfer of the management and control of the property or properties must be executed in behalf of the municipality by:

(1) the executive and clerk or clerk-treasurer of the municipality; and

(2) the agents of the cemetery.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-14

Bond

Sec. 14. Each officer and employee whose duty includes handling any funds in carrying out this chapter shall, in the manner prescribed by IC 5-4-1, execute an official bond before beginning the duties of office or employment.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-15

Powers of cemetery board

Sec. 15. A cemetery board may:

(1) make all necessary rules and regulations for the management of the cemetery or cemeteries over which it has control and management;

(2) sell lots or parts of lots at prices that the board considers reasonable; and

(3) require payment for sales:

(A) in cash; or

(B) partly in cash and the balance in deferred payments spread over a time the board considers reasonable.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-16

Execution of deed; requirements for deferred payment sales

Sec. 16. (a) In the case of cash sales of lots under section 15 of this chapter, a deed to the property sold shall be executed on behalf of the

municipality by the cemetery board to the purchaser.

(b) The following requirements apply to sales of lots under section 15 of this chapter that are made on a deferred payment basis:

(1) The transaction shall be evidenced by a written contract of sale executed by and between the board and the purchaser.

(2) Title to the lot shall be reserved in the municipality until the purchase price is paid in full.

(3) If the purchaser dies before payment in full has been completed, but after at least fifty percent (50%) of the purchase price has been paid, the balance of the purchase price shall be canceled and a deed for the property shall be executed by the cemetery board on behalf of the municipality to the heirs of the purchaser.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-17

Employment of agents and employees; collection and receipt of money

Sec. 17. A cemetery board:

(1) may employ agents for the sale of cemetery lots or part of lots and pay the agents compensation for services that the board considers reasonable;

(2) may employ all necessary superintendents, attorneys, engineers, and other employees and discharge them at the board's pleasure;

(3) may collect and receive all money owed for:

(A) the sale of lots;

(B) the care of lots;

(C) the care of graves;

(D) the digging of graves; and

(E) all other services rendered; and

(4) shall use and disburse the money received for the preservation, care, and improvement of the cemetery or cemeteries over which it has control and management.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-18

Purchase of property

Sec. 18. (a) A cemetery board may purchase on behalf of the municipality any other property for cemetery purposes that is located within five (5) miles from the corporate limits of the municipality.

(b) A cemetery board may purchase property that:

(1) adjoins; or

(2) is located conveniently near;

a cemetery that is under the control of the board for additions to the cemetery. The property must be used, held, and managed in the same manner as the adjoining or nearby cemetery or cemeteries, but is subject to the approval of the executive and legislative body of the municipality.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-19
Financial report; budget; expenditure of money

Sec. 19. (a) During January of each year, a cemetery board shall make a report to the legislative body of the municipality. The report must:

(1) provide information on:

(A) the financial condition of the cemetery board; and

(B) the business done by the cemetery board during the previous year; and

(2) include a statement showing the receipts and expenditures of the cemetery board for the year.

(b) A cemetery board shall annually prepare a budget for the cemetery or cemeteries under its control in the same manner as other offices and departments of the municipality prepare budgets. The budget of the cemetery board is subject to review under the budget statutes applying to municipalities.

(c) A cemetery board may not expend funds without prior appropriation by the legislative body of the municipality. If the revenues of the cemetery board are not sufficient to meet the:

(1) current operating expenses; and

(2) amounts to be paid for the purchase of cemetery lands or other property;

the deficiency in the revenues may be resolved through an appropriation from the general fund of the municipality.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-20
Awarding of contracts

Sec. 20. A cemetery board shall award contracts in accordance with IC 5-16-1 and IC 5-17-1.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-21
Eminent domain

Sec. 21. (a) A cemetery board may exercise the power of eminent domain:

(1) within the boundaries of the municipality; and

(2) also outside the municipality, within a distance of five (5) miles from the corporate limits of the municipality;

for the purpose of acquiring additional cemetery lands.

(b) A cemetery board may pay damages to landowners for the lands and property taken or injuriously affected, proceeding in accordance with the statutes applying to municipalities when exercising the power of eminent domain.

(c) A cemetery board may bring suit in the name of the cemetery board in eminent domain proceedings and in other matters whenever the action is necessary to protect the interests of the cemetery board in its conduct and discharge of its duties or obligations, rights, and privileges. A suit may be brought against the cemetery board in its own name.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-22
Delivery of money to controller or clerk-treasurer; payment of expenses

Sec. 22. (a) A cemetery board shall daily deliver all money, funds, and revenues it receives to the controller or clerk-treasurer of the municipality, who shall give the board a receipt. The amounts delivered by the cemetery board shall be credited to the account of the cemetery board and deposited in accordance with IC 5-13-6.

(b) All expenses incurred by the cemetery board shall be paid by claims allowed and signed by a majority of the cemetery board. The claims shall be delivered to the controller or clerk-treasurer of the municipality, and warrants in payment of the claims shall be drawn on the municipal treasury.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-23
Acceptance and receipt of real and personal property

Sec. 23. (a) A cemetery board may accept and receive real and personal property:

(1) through gift, legacy, or bequest; and
(2) upon terms, conditions, or trusts that the donor or testator designates;

for use concerning the operation, maintenance, and preservation of cemeteries or a part of a cemetery.

(b) The property received under subsection (a) is exempt from all taxation.

(c) If:

(1) a cemetery board receives money under subsection (a); and
(2) the money is not required currently to carry out the purpose or trusts upon which the money was received;

the cemetery board shall invest the money in accordance with IC 5-13-9. For investment purposes under this subsection, the cemetery board shall give preference to the purchase of bonds or securities issued and negotiated by the municipality.

(d) A cemetery board shall use the income from securities purchased under subsection (c) to carry out the trusts upon which the gift was made.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-24
Placement of bonds or other securities in safety deposit box

Sec. 24. To protect bonds or other securities held by a cemetery board, the cemetery board shall place them in a safety deposit box in the vault of a reliable financial institution located in the municipality. One (1) key to the box shall be retained by each of the following:

(1) A member of the cemetery board who is designated by the cemetery board.
(2) The controller or clerk-treasurer of the municipality.

(3) The financial institution.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-25
Improvement and development of cemetery; adoption of resolution

Sec. 25. (a) If the improvement and development of a cemetery will:

(1) provide relief for the unemployed;
(2) be a stimulus to the industry of the municipality;
(3) be a suitable project and eligible for financing as a self-liquidating project by:
(A) an agency of the federal government; or
(B) an individual, firm, limited liability company, or corporation; and
(4) result in no cost to the municipality;

the cemetery board that has or would have control and management of the cemetery may adopt a resolution expressing the determination of the board to proceed with the improvement and development of the cemetery.

(b) After adopting a resolution under subsection (a), the cemetery board may do anything necessary to secure the funds that are necessary to make the improvements and provide for the developments.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-26
Payment of preliminary expenses for preparation of grant application; powers of cemetery board in improvement and development of cemetery

Sec. 26. (a) In seeking funds for the improvement and development of a cemetery, a cemetery board may pay all preliminary expenses that the cemetery board incurs in preparing and presenting an application to a federal agency or other agency having authority to grant aid to self-liquidating projects. The expenses may be paid out of funds at the disposal of the cemetery board.

(b) Upon the adoption of its resolution of determination under section 25 of this chapter, the cemetery board shall follow the procedure established by statute for the establishment of a sewage disposal plant by the municipality.

(c) In the improvement and development of a cemetery, a cemetery board has the same powers as the board of public works or board of public works and safety of a city, including the power to do the following:

(1) Create the necessary sinking fund.
(2) Pledge the receipts of the cemetery board.
(3) Fix the rates and charges of the cemetery board at a level sufficient to pay the obligations and mortgage of the cemetery board.
(4) Otherwise obligate the property under the control of the cemetery board to secure the payment of the obligations of the

cemetery board as they mature, including interest.
As added by P.L.52-1997, SEC.39.

IC 23-14-65-27
Management and control of cemetery

Sec. 27. A cemetery board has exclusive management and control of a cemetery or cemeteries transferred to or acquired by the cemetery board, including:

(1) all of the property, whether real, personal, or mixed, acquired by the cemetery board for cemetery purposes; and

(2) the part of a public road or street that passes through the cemetery.

As added by P.L.52-1997, SEC.39.

IC 23-14-65-28
Rules; enforcement

Sec. 28. (a) A cemetery board may do the following:

(1) Make reasonable rules and regulations for the management, control, direction, care, and maintenance of the property under the control of the cemetery board.

(2) Make and enforce reasonable regulations respecting the placement and erection of markers, monuments, tombstones, and mausoleums that any person desires to place or erect in the cemetery.

(3) Seize and impound animals running at large in the cemetery and establish a suitable place for impounding them, assessing the reasonable costs to the owner.

(4) Vacate streets, alleys, roads, or highways, or parts of them, lying within lands under the control of the cemetery board in the same manner as is prescribed under the powers of street improvement authority of the municipality.

(5) Provide proper facilities for furnishing electric lighting, water, and sewer facilities in the cemetery, ordering a public utility to construct and install equipment that is necessary for these purposes.

(b) For the purposes of making rules and regulations for the management and control of property under subsection (a)(1), a cemetery board may request from the police authority of the municipality the manpower necessary to carry out and enforce the rules and regulations of the cemetery board. The police authority shall comply with the request to the extent that it is able to comply at the time the request is made, considering all other obligations and duties of the police authority. If the cemetery board and the police authority disagree over these matters, the controversy shall be settled by an order of the executive of the municipality.
As added by P.L.52-1997, SEC.39.

IC 23-14-66

Chapter 66. Care of Cemeteries by Third Class Cities and Towns

IC 23-14-66-1

Petitions for additional care and maintenance for cemetery

Sec. 1. If:

(1) a petition is presented to the legislative body of a third class city or town at a regular meeting of the legislative body;

(2) the petition is signed by at least ten percent (10%) of the freeholders and taxpayers of the city or town; and

(3) the petition states that:

(A) a cemetery lies within one-half (1/2) mile of the corporate limits of the city or town;

(B) the cemetery is in need of additional care and maintenance;

(C) at least twenty-five percent (25%) of the burial lots in the cemetery are owned, maintained, and cared for, in whole or in part, by freeholders in the city or town; and

(D) it would be in the best interests of the city or town for the city or town to provide additional care and maintenance for the cemetery;

the legislative body shall investigate the accuracy of the petition.

As added by P.L.52-1997, SEC.40.

IC 23-14-66-2

Taxation for costs of additional care and maintenance

Sec. 2. (a) If the legislative body is satisfied with the accuracy of the petition, it shall:

(1) record its findings at that meeting or at any regular meeting; and

(2) subject to subsection (b), levy and collect an annual tax, as other taxes are levied and collected, in an amount that it considers reasonable, to provide additional care and maintenance for the cemetery.

(b) Taxes collected by a city or town for the care and maintenance of a cemetery lying entirely outside of the corporate limits of the city or town may not exceed three cents ($0.03) on each one hundred dollars ($100) of assessed valuation of property in the city or town.

As added by P.L.52-1997, SEC.40.

IC 23-14-67

Chapter 67. Care of Cemeteries by Counties

IC 23-14-67-1

Application of chapter; determination of Civil War burial grounds

Sec. 1. (a) This chapter applies to a cemetery that:

(1) is without funds or sources of funds for reasonable maintenance;

(2) has suffered neglect and deterioration;

(3) may be the burial grounds for an Indiana pioneer leader or veteran of an American war, including the Revolutionary War; and

(4) either:

(A) was established before 1875; or

(B) is a burial ground for a veteran of the Civil War.

(b) A county cemetery commission shall determine if a cemetery is a burial ground for a veteran of the Civil War under subsection (a)(4)(B) based on evidence presented to the county cemetery commission from any of the following:

(1) The Indiana historical bureau established by IC 4-23-7-3.

(2) The Indiana historical society established under IC 23-6-3.

(3) A historical society (as defined in IC 36-10-13-3).

(4) The Indiana Landmarks.

(5) The division of historic preservation and archeology of the department of natural resources.

As added by P.L.52-1997, SEC.41. Amended by P.L.11-2012, SEC.1.

IC 23-14-67-2

County cemetery commission

Sec. 2. (a) The board of commissioners of a county may appoint a county cemetery commission consisting of five (5) residents of the county.

(b) The members of a county cemetery commission shall be appointed for a term of five (5) years. The board of county commissioners shall stagger the terms of the members to permit the appointment or a reappointment of one (1) commission member per year.

As added by P.L.52-1997, SEC.41.

IC 23-14-67-3

Annual tax for restoration and maintenance

Sec. 3. A county cemetery commission may request the levy of an annual tax for the purpose of restoring and maintaining one (1) or more cemeteries described in section 1 of this chapter that are located in the county. The tax may not exceed fifty cents ($0.50) on each one hundred dollars ($100) of assessed valuation of property in the county.

As added by P.L.52-1997, SEC.41.

IC 23-14-67-3.5

Annual reports filed with Indiana historical bureau

Sec. 3.5. (a) Before March 1 of each year, a county cemetery commission shall file an annual report with the Indiana historical bureau established by IC 4-23-7-3.

(b) An annual report filed under this section must include information on the following:

(1) The budget of the county cemetery commission for the preceding calendar year.

(2) Expenditures made by the county cemetery commission during the preceding calendar year.

(3) Activities of the county cemetery commission during the preceding calendar year.

(4) Plans of the county cemetery commission for the calendar year during which the report is filed.

(c) The Indiana historical bureau shall make reports filed under this section available for public inspection under IC 5-14-3.

As added by P.L.2-1998, SEC.64.

IC 23-14-67-4

Annual budget and annual report

Sec. 4. A county cemetery commission established under this chapter shall:

(1) present an annual plan and budget; and

(2) make an annual report;

to the board of county commissioners and the county council for approval.

As added by P.L.52-1997, SEC.41.

IC 23-14-68

Chapter 68. Care of Cemeteries by Townships

IC 23-14-68-1

Application of chapter

Sec. 1. (a) This chapter applies to each cemetery that:

(1) is without funds for maintenance;

(2) was in existence on February 28, 1939; and

(3) is operated by a nonprofit organization or is not managed by any viable organization.

(b) This chapter does not apply to a cemetery located on land on which property taxes are assessed and paid under IC 6-1.1-4.

As added by P.L.52-1997, SEC.42.

IC 23-14-68-2

Township trustee locating and maintaining cemeteries

Sec. 2. The trustee of each township shall locate and maintain all the cemeteries described in section 1(a) of this chapter that are within the township. However, a cemetery association claiming assistance under this chapter shall furnish a verified statement of assets and liabilities to the township trustee.

As added by P.L.52-1997, SEC.42.

IC 23-14-68-3

Maintenance of cemeteries

Sec. 3. For the purposes of this chapter, the maintenance of a cemetery includes the following:

(1) Resetting and straightening all monuments.

(2) Leveling and seeding the ground.

(3) Constructing fences where there are none and repairing existing fences.

(4) Destroying and cleaning up detrimental plants (as defined in IC 15-16-8-1), noxious weeds, and rank vegetation.

As added by P.L.52-1997, SEC.42. Amended by P.L.2-2008, SEC.48.

IC 23-14-68-4

Appropriations for care and maintenance; cemetery tax

Sec. 4. (a) The township shall appropriate enough money to provide for the care, repair, and maintenance of each cemetery described in section 1(a) of this chapter that is located within the township. Funds shall be appropriated under this subsection in the same manner as other township appropriations.

(b) The township may levy a township cemetery tax to create a fund for maintenance of cemeteries under this chapter. If a fund has not been provided for maintenance of cemeteries under this chapter, part of the township fund may be used.

As added by P.L.52-1997, SEC.42.

IC 23-14-68-5

Trustee's failure to perform duties

Sec. 5. A township trustee who fails to perform the trustee's duties under this chapter commits a Class C infraction.
As added by P.L.52-1997, SEC.42.

IC 23-14-69

Chapter 69. Establishment of Public Cemeteries by Townships

IC 23-14-69-1

Application of chapter

Sec. 1. This chapter applies to the following:

(1) A public cemetery that belongs to a township.

(2) An addition to a public cemetery that belongs to a township.

As added by P.L.52-1997, SEC.43.

IC 23-14-69-2

Nonapplicability of chapter

Sec. 2. This chapter does not apply to the following:

(1) A cemetery that is owned or controlled by a city, a town, or a voluntary association.

(2) A cemetery that is maintained by a township under IC 23-14-68.

As added by P.L.52-1997, SEC.43.

IC 23-14-69-3

Care and maintenance

Sec. 3. A township trustee shall care for and maintain each cemetery to which this chapter applies that is located in the township, keeping the cemeteries in a respectable condition by:

(1) destroying detrimental plants (as defined in IC 15-16-8-1), noxious weeds, and rank vegetation; and

(2) removing all unsightly accumulations and debris.

As added by P.L.52-1997, SEC.43. Amended by P.L.2-2008, SEC.49.

IC 23-14-69-4

Donated land

Sec. 4. (a) The township trustee may accept donations of land suitable for a public cemetery if the township trustee considers acceptance of the land to be in the best interests of the township.

(b) Donated land shall be:

(1) conveyed to the township;

(2) set apart by the trustee for a public cemetery; and

(3) kept in good condition and repair by the township trustee.

As added by P.L.52-1997, SEC.43.

IC 23-14-69-5

Purchase of land

Sec. 5. (a) If:

(1) no land suitable for a public cemetery is donated to a township; and

(2) if the township legislative body adopts a resolution approving the purchase;

the township executive may purchase land for the purpose of establishing a public cemetery.

(b) When land is purchased and conveyed to the township under

subsection (a), the land must be set apart, kept in repair, and used as provided in section 6 of this chapter.
As added by P.L.52-1997, SEC.43.

IC 23-14-69-6
Use of cemetery

Sec. 6. A public cemetery of a township may be used by the inhabitants of the township for the interment of the dead. The township trustee may prescribe regulations governing the use of the cemetery.
As added by P.L.52-1997, SEC.43.

IC 23-14-69-7
Duties of township trustee

Sec. 7. (a) When a township acquires title to land by donation, purchase, or otherwise for a public cemetery, the trustee of the township shall:

(1) lay out the land in lots with streets and walks;
(2) plat the land; and
(3) record the plat in the office of the recorder of the county.

(b) For recording a plat under subsection (a), the recorder shall collect the same fees as are allowed for similar recordings.

(c) The lots laid out and platted under subsection (a) must be numbered. A specific part of the lots must be:

(1) set apart; and
(2) designated on the plat;

for a potter's field.

(d) After the plat has been recorded, the township trustee shall appoint:

(1) one (1) disinterested freeholder of the township; and
(2) one (1) disinterested appraiser licensed under IC 25-34.1;

who are residents of Indiana to appraise and fix the value of all the lots on the plat, except the part assigned to the potter's field under subsection (c). The appraisal shall be filed with and preserved by the township trustee.
As added by P.L.52-1997, SEC.43. Amended by P.L.113-2006, SEC.18.

IC 23-14-69-8
Private sale of lots

Sec. 8. (a) The township trustee may sell and convey the lots in a cemetery to which this chapter applies at a private sale to persons who desire to purchase them. The trustee shall not sell a lot under this subsection at less than the value fixed for the lot under section 7 of this chapter.

(b) The proceeds of the sale of lots in a cemetery under subsection (a) shall be used to pay the expenses that the township trustee may incur under this chapter for the cemetery. Any surplus shall be held as a fund for use in keeping the cemetery in repair.

(c) The township trustee shall keep an accurate account of:

(1) the money received by the township trustee for the purpose of keeping the cemetery in repair; and

(2) the sums that the township trustee has paid out, and for which the trustee has taken vouchers.

As added by P.L.52-1997, SEC.43.

IC 23-14-69-9

Payment of expenses

Sec. 9. All expenses incurred by the township trustee for administering this chapter shall be paid out of the township fund of the township.

As added by P.L.52-1997, SEC.43.

IC 23-14-70

Chapter 70. Trusts for Cemetery Associations

IC 23-14-70-1

Power to receive deposit of money; use of interest

Sec. 1. (a) The board of commissioners of a county may receive from or on behalf of a:

(1) cemetery corporation;
(2) church;
(3) association; or
(4) organization;

that has been dissolved or is to be dissolved a deposit of money to be held in trust under terms that are designated in writing.

(b) Funds may be provided under section 1 of this chapter to the board of commissioners of:

(1) the county in which the cemetery of the cemetery corporation, church, association, or organization is located; or
(2) the county adjoining and nearest to the county described in subdivision (1).

(c) The interest on the funds received under subsection (a) shall be used to keep in good condition any:

(1) abandoned cemetery;
(2) public incorporated cemetery; or
(3) lots, monuments, mausoleums, vaults, or other burial structures in any cemetery.

(d) A board of commissioners may not expend more for the purpose set forth in subsection (c) than the interest earned from the loan or investment of the funds.

As added by P.L.52-1997, SEC.44.

IC 23-14-70-2

Investment of money

Sec. 2. All money received by a board of commissioners under section 1 of this chapter may be invested in compliance with IC 20-42-1-14.

As added by P.L.52-1997, SEC.44. Amended by P.L.2-2006, SEC.181.

IC 23-14-70-3

Distribution of accrued interest

Sec. 3. The county auditor shall distribute the interest accrued on any cemetery fund or funds received under section 1 of this chapter on the last Monday of January of each year to the following person or persons:

(1) The trustee of the township in which an abandoned or unincorporated cemetery is located.
(2) The trustee of the township lying on the east or south of the cemetery if the cemetery is located on a county boundary or a township boundary.
(3) The treasurer of the board of directors of an incorporated

cemetery.
As added by P.L.52-1997, SEC.44.

IC 23-14-70-4
Receipts and vouchers

Sec. 4. (a) A township trustee or treasurer of the board of directors of an incorporated cemetery who receives a distribution under section 3 of this chapter shall make a receipt or voucher for any money paid out.

(b) A receipt or voucher made under subsection (a) must state:

(1) the amount paid out;
(2) the purpose for which the money was expended; and
(3) the fund from which the money came.

(c) The receipts and vouchers made under subsection (a) shall be:

(1) filed with the county auditor before January 2 of each year; and
(2) presented to the board of commissioners for examination and approval at the January meeting of the board of commissioners.

As added by P.L.52-1997, SEC.44.

IC 23-14-70-5
Liability of auditor or county

Sec. 5. (a) The auditor is liable on the auditor's bond for any neglect or failure of duty with respect to funds received under section 1 of this chapter in the same manner as with respect to the school fund.

(b) The county is also liable for the preservation of the principal and the payment of the interest on the funds received under section 1 of this chapter to the same extent that it is liable with respect to the principal and interest of the school fund.
As added by P.L.52-1997, SEC.44.

IC 23-14-70-6
Effect of chapter on certain bequests, legacies, or endowments; payment or return of money deposited

Sec. 6. (a) This chapter does not affect a bequest, legacy, or endowment that is under or comes under the control of:

(1) the board of directors of an incorporated cemetery; or
(2) the trustees or officers of a church, association, or other organization.

(b) This chapter does not affect a bequest, legacy, or endowment received under this chapter.

(c) If a cemetery is under the control of:

(1) an organized board of directors of an incorporated cemetery; or
(2) the trustees or officers of a church, association, or other organization;

the board of county commissioners may, on its own initiative or upon request of the proper officers of the cemetery, pay over or return to the treasurer of the cemetery any money deposited with the county

under this chapter.

(d) Money paid over or returned under subsection (c) shall be held and managed by the cemetery corporation, church, association, or organization in compliance with the terms of the bequest, legacy, or endowment, and in compliance with applicable statutes.

As added by P.L.52-1997, SEC.44.

IC 23-14-71

Chapter 71. Union Chapel Cemetery Association

IC 23-14-71-1

"Association" defined

Sec. 1. As used in this chapter, "association" refers to the Union Chapel Cemetery Association.

As added by P.L.52-1997, SEC.45.

IC 23-14-71-2

Holding of title to real estate

Sec. 2. The Union Chapel Cemetery Association holds title to the real estate of the Union Chapel Cemetery in Washington Township, Marion County, Indiana, for the uses and purposes of a public cemetery.

As added by P.L.52-1997, SEC.45.

IC 23-14-71-3

Platting and acquisition of adjacent land for burial purposes

Sec. 3. The association may lay out and plat into lots all portions of the cemetery not platted and used and occupied for burial purposes on March 6, 1899, and may purchase, take, receive, and hold other real estate adjacent to the cemetery for burial purposes.

As added by P.L.52-1997, SEC.45.

IC 23-14-71-4

Powers of trustees of association

Sec. 4. The trustees of the association:

(1) have full and complete charge, care, and supervision of the cemetery; and

(2) may care for, supervise, and beautify the cemetery in the same manner and with the same powers provided by law for public cemeteries.

As added by P.L.52-1997, SEC.45.

IC 23-14-72

Chapter 72. Annexation of Unincorporated Cemetery

IC 23-14-72-1

Application of chapter

Sec. 1. This chapter does not apply to a cemetery:

(1) in which the interment of dead bodies has been forbidden before May 31, 1917, by ordinance passed by a city in Indiana; or

(2) that has been condemned for use for the interment of dead bodies by the action of:

(A) the state department of health; or

(B) a local board of health.

As added by P.L.52-1997, SEC.46.

IC 23-14-72-2

Extension of incorporated cemetery boundaries

Sec. 2. If:

(1) the grounds of a cemetery that is platted but not incorporated adjoin or are contiguous to the grounds of a cemetery that is incorporated under Indiana law; and

(2) a petition that:

(A) seeks the incorporation of the grounds of the unincorporated cemetery into the incorporated cemetery; and

(B) is signed by a majority of the owners of lots in the unincorporated cemetery;

is filed with the board of trustees or board of directors of the association of the incorporated cemetery;

the association may extend the boundaries of the incorporated cemetery to include the grounds of the unincorporated cemetery.

As added by P.L.52-1997, SEC.46.

IC 23-14-72-3

Levying assessments

Sec. 3. After the grounds of an unincorporated cemetery are brought into an incorporated cemetery under section 2 of this chapter, the association of the incorporated cemetery may periodically levy an assessment against each lot that was brought into the incorporated cemetery to provide a fund with which to maintain and provide for the upkeep of the lots.

As added by P.L.52-1997, SEC.46.

IC 23-14-72-4

Sale of lot for failure to pay assessments

Sec. 4. (a) As used in this section, "lot" includes a half-lot.

(b) If:

(1) the owner of a lot fails to pay an assessment imposed under section 3 of this chapter within the time allowed by the bylaws of the association of the incorporated cemetery; and

(2) the lot is not occupied by a grave;

the incorporated cemetery may sell the lot to satisfy the unpaid assessment after following the procedure set forth in subsection (c).

(c) The association of an incorporated cemetery may sell a lot under this section if:

(1) the association provides:

(A) notice in a writing addressed individually to the owner of the lot; or

(B) if the address of the owner is unknown, notice by publication once each week for a period of two (2) weeks in a newspaper of general circulation that is printed and published in the county in which the cemetery is located;

stating that the lot may be sold unless the assessment is paid within thirty (30) days after the date of the writing delivered under clause (A) or the second publication under clause (B); and

(2) the assessment is not paid within the period referred to in subdivision (1).

As added by P.L.52-1997, SEC.46.

IC 23-14-72-5

Collection of fixed amount for upkeep and maintenance

Sec. 5. (a) An incorporated cemetery that extends its boundaries to include the grounds of an unincorporated cemetery under section 2 of this chapter, instead of levying a periodic assessment against the owner of a lot under section 3 of this chapter, may collect a fixed amount from the owner in full satisfaction of all future assessments against the lot for the upkeep and maintenance.

(b) A cemetery association that receives money from the owners of lots under subsection (a) shall:

(1) hold and invest the money as a fund for the upkeep and maintenance of the lots; and

(2) expend only the income earned from the investment of the money under subdivision (1) in the care of the lots.

(c) After a cemetery association receives money from the owners of lots under subsection (a), the association shall keep and care for the lots.

As added by P.L.52-1997, SEC.46.

IC 23-14-73

Chapter 73. Grave Markers of Deceased Soldiers

IC 23-14-73-1

"Member of the armed forces" defined

Sec. 1. As used in this chapter, "member of the armed forces" means an individual who served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

As added by P.L.52-1997, SEC.47.

IC 23-14-73-2

Standards for markers

Sec. 2. A board of trustees or other governing body or custodian that controls a cemetery shall not refuse to allow the setting up of markers for the graves of deceased members of the armed forces in its grounds if the markers conform to the standard markers furnished by the United States government for marking the graves of deceased members of the armed forces.

As added by P.L.52-1997, SEC.47.

IC 23-14-73-3

Violation of chapter; Class C infraction

Sec. 3. A person who violates section 2 of this chapter commits a Class C infraction.

As added by P.L.52-1997, SEC.47.

IC 23-14-74

Chapter 74. Cemetery Fences and Upkeep

IC 23-14-74-1

Destruction of detrimental plants and noxious weeds

Sec. 1. A corporation, organization, association, or individual that owns and has the control and management of a public cemetery located in a township shall keep the public cemetery in a respectable condition by destroying detrimental plants (as defined in IC 15-16-8-1), noxious weeds, and rank vegetation.

As added by P.L.52-1997, SEC.48. Amended by P.L.2-2008, SEC.50.

IC 23-14-74-2

Violation of chapter; Class C infraction

Sec. 2. A person who violates section 1 of this chapter commits a Class C infraction. Each year during which a cemetery is neglected in violation of this chapter constitutes a separate offense.

As added by P.L.52-1997, SEC.48.

IC 23-14-75

Chapter 75. Eminent Domain Acquisition of Cemetery Land

IC 23-14-75-1

Application of chapter

Sec. 1. This chapter applies to a city, town, or township that:

(1) owns a cemetery that has been in existence for at least thirty (30) years; or

(2) desires to own a public cemetery.

As added by P.L.52-1997, SEC.49. Amended by P.L.163-2006, SEC.3.

IC 23-14-75-2

Power of eminent domain

Sec. 2. If land has not been appropriated or set apart by the owners by platting for a public cemetery and it is necessary to purchase real estate for the cemetery:

(1) the legislative body of the city or town; or

(2) the executive of the township;

has the power of eminent domain to condemn and appropriate the land for cemetery purposes under proceedings provided by statute.

As added by P.L.52-1997, SEC.49. Amended by P.L.163-2006, SEC.4.

IC 23-14-76

Chapter 76. Application of Corporations Laws to Cemetery Associations

IC 23-14-76-1

Application of chapter

Sec. 1. This chapter does not apply to a cemetery owned by a county or a township. However, if a cemetery owned by a county or township is sold to a private entity, the purchaser is subject to this chapter.

As added by P.L.52-1997, SEC.50.

IC 23-14-76-2

"Cemetery association" defined

Sec. 2. (a) As used in this chapter, "cemetery association" means any cemetery association, cemetery corporation, or cemetery organization that:

(1) was established under this article before July 1, 1997; and

(2) has not been reorganized under IC 23-1 or IC 23-17 before January 1, 1998.

(b) The term does not include a cemetery that is owned or operated by a recognized church, religious society, or denomination.

(c) The term includes the Union Chapel Cemetery Association (IC 23-14-71).

As added by P.L.52-1997, SEC.50.

IC 23-14-76-3

Application of business corporation and nonprofit corporation law

Sec. 3. Except as provided in section 4 of this chapter, after December 31, 1997:

(1) IC 23-1 applies to a cemetery association that has issued shares of stock; and

(2) IC 23-17 applies to a cemetery association that has not issued shares of stock.

As added by P.L.52-1997, SEC.50.

IC 23-14-76-4

Voluntary election of application of business corporation and nonprofit corporation law

Sec. 4. (a) Before January 1, 1998, a cemetery association may elect to have the provisions of IC 23-1 or IC 23-17 apply permanently to the cemetery association, irrespective of whether the cemetery association has issued shares of stock.

(b) A cemetery association electing to have IC 23-1 apply to the cemetery association may:

(1) incorporate or reincorporate under IC 23-1; or

(2) if the cemetery association is a corporation, comply with the following procedures:

(A) The board of directors or trustees must adopt a resolution electing to have the provisions of IC 23-1 apply to the

cemetery association.

(B) The resolution must specify a date (before January 1, 1998) after which the provisions of IC 23-1 will apply to the cemetery association.

(C) The resolution must be filed with the secretary of state before the date specified under clause (B).

(c) A cemetery association electing to have IC 23-17 apply to the cemetery association may:

(1) incorporate or reincorporate under IC 23-17; or

(2) if the cemetery association is a corporation, accept the provisions of IC 23-17 by taking the actions set forth in IC 23-17-1-1.

As added by P.L.52-1997, SEC.50.

IC 23-14-77

Chapter 77. Vaults Used to Encase Human Remains

IC 23-14-77-1

Disclosure requirement

Sec. 1. A person who sells or otherwise furnishes to another person a vault that:

(1) will be used to encase the remains of a deceased individual; and

(2) is not airtight and watertight;

shall inform the other person in writing that the vault is not airtight and watertight before the person sells or otherwise furnishes the vault to the other person.

As added by P.L.61-2008, SEC.3.

IC 23-14-77-2

Class B infraction

Sec. 2. A person who violates this chapter commits a Class B infraction.

As added by P.L.61-2008, SEC.3.

IC 23-15

ARTICLE 15. MISCELLANEOUS PROVISIONS

IC 23-15-1

Chapter 1. Assumed Business Names

IC 23-15-1-1

Filing of certificate of assumed name; record; applicability entities; consistent entity indicator; notice of discontinuance of use; fees

Sec. 1. (a) Except as otherwise provided in section 2 of this chapter, a person or general partnership conducting or transacting business in Indiana under a name, designation, or title other than the real name of the person or general partnership conducting or transacting the business shall file for record, in the office of the recorder of each county in which a place of business or an office of the person or general partnership is situated, a certificate stating the assumed name or names to be used and the full name and address of the person or general partnership engaged in or transacting business.

(b) The recorder shall keep a record of the certificates filed under this section and shall keep an index of the certificates showing, in alphabetical order, the names of the persons and general partnerships having certificates on file in the recorder's office, and the assumed name or names which they intend to use in carrying on their businesses as shown by the certificates.

(c) Before the dissolution of any business for which a certificate is on file with the recorder, the person or general partnership to which the certificate appertains shall file a notice of dissolution for record in the recorder's office.

(d) The county recorder shall charge a fee in accordance with IC 36-2-7-10 for each certificate, notice of dissolution, and notice of discontinuance of use filed with the recorder's office and recorded under this chapter. The funds received shall be receipted as county funds the same as other money received by the recorders.

(e) Except as provided in section 2 of this chapter:

(1) a corporation conducting business in Indiana under a name, designation, or title other than the name of the corporation as shown by its articles of incorporation;

(2) a foreign corporation conducting business in Indiana under a name, designation, or title other than the name of the foreign corporation as shown by its application for a certificate of authority to transact business in Indiana;

(3) a limited partnership conducting business in Indiana under a name, designation, or title other than the name of the limited partnership as shown by its certificate of limited partnership;

(4) a foreign limited partnership conducting business in Indiana under a name, designation, or title other than the name of the limited partnership as shown by its application for registration;

(5) a limited liability company conducting business in Indiana under a name, designation, or title other than as shown by its articles of organization;

(6) a foreign limited liability company conducting business in Indiana under a name, designation, or title other than the name of the limited liability company as shown by its application for registration;

(7) a limited liability partnership conducting business in Indiana under a name, designation, or title other than the name of the limited liability partnership as shown by its application for registration; and

(8) a foreign limited liability partnership conducting business in Indiana under a name, designation, or title other than the name of the limited liability partnership as shown by its application for registration;

shall file with the secretary of state a certificate stating the assumed name or names to be used and the full name and address of the corporation's, limited partnership's, limited liability company's, or limited liability partnership's, foreign or domestic, principal office in Indiana.

(f) An entity may not include an entity indicator, such as "Inc.", "Corp.", "LLC", "LP", "LLP", or similar description in an assumed business name filing, that is inconsistent with the entity type for which the assumed business name is being filed. However, if the entity filing the assumed business name has filed articles of conversion, domestication, or merger that changes the entity type, the entity indicator in the assumed business name filing may be inconsistent with the entity type if the conversion, domestication, or merger occurred within the twelve (12) months before the date of the assumed business name filing.

(g) A person, general partnership, corporation, limited partnership, limited liability company, or limited liability partnership, foreign or domestic, that has filed a certificate of assumed business name or names under subsection (a) or (e) may file a notice of discontinuance of use of assumed business name or names with the secretary of state or with the recorder's office in which the certificate was filed or transferred. The secretary of state or the recorder shall keep a record of notices filed under this subsection.

(h) This subsection applies to a foreign or domestic corporation, limited partnership, limited liability company, or limited liability partnership that, before July 1, 2009:

(1) filed a certificate stating the assumed name or names to be used in carrying out the entity's business; and

(2) filed the certificate:

(A) with the secretary of state; and

(B) in the recorder's office.

The entity shall file a notice of dissolution or notice of discontinuance of use of the assumed business name or names with the secretary of state and with the recorder's office in which the certificate was filed or transferred.

(i) The secretary of state shall collect the following fees when a copy of a certificate is filed with the secretary of state under subsection (e):

(1) A fee of:
(A) twenty dollars ($20) for an electronic filing; or
(B) thirty dollars ($30) for a filing other than an electronic filing;
from a corporation (other than a nonprofit corporation), limited liability company, or a limited partnership.
(2) A fee of:
(A) ten dollars ($10) for an electronic filing; or
(B) twenty-six dollars ($26) for a filing other than an electronic filing;
from a nonprofit corporation.

The secretary of state shall prescribe the electronic means of filing certificates for purposes of collecting fees under this subsection. A fee collected under this subsection is in addition to any other fee collected by the secretary of state.

(Formerly: Acts 1909, c.151, s.1; Acts 1949, c.61, s.1; Acts 1965, c.241, s.1.) As amended by P.L.34-1987, SEC.393; P.L.146-1988, SEC.1; P.L.231-1989, SEC.1; P.L.226-1989, SEC.20; P.L.75-1990, SEC.12; P.L.8-1993, SEC.327; P.L.96-1993, SEC.3; P.L.230-1995, SEC.18; P.L.277-2001, SEC.11; P.L.106-2008, SEC.50; P.L.133-2009, SEC.40; P.L.63-2014, SEC.12.

IC 23-15-1-2
Exceptions

Sec. 2. This chapter does not apply to:
(1) a person doing business under a name, designation, or title that includes the true surnames of the person or, if the person is not an individual, some or all of the true surnames of the individuals comprising the person; and
(2) a church, a lodge, or an association the business of which is conducted or transacted by trustees under a written instrument or declaration of trust that is recorded in the recorder's office of each county in which the business is conducted or transacted.

(Formerly: Acts 1909, c.151, s.2; Acts 1965, c.241, s.2.) As amended by P.L.34-1987, SEC.394; P.L.226-1989, SEC.21.

IC 23-15-1-3
Violation

Sec. 3. A person, corporation, foreign corporation, limited liability company, foreign limited liability company, limited partnership, or foreign limited partnership that violates this chapter commits a Class B infraction.

(Formerly: Acts 1909, c.151, s.3; Acts 1965, c.241, s.3.) As amended by Acts 1978, P.L.2, SEC.2324; P.L.226-1989, SEC.22; P.L.8-1993, SEC.328.

IC 23-15-1-4
Compliance with former act

Sec. 4. Compliance with the requirements Acts 1941, c.192, prior to July 8, 1965, shall be deemed compliance with this chapter.

(Formerly: Acts 1965, c.241, s.6.) As amended by P.L.34-1987, SEC.395.

IC 23-15-1-5
"Person" defined

Sec. 5. As used in this chapter, "person" means an individual, association, or other legal entity. The term does not include a:

(1) corporation (as defined in IC 23-1-20-5);
(2) foreign corporation (as defined in IC 23-1-20-11);
(3) foreign limited partnership (as defined in IC 23-16-1-6);
(4) limited partnership (as defined in IC 23-16-1-9);
(5) limited liability company (as defined in IC 23-18-1-11); or
(6) foreign limited liability company (as defined in IC 23-18-1-9).

As added by P.L.226-1989, SEC.23. Amended by P.L.8-1993, SEC.329.

IC 23-15-2
Chapter 2. Resident Agents

IC 23-15-2-1
Repealed
(Repealed by P.L.63-2014, SEC.13.)

IC 23-15-2-2
Repealed
(Repealed by P.L.4-1988, SEC.16.)

IC 23-15-3
Repealed

(Repealed by Acts 1971, P.L.364, SEC.4.)

IC 23-15-4
Chapter 4. Use of Facsimile Signatures

IC 23-15-4-1
Facsimile signatures on corporate bonds and notes

Sec. 1. Subject to any restrictions contained in its articles of incorporation or bylaws, the signatures of the officers of any corporation organized under any law of this state, on the bonds, notes, debentures, or other evidences of indebtedness of the corporation may be facsimiles, and the facsimiles on such instruments are deemed the equivalent of and constitute the written signatures of the officers for all purposes, including the full satisfaction of any signature requirements of the laws of this state on the negotiable bonds, notes, debentures, and other evidences of indebtedness of the corporation.

As added by P.L.149-1986, SEC.57.

IC 23-15-5

Chapter 5. Authority to Make Charitable Contributions

IC 23-15-5-1

Right to make charitable contributions

Sec. 1. Every railroad company, rural loan and saving association, credit union, or corporation organized for the conduct of a banking, insurance, surety, trust, safe deposit, mortgage guarantee, or building and loan business organized under any law of this state may, subject to any restrictions contained in the articles of incorporation, make contributions out of the gross income of the corporation to such entities, and for any one (1) or more of such purposes, as the board of directors may reasonably believe will constitute deductions from gross income in computing the net income of the corporation subject to tax, pursuant to the Internal Revenue Code.

As added by P.L.149-1986, SEC.58. Amended by P.L.2-1987, SEC.34.

IC 23-15-6

Chapter 6. Annual Report Requirements

IC 23-15-6-1

Application of chapter

Sec. 1. This chapter applies to a corporation organized in Indiana, or doing business in Indiana, regardless of the law under which it was incorporated or admitted to do business in Indiana and whether or not it is required to file an annual or biennial report with any other governmental agency, if the corporation is not required to file an annual or biennial report with the secretary of state under other provisions of this title.

As added by P.L.107-1987, SEC.49. Amended by P.L.228-1995, SEC.13.

IC 23-15-6-2

Delivery of report to secretary of state

Sec. 2. A corporation subject to this chapter shall deliver to the secretary of state for filing:

(1) an annual report; or

(2) a biennial report, if the corporation is a domestic corporation organized for profit;

that contains the information required by IC 23-1-53-3.

As added by P.L.107-1987, SEC.49. Amended by P.L.228-1995, SEC.14.

IC 23-15-6-3

Simultaneous delivery with IC 23-1-53-3 reports

Sec. 3. Annual or biennial reports required by this chapter must be delivered at the same times as those set forth in IC 23-1-53-3.

As added by P.L.107-1987, SEC.49. Amended by P.L.228-1995, SEC.15.

IC 23-15-6-4

Notice of incomplete report; timely correction

Sec. 4. If an annual or a biennial report does not contain the information required by this chapter, the secretary of state shall promptly notify the reporting corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

As added by P.L.107-1987, SEC.49. Amended by P.L.228-1995, SEC.16.

IC 23-15-6-5

Administrative dissolution upon failure to report

Sec. 5. (a) The secretary of state may commence a proceeding under this section to administratively dissolve a corporation incorporated under Indiana law if the corporation does not deliver its

annual or biennial report to the secretary of state within sixty (60) days after it is due.

(b) The procedure for administrative dissolution under this section is the same as that set forth in IC 23-1-46-2.

(c) The procedure for reinstatement after an administrative dissolution under this section is the same as that set forth in IC 23-1-46-3.

(d) The procedures for denial and appeal of a denial of reinstatement under this section are the same as those set forth in IC 23-1-46-4.

As added by P.L.107-1987, SEC.49. Amended by P.L.228-1995, SEC.17.

IC 23-15-6-6

Revocation of certificate of authority upon failure to report

Sec. 6. (a) The secretary of state may commence a proceeding under this section to revoke the certificate of authority of a corporation admitted to do business in Indiana if the corporation does not deliver its annual report to the secretary of state within (60) days after it is due.

(b) The procedure for revocation of a certificate of authority under this section is the same as that set forth in IC 23-1-51-2.

(c) The procedure for appeal of a revocation under this section is the same as that set forth in IC 23-1-51-3.

As added by P.L.107-1987, SEC.49.

IC 23-15-7
Repealed

(Repealed by P.L.177-1991, SEC.11.)

IC 23-15-8

Chapter 8. Use of "Bank" in Business Entity Name

IC 23-15-8-1

"Business entity" defined

Sec. 1. As used in this chapter, "business entity" means:

(1) a corporation;

(2) a limited liability company;

(3) an association;

(4) a partnership in any form; or

(5) any other similar form of business organization;

whether organized for profit or not for profit.

As added by P.L.277-2001, SEC.12.

IC 23-15-8-2

Review of use of term "bank"

Sec. 2. (a) If a new filing or an amendment changing the name of the business entity is received by the secretary of state and the new filing or the amendment contains "bank" in the business entity name, the filing must be forwarded to the department of financial institutions for review of the use of the term "bank".

(b) A document under subsection (a) may only be filed by the secretary of state after the filing has been approved by the department of financial institutions.

(c) The department of financial institutions shall review each filing forwarded to the department of financial institutions under section 2 of this chapter and provide notice of the results of the review to the secretary of state.

As added by P.L.277-2001, SEC.12.

IC 23-15-8-3

Notice of violation; administrative dissolution proceedings

Sec. 3. (a) If the department of financial institutions determines that a business entity has violated IC 28-1-20-4, the department of financial institutions shall notify the secretary of state of the violation.

(b) The secretary of state shall commence a proceeding under this section to administratively dissolve a business entity if:

(1) the name of the business entity contains the word "bank", "banc", or "banco"; and

(2) the department of financial institutions determines that the business entity violates IC 28-1-20-4.

(c) If the secretary of state commences an administrative dissolution under subsection (b), the secretary of state shall serve the business entity with written notice of the determination under subsection (b)(2). The secretary of state shall, at the same time notice is sent to the business entity, provide a copy of the notice to the department of financial institutions.

(d) If a business entity that receives a notice under subsection (c) does not:

(1) correct the grounds for dissolution; or

(2) demonstrate to the reasonable satisfaction of the department of financial institutions that the grounds for dissolution do not exist;

at any time after sixty (60) days after service of the notice is perfected, the department of financial institutions shall notify the secretary of state in writing of the continuing violation. After receiving the written notice from the department of financial institutions, the secretary of state shall administratively dissolve the business entity by signing a certificate of dissolution that recites the grounds for dissolution and the effective date of the dissolution. The secretary of state shall file the original certificate of dissolution and serve a copy of the certificate of dissolution on the business entity.

(e) A business entity administratively dissolved under this section may carry on only those activities necessary to wind up and liquidate the business entity's affairs.

As added by P.L.277-2001, SEC.12. Amended by P.L.73-2004, SEC.14.

IC 23-15-8-4

Appeals

Sec. 4. (a) The business entity may appeal the administrative dissolution to the circuit court or superior court of the county:

(1) where the business entity's principal office is located; or

(2) if the principal office is not located in Indiana, where the business entity's registered office is located;

not later than thirty (30) days after service of the notice of denial is perfected.

(b) The court may do the following:

(1) Order the secretary of state to reinstate the dissolved business entity.

(2) Take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.277-2001, SEC.12.

IC 23-15-8-5

Dissolution in addition to other penalties

Sec. 5. Dissolution under this section is in addition to any penalties imposed upon the business entity by IC 28-1-20-4(j).

As added by P.L.277-2001, SEC.12.

IC 23-15-9
Chapter 9. Miscellaneous

IC 23-15-9-1
List of dissolved entities

Sec. 1. The secretary of state shall, upon request from the department of workforce development, provide to the department of workforce development a list of:

(1) corporations;
(2) nonprofit corporations;
(3) limited partnerships; and
(4) limited liability companies;

that have been administratively, judicially, or voluntarily dissolved under IC 23.

As added by P.L.277-2001, SEC.13.

IC 23-15-10

Chapter 10. Issuance of Interrogatories and Investigative Claims

IC 23-15-10-1

"Entity"

Sec. 1. As used in this chapter, "entity" means any entity listed in IC 23-1-20-10.

As added by P.L.63-2014, SEC.14.

IC 23-15-10-2

Written interrogatories

Sec. 2. The secretary of state may propound to any:

(1) domestic or foreign entity that the secretary of state has reason to believe is subject to the provisions of this title under which the domestic entity was created or foreign entity is permitted to transact business in Indiana; and

(2) any officer, director, member, manager, or partner of the entity described in subdivision (1);

any written interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether the entity was formed using suspected fraudulent or fictitious filings or is being used to commit fraud.

As added by P.L.63-2014, SEC.14.

IC 23-15-10-3

Requirements to answer interrogatories

Sec. 3. (a) The interrogatories must be answered not later than thirty (30) days after the date the interrogatories are mailed or within an additional period approved, in writing, by the secretary of state. The answers to the interrogatories must be:

(1) full and complete; and

(2) made in writing and under oath.

(b) If the interrogatories are directed to an individual, the individual shall answer the interrogatories.

(c) If the interrogatories are directed to an entity, a duly appointed officer, an agent, a member, a manager, or a partner of the entity shall answer the interrogatories.

As added by P.L.63-2014, SEC.14.

IC 23-15-10-4

Certification to attorney general

Sec. 4. The secretary of state shall certify to the attorney general, for an action as the attorney general reasonably considers appropriate, all interrogatories and answers to the interrogatories that disclose a violation of any of the provisions of this title under which the entity was created, requiring or permitting action by the attorney general.

As added by P.L.63-2014, SEC.14.

IC 23-15-10-5

Failure to respond to interrogatories

Sec. 5. The secretary of state may:

(1) remove fraudulent filings from the secretary of state's record for the entity; or

(2) administratively dissolve or revoke a certificate of authority;

for failure to timely and adequately respond to interrogatories under section 3 of this chapter.

As added by P.L.63-2014, SEC.14.

IC 23-15-10-6

Adopting rules

Sec. 6. The secretary of state may adopt rules under IC 4-22-2 that are necessary to carry out this chapter.

As added by P.L.63-2014, SEC.14.

IC 23-16

ARTICLE 16. LIMITED PARTNERSHIPS

IC 23-16-1

Chapter 1. Definitions

IC 23-16-1-1

Applicability of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-2

Certificate of limited partnership

Sec. 2. "Certificate of limited partnership" means a certificate described in IC 23-16-3-2 and such a certificate as amended or restated.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-3

Contribution

Sec. 3. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to transfer cash or property or to perform services, that a partner transfers to a limited partnership in the capacity of partner.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-4

Effective date

Sec. 4. "Effective date" means a date specified in a certificate filed with the secretary of state declaring when the certificate becomes effective.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-5

Event of withdrawal of a general partner

Sec. 5. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in IC 23-16-5-2.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-6

Foreign limited partnership

Sec. 6. "Foreign limited partnership" means a partnership formed under the laws of any jurisdiction other than Indiana, including a foreign country or other foreign jurisdiction in which the partnership formed has as partners one (1) or more general partners and one (1) or more limited partners.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-7

General partner

Sec. 7. "General partner" means a person who has been admitted to a limited partnership or a foreign limited partnership as a general partner in accordance with the partnership agreement and is named in the certificate of limited partnership or similar instrument under which the limited partnership is organized, if so required.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-8

Limited partner

Sec. 8. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the laws of Indiana or, in the case of a foreign limited partnership, in accordance with the laws of the state, foreign country, or other foreign jurisdiction under which the foreign limited partnership is organized.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-9

Limited partnership; domestic limited partnership

Sec. 9. "Limited partnership" and "domestic limited partnership" mean a partnership formed by two (2) or more persons under the laws of Indiana that has one (1) or more general partners and one (1) or more limited partners.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-10

Partner

Sec. 10. "Partner" means a limited or general partner.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-11

Partnership agreement

Sec. 11. "Partnership agreement" means a written agreement of the partners as to the affairs of a limited partnership and the conduct of its business.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-12

Partnership interest

Sec. 12. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

As added by P.L.147-1988, SEC.1.

IC 23-16-1-13

Person

Sec. 13. "Person" means an individual, partnership, limited liability company, domestic limited partnership, foreign limited partnership, trust, estate, association, corporation, or any other

individual or entity whether acting in its own capacity or in any representative capacity.
As added by P.L.147-1988, SEC.1. Amended by P.L.8-1993, SEC.330.

IC 23-16-1-14
State

Sec. 14. "State" means the District of Columbia, the Commonwealth of Puerto Rico, or any state, territory, possession, or other jurisdiction of the United States.
As added by P.L.147-1988, SEC.1.

IC 23-16-2
Chapter 2. General Provisions

IC 23-16-2-0.2
Effect of repeal of IC 23-4-2

Sec. 0.2. The repeal of IC 23-4-2 by P.L.147-1988 does not impair:

(1) or otherwise affect the organization or the continued existence of a limited partnership existing before July 1, 1988; or

(2) any contract or affect any right accrued before July 1, 1988.

As added by P.L.220-2011, SEC.382.

IC 23-16-2-1
Name

Sec. 1. (a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) must contain the words "limited partnership" or the abbreviation "L.P.";

(2) may not contain the name of a limited partner unless:

(A) it is also the name of a general partner or the corporate name of a corporate general partner; or

(B) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its partnership agreement; and

(4) except as provided in subsection (b), must be such as to distinguish it upon the records in the office of the secretary of state from the name of any limited partnership or other business entity reserved, registered, or organized under the laws of Indiana or qualified to do business or registered as a foreign limited partnership in Indiana.

(b) A limited partnership may apply to the secretary of state to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (a). The secretary of state shall authorize use of the name applied for if:

(1) the other domestic or foreign limited partnership or other business entity files its written consent to the use of its name, signed by any current general partner of the other limited partnership and verified subject to the penalties for perjury; or

(2) the applicant delivers to the secretary of state a certified copy of a final court judgment establishing the applicant's right to use the name applied for in Indiana.

As added by P.L.147-1988, SEC.1. Amended by P.L.178-2002, SEC.103.

IC 23-16-2-2
Reservation of name

Sec. 2. (a) A person may reserve the exclusive right to the use of a name, including a fictitious name by a foreign limited partnership whose name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the exclusive use of the applicant for renewable one hundred twenty (120) day periods.

(b) The owner of a reserved name may transfer to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

As added by P.L.147-1988, SEC.1. Amended by P.L.277-2001, SEC.14.

IC 23-16-2-2.5

Foreign limited partnerships; registration of name

Sec. 2.5. (a) A foreign limited partnership may register its name, or its name with any addition required by section 1 of this chapter, if the name is distinguishable upon the records of the secretary of state as provided in section 1 of this chapter.

(b) A foreign limited partnership registers its name, or its name with any addition required by section 1 of this chapter, by delivering to the secretary of state for filing an application setting forth:

(1) its name, or its name with any addition required by section 1 of this chapter; and

(2) the state or country and date of its formation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign limited partnership whose registration is effective may renew the registration for successive years by delivering to the secretary of state for filing a renewal application that complies with subsection (b). The renewal application must be filed between October 1 and December 31 of the preceding year. The filing of the renewal application renews the registration for the following calendar year.

(e) A foreign limited partnership whose registration is effective may thereafter register as a foreign limited partnership under that name or consent in writing to the use of that name by a limited partnership thereafter formed under this article or by another foreign limited partnership thereafter authorized to transact business in Indiana. The registration terminates when the domestic limited partnership is formed or the foreign limited partnership registers or consents to the registration of another foreign limited partnership under the registered name.

As added by P.L.277-2001, SEC.15.

IC 23-16-2-3

Maintenance of office and registered agent; agent's consent; communications contact information; resignation; changing registered agent's office

Sec. 3. (a) Each limited partnership shall have and continuously maintain:

(1) an office at an address set forth in the certificate of limited partnership that:

(A) may be (but need not be) a place of its business in Indiana; and

(B) must be the repository for the records required to be maintained by section 6 of this chapter; and

(2) a registered agent whose business address is in Indiana, for service of process on the limited partnership, which agent must be:

(A) an individual resident of Indiana; or

(B) a domestic corporation or a foreign corporation authorized to do business in Indiana.

(b) Each limited partnership formed after June 30, 2014, under the laws of Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each limited partnership formed under the laws of Indiana shall provide to the limited partnership's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the limited partnership; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the limited partnership.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a limited partnership under subsection (c).

(e) If a limited partnership fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 4 of this chapter, as the registered agent for the limited partnership.

(f) A limited partnership may change its registered agent by delivering to the secretary of state for filing a statement containing the following:

(1) The name of the limited partnership.

(2) The name of its current registered agent.

(3) The name and business address of the new registered agent and the new agent's consent to the appointment (either on the statement or attached to it).

(g) If a registered agent changes the address of the registered agent's business office, the registered agent must notify the limited partnership in writing of the change, and sign and deliver to the secretary of state for filing a statement that complies with the requirements of subsection (f) and recites that the limited partnership has been notified of the change.

As added by P.L.147-1988, SEC.1. Amended by P.L.63-2014, SEC.15.

IC 23-16-2-4
Resignation of registered agent; effective date of agency termination

Sec. 4. (a) A registered agent may resign the agency appointment by signing and delivering to the secretary of state for filing the signed original and two (2) exact or conformed copies of a statement of resignation.

(b) After filing the statement, the secretary of state shall mail one (1) copy to the limited partnership at the office referred to in section 3(a)(1) of this chapter.

(c) The agency appointment is terminated on the thirty-first day after the date on which the statement was filed.

As added by P.L.147-1988, SEC.1.

IC 23-16-2-5
Service of process on limited partnership

Sec. 5. (a) A limited partnership's registered agent is the limited partnership's agent for service of process, notice, or demand required or permitted by law to be served on the limited partnership.

(b) If a limited partnership does not have a registered agent, or if the limited partnership's agent cannot with reasonable diligence be served, the limited partnership may be served by registered or certified mail, return receipt requested, addressed to the general partner of the limited partnership (as the term "general partner" is used in Trial Rule 4.6(a)(2) of the Indiana Rules of Trial Procedure) at the address of the general partner as shown in the certificate of limited partnership. Service is perfected under this subsection upon the earliest of:

(1) the date the partnership receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the partnership; or

(3) five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a limited partnership.

As added by P.L.147-1988, SEC.1. Amended by P.L.226-1989, SEC.24.

IC 23-16-2-6
Records to be kept

Sec. 6. (a) Each limited partnership shall keep at the office required under section 3(a) of this chapter the following:

(1) A current list of the full name and last known mailing address of each partner (specifying separately the general partners and the limited partners) in alphabetical order.

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed.

(3) Copies of the limited partnership's federal, state, and local

income tax returns and reports, if any, for the three (3) most recent years.

(4) Copies of the partnership agreement, any amendments to the partnership agreement, any amended and restated partnership agreements, and any financial statements of the limited partnership for the three (3) most recent years.

(5) Unless contained in a partnership agreement:

(A) the amount of cash and a description and statement of the value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(B) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(C) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(D) any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) Records kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

As added by P.L.147-1988, SEC.1.

IC 23-16-2-7

Nature of business

Sec. 7. A limited partnership may carry on any business that a partnership without limited partners may carry on. This article does not authorize a limited partnership to make insurance within the meaning of IC 27-1.

As added by P.L.147-1988, SEC.1.

IC 23-16-2-8

Business transactions of partner with partnership

Sec. 8. (a) Except as provided in the partnership agreement, a partner may:

(1) lend money to;

(2) borrow money from;

(3) act as guarantor or surety for;

(4) provide collateral for the obligations of; and

(5) transact other business;

with the limited partnership.

(b) Except as provided in the partnership agreement, and subject to other applicable law, a partner has the same rights and obligations with respect to the limited partnership as a person who is not a partner.

As added by P.L.147-1988, SEC.1.

IC 23-16-2-9

Indemnification of partners, employees, officers, or agents

Sec. 9. (a) A domestic or foreign limited partnership may

indemnify a person made a party to an action because the person is or was a partner, employee, officer, or agent of the partnership against liability incurred in the action if:

(1) the person's conduct was in good faith; and

(2) the person reasonably believed:

(A) in the case of conduct in the person's capacity as a partner, that the person's conduct was in the best interests of the partnership; and

(B) in all other cases that the person's conduct was at least not opposed to the best interests of the limited partnership or foreign limited partnership; and

(3) in the case of any criminal action, the person either:

(A) had reasonable cause to believe the person's conduct was lawful; or

(B) had no reasonable cause to believe the person's conduct was unlawful.

(b) The indemnification provided for in subsection (a) does not exclude any other rights to indemnification that a partner, employee, officer, or agent of the domestic or foreign limited partnership may have under the partnership agreement or with the written consent of all partners.

As added by P.L.147-1988, SEC.1.

IC 23-16-3
Chapter 3. Formation and Certificate of Limited Partnership

IC 23-16-3-1
Partnership agreement

Sec. 1. (a) A limited partnership must have a partnership agreement. Except as provided in IC 23-16-8-2 and IC 23-16-8-4, a person has the rights, and is subject to the liabilities, of a general partner only if the person has signed a partnership agreement in person or by an attorney-in-fact.

(b) The partnership agreement of a limited partnership may be amended from time to time. Unless the partnership agreement provides otherwise, an amendment of the partnership agreement may be made only with the written consent of each limited partner who may be adversely affected by an amendment that would accomplish any of the following:

(1) Increase the obligations of any limited partner to make contributions.

(2) Alter the allocation for tax purposes of any items of income, gain, loss, deduction, or credit.

(3) Alter the manner of computing the distributions of any partner.

(4) Alter, except as provided in IC 23-16-4-2(a), the voting or other rights of any limited partner.

(5) Allow the obligation of a partner to make a contribution to be compromised by written consent of fewer than all partners.

(6) Alter the procedures for amendment of the partnership agreement.

As added by P.L.147-1988, SEC.1.

IC 23-16-3-2
Certificate of limited partnership

Sec. 2. (a) To form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate must include the following:

(1) The name of the limited partnership.

(2) The address of the office and the name and address of the agent for service of process required to be maintained by IC 23-16-2-3.

(3) The name and the business address of each general partner.

(4) The latest date upon which the limited partnership is to dissolve.

(5) Any other matters the general partners agree to include.

(b) A limited partnership is formed at the time of the filing of the initial certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. Unless the certificate specifies an effective date that is different from the filing date, the time and date of the filing of the certificate is conclusive evidence as to when

a limited partnership is formed.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-3
Amendment to certificate

Sec. 3. (a) A certificate of limited partnership is amended by filing a certificate of amendment in the office of the secretary of state. The certificate of amendment must include the following:

(1) The name of the limited partnership.

(2) The amendment to the certificate of limited partnership.

(b) Within sixty (60) days after any of the following events occurs, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed:

(1) The admission of a new general partner.

(2) The withdrawal of a general partner.

(3) The continuation of the business under IC 23-16-9-1 after an event of withdrawal of a general partner.

(4) The discovery by a general partner that any statement in the certificate of limited partnership was false when made.

(5) The discovery by a general partner that any facts or arrangements described in the certificate of limited partnership have changed, making the certificate inaccurate in any respect.

(c) The filing of an amendment reflecting the occurrence of an event referred to in subsection (b) within the time required under subsection (b) absolves a person from any liability that might arise because the certificate did not reflect the occurrence of that event before the filing of the amendment.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-4
Cancellation of certificate

Sec. 4. A certificate of limited partnership shall be cancelled by filing a certificate of cancellation upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and must include the following:

(1) The name of the limited partnership.

(2) The date of filing of its certificate of limited partnership.

(3) The reason for filing the certificate of cancellation.

(4) The effective date or time (which must be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate.

(5) Any other information the person filing the certificate of cancellation determines.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-5
Execution of certificates

Sec. 5. (a) Each certificate required or permitted to be filed in the office of the secretary of state under this article shall be executed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners.

(2) A certificate of amendment or restatement must be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; however, if there are no general partners a certificate of amendment or restatement must be signed by each new general partner as designated in the certificate.

(3) A certificate of cancellation must be signed by all general partners; however, if there is no general partner, a certificate of cancellation must be signed by a majority in interest of the limited partners.

(b) Any person may sign a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact. Powers of attorney relating to the signing of a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact need not be sworn to, verified, acknowledged, or signed in the presence of a notary public, and need not be filed with the secretary of state, but must be retained among the records of the partnership. A power of attorney may be included in the partnership agreement and need not be a separate document.

(c) The execution of a certificate by any person constitutes an oath or affirmation under the penalties of perjury that to the best of the person's knowledge and belief the statements made in the certificate are true.

(d) A signature on a document under this section that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

As added by P.L.147-1988, SEC.1. Amended by P.L.130-2006, SEC.22; P.L.40-2013, SEC.3.

IC 23-16-3-6
Execution by judicial act

Sec. 6. If a person required to execute any certificate under section 5 of this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit or superior court of the county in which the office described in IC 23-16-2-3 is located to direct the execution of the certificate. If the office referred to in IC 23-16-2-3 is not within Indiana, the petition

may be made to the circuit or superior court of the county in which the business address of the registered agent referred to in IC 23-16-2-3 is located. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to file a certificate in form and substance as directed by the court.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-7
Filing in office of secretary of state

Sec. 7. (a) The original signed copy (together with a duplicate copy, which may be either a signed or conformed copy) of the certificate of limited partnership, of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation), and of any restated certificate shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that a certificate does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) endorse on the original and each copy the word "filed" and the date and time of the filing;
(2) file the original certificate; and
(3) return the copy to the person who filed it or to that person's representative.

(b) In the absence of fraud an endorsement by the secretary of state under subsection (a) is conclusive evidence of the date and time of the filing of the certificate.

(c) Upon the filing of a certificate of amendment (or judicial decree of amendment) or a restated certificate in the office of the secretary of state, or upon the effective date or time provided for in a certificate of amendment (or judicial decree of amendment) or a restated certificate, the certificate of limited partnership is amended or restated as set forth in the certificate of amendment or restated certificate. Upon the filing of a certificate of cancellation (or a judicial decree of cancellation), or upon the effective date or time of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-8
Liability for false statement in certificate

Sec. 8. (a) Except as provided in subsection (b), if any certificate of limited partnership or certificate of amendment or cancellation contains a materially false statement, a person who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) any person who executed the certificate, or caused another to execute the certificate on that person's behalf, and who knew

the statement to be false at the time the certificate was executed;
(2) any general partner who knew or should have known the statement to be false at the time the certificate was executed; and
(3) any general partner who:
(A) after the execution of the certificate, but at least sixty (60) days before the statement was reasonably relied upon, knew or should have known that any arrangement or other fact described in a statement in the certificate had changed, making the statement inaccurate; and
(B) failed to cancel or amend the certificate or to file a petition for the cancellation or amendment of the certificate under section 6 of this chapter before the statement was reasonably relied upon.

(b) A general partner is not liable for failing to cancel or amend a certificate or for failing to file a petition for the amendment or cancellation of a certificate under subsection (a)(2) if a certificate of amendment, certificate of cancellation, or petition for amendment or cancellation is filed within sixty (60) days after the general partner knew or should have known to the extent provided in subsection (a) that the statement in the certificate was false in any material respect.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-9
Scope of notice

Sec. 9. The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and is notice of all other facts that are required to be set forth in a certificate of limited partnership under section 2 of this chapter and that are set forth in the certificate.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-10
Delivery of certificates to limited partners

Sec. 10. Upon the return by the secretary of state of a certificate marked "Filed" under section 7 of this chapter, the general partners shall promptly deliver or mail a copy of the certificate to each limited partner, unless the partnership agreement provides otherwise.
As added by P.L.147-1988, SEC.1.

IC 23-16-3-11
Integration and restatement of certificate

Sec. 11. (a) Whenever it so desires, a limited partnership may integrate into a single instrument all of the provisions of its certificate of limited partnership that are in effect and operative as a result of the previous filing with the secretary of state of one (1) or more certificates or other instruments under this article by filing a restated certificate of limited partnership specifically designated as a "Restated Certificate of Partnership", and stating in its heading or in a separate paragraph that there is no discrepancy between the

provisions of the original certificate of limited partnership with its amendments and the restated certificate. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership, as previously amended or supplemented, it must bear a heading with the words "Amended and Restated Certificate of Limited Partnership" together with such other words as the partnership considers appropriate, it must be executed by at least one (1) general partner and by each other general partner designated in the amended and restated certificate of limited partnership as a new general partner, and it must be filed under section 7 of this chapter in the office of the secretary of state.

(b) A restated or amended and restated certificate of limited partnership must state, either in its heading or in an introductory paragraph, the limited partnership's present name (and, if it has been changed, the name under which the limited partnership was originally filed), the date of filing of the original certificate of limited partnership with the secretary of state, and the effective date or time (which must be a date or time certain) of the restated or amended and restated certificate, if it is not to be effective upon the filing of the restated or amended and restated certificate. A restated or amended and restated certificate must also state that it was duly executed and is being filed in accordance with this section.

(c) Upon the filing of the restated certificate of limited partnership with the secretary of state, or upon the effective date or time provided for in the restated certificate of limited partnership, the initial certificate of limited partnership, as previously amended or supplemented, is superseded. After that filing, the restated certificate of limited partnership, including any further amendment or changes made by the restated certificate, is the certificate of limited partnership, but the original effective date of formation of the limited partnership remains unchanged.

(d) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership under this section is subject to any other provision of this article that is not inconsistent with this section and that would apply if a separate certificate of amendment were filed to effect the amendment or change.

As added by P.L.147-1988, SEC.1.

IC 23-16-3-12

Mergers

Sec. 12. (a) A domestic limited partnership may merge with or into one (1) or more domestic limited partnerships or foreign limited partnerships formed under the laws of another state, with one (1) partnership, as provided in the merger agreement, being the surviving partnership.

(b) A domestic limited partnership that is not the surviving partnership in the merger shall file a certificate of cancellation, which must have an effective date not later than the effective date of the merger.

(c) If, following a merger of one (1) or more domestic limited partnerships and one (1) or more foreign limited partnerships formed under the laws of another state, the surviving partnership is not a domestic limited partnership, the surviving partnership shall execute a certificate, which must be attached to the certificate of cancellation filed for each domestic limited partnership under section 4 of this chapter, that states that it agrees that it may be served with process in Indiana in any action for the enforcement of any obligation of the domestic limited partnership, that irrevocably appoints the secretary of state as its agent to accept service of process in any such action, and that specifies the address to which the secretary of state may mail a copy of process served in any such action. If there is service of process on the secretary of state under this subsection, the plaintiff in any such action shall furnish the secretary of state with the address specified in the certificate provided for in this section and any other address that the plaintiff may elect to furnish, and the secretary of state shall notify the surviving partnership at all such addresses furnished by the plaintiff in accordance with this section.

(d) When the certificate of cancellation required by section 4 of this chapter becomes effective, for all purposes of the laws of Indiana, all of the rights, privileges, and powers of each of the partnerships that have merged, and all real property, personal property, and mixed property and all debts due to any of the partnerships, as well as all other things and causes of action belonging to each of the partnerships, shall be vested in the surviving partnership and become the property of the surviving partnership as they were of each of the partnerships that have merged. The title to any real property vested by deed or otherwise under the laws of Indiana in any of the partnerships does not revert and is not impaired by reason of this chapter. However, all rights of creditors and all liens upon any property of any of the partnerships are preserved unimpaired, and all debts, liabilities, and duties of each of the partnerships that have merged attach to the surviving partnership and may be enforced against it to the same extent as if those debts, liabilities, and duties had been incurred or contracted by it.

As added by P.L.147-1988, SEC.1.

IC 23-16-3-13

Requirements for merger of domestic limited partnership with other business entity; plan of merger

Sec. 13. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited partnerships may merge with

or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic limited partnership corporation that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited partnership and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic corporation or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the limited partnership shares of each domestic limited partnership that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or

incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) will be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(e) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited partnerships with or into one (1) or more other business entities.

(f) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited partnerships with or into one (1) or more foreign corporations must be made solely according to the requirements of this section.

As added by P.L.178-2002, SEC.104.

IC 23-16-3-14

Entity conversion

Sec. 14. (a) As used in this section, "other entity" has the meaning set forth in IC 23-1-38.5-1.

(b) A domestic corporation, domestic other entity, foreign corporation, or foreign other entity may convert to a domestic limited partnership under IC 23-1-38.5.

(c) A domestic limited partnership may convert to a domestic corporation, domestic other entity, foreign corporation, or foreign other entity under IC 23-1-38.5.

As added by P.L.130-2006, SEC.23.

IC 23-16-4

Chapter 4. Limited Partners

IC 23-16-4-1

Additional limited partners

Sec. 1. After the formation of a limited partnership, a person may be admitted as an additional limited partner:

(1) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) in the case of an assignee of a partnership interest, as provided in IC 23-16-8-4.

As added by P.L.147-1988, SEC.1.

IC 23-16-4-2

Classes or groups of limited partners; rights, powers, and duties; voting

Sec. 2. (a) A partnership agreement may provide for classes or groups of limited partners having such relative rights, powers, and duties as the partnership agreement may provide, and may make provision for the future creation, in the manner provided in the partnership agreement, of additional classes or groups of limited partners having such relative rights, powers, and duties as may from time to time be established (including rights, powers, and duties senior to existing classes and groups of limited partners).

(b) Subject to section 3 of this chapter, the partnership agreement may grant to all the limited partners, to certain identified limited partners, or to a specified class or group of the limited partners the right to vote (on a per capita or other basis), separately or with all or any class or group of the limited partners or the general partners, on any matter.

(c) A partnership agreement that grants a right to vote may set forth provisions relating to the following:

(1) Notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any limited partners.

(2) Waiver of the notice described in subdivision (1).

(3) Action by written consent without a meeting.

(4) The establishment of a record date.

(5) Quorum requirements.

(6) Voting in person or by proxy.

(7) Any other matter concerning the exercise of a right to vote under the partnership agreement.

As added by P.L.147-1988, SEC.1.

IC 23-16-4-3

Liability to third parties

Sec. 3. (a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless:

(1) the limited partner is also a general partner; or

(2) the limited partner, in addition to exercising the rights and powers of a limited partner, participates in the control of the business.

However, a limited partner who participates in the control of the business is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one (1) or more of the following:

(1) Being a contractor for, or an agent or employee of, the limited partnership or of a general partner, or being an officer, director, or shareholder of a general partner that is a corporation.

(2) Consulting with or advising a general partner with respect to any matter, including the business of the limited partnership.

(3) Acting as surety, guarantor, or endorser for the limited partnership, guaranteeing or assuming one (1) or more specific obligations of the limited partnership, or providing collateral for the limited partnership.

(4) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership.

(5) Calling, requesting, attending, or participating in a meeting of the partners or the limited partners.

(6) Proposing, approving, or disapproving, by voting or otherwise, one (1) or more of the following matters:

(A) The dissolution and winding up of the limited partnership.

(B) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership.

(C) The incurring, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership other than in the ordinary course of its business.

(D) A change in the nature of the business.

(E) The admission, retention, or removal of a general partner.

(F) The admission, retention, or removal of a limited partner.

(G) A transaction or other matter involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners.

(H) An amendment to the partnership agreement or certificate of limited partnership.

(I) Matters related to the business of the limited partnership not otherwise enumerated in this subsection which the partnership agreement states may be subject to the approval or disapproval of limited partners.

(J) The merger of the limited partnership.

(7) Winding up the limited partnership under IC 23-16-9-3.

(8) Serving on a committee of the limited partnership or the limited partners.

(9) Exercising any right or power permitted to limited partners

under this article and not specifically enumerated in this subsection.

(c) The enumeration of certain powers in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by that limited partner in the control of the business of the limited partnership.

(d) A limited partner who knowingly permits the partner's name to be used in the name of the limited partnership, except under circumstances permitted under IC 23-16-2-1(a)(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

As added by P.L.147-1988, SEC.1.

IC 23-16-4-4

Person erroneously believing to be limited partner

Sec. 4. (a) Except as provided in subsection (b), a person who makes a contribution to a partnership and erroneously but in good faith believes that the person has become a limited partner in the partnership is not a general partner in the partnership, and is not bound by its obligations by reason of making the contribution, receiving distributions from the partnership, or exercising any rights of a limited partner, if, within sixty (60) days after ascertaining the mistake, that person:

(1) in the case of a person who wishes to be a limited partner, causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) in the case of a person who wishes to withdraw from the partnership, takes such action as may be necessary to withdraw.

(b) A person who makes a contribution under the circumstances described in subsection (a) is liable as a general partner to any third party who transacts business with the partnership before the occurrence of either of the events referred to in subsection (a) if the third party:

(1) actually believed in good faith that the person was a general partner at the time of the transaction;

(2) acted in reasonable reliance on that belief; and

(3) extended credit to the partnership in reasonable reliance on the credit of that person.

As added by P.L.147-1988, SEC.1.

IC 23-16-4-5

Access to information by limited partner

Sec. 5. Each limited partner has the right to inspect and copy any of the partnership records required to be maintained by IC 23-16-2-6 and to obtain from the general partners, from time to time, upon reasonable demand the following:

(1) True and full information regarding the state of the business and financial condition of the limited partnership.

(2) Promptly after becoming available, copies of the limited partnership's federal, state, and local income tax returns for each

year.

(3) Other information regarding the affairs of the limited partnership as is just and reasonable.

As added by P.L.147-1988, SEC.1.

IC 23-16-4-6

Admission of limited partners

Sec. 6. A person acquiring a partnership interest is admitted as a limited partner when the latter of the following occurs:

(1) The formation of the limited partnership.

(2) The time provided in the partnership agreement or, if no time is provided in the partnership agreement, when the person's admission is reflected in the records of the limited partnership.

As added by P.L.147-1988, SEC.1.

IC 23-16-5
Chapter 5. General Partners

IC 23-16-5-1
Admission of additional general partners

Sec. 1. After the filing of a limited partnership's initial certificate of limited partnership, unless otherwise provided in the partnership agreement, additional general partners may be admitted only with the specific written consent of each partner.

As added by P.L.147-1988, SEC.1.

IC 23-16-5-2
Events of withdrawal

Sec. 2. A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in IC 23-16-7-2.

(2) The general partner ceases to be a member of the limited partnership as provided in IC 23-16-8-2.

(3) The general partner is removed as a general partner in accordance with the partnership agreement.

(4) Unless otherwise provided in the partnership agreement, or with the specific written consent of all partners, the general partner:

(A) makes an assignment for the benefit of creditors;

(B) files a voluntary petition in bankruptcy;

(C) is adjudged a bankrupt or an insolvent, or an order of relief is entered against the general partner in any bankruptcy or insolvency proceeding;

(D) files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding described in clause (D); or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties.

(5) Unless otherwise provided in the partnership agreement, or with the specific written consent of all partners:

(A) in the case of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, rule, or regulation, the continuation of the proceeding, without dismissal, one hundred twenty (120) days after the proceeding was commenced; or

(B) in the case of the appointment, without the general partner's consent or acquiescence, of a trustee, receiver, or liquidator of the general partner or of all or any substantial

part of the general partner's properties, the absence of any order vacating or staying the appointment within ninety (90) days after the appointment, or, if the appointment is stayed, the absence of any order vacating the appointment within ninety (90) days after the stay expires.

(6) In the case of a general partner who is an individual:

(A) the general partner dies; or

(B) an order is entered by a court adjudicating the general partner incompetent to manage the general partner's own person or property.

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the trust terminates (but not merely the substitution of a new trustee).

(8) In the case of a general partner that is a separate partnership, the separate partnership dissolves and winding up is commenced.

(9) In the case of a general partner that is a corporation, a certificate of dissolution, or its equivalent, is filed for the corporation or the corporation's charter is revoked.

(10) In the case of a general partner that is an estate, the fiduciary distributes the estate's entire interest in the limited partnership.

As added by P.L.147-1988, SEC.1.

IC 23-16-5-3

General powers and liabilities

Sec. 3. (a) Except as provided in this article or in the partnership agreement, a general partner of a limited partnership has the rights and powers of, and is subject to the restrictions of, a partner in a partnership without limited partners.

(b) Except as provided in this article, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners.

(c) Except as provided in this article or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

As added by P.L.147-1988, SEC.1.

IC 23-16-5-4

Contributions by general partner

Sec. 4. (a) A general partner of a limited partnership may make contributions to the partnership, share in the profits and losses of the partnership, and share in distributions from the limited partnership as a general partner. A general partner also may make contributions and share in profits, losses, and distributions as a limited partner.

(b) A person who is both a general partner and a limited partner has the rights and powers of a general partner and is subject to the restrictions and liabilities of a general partner and, except as provided

in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of the person's participation in the partnership as a limited partner.
As added by P.L.147-1988, SEC.1.

IC 23-16-5-5
Classes or groups of general partners; rights, powers, and duties; voting

Sec. 5. (a) A partnership agreement may provide for classes or groups of general partners having such relative rights, powers, and duties as the partnership agreement may provide, and may make provision for the future creation, in the manner provided in the partnership agreement, of additional classes or groups of general partners having such relative rights, powers, and duties as may from time to time be established (including rights, powers, and duties senior to existing classes and groups of general partners).

(b) The partnership agreement may grant to all the general partners, or to certain identified general partners, or to a specified class or group of general partners, the right to vote (on a per capita or any other basis), separately or with all or any class or group of the limited partners on any matter.

(c) A partnership agreement that grants a right to vote may set forth provisions relating to the following:

(1) Notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any general partners.
(2) Waiver of the notice described in subdivision (1).
(3) Action by written consent without a meeting.
(4) The establishment of a record date.
(5) Quorum requirements.
(6) Voting in person or by proxy.
(7) Any other matter concerning the exercise of a right to vote under the partnership agreement.

As added by P.L.147-1988, SEC.1.

IC 23-16-6
Chapter 6. Finance

IC 23-16-6-1
Form of contribution

Sec. 1. The contribution of a partner may be:

(1) in cash, property, or services rendered; or

(2) a promissory note or other obligation to contribute cash or property or to perform services.

As added by P.L.147-1988, SEC.1.

IC 23-16-6-2
Liability for contribution

Sec. 2. (a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability, or any other reason. If a partner does not make a required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value (as stated in the partnership records of the limited partnership) of the contribution that has not been made. The option provided under this subsection is in addition to, and is not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against such a partner under the partnership agreement or applicable law.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or to return money or other property paid or distributed in violation of this article may be compromised only by written consent of all the partners. Notwithstanding any such compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing (including the partnership agreement and any amendment to the partnership agreement) that reflects the obligation and before the amendment or cancellation of the partnership agreement to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution.

(d) A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make is subject to specified penalties for, or specified consequences of, the failure. Penalties or consequences provided for in the partnership agreement may include the following:

(1) Reducing the defaulting partner's proportionate interest in the limited partnership.

(2) Subordinating the defaulting partner's partnership interest to

that of nondefaulting partners.

(3) A forced sale of the partner's partnership interest.

(4) Forfeiture of the partner's partnership interest.

(5) The lending by other partners of the amount necessary to meet the defaulting partner's commitment.

(6) A fixing of the value of the defaulting partner's partnership interest by appraisal or by formula and the redemption or sale of the defaulting partner's partnership interest at the fixed value.

(7) Any other penalty or consequence.

As added by P.L.147-1988, SEC.1.

IC 23-16-6-3

Sharing of profits and losses

Sec. 3. The profits and losses of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

As added by P.L.147-1988, SEC.1.

IC 23-16-6-4

Sharing of distributions

Sec. 4. Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes and groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

As added by P.L.147-1988, SEC.1.

IC 23-16-7
Chapter 7. Distributions and Withdrawals

IC 23-16-7-1
Interim distributions

Sec. 1. Except as provided in this chapter, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up of the limited partnership to the extent and at the times or upon the happening of the events specified in the partnership agreement.

As added by P.L.147-1988, SEC.1.

IC 23-16-7-2
Withdrawal of general partner

Sec. 2. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners. However, if the general partner's withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and may offset the damages against the amount otherwise distributable to the withdrawing general partner in addition to any remedies otherwise available under applicable law.

As added by P.L.147-1988, SEC.1.

IC 23-16-7-3
Withdrawal of limited partner

Sec. 3. A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. If the partnership agreement does not specify in writing:

(1) the time or the events upon the happening of which a limited partner may withdraw; or

(2) a definite time for the dissolution and winding up of the limited partnership;

a limited partner may withdraw upon not less than six (6) months prior written notice to each general partner at the general partner's address as set forth in the certificate of limited partnership filed in the office of the secretary of state.

As added by P.L.147-1988, SEC.1.

IC 23-16-7-4
Distribution upon withdrawal

Sec. 4. Except as provided in this chapter, upon withdrawal any withdrawing partner is entitled to receive any distribution to which the withdrawing partner is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the limited partnership as of the date of withdrawal based upon the

withdrawing partner's right to share in distributions from the limited partnership.
As added by P.L.147-1988, SEC.1.

IC 23-16-7-5
Distribution in kind

Sec. 5. (a) Except as provided in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash.

(b) Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset that is equal to the percentage in which the partner shares in distributions from the limited partnership.
As added by P.L.147-1988, SEC.1.

IC 23-16-7-6
Right to distribution

Sec. 6. At the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.
As added by P.L.147-1988, SEC.1.

IC 23-16-7-7
Limitations on distribution

Sec. 7. A partner may not receive a distribution from a limited partnership to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, would exceed the fair value of the partnership assets.
As added by P.L.147-1988, SEC.1.

IC 23-16-7-8
Liability upon return of contribution

Sec. 8. (a) If a partner has received the return of any part of the partner's contribution without violation of the partnership agreement or this article, the partner is liable to the limited partnership for a period of one (1) year after receiving the return of contribution for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or this article, the partner is liable to the limited partnership for a period of six (6) years after receiving the return of contribution for the amount of the

contribution wrongfully returned.

(c) A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the agreed value (as stated in the records of the limited partnership) of the partner's contribution that has not been distributed to the partner.

As added by P.L.147-1988, SEC.1.

IC 23-16-8

Chapter 8. Assignment of Partnership Interests

IC 23-16-8-1

Nature of partnership interest

Sec. 1. A partnership interest is personal property. A partner has no interest in specific limited partnership property.

As added by P.L.147-1988, SEC.1.

IC 23-16-8-2

Assignment of partnership interest

Sec. 2. Unless otherwise provided in the partnership agreement:

(1) a partnership interest is assignable in whole or in part;

(2) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any rights or powers of a partner;

(3) an assignment entitles the assignee to share in the profits and losses, to receive the distribution or distributions, and to receive the allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(4) a partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of the partner's partnership interest.

As added by P.L.147-1988, SEC.1.

IC 23-16-8-3

Rights of creditor

Sec. 3. On application to a court by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment, with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This article does not deprive any partner of the benefit of any exemption laws applicable to the partner's partnership interest.

As added by P.L.147-1988, SEC.1.

IC 23-16-8-4

Right of assignee to become limited partner

Sec. 4. (a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner, if and to the extent that:

(1) the partnership agreement so provides; or

(2) all other partners consent in writing.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this article. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make contributions as provided in IC 23-16-6-2. However, the assignee is

not obligated for liabilities that were unknown to the assignee at the time the assignee became a limited partner and that could not be ascertained from the partnership agreement. Additionally, the assignee is not liable for any accrued liabilities of the assignor at the time of such assignment unless the assignee specifically assumes such liabilities.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liabilities to the limited partnership under IC 23-16-3-8, IC 23-16-6, and IC 23-16-7, unless such liabilities are specifically assumed by the assignee under subsection (b).

As added by P.L.147-1988, SEC.1.

IC 23-16-8-5

Power of estate of deceased or incompetent partner

Sec. 5. (a) If a partner who is an individual dies or a court adjudges the partner to be mentally incompetent, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner.

(b) If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by the partner's legal representative or successor.

As added by P.L.147-1988, SEC.1. Amended by P.L.33-1989, SEC.22.

IC 23-16-9
Chapter 9. Dissolution

IC 23-16-9-1
Nonjudicial dissolution

Sec. 1. (a) A limited partnership is dissolved and its affairs shall be wound up upon the occurrence of the first of the following:

(1) At the time specified in the certificate of limited partnership.

(2) Upon the occurrence of events specified in the partnership agreement.

(3) Subject to a requirement in the partnership agreement requiring the approval by a greater or lesser percentage of limited partners and general partners, upon the written consent of all general partners and the affirmative vote of two-thirds (2/3) in interest of each class of limited partners.

(4) Except as provided in subsection (b), an event of withdrawal of a general partner, unless:

(A) at the time there is at least one (1) other general partner;

(B) the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner; and

(C) the remaining general partner carries on the business of the limited partnership.

(5) The entry of a decree of judicial dissolution under section 2 of this chapter.

(b) A limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal of a general partner if, within ninety (90) days after the withdrawal, all partners (or such lesser percentage as may be provided in the partnership agreement) agree in writing to continue the business of the limited partnership and agree in writing to the appointment of one (1) or more additional general partners if necessary or desired.

As added by P.L.147-1988, SEC.1.

IC 23-16-9-2
Judicial dissolution

Sec. 2. On application by or for a partner, the circuit or superior court of the county in which the office of the limited partnership referred to in IC 23-16-2-3 is located may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement. If the office referred to in IC 23-16-2-3 is not within Indiana, the application may be made to the circuit or superior court of the county in which the registered agent referred to in IC 23-16-2-3 is located.

As added by P.L.147-1988, SEC.1.

IC 23-16-9-3
Winding up

Sec. 3. (a) Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved

a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs. However, the circuit or superior court of the county in which the office of the limited partnership referred to in IC 23-16-2-3 is located, or if the office referred to in IC 23-16-2-3 is not within Indiana, the circuit or superior court of the county in which the business address of the registered agent referred to in IC 23-16-2-3 is located, may wind up the limited partnership's affairs upon application of any partner or of any partner's legal representative or assignee, and in connection with the winding up, may appoint a liquidating trustee.

(b) Upon the dissolution of a limited partnership, the persons winding up the affairs of a limited partnership may, in the name of the limited partnership and for and on behalf of the limited partnership, prosecute and defend civil, criminal, and administrative proceedings, settle and close the limited partnership's business, dispose of and convey the limited partnership's property, discharge the limited partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners.

As added by P.L.147-1988, SEC.1.

IC 23-16-9-4

Distribution of assets

Sec. 4. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership (whether by payment or by establishment of adequate reserves) other than liabilities for distributions to partners under IC 23-16-7-1 and IC 23-16-7-4.

(2) Unless otherwise provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under IC 23-16-7-1 and IC 23-16-7-4.

(3) Unless otherwise provided in the partnership agreement, to partners first for the return of their contributions and second respecting their partnership interests, in the proportions in which the partners share in distributions.

As added by P.L.147-1988, SEC.1.

IC 23-16-10
Chapter 10. Foreign Limited Partnerships

IC 23-16-10-1
Law governing

Sec. 1. (a) Subject to the Constitution of the State of Indiana:

(1) the laws of the state or other jurisdiction or country under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

(2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of Indiana.

(b) A foreign limited partnership is subject to IC 23-16-2-7. IC 23-16-3-5 and IC 23-16-3-8 apply to foreign limited partnerships as though they were domestic limited partnerships.

As added by P.L.147-1988, SEC.1.

IC 23-16-10-2
Registration

Sec. 2. (a) Before transacting business in Indiana, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership must submit to the secretary of state an original copy executed by a general partner, together with a duplicate copy, of an application for registration as a foreign limited partnership, signed and sworn to under penalties for perjury by a general partner. The application must set forth the following:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in Indiana.

(2) The state, territory, possession, foreign country, or other jurisdiction where the limited partnership was organized, the date of its formation and a statement signed by a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of its organization.

(3) The nature of the business or purpose to be promoted in Indiana.

(4) The name and address of the registered agent for service of process required under section 4 of this chapter.

(5) The name and business address, residence address, or mailing address of each general partner.

(6) The date on which the foreign limited partnership first transacted, or intends to transact, business in Indiana.

(7) The address of the office at which is kept a list of the names and addresses of the limited partners and the capital contributions of each, together with a statement by the foreign limited partnership that it will keep those records until the foreign limited partnership's registration in Indiana is cancelled.

(b) The following activities, among others, do not constitute

transacting business within the meaning of subsection (a):

(1) Maintaining, defending, or settling any proceeding.

(2) Holding meetings of the partners or carrying on other activities concerning internal partnership affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositaries with respect to those securities.

(5) Selling through independent contractors.

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Indiana before they become contracts.

(7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(9) Owning, without more, real or personal property.

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) of a course of repeated transactions of a like nature.

(11) Transacting business in interstate commerce.

(c) Service of legal process upon any foreign limited partnership shall be made as provided in IC 23-16-2-3, except the secretary of state is the agent for service of process for a foreign limited partnership transacting business in Indiana without registration.

As added by P.L.147-1988, SEC.1. Amended by P.L.226-1989, SEC.25.

IC 23-16-10-3

Issuance of registration

Sec. 3. (a) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary of state shall do the following:

(1) Endorse on the application the word "filed", and the date and time of the filing. This endorsement is conclusive evidence of the date and time of its filing in the absence of fraud.

(2) File the original application.

(3) Issue a certificate of registration to transact business in Indiana.

(b) The certificate of registration, together with a copy of the application, shall be returned to the person who filed the application or to that person's representative.

As added by P.L.147-1988, SEC.1.

IC 23-16-10-4

Name; maintenance of office and registered agent; agent's consent; communications contact information; resignation; changing registered agent or agent's office

Sec. 4. (a) Except as provided in subsection (b), a foreign limited

partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its organization) that:

(1) includes the words "limited partnership" or the abbreviation "L.P."; and

(2) could be registered by a domestic limited partnership.

(b) A foreign limited partnership may apply to the secretary of state to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (a). The secretary of state shall authorize use of the name applied for if:

(1) the other domestic or foreign limited partnership files its written consent to the use of its name, signed by any current general partner of the other limited partnership and verified subject to the penalties for perjury; or

(2) the applicant delivers to the secretary of state a certified copy of a final court judgment establishing the applicant's right to use the name applied for in Indiana.

(c) Each foreign limited partnership shall have and maintain:

(1) an office, which may be (but need not be) a place of its business in Indiana; and

(2) a registered agent whose business address is in Indiana for service of process on the foreign limited partnership, which may be:

(A) an individual resident of Indiana; or

(B) a domestic corporation or a foreign corporation authorized to transact business in Indiana.

(d) Each foreign limited partnership that qualifies after June 30, 2014, to do business in Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(e) Each foreign limited partnership qualified to do business in Indiana shall provide to the foreign limited partnership's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the foreign limited partnership; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the foreign limited partnership.

(f) A registered agent shall retain, in paper or electronic form, the information provided by a foreign limited partnership under subsection (e).

(g) If a foreign limited partnership fails to provide the registered agent with the information required under subsection (e), the registered agent may resign, as provided in subsection (j), as the registered agent for the foreign limited partnership.

(h) A foreign limited partnership may change its registered agent by delivering to the secretary of state for filing a statement containing

the following:

(1) The name of the foreign limited partnership.

(2) The name of its current registered agent.

(3) The name and business address of the new registered agent and the new agent's consent to the appointment (either on the statement or attached to it).

(i) If a registered agent changes the address of the registered agent's business office, the registered agent must notify the foreign limited partnership in writing of the change, and sign and deliver to the secretary of state for filing a statement that complies with the requirements of subsection (h) and recites that the foreign limited partnership has been notified of the change.

(j) A registered agent may resign the agency appointment by signing and delivering to the secretary of state for filing the signed original and two (2) exact or conformed copies of a statement of resignation. After filing the statement, the secretary of state shall mail one (1) copy to the partnership at the office referred to in subsection (c)(1). The agency appointment is terminated on the thirty-first day after the date on which the statement was filed.

As added by P.L.147-1988, SEC.1. Amended by P.L.63-2014, SEC.16.

IC 23-16-10-5

Service of process on registered agent

Sec. 5. (a) A foreign limited partnership's registered agent is the foreign limited partnership's agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited partnership.

(b) This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited partnership.

As added by P.L.147-1988, SEC.1.

IC 23-16-10-6

Changes in and amendments to statements in application for registration

Sec. 6. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described in the application have changed, making the application false in any respect, the foreign limited partnership shall, within sixty (60) days after such a change, file in the office of the secretary of state a certificate, signed and sworn to under penalties for perjury by a general partner, correcting the statement.

As added by P.L.147-1988, SEC.1.

IC 23-16-10-7

Cancellation of registration

Sec. 7. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to under penalties for perjury by a general partner. A cancellation does not terminate the authority of the secretary of state

to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in Indiana.
As added by P.L.147-1988, SEC.1.

IC 23-16-10-8
Transaction of business without registration

Sec. 8. (a) A foreign limited partnership transacting business in Indiana may not maintain any action in any court of Indiana until it has registered in Indiana under this chapter and paid to the state all fees and penalties for the years during which it did business in Indiana without having registered.

(b) The failure of a foreign limited partnership to register in Indiana does not:

(1) impair the validity of any contract or act of the foreign limited partnership;

(2) impair the right of any other party to a contract with the foreign limited partnership to maintain any action on the contract; or

(3) prevent the foreign limited partnership from defending any action in any court of Indiana.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in Indiana without registration.

(d) A foreign limited partnership, by transacting business in Indiana without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in Indiana.
As added by P.L.147-1988, SEC.1.

IC 23-16-10-9
Action by attorney general

Sec. 9. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in Indiana in violation of this article, and the circuit or superior court in any county in which the foreign limited partnership is transacting business without registration may enjoin any foreign limited partnership or agent thereof from doing business in Indiana if it has failed to register or if its registration has been procured on the basis of false or misleading representations.
As added by P.L.147-1988, SEC.1.

IC 23-16-10.1
Repealed

(Repealed by P.L.8-1993, SEC.523.)

IC 23-16-11
Chapter 11. Derivative Actions

IC 23-16-11-1
Right of action

Sec. 1. A limited partner may bring an action in the right of a limited partnership to recover a judgment in favor of the limited partnership if:

(1) general partners with authority to bring such an action have refused to bring the action; or

(2) an effort to cause those general partners to bring the action is not likely to succeed.

As added by P.L.147-1988, SEC.1.

IC 23-16-11-2
Proper plaintiff

Sec. 2. In a derivative action under this chapter, the plaintiff must be a partner at the time of bringing the action, and:

(1) the plaintiff must have been a partner at the time of the transaction of which the plaintiff complains in the action; or

(2) the status of the plaintiff as a partner must have devolved upon the plaintiff, by operation of law or under the terms of the partnership agreement, from a person who was a partner at the time of the transaction.

As added by P.L.147-1988, SEC.1.

IC 23-16-11-3
Pleading

Sec. 3. In a derivative action under this chapter, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort to secure initiation of the action by a general partner.

As added by P.L.147-1988, SEC.1.

IC 23-16-11-4
Expenses

Sec. 4. (a) If a derivative action under this chapter is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited partnership the remainder of those proceeds received by the plaintiff.

(b) If the plaintiff is awarded damages in an action under this chapter, the court shall make the award of reasonable expenses payable out of the plaintiff's total award and direct the plaintiff to remit the balance of the total award to the limited partnership. However, if the damages awarded to the plaintiff are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct

that part or all of the plaintiff's award of reasonable expenses be paid by the limited partnership.

As added by P.L.147-1988, SEC.1.

IC 23-16-12
Chapter 12. Miscellaneous

IC 23-16-12-1
Construction and application of article

Sec. 1. (a) This article shall be applied and construed to effectuate its general purpose.

(b) The rule that statutes in derogation of the common law are to be strictly construed does not apply to this article.

As added by P.L.147-1988, SEC.1.

IC 23-16-12-2
Applicability of article to domestic and foreign limited partnerships after effective date and after repeal of antecedent provisions

Sec. 2. (a) After July 1, 1988, this article applies to all domestic and foreign limited partnerships, except as provided in this section.

(b) IC 23-16-6-1, IC 23-16-6-2, and IC 23-16-7-8 apply only to contributions and distributions made after July 1, 1988.

(c) IC 23-16-8-4 applies only to assignments made after July 1, 1988.

(d) IC 23-16-10 does not apply before January 1, 1989.

(e) Unless agreed otherwise by all of the partners, the applicable provisions of IC 23-4-2 (repealed effective July 1, 1993) governing allocation of profits and losses (rather than the provisions of IC 23-16-6-3), distributions to a withdrawing partner (rather than the provisions of IC 23-16-7-4), and distribution of assets upon the winding up of a limited partnership (rather than the provisions of IC 23-16-9-4) govern limited partnerships formed before July 1, 1988.

(f) A limited partnership existing under IC 23-4-2 before July 1, 1988, is not required to file a certificate of limited partnership complying with IC 23-16-3 with the secretary of state, and is not subject to or governed by IC 23-16-3-2, until the earlier of the following:

(1) The voluntary filing by the limited partnership of a certificate of limited partnership with the secretary of state in the manner required by this article.

(2) July 1, 1993.

(g) Until July 1, 1993, a limited partnership existing under IC 23-4-2 before July 1, 1988, that does not file a certificate of limited partnership in accordance with subsection (f)(1) is governed by IC 23-4-2.

(h) If a limited partnership existing under IC 23-4-2 before July 1, 1988, does not file a certificate of limited partnership or a certificate of amendment with the secretary of state by July 1, 1993, and no event has occurred that, under this article, requires the filing of a certificate of amendment, then:

(1) the limited partnership continues to exist as a limited partnership under this article, and the failure to file a certificate with the secretary of state does not impair the validity of any

contract or act of the limited partnership nor prevent the limited partnership from defending any action in any court in Indiana;
(2) a limited partner of the limited partnership is not liable as a general partner solely by reason of the failure to file a certificate with the secretary of state; and
(3) the limited partnership may not maintain an action in any court of Indiana until it has filed a certificate with the secretary of state in compliance with this article.

As added by P.L.147-1988, SEC.1. Amended by P.L.226-1989, SEC.26; P.L.3-1990, SEC.83.

IC 23-16-12-3
Rules for cases not provided for in this article

Sec. 3. In any case not provided for in this article, the provisions of IC 23-4-1 govern.

As added by P.L.147-1988, SEC.1.

IC 23-16-12-4
Fees

Sec. 4. (a) The secretary of state shall collect the following fees when the documents described in this section are delivered by a domestic or foreign limited partnership to the secretary of state for filing:

Document	Electronic Filing Fee	Filing Fee (Other than electronic filing)
(1) Application for reservation of name	$10	$20
(2) Application for use of indistinguishable name	$10	$20
(3) Application for renewal of reservation	$10	$20
(4) Notice of transfer of reserved name	$10	$20
(5) Application of registered name	$20	$30
(6) Application for renewal of registered name	$20	$30
(7) Certificate of change of registered agent's business address	No fee	No fee
(8) Certificate of resignation of agent	No fee	No fee
(9) Certificate of limited partnership	$75	$90
(10) Certificate of amendment	$20	$30
(11) Certificate of cancellation	$75	$90
(12) Restated certificate of limited partnership or registration	$20	$30
(13) Restated certificate of limited partnership or registration with amendments	$20	$30
(14) Application for registration	$75	$90

(15) Certificate of change of application	$20	$30
(16) Certificate of cancellation of registration	$20	$30
(17) Certificate of change of registered agent	No fee	No fee
(18) Application for certificate of existence or authorization	$15	$15
(19) Any other document required or permitted to be filed under this article, including an application for any other certificates or certification certificate (except for any such other certificates that the secretary of state may determine to issue without additional fee in connection with particular filings)	$20	$30

The secretary of state shall prescribe the electronic means of filing documents to which the electronic filing fees set forth in this section apply.

(b) The secretary of state shall collect a fee of ten dollars ($10) each time process is served on the secretary of state under this article. If the party to a proceeding causing service of process prevails in the proceeding, then that party is entitled to recover this fee as costs from the nonprevailing party.

(c) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited partnership:

(1) Per page for copying	$ 1
(2) For a certification stamp	$15

As added by P.L.147-1988, SEC.1. Amended by P.L.226-1989, SEC.27; P.L.75-1990, SEC.14; P.L.277-2001, SEC.16; P.L.60-2007, SEC.4; P.L.106-2008, SEC.51.

IC 23-16-12-5

Requirements for filing documents; filing fee

Sec. 5. (a) A document must satisfy the requirements of this article to be entitled to filing by the secretary of state.

(b) The document must contain the information required by this article. It may contain other information as well.

(c) The document must be typewritten or printed.

(d) The document must be legible and otherwise suitable for filing.

(e) The document must be in the English language. A limited partnership name need not be in English if written in English letters or Arabic or Roman numerals.

(f) Every person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. A signature on a document authorized to be filed under this article may be a facsimile. A signature on a

document under this subsection that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(g) The document must be delivered to the office of the secretary of state as required by section 5.1 of this chapter, and the correct filing fee must be paid in the manner and form required by the secretary of state.

(h) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

As added by P.L.147-1988, SEC.1. Amended by P.L.228-1995, SEC.18; P.L.11-1996, SEC.23; P.L.277-2001, SEC.17.

IC 23-16-12-5.1
Documents delivered for filing

Sec. 5.1. (a) For purposes of this article, a document is delivered for filing if the document is transferred to the secretary of state by hand, mail, or a form of electronic transmission meeting the requirements established by the secretary of state.

(b) If a document is delivered for filing by hand or mail, the document must be accompanied by:

(1) two (2) exact or conformed copies of a document filed under IC 23-16-2-4 or IC 23-16-10-4; or

(2) one (1) exact or conformed copy of any other document filed under this article.

As added by P.L.228-1995, SEC.19. Amended by P.L.63-2014, SEC.17.

IC 23-16-12-6
Effective date of documents

Sec. 6. (a) A document accepted for filing is effective:

(1) at the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(2) at such later time as is specified in the document as provided in subsection (b).

(b) A document may specify a delayed effective time on the date filed, or a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than ninety (90) days after the date it is filed.

As added by P.L.147-1988, SEC.1.

IC 23-16-12-7

Signing false documents for filing

Sec. 7. A person who signs a document that the person knows is false in a material respect with the intent that the document be delivered to the secretary of state for filing commits a Class A misdemeanor.

As added by P.L.63-2014, SEC.18.

IC 23-17

ARTICLE 17. NONPROFIT CORPORATIONS

IC 23-17-1

Chapter 1. Application

IC 23-17-1-0.2

Effect of repeal of IC 23-7-1.1; effect of reduction by P.L.179-1991 of penalty or punishment

Sec. 0.2. (a) Except as provided in subsection (b), the repeal of IC 23-7-1.1 by P.L.179-1991 does not affect the following:

(1) Any action taken:

(A) under:

(i) IC 23-7-1.1;

(ii) the Indiana general not-for-profit corporation act of 1935; or

(iii) any prior law under which domestic nonprofit entities were organized;

before the repeal of IC 23-7-1.1; or

(B) before the applicability of P.L.179-1991 to a nonprofit entity;

whichever is later, including the continuing validity of a domestic nonprofit entity's articles of incorporation, bylaws, or other organic documents, indemnification provisions for directors, officers, employees, and agents, resolutions of the board of directors or governing body and name.

(2) A ratification, a right, a remedy, a privilege, an obligation, or a liability acquired, accrued, or incurred before the applicability of P.L.179-1991 to a nonprofit entity under:

(A) IC 23-7-1.1 (before its repeal);

(B) the Indiana general not-for-profit corporation act of 1935 before the repeal of IC 23-7-1.1; or

(C) any prior law under which domestic nonprofit entities were organized.

(3) A:

(A) violation of:

(i) IC 23-7-1.1 (before its repeal);

(ii) the Indiana general not-for-profit corporation act of 1935; or

(iii) any prior law under which domestic nonprofit entities were organized; or

(B) penalty, forfeiture, or punishment incurred because of the violation before the applicability of P.L.179-1991 to a nonprofit entity.

(4) A proceeding, reorganization, or dissolution commenced before the applicability of P.L.179-1991 to a nonprofit entity under:

(A) IC 23-7-1.1 (before its repeal);

(B) the Indiana general not-for-profit corporation act of 1935 before the repeal of IC 23-7-1.1; or

(C) any prior law under which domestic nonprofit entities were organized.

The proceeding, reorganization, or dissolution may be completed in accordance with IC 23-7-1.1 (before its repeal), the Indiana general not-for-profit corporation act of 1935, or any prior law under which nonprofit corporations were organized as if P.L.179-1991 had not been enacted.

(5) Any action as a result of a meeting of members or directors or action by written consent taken before the applicability of P.L.179-1991 to a nonprofit entity.

(b) If a penalty or punishment imposed for a violation of:

(1) IC 23-7-1.1 (before its repeal);

(2) the Indiana general not-for-profit corporation act of 1935; or

(3) any prior law under which domestic nonprofit entities were organized;

is reduced by P.L.179-1991, the penalty or punishment shall, if not already imposed, be imposed in accordance with P.L.179-1991.

As added by P.L.220-2011, SEC.383.

IC 23-17-1-1

Domestic corporations; application of article

Sec. 1. (a) After July 31, 1993, this article applies to a domestic corporation in existence on July 31, 1993, that was incorporated under or subject to the following:

(1) IC 23-7-1.1 (repealed).

(2) The Indiana general not for profit corporation act of 1935.

(b) After July 31, 1991, an entity organized under Indiana law for a purpose for which a corporation may be organized under this article may accept the provisions of this article and avail the corporation of the rights, privileges, immunities, and franchises provided by this article by taking the following actions:

(1) The entity's board of directors or governing body must adopt a resolution electing to have this article apply to the entity.

(2) The resolution must specify a date after July 31, 1991, after which the provisions of this article will apply to the entity.

(3) The resolution must be filed with the secretary of state, with a statement providing the name and address of the entity's registered agent before the date specified under subdivision (2).

As added by P.L.179-1991, SEC.1. Amended by P.L.1-2010, SEC.93.

IC 23-17-1-2

Foreign corporations; application of article

Sec. 2. After July 31, 1993, this article applies to a foreign corporation that desires to transact business in Indiana. A foreign corporation authorized to transact business in Indiana on July 31, 1993, is subject to this article but is not required to obtain a new certificate of authority to transact business under this article.

As added by P.L.179-1991, SEC.1.

IC 23-17-1-3

Official comments; publication; construction and application of article

Sec. 3. Official comments may be published by the Indiana business law survey commission and, after publication, the comments may be consulted by the courts to determine the underlying reasons, purposes, and policies of this article and may be used as a guide in this article's construction and application.

As added by P.L.179-1991, SEC.1. Amended by P.L.130-2006, SEC.24.

IC 23-17-1-4

Article citation

Sec. 4. This article may be cited as the Indiana Nonprofit Corporation Act of 1991.

As added by P.L.96-1993, SEC.4.

IC 23-17-2
Chapter 2. Definitions

IC 23-17-2-1
Application of chapter
Sec. 1. The definitions in this chapter apply throughout this article.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-2
"Approved by the members"
Sec. 2. "Approved by the members" means the votes cast favoring an action exceed the votes cast opposing the action:
(1) at a duly held meeting at which a quorum is present; or
(2) by a written ballot or written consent in conformity with this article unless this article, articles of incorporation, or bylaws requires a greater number of affirmative votes.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-3
"Articles of incorporation"
Sec. 3. "Articles of incorporation" includes amended and restated articles of incorporation, articles of merger, and articles of acceptance.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-4
"Board of directors"
Sec. 4. (a) "Board of directors" means the person or group of persons vested with overall management of the affairs of the domestic or foreign corporation.
(b) The term does not include a person or group of persons because of powers delegated to the person or group under IC 23-17-12-1.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-5
"Bylaws"
Sec. 5. "Bylaws" means a code of rules, other than articles of incorporation, adopted under this article for the regulation or management of the affairs of a domestic or foreign corporation.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-6
"Class"
Sec. 6. "Class" means a group of memberships that have the same rights with respect to voting, dissolution, redemption, and transfer.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-7
"Corporation"

Sec. 7. (a) "Corporation" means a public benefit, mutual benefit, or religious corporation incorporated under or subject to this article.

(b) The term does not include a foreign corporation.

(c) For purposes of IC 23-17-24, the term does not include a homeowners association (as defined in IC 34-6-2-58).

As added by P.L.179-1991, SEC.1. Amended by P.L.245-2005, SEC.3.

IC 23-17-2-8
"Delegate"

Sec. 8. "Delegate" means a person elected or appointed to vote in a representative assembly for the election of a director or on other matters.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-9
"Director"

Sec. 9. "Director" means an individual designated in articles of incorporation or bylaws, elected by the incorporators or otherwise elected or appointed, to act as a member of a board of directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-10
"Distribution"

Sec. 10. (a) "Distribution" means a direct or an indirect transfer of money or other property or incurrence or transfer of indebtedness by a corporation to or for the benefit of a person.

(b) The term includes a dividend and a purchase, redemption, or other acquisition of memberships.

(c) The term does not include payment of reasonable value for property received or services performed or payment of reasonable benefits in furtherance of the corporation's purposes.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-11
"Domestic corporation"

Sec. 11. (a) "Domestic corporation" means a public benefit, mutual benefit, or religious corporation incorporated under or subject to this article.

(b) The term does not include a foreign corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-12
"Entity"

Sec. 12. "Entity" includes the following:

(1) A domestic corporation or a foreign corporation.

(2) A corporation incorporated under IC 23-1 or a foreign corporation admitted to do business under IC 23-1.

(3) A corporation incorporated under any other statute.

(4) A for-profit or nonprofit unincorporated association.

(5) A corporation sole.
(6) A business trust, an estate, a partnership, a trust, and at least two (2) persons having a joint or common economic interest.
(7) A state, the United States, or a foreign government.
(8) A limited liability company or a foreign limited liability company.

As added by P.L.179-1991, SEC.1. Amended by P.L.8-1993, SEC.331.

IC 23-17-2-13
"Foreign corporation"

Sec. 13. "Foreign corporation" means a corporation incorporated as a nonprofit corporation under a law other than an Indiana law.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-14
"Governmental subdivision"

Sec. 14. "Governmental subdivision" includes authority, county, district, and municipality.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-15
"Individual"

Sec. 15. "Individual" means a natural person. The term includes the estate of an incompetent or a deceased individual.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-16
"Mail"

Sec. 16. "Mail" means either of the following:
(1) First class, certified, or registered United States mail, postage prepaid.
(2) Private carrier service, fees prepaid or billed to the sender.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-17
"Member"

Sec. 17. (a) "Member" means a person who, on more than one (1) occasion, has the right to vote for the election of a director under a corporation's articles of incorporation or bylaws.

(b) A person is not a member because of any of the following:
(1) Any rights the person has as a delegate.
(2) Any rights the person has to designate a director.
(3) Any rights the person has as a director.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-18
"Membership"

Sec. 18. "Membership" means the rights and obligations a member has under a corporation's articles of incorporation, bylaws, and this

article.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-19
"Mutual benefit corporation"
Sec. 19. "Mutual benefit corporation" means a domestic corporation that:
(1) is formed as a mutual benefit corporation under this title;
(2) is designated a mutual benefit corporation by another law; or
(3) is not a public benefit corporation or religious corporation.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-20
"Person"
Sec. 20. "Person" means an individual or entity.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-21
"Principal office"
Sec. 21. "Principal office" means the office, inside or outside of Indiana, designated in an annual report filed under IC 23-17-27-8 where the principal offices of a domestic or foreign corporation are located.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-22
"Proceeding"
Sec. 22. "Proceeding" includes a civil suit and a criminal, an administrative, and an investigatory action.
As added by P.L.179-1991, SEC.1.

IC 23-17-2-23
"Public benefit corporation"
Sec. 23. "Public benefit corporation" means a domestic corporation that is the following:
(1) Either:
(A) formed as a public benefit corporation under this title;
(B) designated as a public benefit corporation by another law;
(C) recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986; or
(D) otherwise organized for a public or charitable purpose, including a veterans organization or a post, a unit, or an auxiliary of the veterans organization, that is chartered by a federal statute for patriotic, public, or charitable purposes and recognized as tax exempt under Section 501(c)(4) or Section 501(c)(19) of the Internal Revenue Code.
(2) Restricted so that on dissolution the corporation must distribute the corporation's assets to an organization organized

for a public or charitable purpose, a religious corporation, the United States, a state, or a person that is recognized as exempt under Section 501(c)(3) of the Internal Revenue Code of 1986.

(3) Not a religious corporation.

As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.5.

IC 23-17-2-24
"Record date"

Sec. 24. "Record date" means the date established under this title on which a corporation determines the identity of the corporation's members for the purposes of this article.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-25
"Religious corporation"

Sec. 25. "Religious corporation" means a domestic corporation that is:

(1) formed as a religious corporation under this title;

(2) designated a religious corporation by another law; or

(3) organized primarily or exclusively for religious purposes.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-26
"Secretary"

Sec. 26. "Secretary" means the corporate officer to whom a board of directors has delegated responsibility under IC 23-17-14-1(b) for:

(1) custody of the minutes of the meetings of a board of directors and members; and

(2) authenticating the records;

of a corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-2-27
"Vote", "voting", or "casting a vote"

Sec. 27. (a) "Vote" includes authorization by written ballot, and "voting" or "casting a vote" includes the giving of written consent.

(b) Even if a person entitled to vote characterizes the conduct as voting or casting a vote, the term does not include:

(1) recording the fact of abstention or failing to vote for a candidate; or

(2) approving or disapproving of a matter.

As added by P.L.179-1991, SEC.1. Amended by P.L.110-2008, SEC.3.

IC 23-17-2-28
"Voting power"

Sec. 28. (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term does not include a vote that is contingent upon the

happening of a condition or an event that has not occurred at the time. If a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-3

Chapter 3. Organization

IC 23-17-3-1

Incorporator; signing and delivering articles of incorporation

Sec. 1. At least one (1) person may act as the incorporator of a corporation by signing and delivering articles of incorporation to the secretary of state for filing.

As added by P.L.179-1991, SEC.1.

IC 23-17-3-2

Articles of incorporation; required provisions

Sec. 2. Articles of incorporation must contain the following:

(1) A corporate name for the corporation that satisfies the requirements of IC 23-17-5-1.

(2) One (1) of the following statements:

(A) "This corporation is a public benefit corporation".

(B) "This corporation is a mutual benefit corporation".

(C) "This corporation is a religious corporation".

(3) The street address of the corporation's initial registered office in Indiana and the name of the corporation's initial registered agent at that office.

(4) The name and address of each incorporator.

(5) Whether or not the corporation will have members.

(6) Provisions that are not inconsistent with any law regarding the distribution of assets on dissolution.

As added by P.L.179-1991, SEC.1.

IC 23-17-3-3

Articles of incorporation; optional provisions

Sec. 3. Articles of incorporation may contain the following:

(1) The purpose or purposes for which the corporation is organized, which may be either alone or in combination with other purposes.

(2) The names and addresses of the individuals who are to serve as the initial directors.

(3) Provisions not inconsistent with any law regarding the following:

(A) Management and regulation of the affairs of the corporation.

(B) Defining, limiting, and regulating the powers of the corporation, the corporation's board of directors, and members (or any class of members).

(C) The characteristics, qualifications, rights, limitations, and obligations attaching to a class of members.

(4) Any other provision that is required or allowed to be set forth in the bylaws.

As added by P.L.179-1991, SEC.1.

IC 23-17-3-4

Articles of incorporation; optional corporate powers provisions

Sec. 4. Articles of incorporation do not have to contain any of the corporate powers set forth under this article.

As added by P.L.179-1991, SEC.1.

IC 23-17-3-5

Filing of articles; commencement of existence; proof of satisfaction of conditions precedent

Sec. 5. (a) Unless a delayed effective date is specified, a corporate existence begins when articles of incorporation are filed.

(b) The filing of articles of incorporation by 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.179-1991, SEC.1.

IC 23-17-3-6

Purporting to act on behalf of nonexistent corporation; liability

Sec. 6. A person who purports to act as or on behalf of a corporation, knowing that no incorporation took place under this article, is jointly and severally liable for all liabilities created while so acting.

As added by P.L.179-1991, SEC.1.

IC 23-17-3-7

Organizational meetings

Sec. 7. (a) After incorporation:

(1) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by:

(A) appointing officers;

(B) adopting bylaws; and

(C) carrying on any other business brought before the meeting; and

(2) if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) to elect directors and complete the organization of the corporation; or

(B) to elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this article to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by at least one (1) written consent that:

(1) describes the action taken; and

(2) is signed by each incorporator.

(c) An organizational meeting may be held in or out of Indiana.
As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.6.

IC 23-17-3-8
Bylaws; contents

Sec. 8. (a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with any law or the articles of incorporation.
As added by P.L.179-1991, SEC.1.

IC 23-17-3-9
Emergency bylaws; effect

Sec. 9. (a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency under subsection (d). Emergency bylaws may make all provisions necessary for managing the corporation during an 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.

(b) Provisions of regular bylaws consistent with emergency bylaws remain effective during the emergency. Emergency bylaws are not effective after the emergency ends.

(c) 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 corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if an extraordinary event prevents a quorum of a 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.179-1991, SEC.1.

IC 23-17-4
Chapter 4. Purposes and Powers

IC 23-17-4-1
Authorized activities; corporations subject to regulation under other statutes

Sec. 1. (a) A corporation incorporated under this article has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another Indiana statute may incorporate under this article unless provisions for incorporation of corporations engaging in that activity exist under the other statute.

As added by P.L.179-1991, SEC.1.

IC 23-17-4-2
Perpetual duration and succession; powers

Sec. 2. Unless a corporation's articles of incorporation provide otherwise, a corporation has perpetual duration and succession in the corporation's corporate name and has the same powers as an individual to do all things necessary or convenient to carry out the corporation's affairs, including the power to do the following:

(1) Sue, be sued, complain, and defend in the corporation's corporate name.

(2) Have a corporate seal or facsimile of a corporate seal, which may be altered at will, to use by impressing or affixing or in any other manner reproducing it. However, the use or impression of a corporate seal is not required and does not affect the validity of any instrument.

(3) Make and amend bylaws not inconsistent with the corporation's articles of incorporation or with Indiana law for managing the affairs of the corporation.

(4) Purchase, receive, take by gift, devise, or bequest, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

(5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of the corporation's property.

(6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any entity.

(7) Make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations and secure any of the corporation's obligations by mortgage or pledge of any of the corporation's property, franchises, or income.

(8) Lend money, invest and reinvest the corporation's funds, and receive and hold real and personal property as security for repayment, except as provided under IC 23-17-13-3.

(9) Be a promoter, a partner, a member, an associate or a manager of any partnership, joint venture, trust, or other entity.
(10) Conduct the corporation's activities, locate offices, and exercise the powers granted by this article inside or outside Indiana.
(11) Elect directors, elect and appoint officers, and appoint employees and agents of the corporation, define the duties and fix the compensation of directors, officers, employees and agents.
(12) Pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for the corporation's current or former directors, officers, employees, and agents.
(13) Make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest.
(14) Impose dues, assessments, admission, and transfer fees upon the corporation's members.
(15) Establish conditions for admission of members, admit members, and issue memberships.
(16) Carry on a business.
(17) Have and exercise powers of a trustee as permitted by law, including those set forth in IC 30-4-3-3.
(18) Purchase and maintain insurance on behalf of any individual who:

(A) is or was a director, an officer, an employee, or an agent of the corporation; or
(B) is or was serving at the request of the corporation as a director, an officer, an employee, or an agent of another entity;

against any liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, an officer, an employee, or an agent, whether or not the corporation would have power to indemnify the individual against the same liability under this article.
(19) Do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.
(20) Adopt, either in the corporation's articles of incorporation or bylaws, a provision establishing exclusive jurisdiction in the circuit or superior courts of any county in Indiana or in the United States district courts of Indiana, for:

(A) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee, or agent of the corporation to the corporation;
(B) any action asserting a claim arising under:
(i) any provision of this article; or
(ii) the corporation's articles of incorporation or bylaws; or
(C) any actions otherwise relating to the internal affairs of the corporation.

As added by P.L.179-1991, SEC.1. Amended by P.L.63-2014,

SEC.19.

IC 23-17-4-3
Emergency powers of board; procedures; effect

Sec. 3. (a) In anticipation of or during an emergency under subsection (d), the board of directors of a corporation may do the following:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors must be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one (1) or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section 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.179-1991, SEC.1.

IC 23-17-4-4
Challenges based on corporate power to act

Sec. 4. (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation for a declaratory judgment or to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the attorney general or a director.

As added by P.L.179-1991, SEC.1.

IC 23-17-5

Chapter 5. Corporate Names

IC 23-17-5-1

Contents; distinguishable from other recorded names; waiver; exceptions; application of article to fictitious names

Sec. 1. (a) A corporate name:

(1) must contain the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd.", or similar words or abbreviations in another language; and

(2) except as provided in subsection (e), may not contain language stating or implying that the corporation is organized for a purpose other than a purpose permitted by this article and the corporation's articles of incorporation.

(b) Except as authorized under subsections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state from the following:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in Indiana.

(2) A corporate name reserved or registered under section 2 or 3 of this chapter.

(3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in Indiana because a real name is unavailable.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from at least one (1) of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A corporation may use the name of another domestic or foreign business corporation that is used in Indiana if the other corporation is incorporated or authorized to do business in Indiana and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) Except as provided under IC 23-17-26-6, this article does not control the use of fictitious names.

As added by P.L.179-1991, SEC.1.

IC 23-17-5-2

Reservation of use; application; duration of reservation; transfer

Sec. 2. (a) A person may reserve the exclusive use of a name, including a fictitious name for a foreign corporation whose name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a one hundred twenty (120) day period.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

As added by P.L.179-1991, SEC.1. Amended by P.L.277-2001, SEC.18.

IC 23-17-5-3

Registration of foreign corporation name; application; renewal conditions; effect; termination

Sec. 3. (a) A foreign corporation may register the foreign corporation's:

(1) name; or

(2) name with any addition required under IC 23-17-26-6;

if the name is distinguishable upon the records of the secretary of state as provided in section 1 of this chapter.

(b) A foreign corporation registers the foreign corporation's name, with any addition required under IC 23-17-26-6, by delivering to the secretary of state for filing an application setting forth:

(1) its name, or its name with any addition required by IC 23-17-26-6; and

(2) the state or country and date of its incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew the registration for successive years by delivering to the secretary of state for filing a renewal application that complies with the requirements of subsection (b) between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following year.

(e) A foreign corporation whose registration is effective may:

(1) qualify as a foreign corporation under that name; or

(2) consent in writing to the use of that name by:

(A) a domestic corporation subsequently incorporated under this article; or

(B) another foreign corporation subsequently authorized to transact business in Indiana.

The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

As added by P.L.179-1991, SEC.1. Amended by P.L.277-2001, SEC.19.

IC 23-17-6

Chapter 6. Offices and Agents

IC 23-17-6-1

Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation

Sec. 1. (a) A corporation must continuously maintain the following in Indiana:

(1) A registered office.

(2) A registered agent, who must be one (1) of the following:

(A) An individual who resides in Indiana and whose business office is identical with the registered office.

(B) A domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office.

(C) A foreign limited liability company, foreign corporation, or nonprofit foreign corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each corporation incorporated after June 30, 2014, under the laws of Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each corporation formed under the laws of Indiana shall provide to the corporation's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the corporation; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the corporation.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a corporation under subsection (c).

(e) If a corporation fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 3 of this chapter, as the registered agent for the corporation.

As added by P.L.179-1991, SEC.1. Amended by P.L.63-2014, SEC.20.

IC 23-17-6-2

Statement of change; contents; notice

Sec. 2. (a) A corporation may change the corporation's registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

(1) The name of the corporation.

(2) The street address of the corporation's current registered office.

(3) If the current registered office is to be changed, the street address of the new registered office.

(4) The name of the corporation's current registered agent.

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on or attached to the statement) to the appointment.

(b) After a change is made, the street addresses of the corporation's registered office and the business office of the corporation's registered agent will be identical.

(c) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of a corporation that the registered agent serves by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that does the following:

(1) Complies with the requirements of subsection (a).

(2) Recites that the corporation has been notified of the change.

As added by P.L.179-1991, SEC.1.

IC 23-17-6-3

Resignation of agency appointment; statement; contents; filing; effective date

Sec. 3. (a) A registered agent may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-17-29 a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall mail one (1) copy to the corporation at the corporation's principal office, if known, and one (1) copy to the registered office, if not discontinued.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, thirty-one (31) days after the date on which the statement is filed.

As added by P.L.179-1991, SEC.1. Amended by P.L.228-1995, SEC.20.

IC 23-17-6-4

Service of process; registered agent; service on corporation in absence of registered agent

Sec. 4. (a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation does not have a registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation or other executive officer under Trial Rule 4.6(a)(1) at the corporation's principal office. Service is perfected under this subsection on the earliest of the following:

(1) The date the corporation receives the mail.

(2) The date shown on the return receipt if signed on behalf of the corporation.

(3) Five (5) days after the service is deposited with the United States Postal Service, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means of serving a corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-7

Chapter 7. Members; Admission; Types of Memberships; Rights and Duties

IC 23-17-7-1

Criteria or procedures for admission; consent

Sec. 1. (a) Articles of incorporation or bylaws may establish criteria or procedures for admission of members.

(b) A person may not be admitted as a member without the person's consent.

As added by P.L.179-1991, SEC.1.

IC 23-17-7-2

Consideration for admission

Sec. 2. Except as provided in a corporation's articles of incorporation or bylaws, a corporation may admit members for either of the following:

(1) No consideration.

(2) Consideration determined by the board of directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-7-3

Corporations without members

Sec. 3. A corporation is not required to have members.

As added by P.L.179-1991, SEC.1.

IC 23-17-7-4

Rights and duties; membership classes

Sec. 4. Members shall have the same rights and obligations with respect to:

(1) voting;

(2) dissolution;

(3) redemption; and

(4) transfer;

unless articles of incorporation or bylaws establish classes of membership with different rights or obligations. Members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by articles of incorporation or bylaws.

As added by P.L.179-1991, SEC.1.

IC 23-17-7-5

Transfer rights; restrictions

Sec. 5. (a) Except as set forth in or authorized by articles of incorporation or bylaws, a member of a corporation may not transfer a membership or any right arising from a membership.

(b) Where transfer rights have been provided, a restriction on transfer rights may not be binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

As added by P.L.179-1991, SEC.1.

IC 23-17-7-6
Liability for acts or debts of corporation

Sec. 6. A member of a corporation is not personally liable for the acts or debts of the corporation. However, the member may become personally liable because of the member's own acts or conduct.
As added by P.L.179-1991, SEC.1.

IC 23-17-7-7
Liability for obligations; transferee's liability

Sec. 7. (a) A member may become liable to the corporation for dues, assessments, or fees. However:

(1) an article of incorporation or a bylaw provision; or

(2) a resolution adopted by the board of directors;

authorizing or imposing dues, assessments, or fees does not create liability to pay the obligation. However, nonpayment constitutes grounds for expelling or suspending the member or suspending or terminating the membership. The validity of mandatory membership and the validity of a lien imposed by a recorded declaration of covenant or a similar commitment running with the real property or an interest in the real property is not affected by this subsection.

(b) A permitted transferee of a membership having notice at the time of the transfer of unpaid dues, assessments, or fees of the transferor is liable to the corporation for unpaid dues, assessments, or fees. However, a transferee who is an executor, an administrator, a guardian, a trustee, a receiver, or a pledgee is not personally liable for any unpaid consideration due to the corporation. An heir or a legatee who is a permitted transferee may surrender the membership to the corporation without incurring any liability for any unpaid consideration.
As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.7.

IC 23-17-7-8
Creditor's proceedings; liability of members; prerequisites; intervention and joinder

Sec. 8. (a) A proceeding may not be brought by a creditor to reach or apply the liability, if any, of a member to the corporation unless:

(1) final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part;

(2) the corporation has been adjudged bankrupt or a receiver has been appointed with the power to collect debts that a receiver on demand of a creditor to bring a proceeding has refused to do; or

(3) the corporation has been dissolved leaving debts unpaid.

However, a proceeding may not be brought more than three (3) years after the happening of any of the events described in this subsection.

(b) Creditors of the corporation, with or without reducing the creditor's claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) to reach and apply unpaid amounts due the corporation. Members who owe amounts to the corporation may be joined in the proceeding.

As added by P.L.179-1991, SEC.1.

IC 23-17-7-9

Advancements or loans to corporation; return or repayment

Sec. 9. A member may advance or loan money to the corporation that may be returned or repaid to the member at a time and under a condition that the corporation and the member agree. However, upon return or repayment, the member may not receive more than the principal amount of the money advanced or loaned, together with reasonable interest at a rate that is not in excess of market rate, whether fixed or variable, otherwise available without premium to the corporation under the same circumstances at the time of the advance or loan.

As added by P.L.179-1991, SEC.1.

IC 23-17-8
Chapter 8. Resignation and Termination of Members

IC 23-17-8-1
Resignation; liability for obligations

Sec. 1. (a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made before a resignation.

As added by P.L.179-1991, SEC.1.

IC 23-17-8-2
Expulsion, suspension, or termination; procedures; limitation of actions; liability for obligations

Sec. 2. (a) A member of a public benefit or mutual benefit corporation may not be expelled or suspended and a membership or memberships in such a corporation may not be terminated or suspended except under a procedure that is:

(1) fair and reasonable; and

(2) carried out in good faith.

(b) A procedure is fair and reasonable under either of the following conditions:

(1) The articles of incorporation or bylaws set forth a procedure that provides the following:

(A) Not less than fifteen (15) days prior written notice of the expulsion, suspension, or termination and the reasons for the expulsion, suspension, or termination.

(B) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension, or termination by a person authorized to decide that the proposed expulsion, termination, or suspension should not take place.

(2) The procedure is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

(d) A proceeding challenging an expulsion, a suspension, or a termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension, or termination.

(e) A member who has been expelled or suspended or whose membership is terminated may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion, suspension, or termination.

As added by P.L.179-1991, SEC.1.

IC 23-17-8-3
Purchase of memberships or membership rights; public benefit or religious corporation; mutual benefit corporation

Sec. 3. (a) A public benefit or religious corporation may not purchase any of the corporation's memberships or any right arising from a membership.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and under the conditions set forth in or authorized by the corporation's articles of incorporation or bylaws. A payment may not be made in violation of IC 23-17-21.

As added by P.L.179-1991, SEC.1.

IC 23-17-9

Chapter 9. Delegates

IC 23-17-9-1

Authority

Sec. 1. A corporation may provide in articles of incorporation or bylaws that delegates have some or all of the authority of members.

As added by P.L.179-1991, SEC.1.

IC 23-17-9-2

Articles of incorporation or bylaws; provisions

Sec. 2. The articles of incorporation or bylaws may set forth provisions relating to the following:

(1) The characteristics, qualifications, rights, limitations, and obligations of delegates, including selection and removal.

(2) Calling, noticing, holding, and conducting meetings of delegates.

(3) Carrying on corporate activities during and between meetings of delegates.

As added by P.L.179-1991, SEC.1.

IC 23-17-10

Chapter 10. Meetings and Action Without Meetings

IC 23-17-10-1

Annual and regular membership meetings

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

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held inside of or outside of Indiana at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(d) At the annual meeting:

(1) the president and chief financial officer or the president's and the chief financial officer's designees shall report on the activities and financial condition of the corporation; and

(2) the members shall consider and act upon other matters as may be raised consistent with the notice requirements of section 5 of this chapter and IC 23-17-11-4(b).

(e) At regular meetings the members shall consider and act upon matters as may be raised consistent with the notice requirements of section 5 of this chapter and IC 23-17-11-4(b).

(f) The failure to hold an annual or a regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not do any of the following:

(1) Affect the validity of any corporate action.

(2) Work any forfeiture or dissolution of the corporation.

(g) If provided in the articles of incorporation or bylaws, a member of a corporation may participate in an annual or a regular meeting of the members by or through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member of a corporation participating in a meeting by this means is considered to be present in person at the meeting.

As added by P.L.179-1991, SEC.1.

IC 23-17-10-2

Special meetings

Sec. 2. (a) A corporation with members must hold a special meeting of members as follows:

(1) On call of the corporation's president or board of directors or other person, including a member or an officer, specifically authorized to do so by the articles of incorporation or bylaws.

(2) Except as provided in the articles of incorporation or bylaws of a religious corporation, if the holders of at least ten percent (10%) of all the votes entitled to be cast on an issue proposed to

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

(b) Unless otherwise provided under section 7 of this chapter, the close of business on the thirtieth day before delivery of the demand for a special meeting to a corporate officer is the record date for the purpose of determining if the ten percent (10%) requirement of subsection (a) has been met.

(c) If a notice for a special meeting demanded under subsection (a)(2) is not given under section 5 of this chapter within thirty (30) days after the date the written demand is delivered to the corporation's secretary, regardless of the requirements of subsection (d), a person signing the demand may do the following:

(1) Set the time and place of the meeting.

(2) Give notice under section 5 of this chapter.

(d) A special meeting of members may be held inside or outside of Indiana at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, a special meeting shall be held at the corporation's principal office.

(e) Only those matters that are within the purposes described in the meeting notice required under section 5 of this chapter may be conducted at a special meeting of members.

(f) If the articles of incorporation or bylaws provide, a member of a corporation may participate in a special meeting of the members by or through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is considered to be present in person at the meeting.

As added by P.L.179-1991, SEC.1.

IC 23-17-10-3

Court ordered meetings

Sec. 3. (a) The circuit court or superior court of the county where a corporation's principal office is located or, if no principal office is located in Indiana, the corporation's registered office, may order a meeting to be held and may fix the time and place of the meeting that shall be conducted in accordance with the corporation's articles of incorporation and bylaws as follows:

(1) On application of a member or other person entitled to participate in an annual or a regular meeting if an annual meeting was not held within the earlier of the following:

(A) Six (6) months after the end of the corporation's fiscal year.

(B) Fifteen (15) months after the corporation's last annual meeting.

(2) On application of a member or other person entitled to participate in a regular meeting if a regular meeting is not held within forty (40) days after the date it was required to be held.

(3) On application of a member who signed a demand for a special meeting valid under section 2 of this chapter, a person entitled to call a special meeting 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.179-1991, SEC.1.

IC 23-17-10-4

Action taken without meeting; approval of action by members holding 80 percent of votes entitled to be cast

Sec. 4. (a) Unless limited or prohibited by the articles of incorporation or bylaws, action required or permitted by this article to be approved by the members may be taken without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the votes entitled to be cast on the action. The action must be evidenced by at least one (1) written consent describing the action taken that meets the following conditions:

(1) Is signed by the members representing at least eighty percent (80%) of the votes entitled to be cast on the action.

(2) Is delivered to the corporation for inclusion in the minutes or filing with the corporation's records.

Requests for written consents must be delivered to all members.

(b) If not otherwise determined under section 3 or 7 of this chapter, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a).

(c) A consent signed under this section:

(1) has the effect of a meeting vote; and

(2) may be described as such in any document.

(d) Action taken under this section is effective when the last member necessary to meet the eighty percent (80%) requirement signs the consent unless a prior or subsequent effective date is specified in the consent.

As added by P.L.179-1991, SEC.1.

IC 23-17-10-5

Notice of meetings

Sec. 5. (a) A corporation shall give notice of meetings of members in a fair and reasonable manner.

(b) A notice that conforms to the requirements of subsection (c) is fair and reasonable. However, other means of giving notice may also be fair and reasonable when all the circumstances are considered if notice of matters referred to in subsection (c)(2) is given as provided in subsection (c).

(c) Unless fair and reasonable notice is otherwise specified in a corporation's bylaws, notice is fair and reasonable if the following occur:

(1) The corporation notifies the corporation's members of the place, date, and time of each annual, regular, and special meeting of members not less than ten (10) days, or, if notice is mailed by other than first class or registered mail, thirty (30) days to sixty (60) days, before the meeting date.

(2) Notice of an annual or a regular meeting includes a description of any matter or matters to be considered at the meeting that must be approved by the members under IC 23-17-13-2.5, IC 23-17-16-13, IC 23-17-17-5, IC 23-17-19-4, IC 23-17-20-2, or IC 23-17-22-2.

(3) Notice of a special meeting includes a description of the purpose for which the meeting is called.

(4) A corporation provides notice by:

(A) communicating in person;

(B) mail or other method of delivery; or

(C) other electronic means capable of verification.

(5) For a corporation, other than a veteran's organization, having more than one thousand (1,000) members, notice of the place, date, and time of an annual, a regular, or a special meeting, and in the case of a special meeting, the purpose of the special meeting, may be given by one (1) publication in a newspaper of general circulation, printed in English, in the county in which the corporation has the corporation's principal office if the publication is made not less than ten (10) days and not more than thirty (30) days before the meeting date.

(d) Unless the bylaws require otherwise, if an annual, a regular, or a special meeting of members is adjourned to a different date, time, or place, notice is not required to 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 7 of this chapter, however, notice of the adjourned meeting must be given under this section to persons who are members as of the new record date.

As added by P.L.179-1991, SEC.1. Amended by P.L.110-2008, SEC.4.

IC 23-17-10-6

Waiver of notice

Sec. 6. (a) A member may waive a notice required by this article, articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver by the member entitled to the notice must be as follows:

(1) In writing.

(2) Signed by the member entitled to the notice.

(3) Delivered to the corporation for inclusion in the minutes or filing with the corporation's records.

(b) A member's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the member 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 described in the meeting notice, unless the member objects to considering the matter when the matter is presented.

As added by P.L.179-1991, SEC.1.

IC 23-17-10-7

Record date

Sec. 7. (a) Bylaws may fix or provide the manner of fixing the record date to determine the members entitled to notice of a members' 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 may fix a future date as a record date. If a record date is not fixed, the record date is determined as follows:

(1) If members are entitled to notice of a members' meeting, the record date is the business day preceding the date on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(2) If members are entitled to vote at a members' meeting, the record date is the date of the meeting.

(3) If members are entitled to exercise any rights in respect of any other lawful action, the record date is the day on which the board of directors adopts the resolution relating the action or the sixtieth day before the date of other action, whichever is later.

(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 members occurs.

(c) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board of directors fixes a new date for determining the right to notice or the right to vote. A board of directors must fix the new date if the meeting is adjourned to a date more than seventy (70) days after the record date for determining members entitled to notice of 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 for notice or voting continues in effect; or

(2) fix a new record date for notice or voting.

As added by P.L.179-1991, SEC.1.

IC 23-17-10-8

Action taken without meeting; delivery of written ballots to members entitled to vote on matter

Sec. 8. (a) Unless prohibited or limited by articles of incorporation or bylaws, an action that may be taken at an annual, a regular, or a special meeting of members may be taken without a meeting if the

corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot must do the following:

(1) Set forth each proposed action.

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot under this section is valid only when the following occur:

(1) The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(2) The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) A solicitation for votes by written ballot must do the following:

(1) Indicate the number of responses needed to meet the quorum requirements.

(2) State the percentage of approvals necessary to approve each matter other than the election of directors.

(3) Specify the time by which a ballot must be received by the corporation to be counted.

(e) Except as otherwise provided in articles of incorporation or bylaws, a written ballot may not be revoked.

As added by P.L.179-1991, SEC.1.

IC 23-17-11
Chapter 11. Voting

IC 23-17-11-1
List of members entitled to notice of meeting; inspection; validity of action not affected by unavailability of list; limitation on inspection imposed by religious and public benefit corporations

Sec. 1. (a) After fixing a record date for a notice of a meeting, a corporation shall prepare a list of the names of the corporation's members who are entitled to notice of a members' meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by a member for the purpose of communication with other members concerning 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. Subject to IC 23-17-27-2(c) and IC 23-17-27-5:

(1) a member;
(2) a member's agent; or
(3) an attorney authorized in writing;

may, on written demand, inspect and copy the list, during regular business hours and at the member's expense, during the period the list is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and a member, the member's agent, or an attorney authorized in writing may inspect the list at any time during the meeting or an adjournment.

(d) If the corporation refuses to allow a member, the member's agent, or an attorney authorized in writing to inspect or copy the list of members during the period specified in subsection (b), the circuit court or superior court of the county where a corporation's principal office, or, if no principal office is located in Indiana, the corporation's registered office, is located, on application of the member, may order the inspection or copying.

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

(f) The use and distribution of information acquired from inspection or copying the list of members under the rights granted by this section are subject to IC 23-17-27-2(c) and IC 23-17-27-5.

(g) The articles of incorporation or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy the corporation's records.

(h) The articles of incorporation of a public benefit corporation

may limit or abolish the right of a member, the member's agent, or an attorney authorized in writing to inspect or copy the membership list if the corporation provides a reasonable means to mail communications concerning the corporation to other members through the corporation at the expense of the member making the request.
As added by P.L.179-1991, SEC.1.

IC 23-17-11-2
Refusal to provide names or identifying information relating to contributors

Sec. 2. Notwithstanding the requirements of this article, a corporation may refuse to provide names or identifying information relating to contributors.
As added by P.L.179-1991, SEC.1.

IC 23-17-11-3
Member entitled to one vote; membership standing of record in names of two or more persons

Sec. 3. (a) Unless articles of incorporation or bylaws provide otherwise, a member is entitled to one (1) vote on each matter voted on by the members.

(b) Unless articles of incorporation or bylaws provide otherwise, if a membership stands of record in the names of at least two (2) persons, the acts of the persons with respect to voting have the following effect:

(1) If one (1) person votes, the vote binds all persons.

(2) If more than one (1) person votes, the vote shall be divided on a pro rata basis.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-4
Quorum; increasing or decreasing quorum; vote on matter not described in notice for regular or annual meeting; votes considered present for quorum purposes

Sec. 4. (a) Unless this article, articles of incorporation, or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter constitutes a quorum for action on that matter.

(b) An amendment of articles of incorporation or bylaws to decrease the quorum for a member action may be approved by either of the following:

(1) The members.

(2) Unless prohibited by articles of incorporation or bylaws, the board of directors.

(c) An amendment of articles of incorporation or bylaws to increase the quorum required for a member action must be approved by the members.

(d) Unless at least one-third (1/3) of the voting power is present in person or by proxy, the only matters that may be voted upon at an

annual or a regular meeting of members are those matters that are described in the meeting notice.

(e) After a vote is represented for any purpose at a meeting, the vote 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.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-5

Voting; approval of actions

Sec. 5. (a) If a quorum exists, action on a matter other than the election of directors is approved if the votes cast favoring the action exceed the votes cast opposing the action unless this article, articles of incorporation, or bylaws require a greater number of affirmative votes.

(b) An amendment to articles of incorporation or bylaws to increase, decrease, or otherwise change the vote required for a member action must be approved by the members.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-6

Vote by proxy

Sec. 6. (a) A member may vote the member's membership in person or by proxy.

(b) Unless articles of incorporation or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form:

(1) personally; or

(2) by an 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 member.

(e) The death or incapacity of the member 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) Subject to section 8 of this chapter and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation may accept the proxy's vote or other action as that of the member making the appointment.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-7

Election of directors; cumulative voting

Sec. 7. (a) Unless otherwise provided in articles of incorporation or bylaws, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a

quorum is present.

(b) Members may not cumulate votes for directors unless articles of incorporation or bylaws so provide.

(c) A statement included in articles of incorporation or bylaws that states all or a designated class of members is "entitled to cumulate their votes for directors" (or similar words) means that the members designated may do the following:

(1) Multiply the number of votes the members are entitled to cast by the number of directors for whom the members are entitled to vote.

(2) Cast the product for a single candidate or distribute the product among at least two (2) candidates.

(d) Cumulative voting may not occur at a particular meeting unless either of the following occur:

(1) The meeting notice or statement accompanying the notice states conspicuously that cumulative voting is authorized.

(2) A member who has the right to cumulate the member's votes gives notice at least forty-eight (48) hours before the time set for the meeting of the member's intent to cumulate the members' votes during the meeting, and if one (1) member gives this notice, all other members of the same class participating in the election are entitled to cumulate the members' votes without giving further notice.

(e) A director elected by cumulative voting may be removed by the members without cause if the requirements of IC 23-17-12-8 are met unless the following occur:

(1) The votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by written ballot, all memberships entitled to vote were voted.

(2) The entire number of directors authorized at the time of the director's most recent election were then being elected.

(f) Members may not cumulatively vote if the directors and members are identical.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-8

Election of directors; organizational unit, geographic unit, preferential voting, or other reasonable method

Sec. 8. A corporation may provide in the corporation's articles of incorporation or bylaws for election of directors by members or delegates:

(1) on the basis of a chapter or other organizational unit;

(2) by region or other geographic unit;

(3) by preferential voting; or

(4) by any other reasonable method.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-9

Acceptance or rejection of votes; liability; validity of corporate action

Sec. 9. (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give the vote, consent, waiver, or proxy appointment effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of the member, the corporation, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give the vote, consent, waiver, or proxy appointment effect as the act of the member if the following conditions exist:

(1) The member 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 attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) At least two (2) persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coholders and the person signing appears to be acting on behalf of all the coholders.

(4) In the case of a mutual benefit corporation the following conditions exist:

(A) The name signed purports to be that of an administrator, an executor, a guardian, or a conservator representing the member 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.

(B) The name signed purports to be that of a receiver or trustee in bankruptcy of the member 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.

(c) The corporation may 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 any of the following:

(1) The validity of the signature on the vote, consent, waiver, or proxy appointment.

(2) The signatory's authority to sign for the member.

(d) A corporation and a 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 member for the consequences of the acceptance or rejection.

(e) A 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.179-1991, SEC.1.

IC 23-17-12

Chapter 12. Directors

IC 23-17-12-1

Necessity of having board of directors; exercise of corporate powers; management of corporate business; delegation of powers

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

(b) Except as otherwise provided in this article:

(1) corporate powers shall be exercised by or under the authority of; and

(2) the business and affairs of the corporation managed under the direction of;

the corporation's board of directors.

(c) Articles of incorporation may authorize a person or a group of persons or the manner of designating a person or a group of persons to exercise some or all of the powers that would otherwise be exercised by a board of directors. To the extent authorized:

(1) the person or group of persons has the duties and responsibilities of the directors;

(2) the directors are relieved to that extent from the duties and responsibilities; and

(3) the person or group of persons should be considered a director or directors for purposes of IC 23-17-13 and IC 23-17-16.

As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.8.

IC 23-17-12-2

Qualifications

Sec. 2. (a) A director must be an individual.

(b) Articles of incorporation or bylaws may prescribe qualifications for directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-3

Number of directors; increase or decrease in number

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 articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased, but to not less than three (3), by an amendment to or in a manner prescribed in articles of incorporation or bylaws.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-4

Time and method of election

Sec. 4. (a) If a corporation has members, all the directors except the initial directors shall be elected at the first annual meeting of members and at each annual meeting after the first annual meeting, unless articles of incorporation or bylaws provide:

(1) another time or method of election; or

(2) that some of the directors are designated or appointed by another person.

(b) If a corporation does not have members, all the directors except the initial directors shall be elected, designated, or appointed as provided in articles of incorporation or bylaws. If a method of election, designation, or appointment is not set forth in articles of incorporation or bylaws, the directors other than the initial directors shall be elected by the board of directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-5

Term

Sec. 5. (a) Articles of incorporation or bylaws must specify the terms of directors. Except for designated or appointed directors, the term of a director may not exceed five (5) years. In the absence of a term specified in articles of incorporation or bylaws, the term of a director is one (1) year. Directors may be elected for successive terms.

(b) Subject to sections 8 through 11 of this chapter, a decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in articles of incorporation or bylaws:

(1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) the term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until:

(1) a successor is elected, designated, or appointed and qualifies; or

(2) there is a decrease in the number of directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-6

Staggered terms

Sec. 6. Articles of incorporation or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of groups is not required to be uniform.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-7

Resignation

Sec. 7. (a) A director may resign at any time by delivering written notice to one (1) of the following:

(1) The board of directors.

(2) The presiding officer of the board of directors.

(3) The president or secretary of the corporation.

(b) A resignation is effective when the notice is effective under

IC 23-17-28 unless the notice specifies a later effective date. If a resignation is made effective at a later date, the 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.
As added by P.L.179-1991, SEC.1.

IC 23-17-12-8
Removal of director by vote of members

Sec. 8. (a) Members may remove a director elected by the members with or without cause unless articles of incorporation provide otherwise.

(b) Except when otherwise provided in the articles of incorporation, if a director is elected by:

(1) a class, chapter, or other organizational unit; or

(2) region or other geographic grouping;

the director may be removed only by the members of the class, chapter, unit, or grouping entitled to vote.

(c) Except as provided in section 10 of this chapter, a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if:

(1) the number of votes; or

(2) the director was elected by a class, chapter, unit, or grouping of members, the number of votes of the class, chapter, unit, or grouping;

sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose of the meeting is the removal of the director.

(f) In determining if a director is protected from removal under subsection (b), (c), or (d), it is assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of the director's election.

(g) An entire board of directors may be removed under subsections (a) through (e).
As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.9.

IC 23-17-12-9
Removal of director by vote of directors

Sec. 9. A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office, unless a greater number is set forth in articles of incorporation or bylaws.
However, a director elected by the board of directors to fill the

vacancy of a director elected by the members may be removed without cause by the members but not by the board of directors.
As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.118.

IC 23-17-12-10
Removal of director by vote of directors; reasons set forth in articles of incorporation or in bylaws

Sec. 10. If at the beginning of a director's term on the board of directors articles of incorporation or bylaws provide that the director may be removed for reasons set forth in the articles of incorporation or bylaws, the board of directors may remove the director for the reasons. The director may be removed only if a majority of the directors then in office votes for the removal.
As added by P.L.179-1991, SEC.1.

IC 23-17-12-11
Religious corporations; removal of directors

Sec. 11. The articles of incorporation or bylaws of a religious corporation may do the following:

(1) Limit the application of this section.

(2) Set forth the vote and procedures by which the board of directors or a person may remove with or without cause a director elected by the members or the board of directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-12
Removal of designated or appointed directors

Sec. 12. (a) A designated director may be removed by an amendment to articles of incorporation or bylaws deleting or changing the designation.

(b) Except as provided in articles of incorporation or bylaws, an appointed director may be removed with or without cause by the person appointing the director. The person removing the director must do so by giving written notice of the removal to the following:

(1) The director.

(2) The presiding officer of the board of directors or the corporation's president or secretary.

A removal is effective when the notice is effective under this article unless the notice specifies a future effective date.
As added by P.L.179-1991, SEC.1.

IC 23-17-12-13
Removal by court order

Sec. 13. (a) The circuit court or superior court of the county where a corporation's principal office is located may remove a director of the corporation from office in a proceeding commenced by the corporation or at least ten percent (10%) of the members of a class entitled to vote for directors, if the following conditions exist:

(1) The court finds that:

(A) the director engaged in:
(i) fraudulent or dishonest conduct; or
(ii) gross abuse of authority or discretion;
with respect to the corporation; or
(B) a final judgment has been entered finding that the director has violated a duty under IC 23-17-13.
(2) Removal is in the best interests of the corporation.

(b) The court that removes a director may bar the director from serving on the board of directors for a period prescribed by the court.

(c) If members commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) The articles of incorporation or bylaws of a religious corporation may limit or prohibit the application of this section.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-14
Filling vacancies

Sec. 14. (a) Unless the articles of incorporation or bylaws provide otherwise and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, one (1) of the following may occur:

(1) The members entitled to vote for directors, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, other organizational unit, or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members.
(2) The board of directors may fill the vacancy.
(3) If the directors remaining in office constitute fewer than a quorum of the board of directors, the remaining directors may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

(b) Unless articles of incorporation or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy must be filled as provided in articles of incorporation or bylaws. In the absence of an applicable article of incorporation or bylaw, the vacancy may not be filled by the board of directors.

(d) A vacancy that will occur at a specific later date because 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.

As added by P.L.179-1991, SEC.1.

IC 23-17-12-15
Compensation

Sec. 15. Unless articles of incorporation or bylaws provide otherwise, a board of directors may fix the compensation of directors.

As added by P.L.179-1991, SEC.1.

IC 23-17-13

Chapter 13. Standards of Conduct for Directors

IC 23-17-13-1

Duties; reliance on statements of and information given by others; conditions for liability; director not trustee

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

(1) In good faith.

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging the director's duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one (1) of the following:

(1) An officer or employee of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Legal counsel, certified public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence.

(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.

(4) In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning a matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for an action taken as a director, or failure to take an action, unless the:

(1) director has breached or failed to perform the duties of the director's office in compliance with this section; and

(2) breach or failure to perform constitutes willful misconduct or recklessness.

(e) A director is not considered to be a trustee with respect to a corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

As added by P.L.179-1991, SEC.1. Amended by P.L.110-2008, SEC.5.

IC 23-17-13-2

Repealed

(Repealed by P.L.110-2008, SEC.13.)

IC 23-17-13-2.5
Contracts and transactions in which member, director, officer, or member of designated body has interest

Sec. 2.5. (a) This section applies unless the articles of incorporation or bylaws of a corporation provide otherwise.

(b) Subject to subsection (c), a contract or transaction between:

(1) a corporation and one (1) or more of the corporation's members, directors, members of a designated body, or officers; or

(2) a corporation and any other corporation, partnership, association, or entity in which one (1) or more of the corporation's members, directors, officers, or members of a designated body:

(A) are members, directors, members of a designated body, or officers;

(B) hold a similar position; or

(C) have a financial interest;

is not void or voidable solely because of the relationship or interest, solely because the member, director, member of a designated body, or officer is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because the vote of the member, director, member of a designated body, or officer is counted for authorizing the contract or transaction.

(c) A contract or transaction described under subsection (b) is not void or voidable as provided under subsection (b) if one (1) or more of the following apply:

(1) The:

(A) material facts as to the:

(i) relationship or interest of a member, a director, a member of a designated body, or an officer; and

(ii) contract or transaction;

are disclosed or known to the board of directors; and

(B) board of directors in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even if the disinterested directors are less than a quorum.

(2) The:

(A) material facts as to the:

(i) relationship or interest of the member, director, member of a designated body, or officer; and

(ii) contract or transaction;

are disclosed or known to the members who are entitled to vote on the contract or transaction; and

(B) contract or transaction is specifically approved in good faith by a vote of the members who are entitled to vote on the contract or transaction.

(3) The contract or transaction is fair as to the corporation at the time the contract or transaction is authorized, approved, or

ratified by the board of directors or the members.

(d) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes a contract or transaction described under subsection (b).

As added by P.L.110-2008, SEC.6.

IC 23-17-13-3

Loans to and guarantees of obligations of directors or officers

Sec. 3. (a) A corporation may not:

(1) lend money to; or

(2) guarantee the obligation of;

a director or an officer of the corporation.

(b) A loan or guaranty that is made in violation of this section does not affect the borrower's liability on the loan.

As added by P.L.179-1991, SEC.1.

IC 23-17-13-4

Unlawful distributions; liability

Sec. 4. (a) Subject to section 1(d) of this chapter, a director who votes for or assents to a distribution made in violation of this article or articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds the amount that could have been distributed without violating this article or articles of incorporation.

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

(1) Every other director who voted for or assented to the distribution, subject to section 1(d) of this chapter.

(2) Each person who received an unlawful distribution for the amount of the distribution accepted whether or not the person receiving the distribution knew the distribution was made in violation of this article, articles of incorporation, or the bylaws.

As added by P.L.179-1991, SEC.1.

IC 23-17-14
Chapter 14. Officers

IC 23-17-14-1
Required officers; preparation of minutes of meetings and authentication of corporate records; offices held simultaneously

Sec. 1. (a) Unless otherwise provided in articles of incorporation or bylaws, a corporation must have a president, a secretary, a treasurer, and other officers appointed by the board of directors.

(b) Bylaws or a board of directors must delegate to one (1) of the officers the responsibility for the following:

(1) Preparing minutes of the director's and members' meetings.

(2) Authenticating records of the corporation.

(c) An individual may simultaneously hold more than one (1) office in a corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-14-2
Duties

Sec. 2. An officer shall perform the duties set forth in bylaws or, to the extent consistent with bylaws, the duties prescribed:

(1) in a resolution of the board of directors; or

(2) by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

As added by P.L.179-1991, SEC.1.

IC 23-17-14-3
Resignation

Sec. 3. (a) An officer may resign at any time by delivering notice to one (1) of the following:

(1) The board of directors, the chairman of the board of directors, or the secretary of the corporation.

(2) If articles of incorporation or bylaws provide, to another designated officer.

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

(1) a resignation is made effective at a later date; and

(2) a 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 an 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.

As added by P.L.179-1991, SEC.1.

IC 23-17-14-4
Election, appointment, resignation, or removal; contract rights

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 with the corporation. An officer's resignation does not affect the corporation's contract rights with the officer. Removal or resignation of an officer does not affect the contract rights of the officer or the corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-15
Chapter 15. Meetings and Action of Board of Directors

IC 23-17-15-1
Regular and special meetings; location of meetings; means of participation in meeting

Sec. 1. (a) If the time and place of a directors' meeting is fixed by:

(1) bylaws; or

(2) the board of directors;

the meeting is a regular meeting. All other meetings are special meetings.

(b) The board of directors may hold regular or special meetings inside or outside of Indiana.

(c) Unless articles of incorporation or bylaws provide otherwise, a board of directors may permit a director to:

(1) participate in a regular or special meeting by; or

(2) conduct the meeting through the use of;

any means of communication by which all directors participating may simultaneously hear each other 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.179-1991, SEC.1.

IC 23-17-15-2
Action taken without meeting

Sec. 2. (a) Unless articles of incorporation or bylaws provide otherwise, action required or permitted by this article to be taken at a meeting of a board of directors may be taken without a meeting if the action is taken by all members of the board of directors. The action must be evidenced by at least one (1) written consent:

(1) describing the action taken;

(2) signed by each director; and

(3) 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 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.179-1991, SEC.1.

IC 23-17-15-3
Notice of meeting

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

(b) Unless articles of incorporation or bylaws provide otherwise, special meetings of the board of directors must be preceded by notice of at least two (2) days to each director of the date, time, and place of the meeting. The notice is not required to describe the purpose of the

special meeting unless required by articles of incorporation or bylaws.

(c) Unless articles of incorporation or bylaws provide otherwise:

(1) the presiding officer of a board of directors;

(2) the president; or

(3) twenty percent (20%) of the directors then in office;

may call and give notice of a meeting of the board of directors.

As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.10.

IC 23-17-15-4

Waiver of notice of meeting

Sec. 4. (a) A director may waive a notice required by this article, articles of incorporation, or bylaws. Except as provided by subsection (b), the waiver must be:

(1) in writing;

(2) signed by the director entitled to the notice; and

(3) filed with the minutes or the 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 vote for or assent to action taken at the meeting.

As added by P.L.179-1991, SEC.1.

IC 23-17-15-5

Quorum; majority vote as act of board

Sec. 5. (a) Except as otherwise provided in this article, articles of incorporation, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. Articles of incorporation or bylaws may not authorize a quorum of fewer than the greater of the following:

(1) One-third (1/3) of the number of directors in office.

(2) Two (2) directors.

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

As added by P.L.179-1991, SEC.1.

IC 23-17-15-6

Committees

Sec. 6. (a) Unless this article, the articles of incorporation, or bylaws provide otherwise, a board of directors may create one (1) or more committees that consist of one (1) or more members of the board of directors.

(b) Unless otherwise provided under this article, 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 articles of incorporation or bylaws to take action under section 5 of this chapter.

(c) Sections 1 through 5 of this chapter apply to committees of the board of directors and the members of committees.

(d) To the extent specified by the board of directors or in articles of incorporation or bylaws, a committee may exercise the authority of the board of directors under IC 23-17-12-1.

(e) A committee may not do the following:

(1) Authorize distributions.

(2) Approve or recommend to members action required to be approved by members under this article.

(3) Subject to subsection (g), fill vacancies on the board of directors or on a committee.

(4) Adopt, amend, or repeal bylaws.

(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 under IC 23-17-13-1.

(g) The board of directors may appoint one (1) or more directors as alternate members of a committee to replace an absent or a disqualified member during the member's absence or disqualification. Unless the articles of incorporation, bylaws, or the resolution creating the committee provides otherwise, in the event of the absence or disqualification of a member of a committee, the members present at a meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.

(h) A corporation may create or authorize the creation of one (1) or more advisory committees whose members need not be directors. *As added by P.L.179-1991, SEC.1. Amended by P.L.110-2008, SEC.7.*

IC 23-17-16

Chapter 16. Indemnification

IC 23-17-16-1

Corporation defined

Sec. 1. As used in this chapter, "corporation" includes a corporation organized under or governed by this chapter and 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.179-1991, SEC.1.

IC 23-17-16-2

Director defined

Sec. 2. (a) 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 member, a manager, a partner, a trustee, an employee, or an agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, 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.

(b) The term includes the estate or personal representative of a director.

As added by P.L.179-1991, SEC.1. Amended by P.L.8-1993, SEC.332.

IC 23-17-16-3

Expenses as including attorney's fees

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

As added by P.L.179-1991, SEC.1.

IC 23-17-16-4

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 actually incurred with respect to a proceeding.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-5

Official capacity defined

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

(1) When used with respect to a director, the office of director in a corporation.

(2) When used with respect to an individual other than a director

under 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, limited liability company, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not.

As added by P.L.179-1991, SEC.1. Amended by P.L.8-1993, SEC.333.

IC 23-17-16-6

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.179-1991, SEC.1.

IC 23-17-16-7

Proceeding defined

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

As added by P.L.179-1991, SEC.1.

IC 23-17-16-8

Grounds for indemnification; conduct with respect to employee benefit plans; judgment, order, settlement, conviction, or nolo contendere plea not determinative of failure to meet standard of conduct

Sec. 8. (a) If an individual is made a party to a proceeding because the individual is or was a director, a corporation may indemnify the individual 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:

(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)(B).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not determinative that a director did not meet the standard of conduct described in this section.
As added by P.L.179-1991, SEC.1.

IC 23-17-16-9
Director wholly successful in defense of proceeding

Sec. 9. Unless limited by articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of a proceeding to which the director was a party, because the director is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding.
As added by P.L.179-1991, SEC.1.

IC 23-17-16-10
Reasonable expense payments in advance of final disposition

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 the following occur:

(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 an advance if it is ultimately determined that the director did not meet the standard of conduct.

(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):

(1) must be an unlimited general obligation of the director;

(2) is not required to be secured; and

(3) 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.179-1991, SEC.1.

IC 23-17-16-11
Application to court; grounds for ordering indemnification

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 may, after giving any notice the court considers necessary, order indemnification in the amount the court considers proper if the court determines one (1) of the following:

(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.

(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.179-1991, SEC.1.

IC 23-17-16-12

Authorization of indemnification; evaluation as to reasonableness of expenses; procedures of board of directors

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 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 consisting solely of at least two (2) directors not at the time parties to the proceeding. Directors who are parties may participate in the designation.

(3) By special legal counsel:

(A) selected by the board of directors or a committee of the board of directors 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. Directors who are parties may participate in the selection.

(4) By the members. However, memberships 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 the reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-13

Indemnification of officers, employees, and agents

Sec. 13. Unless a corporation's articles of incorporation provide otherwise:

(1) an officer of the corporation, whether or not a director, is entitled to:

(A) mandatory indemnification under section 9 of this chapter; and

(B) 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; and

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

As added by P.L.179-1991, SEC.1.

IC 23-17-16-14

Purchase of insurance

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

(1) a director;

(2) an officer;

(3) an employee or agent of the corporation; or

(4) 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 member, a manager, a partner, a trustee, an employee, or an agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprise;

against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, an officer, an employee, or an agent, 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.179-1991, SEC.1. Amended by P.L.8-1993, SEC.334.

IC 23-17-16-15

Other rights to indemnification; reimbursement of expenses of appearing as witness

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

(1) A corporation's articles of incorporation or bylaws.

(2) A resolution of the board of directors or of the members.

(3) Any other authorization, whenever adopted after notice, by

a majority vote of all the voting members of the corporation.

(b) If:

(1) articles of incorporation;

(2) bylaws;

(3) resolutions of the board of directors or of the members; or

(4) other duly 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 of incorporation, bylaws, or resolution of the board of directors or of the members, or other duly 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 respondent to the proceeding.

As added by P.L.179-1991, SEC.1.

IC 23-17-17

Chapter 17. Amendment of Articles of Incorporation

IC 23-17-17-1

Written approval by specified person

Sec. 1. Articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a specified person other than the board of directors. The requirement may only be amended with the approval in writing of the person.

As added by P.L.179-1991, SEC.1.

IC 23-17-17-2

Termination, redemption, or cancellation of members or class of members of public benefit or mutual benefit corporation

Sec. 2. (a) An amendment to articles of incorporation or bylaws of a public benefit or mutual benefit corporation that would terminate all members or a class of members or redeem or cancel all memberships or a class of memberships must meet the requirements of this article.

(b) Before adopting a resolution proposing an amendment under this section, the board of directors of a mutual benefit corporation must give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing an amendment under this section, the notice to members proposing the amendment must include a statement of not more than five hundred (500) words opposing the proposed amendment if the statement is submitted by:

(1) five (5) members; or

(2) members having at least three percent (3%) of the voting power;

whichever is less, not later than twenty (20) days after the board of directors has voted to submit the amendment to the members for approval. In a public benefit corporation, the production and mailing costs shall be paid by the requesting members. In a mutual benefit corporation, the production and mailing costs shall be paid by the corporation.

(d) An amendment under this section must be approved by the members by a majority of the votes cast by each class.

(e) IC 23-17-8-2 does not apply to an amendment under this section meeting the requirements of this article.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.119.

IC 23-17-17-3

Adding or changing required or permitted provision; deleting provision not required

Sec. 3. (a) A corporation may amend the corporation's articles of incorporation to do any of the following:

(1) Add or change a provision that is required or permitted in the articles.

(2) Delete a provision not required in the articles.

(b) Whether a provision is required or permitted in the articles must be determined as of the effective date of the amendment.

As added by P.L.179-1991, SEC.1.

IC 23-17-17-4

Adoption by board of directors without member approval; amendments adopted by incorporators

Sec. 4. (a) Unless articles of incorporation provide otherwise, a corporation's board of directors may adopt at least one (1) amendment to the corporation's articles without member approval to do the following:

(1) To extend the duration of the corporation that was incorporated at a time when limited duration was required by law.

(2) To delete the names and addresses of the initial directors and incorporators.

(3) To delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state.

(4) To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name.

(5) To delete a mailing address if an annual report has been filed with the secretary of state.

(6) To include a statement identifying the corporation as a public benefit, mutual benefit, or religious corporation.

(7) To make any other change expressly permitted by this article to be made by director action.

(b) If a corporation has no members, the corporation's incorporators may, until directors have been chosen and then the corporation's board of directors, adopt amendments to the corporation's articles of incorporation subject to any approval required under section 1 of this chapter. The amendment must be approved by a majority of the directors in office or, if the directors have not yet been chosen, by a majority of the incorporators, at the time the amendment is adopted. The corporation shall provide notice of a meeting at which an amendment is to be voted upon. The notice must do the following:

(1) Be in accordance with IC 23-17-15-3.

(2) State that the purpose of the meeting is to consider a proposed amendment to the articles of incorporation.

(3) Contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.120; P.L.96-1993, SEC.11.

IC 23-17-17-5

Approval by board of directors, members, and person whose approval is required; initiation of amendment by board of directors; approval at membership meeting; notice; approval by written consent or ballot; amendment summary

Sec. 5. (a) Unless this article, articles of incorporation, bylaws, or the board of directors acting under subsection (b) require a greater vote or voting by class, an amendment to a corporation's articles of incorporation to be adopted must be approved as follows:

(1) By the board of directors.

(2) Except as provided in section 4(a) of this chapter, by the members by a majority of the votes cast.

(3) In writing by a person whose approval is required by a provision of the articles of incorporation authorized under section 1 of this chapter.

(b) Unless articles of incorporation provide otherwise, amendments to the articles of incorporation must be initiated by the board of directors. The board of directors may condition an amendment's adoption on receipt of a higher percentage of affirmative votes of the members or another basis.

(c) If a board of directors seeks to have an amendment approved by the members at a membership meeting, the corporation shall give notice to the corporation's members of the proposed membership meeting in writing in accordance with IC 23-17-10-5. The notice must do the following:

(1) State that the purpose of the meeting is to consider the proposed amendment.

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

(d) If a board of directors seeks to have an amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.121.

IC 23-17-17-6

Public benefit, mutual benefit, or religious corporation; vote by members of class

Sec. 6. (a) The members of a class in a public benefit corporation may vote as a separate voting group on a proposed amendment to the articles of incorporation if the amendment would change the rights of the class as to voting in a manner different than the amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation may vote as a separate voting group on a proposed amendment to the articles of incorporation if the amendment would do any of the following:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of the class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the

amendment would affect another class.

(2) Change the rights, privileges, preferences, restrictions, or conditions of the class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(3) Increase or decrease the number of memberships authorized for the class.

(4) Increase the number of memberships authorized for another class.

(5) Effect an exchange, a reclassification, or the termination of the memberships of the class.

(6) Authorize a new class of memberships.

(c) The members of a class of a religious corporation may vote as a separate voting group on a proposed amendment to the articles of incorporation only if a class vote is provided for in articles of incorporation or bylaws.

(d) If a class is to be divided into two (2) or more classes as a result of an amendment to the articles of incorporation of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(e) Except as provided in articles of incorporation or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of incorporation of a corporation, the amendment must be approved by the members of the class by a majority of the votes cast by the class.

(f) A class of members of a public benefit or mutual benefit corporation may have the voting rights granted by this section although articles of incorporation and bylaws provide that the class may not vote on the proposed amendment.

As added by P.L.179-1991, SEC.1.

IC 23-17-17-7

Delivery to secretary of state of articles of amendment; amendment changing corporate name

Sec. 7. (a) A corporation amending the corporation's articles of incorporation must deliver to the secretary of state articles of amendment setting forth the following:

(1) The name of the corporation.

(2) The date of the corporation's incorporation.

(3) The text of each amendment adopted.

(4) The date of each amendment's adoption.

(5) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators.

(6) If approval by members was required, the following:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment.

(B) Either:

(i) the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment; or

(ii) the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

(7) If approval of the amendment was by a person other than the members, a statement under section 1 of this chapter that the approval was obtained.

(b) If a corporation amends the corporation's articles of incorporation to change the corporation's corporate name, the corporation may, after the amendment has become effective, file:

(1) for record with the county recorder of each county in Indiana in which the corporation has real property; and

(2) 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.179-1991, SEC.1. Amended by P.L.1-1992, SEC.122.

IC 23-17-17-8

Restatement of articles of incorporation; amendment of articles included in restatement; approval

Sec. 8. (a) A corporation's board of directors may restate the corporation's articles of incorporation with or without approval by members or another person.

(b) A restatement may include amendments to the articles of incorporation. If the restatement includes an amendment requiring approval by the members or another person, the amendment must be adopted under section 5 of this chapter.

(c) If a restatement includes an amendment requiring approval by members, the board of directors must submit the restatement to the members for approval.

(d) If a board of directors seeks to have a restatement approved by the members at a membership meeting, the corporation shall notify each of the corporation's members of the proposed membership meeting in writing under IC 23-17-10-5. The notice must do the following:

(1) State that the purpose of the meeting is to consider the proposed restatement.

(2) Contain or be accompanied by a copy or summary of the restatement that identifies amendments or other changes the restatement would make in the articles of incorporation.

(e) If a board of directors seeks to have a restatement approved by the members by written ballot or written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of the restatement that identifies amendments or other

changes the restatement would make in the articles of incorporation.

(f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles of incorporation under section 5 of this chapter.

(g) If a restatement includes an amendment requiring approval under section 1 of this chapter, the board of directors must submit the restatement for approval.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.123.

IC 23-17-17-9

Articles of restatement; delivery to secretary of state; statements required to be included; effect of restated articles; certification by secretary of state

Sec. 9. (a) A corporation restating the corporation's articles of incorporation shall deliver to the secretary of state 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 the following:

(1) Whether the restatement contains an amendment to the articles of incorporation requiring approval by the members or another person other than the board of directors and, if the restatement does not, that the board of directors adopted the restatement.

(2) If the restatement contains an amendment to the articles of incorporation requiring approval by the members, the information required under section 7 of this chapter.

(3) If the restatement contains an amendment to the articles of incorporation requiring approval by a person whose approval is required under section 1 of this chapter, a statement that the approval was obtained.

(b) The restatement of articles of incorporation must include all statements required to be included in original articles of incorporation except that no statement is required to be made with respect to the following:

(1) The names and addresses of the incorporators or the initial or present registered office or agent.

(2) The mailing address of the corporation if an annual report has been filed with the secretary of state.

(c) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

(d) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required under subsection (a).

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.124.

IC 23-17-17-10

Amendment of articles of incorporation to carry out reorganization plan

Sec. 10. (a) A corporation's articles of incorporation may be amended without approval:

(1) of the board of directors;

(2) by the members; or

(3) as required by section 1 of this chapter;

to carry out a plan of reorganization ordered by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted under IC 23-17-3-2.

(b) An individual designated by a court shall deliver to the secretary of state articles of amendment setting forth the following:

(1) The name of the corporation.

(2) The text of each amendment approved by the court.

(3) The date of the court's order or decree approving the articles of amendment.

(4) The title of the reorganization proceeding in which the order or decree was entered.

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.125.

IC 23-17-17-11

Rights, claims, proceedings, and limitations not affected by amendment to articles or by change of corporate name

Sec. 11. (a) An amendment to articles of incorporation does not affect the following:

(1) A proceeding to which the corporation is a party in a cause of action existing against or in favor of the corporation.

(2) A requirement or limitation imposed upon the corporation or any property held by the corporation by virtue of any trust upon which the property is held by the corporation.

(3) The existing rights of persons other than members of the corporation.

(b) An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in the corporation's former name.

As added by P.L.179-1991, SEC.1.

IC 23-17-18

Chapter 18. Amendment of Bylaws

IC 23-17-18-1

Amendment or repeal by directors; notice

Sec. 1. (a) A board of directors may amend or repeal a corporation's bylaws unless:

(1) articles of incorporation;

(2) bylaws; or

(3) this article;

provide otherwise, subject to approval required under IC 23-17-17-1. However, until the directors have been chosen, the incorporators have power to amend or repeal the bylaws. This section is subject to the class voting rules under section 2 of this chapter.

(b) The corporation must provide notice of any meeting of directors at which an amendment is to be approved. The notice must do the following:

(1) Be in accordance with IC 23-17-15-3.

(2) State that the purpose of the meeting is to consider a proposed amendment to the bylaws.

(3) Contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.126; P.L.96-1993, SEC.12; P.L.130-2006, SEC.25.

IC 23-17-18-2

Class voting

Sec. 2. (a) The members of a class in a public benefit corporation may vote as a separate voting group on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than the amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation may vote as a separate voting group on a proposed amendment to the bylaws if the amendment would do the following:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of the class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the amendment would affect another class.

(2) Change the rights, privileges, preferences, restrictions, or conditions of the class as to voting, privileges, preferences, restrictions, or conditions of another class.

(3) Increase or decrease the number of memberships authorized for the class.

(4) Increase the number of memberships authorized for another class.

(5) Effect an exchange, reclassification, or termination of all or part of the memberships of the class.

(6) Authorize a new class of memberships.

(c) The members of a class of a religious corporation may vote as

a separate voting group on a proposed amendment to the bylaws only if a class vote is provided for in articles of incorporation or bylaws.

(d) If:

(1) a class is to be divided into at least two (2) classes as approved by the members of each class that would be created by the amendment; and

(2) a class vote is required to approve an amendment to the bylaws;

the amendment must be approved by the members of the class by a majority of the votes cast by the class.

(e) A class of members has the voting rights granted by this section although the articles of incorporation and bylaws provide that the class may not vote on the proposed amendment.

As added by P.L.179-1991, SEC.1.

IC 23-17-19
Chapter 19. Merger

IC 23-17-19-1
Authorization; plan; required provisions; optional provisions

Sec. 1. (a) Subject to the limitations in section 2 of this chapter, nonprofit corporations may merge into a business or nonprofit corporation if the plan of merger is approved under section 3 of this chapter.

(b) A plan of merger must set forth the following:

(1) The name of the following:

(A) Each corporation planning to merge.

(B) The surviving corporation into which each corporation plans to merge.

(2) The terms and conditions of the planned merger.

(3) The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving or other corporation.

(4) If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into:

(A) memberships, obligations, or securities of the surviving or any other corporation; or

(B) cash or other property in whole or part.

(c) The plan of merger may set forth the following:

(1) Amendments to or a restatement of the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger.

(2) Other provisions relating to the planned merger.

(3) A delayed effective date.

As added by P.L.179-1991, SEC.1.

IC 23-17-19-2
Mergers without prior approval; conditions

Sec. 2. (a) Without the prior approval of the circuit court or superior court of the county where the corporation's principal office or, if the principal office is not located in Indiana, the corporation's registered office, is located in a proceeding that the attorney general has been given written notice, a public benefit or religious corporation may only merge with the following:

(1) A public benefit or religious corporation.

(2) A foreign corporation that would qualify under this article as a public benefit or religious corporation.

(3) A wholly-owned foreign or domestic business or mutual benefit corporation if the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger.

(4) A business or mutual benefit corporation if the following conditions are met:

(A) On or before the effective date of the merger, assets with

a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or the fair market value of the public benefit corporation if the corporation were to be operated as a business concern are transferred or conveyed to a person who would have received the corporation's assets under IC 23-17-22-6(a)(5) and IC 23-17-22-6(a)(6) had the corporation dissolved.

(B) The business or mutual benefit corporation returns, transfers, or conveys any assets held by the business or mutual benefit corporation upon condition requiring return, transfer, or conveyance, that occurs by reason of the merger, in accordance with the condition.

(C) The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become:

(i) members in;

(ii) shareholders in; or

(iii) officers, employees, agents, or consultants of;

the surviving corporation.

(D) The requirements of section 8 of this chapter are met.

(b) At least twenty (20) days before consummation of any merger of a public benefit corporation or a religious corporation under subsection (a)(4), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(c) Without the prior written consent of the attorney general or of the circuit court or superior court of the county where:

(1) the corporation's principal office is located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is located;

in a proceeding in which the attorney general has been given notice, a member of a public benefit or religious corporation may not receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The court shall approve the transaction if the transaction is in the public interest.

As added by P.L.179-1991, SEC.1.

IC 23-17-19-3

Approval of mergers

Sec. 3. (a) Unless this article, articles of incorporation, bylaws, or the board of directors or members acting under subsection (c) require a greater vote or voting by class, a plan of merger to be adopted must be approved as follows:

(1) By the board of directors.

(2) By the members, if any, by a majority of the votes cast.

(3) In writing by a person whose approval is required by articles of incorporation authorized under IC 23-17-17-1 for an amendment to articles of incorporation or bylaws.

(b) If a corporation does not have members, a merger must be

approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors meeting at which the approval is to be obtained under IC 23-17-15-3. The notice must also state that the purpose of the meeting is to consider the proposed merger.

(c) Unless articles of incorporation provide otherwise, a proposed merger and plan of merger must be initiated by a board of directors. The board of directors may condition the submission of the proposed merger on receipt of a higher percentage of affirmative votes of the members or on another basis.

(d) If a board of directors seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to the corporation's members of the proposed membership meeting under IC 23-17-10-5. The notice must also state that the purpose of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles of incorporation and bylaws that will be in effect immediately after the merger takes effect.

(e) If a board of directors seeks to have a plan approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include a provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a separate voting group on the proposed amendment under IC 23-17-17-6 or IC 23-17-18-2. The plan is approved by a class of members by a majority of the votes cast by the class.

(g) After a merger is adopted and before articles of merger are filed, the planned merger may be abandoned subject to any contractual rights without further action by members or other persons who approved the plan:

(1) under the procedure set forth in the plan of merger; or

(2) if a procedure is not set forth, in the manner determined by the board of directors.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.127; P.L.96-1993, SEC.13.

IC 23-17-19-4
Articles of merger; contents; effective date; filing

Sec. 4. (a) After a plan of merger is approved by the board of directors and if required by section 3 of this chapter by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state articles of merger setting forth the following:

(1) The plan of merger.

(2) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors.

(3) If approval by members was required, the following:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan.

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class.

(4) If approval of the plan by a person other than the members or the board of directors is required under section 3(a)(3) of this chapter, a statement that the approval was obtained.

(b) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

(c) The surviving corporation resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county in Indiana in which a merging corporation has real property at the time of the merger, the title to which will be transferred by the merger, a file-stamped copy of the articles of merger. If the plan of merger sets forth amendments to the articles of incorporation of the surviving corporation that change the surviving corporation's corporate name, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county in Indiana in which the surviving corporation has real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in corporate name.

As added by P.L.179-1991, SEC.1.

IC 23-17-19-5
Effect of mergers

Sec. 5. (a) When a merger takes effect the following occur:

(1) Another corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.

(2) The title to real property and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any

conditions to which the property was subject before the merger.

(3) The surviving corporation has all liabilities and obligations of each corporation party to the merger.

(4) A proceeding pending against a corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

(5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

(b) After a merger takes effect as provided in this article, any terms of the plan of merger that are not included in the articles of incorporation shall be considered to be contract rights only and not part of the governing document of the corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-19-6

Foreign corporations

Sec. 6. (a) Except as provided in section 2 of this chapter, foreign business or nonprofit corporations may merge with domestic nonprofit corporations if the following conditions are met:

(1) The merger is permitted by the law of the state or country under whose laws each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

(2) The foreign corporation complies with section 4 of this chapter if the foreign corporation is the surviving corporation of the merger.

(3) Each domestic nonprofit corporation complies with sections 1 through 3 of this chapter and, if the domestic nonprofit corporation is the surviving corporation of the merger, with section 4 of this chapter.

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is considered to have irrevocably appointed the secretary of state as the agent for service of process for the business or corporation in any proceeding brought against the business or corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-19-7

Bequests, devises, gifts, grants, or premises

Sec. 7. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that:

(1) is made to a constituent corporation; and

(2) takes effect or remains payable after the merger;

inures to the surviving corporation unless a will or other instrument otherwise specifically provides.

As added by P.L.179-1991, SEC.1.

IC 23-17-19-8
Compliance with related provisions

Sec. 8. A domestic business corporation that is a party to a merger with a nonprofit corporation under this chapter shall comply with all applicable requirements of IC 23-1 relating to mergers except when inconsistent with this chapter. A domestic business corporation that is the survivor of a merger with a nonprofit corporation is subject to IC 23-1 after the merger.

As added by P.L.179-1991, SEC.1.

IC 23-17-20

Chapter 20. Sale of Assets

IC 23-17-20-1

Disposal and encumbrance of property

Sec. 1. (a) A corporation may, on the terms and conditions and for the consideration determined by the board of directors, do the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the corporation's property in the usual and regular course of the corporation's activities.

(2) Mortgage, pledge, dedicate to the repayment of indebtedness, with or without recourse, or otherwise encumber the corporation's property whether or not in the usual and regular course of the corporation's activities.

(b) Unless articles of incorporation require approval of the members or any other person of a transaction described in subsection (a) is not required.

As added by P.L.179-1991, SEC.1.

IC 23-17-20-2

Disposal of property other than in usual or regular course of business; authorization; abandonment of transactions

Sec. 2. (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of the corporation's property, with or without the goodwill, other than in the usual and regular course of the corporation's activities on the terms and conditions and for the consideration determined by the corporation's board of directors if the proposed transaction is authorized by subsection (b).

(b) Unless this article, articles of incorporation, bylaws, a board of directors, or members acting under subsection (d) require a greater vote or voting by class, a proposed transaction to be authorized must be approved as follows:

(1) By the board of directors.

(2) By the members by a majority of the votes cast.

(3) In writing by a person whose approval is required by articles of incorporation authorized under IC 23-17-17-1 for an amendment to the articles of incorporation or bylaws.

(c) If a corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of a directors meeting at which the approval is to be obtained under IC 23-17-15-3. The notice must state that the purpose of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) Unless articles of incorporation provide otherwise, a proposed transaction must be initiated by a board of directors. The board of directors may condition the board's submission of the proposed

transaction on receipt of a higher percentage of the members of affirmative votes or on any other basis.

(e) If a corporation seeks to have a transaction approved by the members at a membership meeting, the corporation shall give notice to the members of the proposed membership meeting under IC 23-17-10-5. The notice must state that the purpose of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If a board of directors seeks to have a transaction approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description of the transaction.

(g) After a sale, a lease, an exchange, or other disposition of property is authorized, the transaction may be abandoned subject to any contractual rights without further action by the members or a person who approved the transaction:

(1) in accordance with the procedure in the resolution proposing the transaction; or

(2) if a procedure is not set forth, in the manner determined by the board of directors.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.128; P.L.96-1993, SEC.14.

IC 23-17-21

Chapter 21. Distributions

IC 23-17-21-1

Prohibited distributions

Sec. 1. Except as authorized under section 2 of this chapter, a corporation may not make distributions.

As added by P.L.179-1991, SEC.1.

IC 23-17-21-2

Exceptions to prohibition

Sec. 2. (a) A mutual benefit corporation may purchase the corporation's memberships if, after the purchase is completed:

(1) the corporation would be able to pay the corporation's debts as the debts become due in the usual course of the corporation's activities; and

(2) the corporation's total assets would at least equal the sum of the corporation's total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with IC 23-17-22, IC 23-17-23, or IC 23-17-24.

(c) A corporation may, in conformity with the purposes of the corporation, make distributions to and confer benefits on a member or an affiliate that is a governmental entity (as defined under IC 34-6-2-49) or a member or an affiliate that is another nonprofit domestic or foreign entity if, after any distribution is completed:

(1) the corporation would be able to pay the corporation's debts as the debts become due in the usual course of the corporation's activities; and

(2) the corporation's total assets would at least equal the corporation's total liabilities.

An affiliate is an entity that directly or indirectly controls, is controlled by, or is under common control with the corporation. Control includes the power to select the corporation's board of directors.

(d) Corporations may repay loans or advances in accordance with and to the extent authorized under IC 23-17-7-9.

As added by P.L.179-1991, SEC.1. Amended by P.L.1-1998, SEC.129.

IC 23-17-22

Chapter 22. General Dissolution

IC 23-17-22-1

Corporations without members; corporations that have not commenced business; articles of dissolution; contents

Sec. 1. A majority of the incorporators or initial directors of a corporation that has no members or has not commenced activities may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth the following:

(1) The name of the corporation.

(2) The date of the corporation's incorporation.

(3) Either:

(A) that no membership in the corporation has been issued; or

(B) that the corporation has not commenced business.

(4) That no debt of the corporation remains unpaid.

(5) That a majority of the incorporators or initial directors authorized the dissolution.

As added by P.L.179-1991, SEC.1.

IC 23-17-22-2

Proposals by board; conditions for adoption; notice

Sec. 2. (a) A corporation's board of directors may propose dissolution for submission to the members.

(b) For a proposal to dissolve to be adopted, the following conditions must be met:

(1) The board of directors must recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances the board should not make a recommendation and communicates the basis for the board's determination to the members.

(2) The members entitled to vote must approve the proposal to dissolve as provided under subsection (f).

(3) A person whose approval is required by articles of incorporation authorized under IC 23-17-17-1 for an amendment to the articles of incorporation or bylaws must approve the proposal to dissolve in writing.

(c) If a corporation does not have members, dissolution must be approved by a majority of the directors in office at the time dissolution is approved. The corporation shall provide notice to directors of a director's meeting where an approval for dissolution will be sought under IC 23-17-15-3. The notice must state that the purpose of the meeting is to consider the proposed dissolution.

(d) The board of directors may condition the board's submission of the proposal for dissolution on any basis.

(e) The corporation must notify each member, whether or not entitled to vote, of the proposed members' meeting under IC 23-17-10-5. The notice must state that the purpose of the meeting is to consider dissolving the corporation.

(f) Unless articles of incorporation or a board of directors acting under subsection (d) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by the members by a majority of the votes cast on the proposal.

(g) After a proposal for dissolution is adopted, the corporation must give the notices required under the following:

(1) IC 6-8.1-10-9.

(2) IC 22-4-32-23.

(3) IC 32-34-1-25.

As added by P.L.179-1991, SEC.1. Amended by P.L.121-1994, SEC.1; P.L.31-1995, SEC.5; P.L.2-2002, SEC.75.

IC 23-17-22-3

Articles of dissolution; contents

Sec. 3. (a) After a dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth the following:

(1) The name of the corporation.

(2) The date dissolution was authorized.

(3) A statement that dissolution was approved by a sufficient vote of the board of directors.

(4) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators.

(5) If approval by members was required, the following:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution.

(B) The total number of:

(i) votes cast for and against dissolution by each class entitled to vote separately on dissolution; or

(ii) undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

(6) If approval of dissolution was by a person other than the members, a statement that approval under section 2(b)(3) of this chapter was obtained.

(b) A corporation is dissolved upon the effective date of the corporation's articles of dissolution.

As added by P.L.179-1991, SEC.1.

IC 23-17-22-4

Revocation; authorization; articles of revocation; contents; effect

Sec. 4. (a) A corporation may revoke the corporation's dissolution within one hundred twenty (120) days of the effective date of the dissolution.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless the authorization permitted revocation by action of the board of directors alone,

allowing the board of directors to revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, a corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of the corporation's articles of dissolution, that set forth the following:

(1) The name of the corporation.

(2) The effective date of the dissolution that was revoked.

(3) The date that the revocation of dissolution was authorized.

(4) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

(5) If the corporation's board of directors revoked a dissolution authorized by the members or in conjunction with another person, a statement that revocation was permitted by action by the board of directors alone under that authorization.

(6) If member or third person action was required to revoke the dissolution, the information required by section 3(a)(5) and 3(a)(6) of this chapter.

(d) Revocation of dissolution is effective upon the effective date specified in the articles of revocation of dissolution.

(e) When a revocation of dissolution is effective, the revocation relates back to and takes effect as of the effective date of the dissolution. The corporation resumes carrying on the corporation's activities as if dissolution had never occurred.

As added by P.L.179-1991, SEC.1.

IC 23-17-22-5

Continued existence; winding up and liquidation; effect of dissolution

Sec. 5. (a) A dissolved corporation continues the corporation's corporate existence but may not carry on activities except those appropriate to wind up and liquidate the corporation's affairs, including the following:

(1) Preserving and protecting the corporation's assets and minimizing the corporation's liabilities.

(2) Discharging or making provision for discharging the corporation's liabilities and obligations.

(3) Disposing of the corporation's properties that will not be distributed in kind.

(4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance that occurs by reason of the dissolution, in accordance with the condition.

(5) Transferring, subject to any contractual or legal requirements, the corporation's assets as provided in or authorized by the corporation's articles of incorporation or bylaws.

(6) If the corporation is a public benefit or religious corporation and no provision has been made in the corporation's articles of incorporation or bylaws for distribution of assets on dissolution,

transferring, subject to any contractual or legal requirement, the corporation's assets:

(A) to a person described in Section 501(c)(3) of the Internal Revenue Code; or

(B) if the dissolved corporation is not described in Section 501(c)(3) of the Internal Revenue Code, to a foreign or domestic public benefit or religious corporation.

(7) If the corporation is a mutual benefit corporation and no provision has been made in the corporation's articles of incorporation or bylaws for distribution of assets on dissolution, transferring the corporation's assets to the corporation's members or, if the corporation has no members, to those persons whom the corporation holds the corporation out as benefiting or serving.

(8) Doing any other act necessary to wind up the corporation's affairs and liquidate the corporation's assets, including the transfer of any escheated assets to the state under IC 23-17-30-1(b).

(b) Dissolution of a corporation does not do the following:

(1) Transfer title to the corporation's property.

(2) Subject the corporation's directors or officers to standards of conduct different from those under this title.

(3) Change the following:

(A) Quorum or voting requirements for the corporation's board of directors or members.

(B) Requirements for selection, resignation, or removal of the corporation's directors or officers.

(C) Requirements for amending the corporation's bylaws.

(4) Prevent commencement of a proceeding by or against the corporation in the corporation's corporate name.

(5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

(6) Terminate the authority of a registered agent.

As added by P.L.179-1991, SEC.1.

IC 23-17-22-6

Claims against dissolved corporation; notice to claimants; limitation of actions

Sec. 6. (a) A dissolved corporation may dispose of the known claims against the corporation by following the procedure described in this section.

(b) The dissolved corporation shall notify the corporation's known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do the following:

(1) Specify the amount that the dissolved corporation believes will satisfy the claim.

(2) Inform the creditor that the creditor has the right to dispute the amount of the claim and describe the procedure for disputing the amount of the claim.

(3) Provide a mailing address where a dispute of the amount of

the claim may be sent.

(4) State the deadline, which may not be less than sixty (60) days after the effective date of the written notice, by which the dissolved corporation must receive the dispute of the amount of the claim.

(5) State that the claim will be fixed at the amount specified by the dissolved corporation if a dispute of the amount of the claim is not received by the deadline.

(c) If the amount of a claim is disputed, the claimant must notify the dissolved corporation of the dispute by the deadline. If the dissolved corporation rejects the disputed amount, the claimant must commence a proceeding to enforce the claim not later than ninety (90) days after the effective date of the dissolved corporation's rejection notice.

(d) The amount of the claim is fixed if:

(1) the claimant does not notify the dissolved corporation by the deadline; or

(2) the claimant who has notified the dissolved corporation of a dispute and has received a rejection notice does not commence a proceeding not later than ninety (90) days from the effective date of the rejection notice.

(e) Regardless of a dispute in the amount of a claim, the dissolved corporation must tender to the claimant the amount of the claim set forth by the dissolved corporation in the notice of claim not later than thirty (30) days after the earlier of the following dates:

(1) The date that the claim becomes fixed.

(2) The date that the claimant commences the proceeding to enforce the claim.

(f) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

As added by P.L.179-1991, SEC.1.

IC 23-17-22-7

Claims against dissolved corporation; notice by publication; limitation of actions; enforcement

Sec. 7. (a) A dissolved corporation may also publish notice of the corporation's dissolution and request that persons with claims against the corporation present the claims in accordance with the notice.

(b) The notice must do the following:

(1) Be published one (1) time in a newspaper of general circulation in the county where:

(A) the dissolved corporation's principal office is or was last located; or

(B) if the principal office is not located in Indiana, the corporation's registered office is or was last located.

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within

two (2) years after publication of the notice.

(c) If a dissolved corporation publishes a newspaper notice under subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation not later than two (2) years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 6 of this chapter.

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on.

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation to the extent of the corporation's undistributed assets; or

(2) if the assets have been distributed in liquidation, against a person, other than a creditor of the corporation, to whom the corporation distributed the corporation's property to the extent of the distributee's pro rata share of the claim or the corporation assets distributed to the person in liquidation, whichever is less. The distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

As added by P.L.179-1991, SEC.1.

IC 23-17-23

Chapter 23. Administrative Dissolution

IC 23-17-23-1

Grounds

Sec. 1. The secretary of state may commence a proceeding under section 2 of this chapter to administratively dissolve a corporation if the following occur:

(1) The corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by this article or other law.

(2) The corporation does not deliver the corporation's annual report to the secretary of state within sixty (60) days after the report is due.

(3) The corporation is without a registered agent or registered office in Indiana for at least sixty (60) days.

(4) The corporation does not notify the secretary of state within sixty (60) days that the corporation's:

(A) registered agent or registered office has been changed;

(B) registered agent has resigned; or

(C) registered office has been discontinued.

(5) The corporation's period of duration, if any, stated in the corporation's articles of incorporation expires.

(6) The secretary receives credible evidence that the corporation is engaged in:

(A) illegal activity; or

(B) activity not authorized by the corporation's articles of incorporation.

As added by P.L.179-1991, SEC.1. Amended by P.L.92-2013, SEC.79.

IC 23-17-23-2

Procedure for dissolution; notice; certificate of dissolution; winding up affairs; authority of registered agent

Sec. 2. (a) If the secretary of state determines that a ground exists under section 1 of this chapter for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the determination under IC 23-17-6-4 unless the secretary of state:

(1) receives a receipt showing failure of service of process upon the corporation's registered agent at the address of the registered office; and

(2) determines that the secretary of state's office has no record of the corporation's principal office address.

(b) If the corporation does not:

(1) correct each ground for dissolution; or

(2) demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist;

within at least sixty (60) days after service of the notice is perfected under IC 23-17-6-4, the secretary of state may administratively

dissolve the corporation by signing a certificate of dissolution that recites the grounds for dissolution and the effective date of the dissolution. The secretary of state shall file the original of the certificate and serve a copy on the corporation under IC 23-17-6-4.

(c) A corporation administratively dissolved continues the corporation's corporate existence but may not carry on any activities except those necessary to wind up and liquidate the corporation's affairs under IC 23-17-22-5 and notify the corporation's claimants under IC 23-17-22-6 and IC 23-17-22-7.

(d) The administrative dissolution of a corporation does not terminate the authority of the corporation's registered agent.

As added by P.L.179-1991, SEC.1. Amended by P.L.63-2014, SEC.21.

IC 23-17-23-3

Reinstatement

Sec. 3. (a) A corporation administratively dissolved under section 2 of this chapter may apply to the secretary of state for reinstatement. An application for reinstatement must do the following:

(1) Recite the name of the corporation and the effective date of the corporation's administrative dissolution.

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) State that the corporation's name satisfies the requirements of IC 23-17-5-1.

(4) Contain a certificate from the department of state revenue reciting that taxes owed by the corporation have been paid.

(b) If the secretary of state determines that:

(1) the application contains the information required by subsection (a); and

(2) the information is correct;

the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under IC 23-17-6-4.

(c) When reinstatement becomes effective, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on the corporation's activities as if the administrative dissolution had never occurred.

As added by P.L.179-1991, SEC.1.

IC 23-17-23-4

Denial of application for reinstatement; notice; appeal

Sec. 4. (a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under IC 23-17-6-4 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court or superior court of the county where:

(1) the corporation's principal office is located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is located;

within thirty (30) days after service of the notice of denial is perfected.

(c) A corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the following:

(1) The secretary of state's certificate of dissolution.

(2) The corporation's application for reinstatement.

(3) The secretary of state's notice of denial.

(d) The court may do the following:

(1) Order the secretary of state to reinstate the dissolved corporation.

(2) Take other action the court considers appropriate.

(e) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.179-1991, SEC.1.

IC 23-17-24

Chapter 24. Judicial Dissolution

IC 23-17-24-1

Judicial dissolution; when allowable; factors considered

Sec. 1. (a) A circuit court or superior court may dissolve a corporation as follows:

(1) In a proceeding by the attorney general if one (1) of the following is established:

(A) The corporation obtained the corporation's articles of incorporation through fraud.

(B) The corporation has continued to exceed or abuse the authority conferred upon the corporation by law.

(C) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted.

(D) The corporation is a public benefit corporation and is no longer able to carry out the corporation's purposes.

(2) Except as provided in the articles of incorporation or bylaws of a religious corporation, in a proceeding by fifty (50) members or members holding at least five percent (5%) of the voting power, whichever is less, or by a director or a person specified in articles of corporation, if one (1) of the following is established:

(A) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock.

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

(C) The members have deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired.

(D) The corporate assets are being misapplied or wasted.

(E) The corporation is a public benefit or religious corporation and is no longer able to carry out the corporation's purposes.

(3) In a proceeding by a creditor if either of the following is established:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) In a proceeding by the corporation to have the corporation's voluntary dissolution continued under court supervision.

(b) Before dissolving a corporation, a court must consider the following:

(1) Reasonable alternatives to dissolution.

(2) If dissolution is in the public interest if the corporation is a public benefit corporation.

(3) If dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-24-1.5

Remedies, assurance of voluntary compliance

Sec. 1.5. (a) This section applies to the following:

(1) Notwithstanding IC 23-17-1-1, all corporations organized under Indiana law for a purpose for which a corporation may be organized under this article, regardless of the date of incorporation.

(2) A foreign corporation that desires to transact business in Indiana.

(b) In addition to a dissolution under section 1 of this chapter, the attorney general may petition a court to issue one (1) or more of the following remedies:

(1) Injunctive relief.

(2) Appointment of temporary or permanent receivers.

(3) Permanent removal of trustees, corporate officers, or directors who have breached the fiduciary duty.

(4) Appointment of permanent court approved replacement trustees, corporate officers or directors, and members.

(c) The attorney general may seek a remedy against any or all of the following:

(1) If the attorney general establishes a condition enumerated in section 1(a)(1) of this chapter, a corporation.

(2) For a violation of the officer's duties under IC 23-17-14-2, a corporate officer.

(3) For a violation of IC 23-17-13, a corporate director.

(d) In addition to any remedies described in subsection (b), the attorney general may accept a written assurance of voluntary compliance with respect to:

(1) a past, an existing, or an imminent condition enumerated in section 1(a)(1) of this chapter; or

(2) any past, existing, or imminent violation of a duty under this article by a corporation, director, officer, member, trustee, or other corporate principal.

(e) An assurance of voluntary compliance described in subsection (d) may include a stipulation for the voluntary payment by the person of:

(1) the costs of an investigation;

(2) an amount to be held in escrow pending the outcome of an action;

(3) an amount to be held in escrow pending the outcome of an action as restitution to an aggrieved nonprofit corporation or person; or

(4) both amounts described in subdivisions (2) and (3).

(f) An assurance of voluntary compliance described in subsection

(d):

(1) must be filed with; and

(2) is subject to the approval of;

the court having jurisdiction.

(g) An assurance of voluntary compliance described in subsection (d) is not considered an admission of a violation of any law.

(h) If the attorney general closes a matter by accepting an assurance of voluntary compliance described in subsection (d), the attorney general may reopen the matter for further proceedings within the period of the applicable statute of limitations.

As added by P.L.245-2005, SEC.4. Amended by P.L.65-2014, SEC.4.

IC 23-17-24-2

Venue; parties; judicial authority; notice to attorney general

Sec. 2. (a) Venue for a proceeding brought by the attorney general against a corporation or its officers or directors lies in Marion County. Venue for a proceeding brought by any other party named under section 1 of this chapter lies in the county where:

(1) a corporation's principal office is or was last located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is or was last located.

(b) A director or a member does not have to be made a party to a proceeding to dissolve a corporation unless relief is sought against a director or a member individually.

(c) A court in a proceeding brought to dissolve a corporation may do the following:

(1) Issue injunctions.

(2) Appoint a receiver or custodian pendente lite with all powers and duties the court directs.

(3) Take other action required to preserve the corporate assets wherever located.

(4) Carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall give written notice without delay of the proceeding to the attorney general who may intervene.

As added by P.L.179-1991, SEC.1. Amended by P.L.245-2005, SEC.5.

IC 23-17-24-3

Receivers and custodians

Sec. 3. (a) A court in a judicial proceeding brought by the attorney general or by any other party named under section 1 of this chapter to dissolve a public benefit or mutual benefit corporation may appoint at least one (1):

(1) receiver to wind up and liquidate; or

(2) custodian to manage;

the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons

designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of the corporation's property wherever located.

(b) The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in Indiana as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in the appointing order, which may be amended from time to time, including the following:

(1) The receiver may do the following:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the corporation is subject to a trust, an endowment, and other restrictions that would be applicable to the corporation.

(B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all Indiana courts.

(2) The custodian may exercise all of the powers of the corporation, through or in place of the corporation's board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of the corporation's members and creditors or to carry out the corporation's lawful purposes.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and the corporation's members and creditors.

(e) The court may, during the receivership or custodianship, order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

As added by P.L.179-1991, SEC.1. Amended by P.L.245-2005, SEC.6.

IC 23-17-24-4

Decree of dissolution; winding up affairs

Sec. 4. (a) If after a hearing the court determines that a ground for judicial dissolution described in section 1 of this chapter exists, the court may enter a decree dissolving the corporation and specifying the effective date of the dissolution. The clerk of the court shall deliver a certificate copy of the decree to the secretary of state, who shall file the certificate copy.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidating of the corporation's affairs in accordance with IC 23-17-22-5 and the notification of the corporation's claimants under IC 23-17-22-6 and IC 23-17-22-7.

As added by P.L.179-1991, SEC.1.

IC 23-17-25

Chapter 25. Private Foundations

IC 23-17-25-1

Duties and prohibitions

Sec. 1. Except where otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation (as defined in Section 509(a) of the Internal Revenue Code of 1986, as amended) shall do the following:

(1) Distribute amounts for each taxable year at a time and in a manner as to not subject the corporation to tax under Section 4942 of the Internal Revenue Code of 1986.

(2) Not engage in an act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code of 1986).

(3) Not retain excess business holdings (as defined in Section 4943(c) of the Internal Revenue Code of 1986).

(4) Not make investments in a manner as to subject the corporation to taxes on investments that jeopardize charitable purposes (as defined in Section 4944 of the Internal Revenue Code of 1986).

(5) Not make taxable expenditures (as defined in Section 4945(d) of the Internal Revenue Code of 1986).

As added by P.L.179-1991, SEC.1.

IC 23-17-26
Chapter 26. Foreign Corporations

IC 23-17-26-1
Necessity of certificate of authority; transacting business

Sec. 1. (a) A foreign corporation may not transact business in Indiana until the corporation obtains a certificate of authority from the secretary of state.

(b) The following activities do not constitute transacting business within the meaning of subsection (a):

(1) Maintaining, defending, or settling a proceeding.

(2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to the securities.

(5) Selling through independent contractors.

(6) Soliciting or obtaining orders, by mail or through employees or agents, if the orders require acceptance outside of Indiana before the orders become contracts.

(7) Making loans or otherwise creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(9) Owning real or personal property.

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not in the course of repeated transactions of a similar nature.

(11) Transacting business in interstate commerce.

(12) Soliciting funds if otherwise authorized by Indiana law.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-2
Transacting business without certificate of authority

Sec. 2. (a) Except as provided in subsection (e), a foreign corporation transacting business in Indiana without a certificate of authority may not maintain a proceeding in an Indiana court until the foreign corporation obtains a certificate of authority.

(b) Except as provided in subsection (e), the successor to a foreign corporation that transacted business in Indiana without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in an Indiana court until the foreign corporation or the foreign corporation's successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, a foreign corporation's successor, or an assignee until the court determines whether the foreign corporation or the foreign corporation's successor requires a certificate of authority. If the court

determines, the court may further stay the proceeding until the foreign corporation or the foreign corporation's successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of not more than ten thousand dollars ($10,000) if the foreign corporation transacts business in Indiana without a certificate of authority. The attorney general may collect penalties due under this subsection.

(e) The failure of a foreign corporation to obtain a certificate of authority does not do any of the following:

(1) Impair the validity of the foreign corporation's corporate acts.

(2) Prevent the foreign corporation from defending a proceeding in Indiana.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-3

Application for certificate of authority; contents; certificate of existence from foreign state or country

Sec. 3. (a) A foreign corporation may apply for a certificate of authority to transact business in Indiana by delivering an application to the secretary of state. The application must set forth the following:

(1) The name of the foreign corporation or, if the foreign corporation's name is unavailable for use in Indiana, a corporate name that satisfies the requirements of section 6 of this chapter.

(2) The name of the state or country under whose law the foreign corporation is incorporated.

(3) The date of incorporation and period of duration.

(4) The street address of the foreign corporation's principal office.

(5) The address of the foreign corporation's registered office in Indiana and the name of the foreign corporation's registered agent at the office.

(6) The names and usual business addresses of the foreign corporation's current directors and officers.

(7) Whether the foreign corporation has members.

(8) Whether the corporation, if the foreign corporation had been incorporated in Indiana, would be a public benefit, mutual benefit, or religious corporation.

(b) The foreign corporation must deliver with the completed application a certificate of existence or a similar document duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-4

Amended certificate of authority

Sec. 4. (a) A foreign corporation authorized to transact business in Indiana must obtain an amended certificate of authority from the secretary of state if the corporation changes any of the following:

(1) The foreign corporation's corporate name.
(2) The period of the foreign corporation's duration.
(3) The state or country of the foreign corporation's incorporation.

(b) The requirements of section 3 of this chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-5

Rights and privileges under certificate of authority

Sec. 5. (a) A certificate of authority authorizes the foreign corporation to which the certificate is issued to transact business in Indiana subject to the right of the state to revoke the certificate as provided in this article.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as and, except as otherwise provided by this article, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a similar domestic corporation.

(c) This article does not authorize Indiana to regulate the organization or internal affairs of a foreign corporation authorized to transact business in Indiana.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-6

Corporate name

Sec. 6. (a) If the corporate name of a foreign corporation does not satisfy the requirements of IC 23-17-5-1, the foreign corporation may, to obtain or maintain a certificate of authority to transact business in Indiana:

(1) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd.", to the foreign corporation's corporate name for use in Indiana; or
(2) use a fictitious name to transact business in Indiana if the foreign corporation's real name is unavailable and the foreign corporation delivers to the secretary of state for filing a copy of the resolution of the foreign corporation's board of directors, certified by the foreign corporation's secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from the following:

(1) The corporate name of a corporation incorporated or authorized to transact business in Indiana under IC 23-1.
(2) A corporate name reserved or registered under IC 23-17-5-2, IC 23-17-5-3, IC 23-1-23-2, or IC 23-1-23-3.
(3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in Indiana.

(4) The name of a nonprofit entity organized or authorized to transact business in Indiana.

(c) A foreign corporation may apply to the secretary of state for authorization to use in Indiana the name of another corporation incorporated or authorized to transact business in Indiana that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change the other corporation's name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A foreign corporation may use in Indiana the name, including the fictitious name, of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the foreign corporation has:

(1) merged with the other corporation;

(2) been formed by reorganization of the other corporation; or

(3) acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in Indiana changes the foreign corporation's corporate name to a name that does not satisfy the requirements of IC 23-17-5-1, the foreign corporation may not transact business in Indiana under the changed name until the foreign corporation adopts a name satisfying the requirements of IC 23-17-5-1 and obtains an amended certificate of authority under section 4 of this chapter.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-7

Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation

Sec. 7. (a) A foreign corporation authorized to transact business in Indiana must continuously maintain in Indiana:

(1) a registered office; and

(2) a registered agent, who may be:

(A) an individual who resides in Indiana and whose business office is identical with the registered office;

(B) a domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office; or

(C) a foreign limited liability company, foreign corporation, or nonprofit foreign corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each foreign corporation that qualifies after June 30, 2014, to do business in Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each foreign corporation qualified to do business in Indiana shall provide to the foreign corporation's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the foreign corporation; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the foreign corporation.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a foreign corporation under subsection (c).

(e) If a foreign corporation fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 9 of this chapter, as the registered agent for the foreign corporation.

As added by P.L.179-1991, SEC.1. Amended by P.L.63-2014, SEC.22.

IC 23-17-26-8

Change in registered office or registered agent

Sec. 8. (a) A foreign corporation authorized to transact business in Indiana may change the foreign corporation's registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

(1) The foreign corporation's name.

(2) The street address of the foreign corporation's current registered office.

(3) If the current registered office is to be changed, the street address of the foreign corporation's new registered office.

(4) The name of the foreign corporation's current registered agent.

(5) If the current registered agent is to be changed, the name of the foreign corporation's new registered agent and the new agent's written consent or a representation that the new registered agent has consented, either on the statement or attached to the statement, to the appointment.

(6) That after the change is made, the street addresses of the foreign corporation's registered office and the business office of the foreign corporation's registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the agent may change the street address of the registered office of any foreign corporation that the registered agent serves by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with

the requirements of subsection (a) and recites that the corporation has been notified of the change.
As added by P.L.179-1991, SEC.1.

IC 23-17-26-9
Resignation of registered agent

Sec. 9. (a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-17-29 a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail one (1) copy to the foreign corporation at the foreign corporation's principal office address shown in the foreign corporation's most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, thirty-one (31) days after the date on which the statement was filed.
As added by P.L.179-1991, SEC.1. Amended by P.L.228-1995, SEC.21.

IC 23-17-26-10
Service of process or notice on foreign corporation

Sec. 10. (a) The registered agent of a foreign corporation authorized to transact business in Indiana is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or other executive officer under Trial Rule 4.6(A)(1) at the foreign corporation's principal office shown in the foreign corporation's application for a certificate of authority or in the foreign corporation's most recent annual report filed if the foreign corporation:

(1) does not have a registered agent or the foreign corporation's registered agent cannot with reasonable diligence be served;

(2) has withdrawn from transacting business in Indiana under section 11 of this chapter; or

(3) has had the foreign corporation's certificate of authority revoked under section 13 of this chapter.

(c) Service is perfected under subsection (b) the earliest of the following:

(1) The date the foreign corporation receives the mail.

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation.

(3) Five (5) days after the service is deposited with the United States Postal Service, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means of serving a foreign corporation.
As added by P.L.179-1991, SEC.1.

IC 23-17-26-11
Withdrawal of foreign corporation; necessity of certificate of withdrawal; application for certificate; service of process after withdrawal

Sec. 11. (a) A foreign corporation authorized to transact business in Indiana may not withdraw from Indiana until the foreign corporation obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in Indiana may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth the following:

(1) The name of the foreign corporation and the name of the state or country under whose law the foreign corporation is incorporated.

(2) That the foreign corporation is not transacting business in Indiana and that the foreign corporation surrenders the foreign corporation's authority to transact business in Indiana.

(3) That the foreign corporation revokes the authority of the foreign corporation's registered agent to accept service on the foreign corporation's behalf and appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in Indiana.

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subdivision (3).

(5) A commitment to notify the secretary of state in the future of any change in the mailing address.

(c) After the withdrawal of the foreign corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth in the foreign corporation's application for withdrawal.
As added by P.L.179-1991, SEC.1.

IC 23-17-26-12
Revocation of certificate of authority of a foreign corporation; grounds

Sec. 12. The secretary of state may commence a proceeding under IC 23-17-23-2 to revoke the certificate of authority of a foreign corporation authorized to transact business in Indiana if any of the following conditions exists:

(1) The foreign corporation does not deliver the annual report to

the secretary of state within sixty (60) days after the report is due.

(2) The foreign corporation is without a registered agent or registered office in Indiana for at least sixty (60) days.

(3) The foreign corporation does not inform the secretary of state under section 8 or 9 of this chapter that the foreign corporation's:

(A) registered agent or registered office has changed;

(B) registered agent has resigned; or

(C) registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance.

(4) An incorporator, a director, an officer, or an agent of the foreign corporation signed a document the incorporator, director, officer, or agent knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing.

(5) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that the foreign corporation has been dissolved or disappeared as the result of a merger.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-13

Procedure for revocation; service of process after revocation; authority of registered agent

Sec. 13. (a) If the secretary of state determines that a ground exists under section 12 of this chapter for revocation of a certificate of authority, the secretary of state shall, under section 10 of this chapter, serve the foreign corporation with written notice of the determination unless the secretary of state:

(1) receives a receipt showing failure of service of process upon the foreign corporation's registered agent at the address of the registered office; and

(2) determines that the secretary of state's office has no record of the foreign corporation's principal office address.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under section 10 of this chapter, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground for revocation and the revocation's effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 10 of this chapter.

(c) The authority of a foreign corporation to transact business in Indiana ceases on the date shown on the certificate revoking the foreign corporation's certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at the foreign corporation's principal office shown in the foreign corporation's most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of the foreign corporation's principal office, or, if a report or communication is not on file, in the foreign corporation's application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the foreign corporation.

As added by P.L.179-1991, SEC.1. Amended by P.L.63-2014, SEC.23.

IC 23-17-26-13.5

Application for reinstatement; effective date of reinstatement

Sec. 13.5. (a) A foreign corporation that has had its certificate of authority revoked under section 13 of this chapter may apply to the secretary of state for reinstatement. The application for reinstatement must include all the following:

(1) The name of the foreign corporation.

(2) The effective date of the revocation of the foreign corporation's certificate of authority.

(3) A statement that the ground or grounds for revocation of the foreign corporation's certificate of authority either did not exist or have been eliminated.

(4) A statement that the foreign corporation's name satisfies the requirements of IC 23-17-5-1 or section 6 of this chapter.

(5) A certificate from the department of state revenue stating that all taxes owed by the foreign corporation have been paid.

(b) If the secretary of state determines that the application contains the information required under subsection (a) and that the information is correct, the secretary of state shall:

(1) cancel the certificate of revocation of the foreign corporation's certificate of authority; and

(2) prepare a certificate of reinstatement that states:

(A) that the certificate of revocation of the foreign corporation's certificate of authority has been canceled; and

(B) the date that the reinstatement is effective;

(3) file the original certificate of reinstatement; and

(4) serve, as provided in section 10 of this chapter, a copy of the certificate of reinstatement on the foreign corporation.

(c) When the certificate of reinstatement is effective, the certificate of reinstatement relates back to and is considered to take effect as of

the effective date of the revocation of the foreign corporation's certificate of authority and the foreign corporation resumes carrying on its business as if the revocation of the foreign corporation's certificate of authority had never occurred.
As added by P.L.63-2014, SEC.24.

IC 23-17-26-14
Denial of application for reinstatement; written notice; appeal

Sec. 14. (a) If the secretary of state denies a foreign corporation's application for reinstatement under section 13.5 of this chapter, the secretary of state shall serve, as provided in section 10 of this chapter, the foreign corporation with a written notice that explains the reason or reasons for denial.

(b) A foreign corporation may appeal the secretary of state's denial of reinstatement to the circuit or superior court of the county in which the foreign corporation's registered office is located within thirty (30) days after service of the certificate of revocation is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of all the following:

(1) The secretary of state's certificate of revocation.

(2) The foreign corporation's application for reinstatement described in section 13.5 of this chapter.

(3) The secretary of state's notice of denial described in subsection (a).

(c) The court may do the following:

(1) Order the secretary of state to reinstate the certificate of authority.

(2) Take any other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.
As added by P.L.179-1991, SEC.1. Amended by P.L.63-2014, SEC.25.

IC 23-17-27

Chapter 27. Records and Reports

IC 23-17-27-1

Required records

Sec. 1. (a) A corporation shall keep as permanent records a record of the following:

(1) Minutes of meetings of the corporation's members and board of directors.

(2) A record of actions taken by the members or directors without a meeting.

(3) A record of actions taken by committees of the board of directors as authorized under IC 23-17-15-6(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or the corporation's agent shall maintain a record of the corporation's members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain the corporation's records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at the corporation's principal office:

(1) The corporation's articles of incorporation or restated articles of incorporation and all amendments to the articles of incorporation currently in effect.

(2) The corporation's bylaws or restated bylaws and all amendments to the bylaws currently in effect.

(3) Resolutions adopted by the corporation's board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or a class or category of members.

(4) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years.

(5) Written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years under section 6 of this chapter.

(6) A list of the names and business or home addresses of the corporation's current directors and officers.

(7) The corporation's most recent annual report delivered to the secretary of state under section 8 of this chapter.

(f) Except as otherwise provided in articles of incorporation or bylaws, ballots must be retained by a corporation until the earlier of the following:

(1) The date of the next annual meeting.

(2) One (1) year after the date the ballot was received.

As added by P.L.179-1991, SEC.1. Amended by P.L.110-2008, SEC.8.

IC 23-17-27-2

Member's right to inspect and copy records

Sec. 2. (a) Subject to subsection (e) and section 3(c) of this chapter, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, the records of the corporation described in section 1(e) of this chapter if the member gives the corporation written notice or a written demand at least five (5) business days before the date on which the member desires to inspect and copy.

(b) Subject to subsection (e), a member may inspect and copy, at a reasonable time and reasonable location specified by the corporation, the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five (5) business days before the date on which the member desires to inspect and copy:

(1) Excerpts from records required to be maintained under section 1(a) of this chapter, to the extent not subject to inspection under subsection (a).

(2) Accounting records of the corporation.

(3) Subject to section 5 of this chapter, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if the following conditions exist:

(1) The member's demand is made in good faith and for a proper purpose.

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect.

(3) The records are directly connected with the purpose.

(d) This section does not affect the following:

(1) The rights of a member to inspect records under IC 23-17-11-1 or, if the member is in litigation with the corporation, to the same extent as any other litigant.

(2) The power of a court, independently of this article, to compel the production of corporate records for examination.

(e) The articles of incorporation or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy a corporate record.

(f) The articles of incorporation of a corporation may limit or abolish the following:

(1) The right of a member to obtain from the corporation information as to the identity of contributors to the corporation.

(2) The right of a member or the member's agent or attorney to inspect or copy the membership list if the corporation provides a reasonable means to mail communications to other members through the corporation at the expense of the member making the request.

As added by P.L.179-1991, SEC.1.

IC 23-17-27-3

Inspection by member's agent or attorney; copies; costs; list of members

Sec. 3. (a) A member's agent or attorney, if authorized in writing,

has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under section 2 of this chapter includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) A corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) A corporation may comply with a member's demand to inspect the record of members under section 2(b)(3) of this chapter by providing the member with a list of the corporation's members that was compiled not earlier than the date of the member's demand.

As added by P.L.179-1991, SEC.1.

IC 23-17-27-4

Court order for inspection and copying; payment of costs by corporation; restrictions on use of records

Sec. 4. (a) If a corporation does not allow a member who complies with section 2(a) of this chapter to inspect and copy records required under section 2(a) of this chapter to be available for inspection, the circuit court or superior court of the county where:

(1) the corporation's principal office is located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is located;

may order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, a member who complies with section 2(b) and 2(c) of this chapter may apply to the circuit court or superior court of the county where:

(1) the corporation's principal office is located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is located;

for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, the court shall also order the corporation to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order unless the corporation proves that the corporation refused inspection in good faith because the corporation had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, the court may impose reasonable restrictions on the use or distribution of the records by the demanding member.

As added by P.L.179-1991, SEC.1.

IC 23-17-27-5

Membership list; use

Sec. 5. Without the consent of a board of directors, all or part of a membership list may not be obtained or used by a person for a purpose unrelated to a member's interest as a member. Without the consent of the board of directors, all or part of a membership list may not be:

(1) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) used for a commercial purpose; or

(3) sold to or purchased by a person.

As added by P.L.179-1991, SEC.1.

IC 23-17-27-6

Annual financial statements; furnishing to members

Sec. 6. (a) Except as provided in articles of incorporation or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish the member the corporation's latest annual financial statements, which may be consolidated or combined statements of the corporation and the corporation's subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany the statements. If annual financial statements are not reported upon by a certified public accountant, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records that does the following:

(1) States the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describes the basis of preparation.

(2) Describes any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

As added by P.L.179-1991, SEC.1.

IC 23-17-27-7

Indemnification or advance of expenses to director; report to members

Sec. 7. If a corporation indemnifies or advances expenses to a director under IC 23-17-16-1 through IC 23-17-16-11 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

As added by P.L.179-1991, SEC.1.

IC 23-17-27-8
Annual report; requirements

Sec. 8. (a) An annual report accompanied by the filing fee must be filed with the secretary of state by all nonprofit domestic and foreign corporations incorporated under this article or a previous statute. However, this section does not apply to a corporation that is already required to file an annual report with the secretary of state.

(b) A domestic corporation and each foreign corporation authorized to transact business in Indiana shall deliver to the secretary of state an annual report on a form prescribed and furnished by the secretary of state that sets forth the following:

(1) The name of the corporation and the state or country under whose law the corporation is incorporated.

(2) The street address of the corporation's registered office and the name of the corporation's registered agent at the office in Indiana.

(3) The address of the corporation's principal office.

(4) The names and business or residence addresses of the corporation's directors, secretary, and highest executive officer.

(c) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(d) The first annual report must be delivered to the secretary of state in the year following the year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. The report is due during the same month as the month in which the corporation was incorporated or authorized to transact business. Subsequent annual reports must be delivered to the secretary of state during that same month in the following years. The secretary of state may accept annual reports during the two (2) months before the month that the corporation was incorporated or authorized to transact business.

(e) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to the corporation for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, the report is considered to be timely filed.

(f) The secretary of state may mail the annual report form to an address shown for the corporation on the last annual report filed with the secretary of state. The failure of the corporation to receive the annual report form from the secretary of state does not relieve the corporation of the corporation's duty to deliver an annual report to the office as required by this section.

(g) A domestic or foreign corporation may deliver to the secretary of state for filing an amendment to the annual report if a change in the information set forth in the annual report occurs after the report is delivered to the secretary of state's office for filing and before the next due date. This subsection applies only to a change that is not required to be made by an amendment to the articles of incorporation.

The amendment to the annual report must set forth the following:

(1) The name of the corporation as shown on the records of the secretary of state's office.

(2) The information as changed.

As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.15; P.L.11-1996, SEC.24.

IC 23-17-28

Chapter 28. Notice

IC 23-17-28-1

Notice

Sec. 1. Notice under this article must be in writing unless oral notice is authorized by a corporation's articles of incorporation or bylaws.

As added by P.L.179-1991, SEC.1.

IC 23-17-28-2

Notice; means of communication

Sec. 2. Notice, if otherwise in proper form under this article and subject to the requirements of section 1 of this chapter, may be communicated by any of the following:

(1) In person.

(2) By telephone, telegraph, teletype, or other form of wire or wireless communication.

(3) By mail.

(4) By a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

As added by P.L.179-1991, SEC.1.

IC 23-17-28-3

Corporations; notice by mail

Sec. 3. Written notice by a domestic or foreign corporation to a member is effective when mailed, if correctly addressed to the member's address shown in the corporation's current record of members.

As added by P.L.179-1991, SEC.1.

IC 23-17-28-4

Address of corporations; notice

Sec. 4. Written notice to a domestic or foreign corporation authorized to transact business in Indiana, other than in the corporation's capacity as a member, may be addressed to the corporation's registered agent at the corporation's registered office or to the corporation's secretary at the corporation's principal office shown in the most recent filing of the corporation under this article.

As added by P.L.179-1991, SEC.1. Amended by P.L.228-1995, SEC.22.

IC 23-17-28-5

Effective date of notice

Sec. 5. Except as provided in this chapter or other applicable law, written notice is effective at the earliest of the following:

(1) When received.

(2) Five (5) days after the notice is mailed, as evidenced by the postmark or private carrier receipt, if mailed correctly addressed

to the address listed in the most current records of the corporation.

(3) On the date shown on the return receipt, if sent by registered or certified United States mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(4) Thirty (30) days after the notice is deposited with another method of the United States Postal Service other than first class, registered, or certified postage affixed, as evidenced by the postmark, if mailed correctly addressed to the address listed in the most current records of the corporation.

As added by P.L.179-1991, SEC.1. Amended by P.L.110-2008, SEC.9.

IC 23-17-28-6

Newsletters, magazines, or other publications; written notice

Sec. 6. A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members constitutes a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or if members are residents of the same household and have the same address in the corporation's current list of members, if addressed or delivered to one (1) of the members at the address appearing on the current list of members.

As added by P.L.179-1991, SEC.1.

IC 23-17-28-7

Oral notice

Sec. 7. Oral notice is effective when communicated.

As added by P.L.179-1991, SEC.1.

IC 23-17-28-8

Prescribed notice requirements

Sec. 8. If this article prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this chapter or other provisions of this article, those requirements govern.

As added by P.L.179-1991, SEC.1.

IC 23-17-29

Chapter 29. Filing Documents; Fees

IC 23-17-29-1

Requirements for documents; filing fee

Sec. 1. (a) To be entitled to be filed by the secretary of state under this article, a document must meet the following conditions:

(1) Be filed in the office of the secretary of state.

(2) Contain the information required by this article.

(3) Be typewritten or printed.

(4) Be legible.

(5) Be in English. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) Be signed:

(A) by the presiding officer of the board of directors of a domestic or foreign corporation, the corporation's president, or by another of the corporation's officers;

(B) if directors have not been selected or the corporation has not been formed, by an incorporator;

(C) if the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by the fiduciary; or

(D) for purposes of annual or biennial reports, by:

(i) a registered agent;

(ii) a certified public accountant; or

(iii) an attorney;

employed or retained by the business entity.

(7) Be signed by the person executing the document and state beneath or opposite the person's signature name the capacity in which the person signs. A signature on a document authorized to be filed under this article may be a facsimile. A signature on a document under this subdivision that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(A) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(B) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(b) A document may contain the following:

(1) A corporate seal.

(2) An attestation by a secretary or an assistant secretary.

(3) An acknowledgement, a verification, or a proof.

(c) If the secretary of state has prescribed a mandatory form for a document under section 2 of this chapter, the document must be in or on the prescribed form.

(d) A document must be delivered to the office of the secretary of

state for filing as described in section 1.1 of this chapter and must be accompanied by the correct filing fee. The filing fee must be paid in the manner and form required by the secretary of state.

(e) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

As added by P.L.179-1991, SEC.1. Amended by P.L.228-1995, SEC.23; P.L.11-1996, SEC.25; P.L.277-2001, SEC.20; P.L.40-2013, SEC.4.

IC 23-17-29-1.1

Documents delivered for filing

Sec. 1.1. (a) For purposes of this article, a document is delivered for filing if the document is transferred to the secretary of state by hand, mail, or a form of electronic transmission meeting the requirements established by the secretary of state.

(b) If a document is delivered for filing by hand or mail, the document must be accompanied by:

(1) two (2) exact or conformed copies of a document filed under IC 23-17-6-3 or IC 23-17-26-9; or

(2) one (1) exact or conformed copy of any other document filed under this article.

As added by P.L.228-1995, SEC.24. Amended by P.L.63-2014, SEC.26.

IC 23-17-29-2

Forms

Sec. 2. (a) The secretary of state may prescribe and furnish, on request, forms for the following:

(1) A foreign corporation's application for a certificate of authority to transact business in Indiana.

(2) A foreign corporation's application for a certificate of withdrawal.

(3) The annual report.

(b) If the secretary of state requires, use of the forms described in

subsection (a) is mandatory.

(c) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this article but the use of forms for other documents is not mandatory.

As added by P.L.179-1991, SEC.1.

IC 23-17-29-3

Collection of fees

Sec. 3. (a) The secretary of state shall collect the following fees when the following documents are delivered for filing:

	Document	Electronic Filing Fee	Filing Fee (Other than electronic filing)
(1)	Articles of Incorporation	$20	$30
(2)	Application for use of indistinguishable name	$10	$20
(3)	Application for reserved name	$10	$20
(4)	Notice of transfer of reserved name	$10	$20
(5)	Application for renewal of reservation	$10	$20
(6)	Application for registered name	$20	$30
(7)	Application for renewal of registered name	$20	$30
(8)	Corporation's statement of change of registered agent or registered office or both	no fee	no fee
(9)	Agent's statement of change of registered office for each affected corporation	no fee	no fee
(10)	Agent's statement of resignation	no fee	no fee
(11)	Amendment of articles of incorporation	$20	$30
(12)	Restatement of articles of incorporation with amendments	$20	$30
(13)	Articles of merger	$20	$30
(14)	Articles of dissolution	$20	$30
(15)	Articles of revocation of dissolution	$20	$30
(16)	Certificate of administrative dissolution	no fee	no fee
(17)	Application for reinstatement following administrative dissolution	$20	$30
(18)	Certificate of reinstatement	no fee	no fee
(19)	Certificate of judicial dissolution	no fee	no fee
(20)	Application for certificate of authority	$20	$30

(21)	Application for amended certificate of authority	$20	$30
(22)	Application for certificate of withdrawal	$20	$30
(23)	Certificate of revocation of authority to transact business	no fee	no fee
(24)	Annual report	$5	$10
(25)	Certificate of existence	$15	$15
(26)	Any other document required or permitted to be filed by this article	$20	$30

The secretary of state shall prescribe the electronic means of filing documents to which the electronic filing fees set forth in this section apply.

(b) The secretary of state shall collect a fee of ten dollars ($10) upon being served with process under this article. The party to a proceeding causing service of process may recover the fee paid the secretary of state as costs if the party prevails in the proceeding.

(c) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1) a page for copying.

(2) Fifteen dollars ($15) for the certification stamp.

As added by P.L.179-1991, SEC.1. Amended by P.L.277-2001, SEC.21; P.L.60-2007, SEC.5; P.L.106-2008, SEC.52.

IC 23-17-29-4

Documents; effective times and dates

Sec. 4. (a) Except as provided in subsection (b), a document is effective:

(1) at the time of filing on the date the document is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(2) at the time specified in the document as the document's effective time on the date the document is filed.

(b) A document may specify a delayed effective time and date, and if the document does, the document becomes effective at the time and date specified. If an effective date is delayed but no time is specified, the document is effective at 12:01 a.m. on the date filed. A delayed effective date for a document may not be later than the ninetieth day after the date filed.

As added by P.L.179-1991, SEC.1.

IC 23-17-29-5

Correction of documents

Sec. 5. (a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(1) contains an incorrect statement; or

(2) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) by preparing articles of correction that:

(A) describe the document, including the document's filing date, or attaching a copy of the document to the articles of correction;

(B) specify the incorrect statement and the reason the statement is incorrect or the manner in which the execution was defective; and

(C) correct the incorrect statement or defective execution; and

(2) by delivering the articles of correction to the secretary of state.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed or when the reliance ceased to be reasonable, whichever first occurs.

As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.16.

IC 23-17-29-6

Filing of documents

Sec. 6. (a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 1 of this chapter, the secretary of state shall file the document.

(b) The secretary of state shall file a document by stamping or otherwise endorsing the word "FILED" on the document, together with the secretary of state's name and official title and the date and the time of receipt, on both the original and copy of the document and on the receipt for the filing fee. After filing a document, except as provided under IC 23-17-6-3 and IC 23-17-26-9, the secretary of state shall deliver the document copy, with the filing fee receipt or acknowledgement of receipt if no fee is required attached, to the domestic or foreign corporation or the corporation's representative.

(c) Upon refusing to file a document, the secretary of state shall return the document to the domestic or foreign corporation or the corporation's representative within ten (10) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not do any of the following:

(1) Affect the validity or invalidity of the document in whole or in part.

(2) Relate to the correctness or incorrectness of information contained in the document.

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

As added by P.L.179-1991, SEC.1. Amended by P.L.228-1995,

SEC.25.

IC 23-17-29-7
Refusal to file documents

Sec. 7. (a) If the secretary of state refuses to file a document delivered for filing to the secretary of state, a domestic or foreign corporation may appeal the refusal to the circuit court or superior court in the county where the corporation's principal office, or, if there is none in Indiana, the corporation's registered office, is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.179-1991, SEC.1.

IC 23-17-29-8
Certification stamp

Sec. 8. A certification stamp affixed on or a certification certificate attached to a copy of a document under this chapter, bearing the secretary of state's signature, which may be in facsimile, and the seal of Indiana, is conclusive evidence that the original document is on file with the secretary of state.

As added by P.L.179-1991, SEC.1.

IC 23-17-29-9
Certificates of existence

Sec. 9. (a) A person may request the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(b) The certificate of existence sets forth the following:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in Indiana.

(2) That:

(A) the domestic corporation is duly incorporated under Indiana law, the date of the corporation's incorporation, and the period of the corporation's duration if less than perpetual; or

(B) the foreign corporation is authorized to transact business in Indiana.

(3) That all fees, taxes, and penalties owed to this state have been paid, if:

(A) payment is reflected in the records of the secretary of state; and

(B) nonpayment affects the existence of authorization of the domestic or foreign corporation.

(4) That the corporation's most recent annual report required under IC 23-17-27-8 has been delivered to the secretary of state.

(5) That articles of dissolution have not been filed.

(6) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in Indiana.

As added by P.L.179-1991, SEC.1.

IC 23-17-29-10

Signing false documents; misdemeanor

Sec. 10. (a) A person commits an offense by signing a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

(b) An offense under this section is a Class A misdemeanor.

As added by P.L.179-1991, SEC.1.

IC 23-17-30

Chapter 30. Miscellaneous Provisions

IC 23-17-30-1

Dissolution of corporations; transfer and distribution of assets

Sec. 1. (a) Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive the assets shall be reduced to cash subject to known trust restrictions and deposited with the treasurer of state or other appropriate state official for safekeeping. The treasurer of state may receive and hold property in kind. When a creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the treasurer of state shall deliver to the creditor, claimant, or member, or a person representing a creditor, claimant, or member, that amount.

(b) On dissolution of a corporation, assets remaining after distribution shall escheat to the state. The corporation shall pay the assets to the state general fund through payment to the treasurer of state.

As added by P.L.179-1991, SEC.1.

IC 23-17-30-2

Religious doctrines; conflict with statutes

Sec. 2. If religious doctrine or practice governing the affairs of a religious corporation is inconsistent with this article, the religious doctrine or practice control to the extent required by the Constitution of the United States or the Constitution of the State of Indiana.

As added by P.L.179-1991, SEC.1.

IC 23-17-30-3

Secretary of state; powers and duties

Sec. 3. The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state's office by this article.

As added by P.L.179-1991, SEC.1.

IC 23-17-30-4

Meetings impractical or impossible; court orders

Sec. 4. (a) If it is impractical or impossible for a corporation to call or conduct a meeting of the corporation's members, delegates, or directors or otherwise obtain their consent in the manner prescribed by the corporation's articles of incorporation, bylaws, or this article, upon petition of a director, an officer, a delegate, a member, or the attorney general the circuit or superior court of the county where a corporation's principal office is located may order that a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized in a manner that the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued under this section, provide

for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held under the articles of incorporation, bylaws, and this article, whether or not the method results in actual notice to all persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(c) An order issued under this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement concerning quorums or the number or percentage of votes needed for approval, that would otherwise be imposed by the articles of incorporation, bylaws, or this article.

(d) When practical, an order issued under this section must limit the subject matter of meetings or other forms of consent judicially authorized to those items, including amendments to the articles of incorporation or bylaws, for which the resolution may enable the corporation to continue managing the corporation's affairs without further resort to this section. However, an order under this section may also authorize the obtaining of any votes and approvals that are necessary for a dissolution, merger, or sale of assets.

(e) A meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section that complies with the order, is considered a valid meeting or vote and has the same force and effect as if the meeting or method complied with every requirement imposed by the articles of incorporation, bylaws, and this article.

As added by P.L.179-1991, SEC.1.

IC 23-17-31
Chapter 31. Domestication of Nonprofit Corporation

IC 23-17-31-1
Domestication; applicable laws; plan of domestication

Sec. 1. (a) A foreign nonprofit corporation may become a domestic nonprofit corporation only if the domestication is permitted by the organic law of the domiciliary state of the foreign nonprofit corporation. The laws of Indiana govern the effect of domesticating a foreign nonprofit corporation in Indiana under this chapter.

(b) A domestic nonprofit corporation may become a foreign nonprofit corporation only if the domestication is permitted by the laws of the foreign jurisdiction where the domestic nonprofit corporation is seeking redomestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the nonprofit corporation of a plan of domestication in the manner provided in this section. The laws of the foreign jurisdiction govern the effect of domesticating in that jurisdiction.

(c) The plan of domestication must include:

(1) a statement of the jurisdiction in which the nonprofit corporation is to be domesticated;

(2) the terms and conditions of the domestication; and

(3) any desired amendments to the articles of incorporation of the nonprofit corporation following its domestication.

As added by P.L.63-2014, SEC.27.

IC 23-17-31-2
Domestication in a foreign jurisdiction; adoption by board of directors required

Sec. 2. In the case of a domestication of a domestic nonprofit corporation in a foreign jurisdiction, the plan of domestication must be adopted by the board of directors.

As added by P.L.63-2014, SEC.27.

IC 23-17-31-3
Articles of domestication

Sec. 3. (a) After the domestication of a foreign nonprofit corporation has been authorized as required by the laws of the foreign jurisdiction, the articles of domestication must be executed by an officer or other authorized representative. The articles must set forth:

(1) the name of the nonprofit corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in Indiana or the nonprofit corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of IC 23-17-5-1;

(2) the jurisdiction of incorporation of the nonprofit corporation immediately before the filing of the articles of domestication in that jurisdiction; and

(3) a statement that the domestication of the nonprofit

corporation in Indiana was authorized as required by the laws of the jurisdiction in which the nonprofit corporation was incorporated immediately before its domestication under this chapter.

(b) The articles of domestication must either contain all the provisions that IC 23-17-3-2 requires to be set forth in articles of incorporation and any other desired provisions that IC 23-17-3-3 permits to be included in the articles of incorporation or must have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication must be delivered to the secretary of state for filing and are effective at the time provided in IC 23-17-29-4.

(d) If the foreign corporation is authorized to transact business in this state under IC 23-17-26, its certificate of authority is canceled automatically on the effective date of its domestication.

As added by P.L.63-2014, SEC.27.

IC 23-17-31-4

Articles of charter surrender

Sec. 4. (a) Whenever a domestic nonprofit corporation has adopted and approved, in the manner required by this chapter, a plan of domestication providing for the nonprofit corporation to be domesticated in a foreign jurisdiction, an officer or another authorized representative of the domestic nonprofit corporation must execute articles of charter surrender on behalf of the domestic nonprofit corporation. The articles of charter surrender must set forth:

(1) the name of the nonprofit corporation;

(2) a statement that the articles of charter surrender are being filed in connection with the domestication of the nonprofit corporation in a foreign jurisdiction;

(3) a statement that the domestication was approved by the board of directors; and

(4) the nonprofit corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender must be delivered by the nonprofit corporation to the secretary of state for filing. The articles of charter surrender are effective at the time provided in IC 23-17-29-4.

As added by P.L.63-2014, SEC.27.

IC 23-17-31-5

Effect of domestication

Sec. 5. When a domestication of a foreign nonprofit corporation in Indiana becomes effective:

(1) the title to all real and personal property, both tangible and intangible, held by the nonprofit corporation remains in the nonprofit corporation without reversion or impairment;

(2) the liabilities of the nonprofit corporation remain the liabilities of the nonprofit corporation;

(3) an action or proceeding pending against the nonprofit corporation continues against the nonprofit corporation as if the domestication had not occurred;
(4) the articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of the nonprofit corporation;
(5) the nonprofit corporation is considered to:
(A) be incorporated under the laws of Indiana for all purposes;
(B) be the same nonprofit corporation without interruption as the nonprofit corporation that existed under the laws of the foreign jurisdiction; and
(C) have been incorporated on the date it was originally incorporated in the foreign jurisdiction.
As added by P.L.63-2014, SEC.27.

IC 23-17-31-6
Abandoning domestication

Sec. 6. (a) Unless otherwise provided in a plan of domestication of a domestic nonprofit corporation, after the plan has been adopted and approved as required by this chapter, and at any time before the domestication has become effective, the plan of domestication may be abandoned by the board of directors.

(b) If a domestication is abandoned under subsection (a) after articles of charter surrender have been filed with the secretary of state but before the domestication has become effective, a statement that the domestication has been abandoned under this section, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing before the effective date of the domestication. The statement is effective upon filing and the domestication is abandoned and may not become effective.

(c) If the domestication of a foreign nonprofit corporation in Indiana is abandoned under the laws of the foreign jurisdiction after articles of domestication have been filed with the secretary of state, a statement that the domestication has been abandoned, executed by an officer or other authorized representative, must be delivered to the secretary of state for filing. The statement is effective upon filing and the domestication is abandoned and may not become effective.
As added by P.L.63-2014, SEC.27.

IC 23-18

ARTICLE 18. LIMITED LIABILITY COMPANIES

IC 23-18-1

Chapter 1. Definitions

IC 23-18-1-1

Citation of article

Sec. 1. This article may be cited as the "Indiana business flexibility act".

As added by P.L.8-1993, SEC.301.

IC 23-18-1-2

Application of definitions

Sec. 2. The definitions of this chapter apply throughout this article.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-3

"Articles of organization"

Sec. 3. "Articles of organization" means the articles of organization described by IC 23-18-2-4 and any amended or restated articles of organization.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-4

"Business trust"

Sec. 4. "Business trust" means a business trust or a foreign business trust (as defined in IC 23-5).

As added by P.L.8-1993, SEC.301.

IC 23-18-1-5

"Contribution"

Sec. 5. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services that a person transfers to a limited liability company in the capacity as a member.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-6

"Corporation"

Sec. 6. "Corporation" means a domestic corporation or a foreign corporation (as defined in either IC 23-1 or IC 23-17).

As added by P.L.8-1993, SEC.301.

IC 23-18-1-7

"Distribution"

Sec. 7. "Distribution" means a direct or an indirect transfer of money or other property or the incurrence or the transfer of indebtedness by a limited liability company to or for the benefit of its

members in respect of their interests in the limited liability company. A distribution may be in the form of a declaration or payment of a dividend, purchase, redemption, or other acquisition of an interest, a distribution of indebtedness, or otherwise. The term does not include:

(1) amounts constituting reasonable compensation for past or present services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefit program; or

(2) the making of or payment or performance upon a bona fide guaranty or similar arrangement by a limited liability company to or for the benefit of its members.

However, the failure of an amount to satisfy subdivision (1), or of a payment or performance to satisfy subdivision (2), is not determinative of whether the amount, payment, or performance is a distribution.

As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.26; P.L.40-2013, SEC.5.

IC 23-18-1-8
"Event of dissociation"

Sec. 8. "Event of dissociation" means an event that causes a person to cease being a member of a limited liability company as provided by IC 23-18-6-5.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-9
"Foreign limited liability company"

Sec. 9. "Foreign limited liability company" means an entity that is:

(1) an unincorporated association organized under the laws of a state other than Indiana or another jurisdiction, including a foreign country;

(2) organized under a statute that affords each member of the entity limited liability with respect to the activities and ownership of the entity; and

(3) not required to obtain a certificate of registration as a foreign limited partnership under IC 23-16 or qualify to transact business as a foreign business trust under IC 23-5.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-10
"Interest"

Sec. 10. "Interest" means a member's economic rights in the limited liability company, including the member's share of the profits and losses of the limited liability company and the right to receive distributions from the limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-11
"Limited liability company" or "domestic limited liability

company"

Sec. 11. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association organized under this article.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-12

"Limited partnership"

Sec. 12. "Limited partnership" means an Indiana limited partnership or foreign limited partnership (as defined in IC 23-16).

As added by P.L.8-1993, SEC.301.

IC 23-18-1-13

"Majority in interest of the members"

Sec. 13. "Majority in interest of the members" means the members who have made more than fifty percent (50%) of the agreed value, as stated in the records of the limited liability company, of the total contributions made by all members, to the extent that the contributions have not been previously returned.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-14

"Manager"

Sec. 14. "Manager" means, with respect to a limited liability company whose articles of organization provide for a manager, a person designated in accordance with the authority under IC 23-18-4-1(b).

As added by P.L.8-1993, SEC.301.

IC 23-18-1-15

"Member"

Sec. 15. "Member" means a person admitted to membership in a limited liability company under IC 23-18-6-1 and as to whom an event of dissociation has not occurred.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-16

"Operating agreement"

Sec. 16. "Operating agreement" means any written or oral agreement of the members as to the affairs of a limited liability company and the conduct of its business that is binding upon all the members.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-17

"Person"

Sec. 17. "Person" means an individual, a corporation, a general or limited partnership, an association, a limited liability company, a foreign limited liability company, a business trust, or another legal or commercial entity.

As added by P.L.8-1993, SEC.301.

IC 23-18-1-18
"Principal office"

Sec. 18. "Principal office" means the office, within or outside of Indiana, so designated in the biennial report where the principal executive offices of a domestic or foreign limited liability company are located.

As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.26.

IC 23-18-1-19
"State"

Sec. 19. "State" refers to a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

As added by P.L.8-1993, SEC.301.

IC 23-18-2

Chapter 2. Organization and Powers

IC 23-18-2-1

Organization; purpose; regulation

Sec. 1. (a) A limited liability company may:

(1) be organized under this article for any business, personal, or nonprofit purpose; and

(2) conduct business in any state for any lawful purpose;

unless a more limited purpose is set forth in its articles of organization.

(b) A limited liability company must comply with any statute that regulates the limited liability company's business.

As added by P.L.8-1993, SEC.301. Amended by P.L.40-2013, SEC.6.

IC 23-18-2-2

Powers

Sec. 2. Unless the limited liability company's articles of organization provide otherwise, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including the following:

(1) Sue, be sued, complain, and defend in its name.

(2) Make and amend operating agreements, not inconsistent with its articles of organization or with the laws of this state, for managing the business and regulating the affairs of the limited liability company.

(3) Purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located.

(4) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

(5) Except as otherwise prohibited by this article:

(A) purchase, receive, subscribe for, or otherwise acquire;

(B) own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and

(C) deal in and with shares, interests, obligations, or other securities of;

any corporation, partnership, association, limited liability company, foreign limited liability company, or business trust.

(6) Make contracts and guarantees, incur liabilities, borrow money, and issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

(7) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

(8) Be a promoter, a stockholder, a partner, a member, a manager, an associate, or an agent of any corporation, partnership, limited liability company, foreign limited liability company, joint venture, trust, or other enterprise.

(9) Conduct its business, locate offices, and exercise the powers granted by this article within or outside Indiana.
(10) Elect or appoint managers, agents, and employees, define their duties, fix their compensation, and lend them money and credit.
(11) Pay pensions and establish and administer pension plans, pension trusts, profit-sharing plans, welfare plans, qualified and nonqualified retirement plans, and benefit or incentive plans for any or all of its current or former managers, employees, and agents.
(12) Make donations for public welfare, charitable, scientific, or educational purposes.
(13) Transact any lawful business that will aid governmental policy.
(14) Indemnify and hold harmless any member, manager, agent, or employee from and against any and all claims and demands, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness and subject to any standards and restrictions set forth in a written operating agreement.
(15) To the extent authorized by the licensing authority (as defined in IC 23-1.5-1-9) provide professional services (as defined in IC 23-1.5-1-11).
(16) Make payments or donations or do any other act that furthers the business and affairs of the limited liability company.
(17) Adopt, either in the limited liability company's articles of organization or written operating agreement, a provision establishing exclusive jurisdiction in the circuit or superior courts of any county in Indiana or in the United States district courts of Indiana, for:
(A) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee, or agent of the limited liability company to the limited liability company;
(B) any action asserting a claim arising under:
(i) any provision of this article; or
(ii) the limited liability company's articles of organization or operating agreement; or
(C) any actions otherwise relating to the internal affairs of the limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.28.

IC 23-18-2-3
Professional licensing or regulatory authorities; powers

Sec. 3. Except for the prohibitions in this article concerning the personal liability of members, managers, employees, and agents of a limited liability company organized under this article, nothing in this article is intended to restrict or limit in any manner the authority and duty of any licensing authority (as defined in IC 23-1.5-1-9) or to regulate the provision of professional services (as defined in

IC 23-1.5-1-11) within Indiana, notwithstanding that the member, manager, or employee of a limited liability company is providing professional services or engaging in the practice of a profession through the limited liability company.
As added by P.L.8-1993, SEC.301.

IC 23-18-2-4
Formation; articles of organization; contents

Sec. 4. (a) At least one (1) person may form a limited liability company by causing articles of organization to be executed and filed for record with the office of the secretary of state. A person does not need to be a member of the limited liability company at the time of formation or after formation has occurred.

(b) Articles of organization shall contain the following:

(1) The name of the limited liability company.

(2) The street address of the limited liability company's registered office in Indiana and the name of the limited liability company's registered agent at that office.

(3) The latest date upon which the limited liability company is to dissolve, or a statement that the duration of the limited liability company is perpetual until dissolution in accordance with this article.

(4) If the articles of organization provide for a manager or managers, a statement to that effect.

(5) Any other matters not inconsistent with this article that the members agree to include, including any matters that are required to be or may be included in an operating agreement under this article.

As added by P.L.8-1993, SEC.301.

IC 23-18-2-5
Amendment of articles of organization

Sec. 5. (a) Articles of organization of a limited liability company may be amended by filing articles of amendment of the articles of organization in the office of the secretary of state. The articles of amendment must contain the following:

(1) The name of the limited liability company.

(2) The date the articles of organization were filed.

(3) The amendment to the articles of organization.

(b) Articles of organization of a limited liability company may be amended at any time that the members determine provided that the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time the amendment is made.
As added by P.L.8-1993, SEC.301.

IC 23-18-2-6
Restated articles of organization

Sec. 6. (a) Articles of organization may be restated at any time. Restated articles of organization must:

(1) be filed with the secretary of state;
(2) be specifically designated as "restated articles of organization"; and
(3) state in the heading or in a separate paragraph the limited liability company's present name, and if the name has been changed, all of its former names and the date of filing of its original articles of organization.

(b) A restated articles of organization may include one (1) or more amendments to the articles of organization. If the restated articles of organization include an amendment, the amendment must be adopted as provided in section 5 of this chapter.

As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.2.

IC 23-18-2-7
Filing articles with secretary of state; notice

Sec. 7. The fact that articles of organization of a limited liability company are on file in the office of the secretary of state is notice that the limited liability company has been organized and is notice of all other facts that are required to be set forth in the articles of organization under section 4 of this chapter and that are set forth in the articles of organization.

As added by P.L.8-1993, SEC.301.

IC 23-18-2-8
Name

Sec. 8. (a) The name of each limited liability company as set forth in its articles of organization:
(1) must contain the words "limited liability company" or either of the following abbreviations:
(A) "L.L.C."; or
(B) "LLC";
(2) may contain the name of a member or manager; and
(3) except as provided in subsection (b), must be such as to distinguish the name upon the records of the office of the secretary of state from the name of any limited liability company or other business entity reserved, registered, or organized under the laws of Indiana or qualified to transact business as a foreign limited liability company in Indiana.

(b) A limited liability company may apply to the secretary of state to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (a). The secretary of state shall authorize the use of the name applied for if:
(1) the other domestic or foreign limited liability company or other business entity files its written consent to the use of its name; or
(2) the applicant delivers to the secretary of state a certified copy of a final court judgment from a circuit or superior court in the state of Indiana establishing the applicant's right to use the

name applied for in Indiana.

As added by P.L.8-1993, SEC.301. Amended by P.L.178-2002, SEC.105.

IC 23-18-2-9

Reservation of name

Sec. 9. (a) A person may reserve the exclusive right to the use of a name, including a fictitious name by a foreign limited liability company whose name is not available, by delivering an application to the secretary of state. The application must set forth the name and address of the applicant and the name to be reserved. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the exclusive use of the applicant for renewable one hundred twenty (120) day periods.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the office of the secretary of state a signed notice of the transfer that states the name and address of the transferee.

As added by P.L.8-1993, SEC.301. Amended by P.L.277-2001, SEC.22.

IC 23-18-2-9.5

Foreign limited liability companies; registration of name

Sec. 9.5. (a) A foreign limited liability company may register its name, or its name with any addition required by IC 23-18-2-8, if the name is distinguishable upon the records of the secretary of state as provided in section 8 of this chapter.

(b) A foreign limited liability company registers its name, or its name with any addition required by IC 23-18-2-8, by delivering to the secretary of state for filing an application setting forth:

(1) its name, or its name with any addition required by IC 23-18-2-8; and

(2) the state or country and date of its formation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign limited liability company whose registration is effective may renew the registration for successive years by delivering to the secretary of state for filing a renewal application that complies with subsection (b). The renewal application must be filed between October 1 and December 31 of the preceding year. The filing of the renewal application renews the registration for the following calendar year.

(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under that name or consent in writing to the use of that name by a limited liability company thereafter organized under this article or by another foreign limited liability company thereafter authorized to transact business in Indiana. The registration terminates when the domestic limited liability company is organized or the foreign limited liability company qualifies or consents to the qualification of another

foreign limited liability company under the registered name.
As added by P.L.277-2001, SEC.23.

IC 23-18-2-10
Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation

Sec. 10. (a) A limited liability company must continuously maintain in Indiana the following:

(1) A registered office.

(2) A registered agent, who must be one (1) of the following:

(A) An individual who resides in Indiana and whose business office is identical with the registered office.

(B) A domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office.

(C) A foreign limited liability company, foreign corporation, or nonprofit foreign corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each limited liability company organized after June 30, 2014, under the laws of Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each limited liability company formed under the laws of Indiana shall provide to the limited liability company's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the limited liability company; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the limited liability company.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a limited liability company under subsection (c).

(e) If a limited liability company fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 12 of this chapter, as the registered agent for the limited liability company.
As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.29.

IC 23-18-2-11
Change of registered office or agent

Sec. 11. (a) A limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

(1) The name of the limited liability company.

(2) The street address of its current registered office.

(3) If the current registered office is to be changed, the street address of the new registered office.
(4) The name of its current registered agent.
(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent or a representation that the new registered agent has consented either on the statement or attached to the statement to the appointment.
(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability company that the registered agent serves by notifying the limited liability company in writing of the change and signing either manually or in facsimile and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and states that the limited liability company has been notified of the change.
As added by P.L.8-1993, SEC.301.

IC 23-18-2-12
Resignation of agency; discontinuance of office

Sec. 12. (a) A registered agent may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-18-12 a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall mail one (1) copy to the limited liability company at the limited liability company's principal office and one (1) copy to the registered office, if not discontinued.

(c) The agency appointment is terminated and the registered office discontinued, if discontinued under the statement, thirty-one (31) days after the statement was filed.
As added by P.L.8-1993, SEC.301. Amended by P.L.228-1995, SEC.26.

IC 23-18-2-13
Service of process; perfection; nonexclusive means

Sec. 13. (a) A limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(b) If a limited liability company does not have a registered agent or the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at the limited liability company's principal office. Service is perfected under this subsection at the earliest of the following:

(1) The date the limited liability company receives the mail.

(2) The date shown on the return receipt, if signed on behalf of the limited liability company.

(3) Five (5) days after the deposit of the service in the United States mail, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-3

Chapter 3. Relations of Members and Managers to Persons Dealing With a Limited Liability Company

IC 23-18-3-1

Members and managers as agents; companies existing on or before June 30, 1999

Sec. 1. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as provided in subsection (c), each member is an agent of the limited liability company for the purpose of the limited liability company's business or affairs, and the act of any member, including the execution in the name of the limited liability company of an instrument for apparently carrying on in the usual way the business or affairs of the limited liability company, binds the limited liability company, unless:

(1) the acting member does not have authority to act for the limited liability company in the particular matter; and

(2) the person with whom the member is dealing has knowledge of the fact that the member does not have the authority to act.

(c) If the articles of organization provide for a manager or managers, and except to the extent provided in the articles of organization:

(1) a member acting solely in the capacity as a member is not an agent of the limited liability company; and

(2) each manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting does not have authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager does not have the authority to act.

(d) An act of a manager or a member that is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with a written operating agreement or by the unanimous consent of all members at any time.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.1.

IC 23-18-3-1.1

Members and managers as agents; companies formed after June 30, 1999

Sec. 1.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as provided in subsection (c) or the articles of

organization, each member is an agent of the limited liability company for the purpose of the limited liability company's business or affairs, and the act of any member, including the execution in the name of the limited liability company of an instrument for apparently carrying on in the usual way the business or affairs of the limited liability company, binds the limited liability company, unless:

(1) the acting member does not have authority to act for the limited liability company in the particular matter; and

(2) the person with whom the member is dealing has knowledge of the fact that the member does not have the authority to act.

(c) If the articles of organization provide for a manager or managers, and except to the extent provided in the articles of organization:

(1) a member acting solely in the capacity as a member is not an agent of the limited liability company; and

(2) each manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager does not have authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager does not have the authority to act.

(d) An act of a manager or member that is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with a written operating agreement or by the unanimous consent of all members at any time.

As added by P.L.269-1999, SEC.2.

IC 23-18-3-2

Notice to member or manager imputed to company; exceptions

Sec. 2. (a) Except as provided in subsection (b), notice to a member of a matter relating to the business or affairs of the limited liability company and the knowledge of the member acting in the particular matter acquired while a member or of which the person had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, is notice to the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(b) If the articles of organization provide for a manager or managers:

(1) notice to a manager of a matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the person had knowledge at the time of becoming a manager, and the knowledge of any other manager

who reasonably could and should have communicated the knowledge to the acting manager, is notice to the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

(2) notice to or knowledge of any member of a limited liability company while the member is acting solely in the capacity of a member is not notice to or knowledge of the limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-3-2.5

Officers

Sec. 2.5. If the written operating agreement of a limited liability company provides for officers as permitted by IC 23-18-4-4(a)(3), the following apply:

(1) Each officer has those powers and duties:

(A) set forth, generally or specifically in the written operating agreement; or

(B) otherwise delegated to an officer from time to time by the:

(i) manager or managers of a manager-managed limited liability company; or

(ii) member or members of a member-managed limited liability company;

in a manner consistent with the written operating agreement.

(2) Each officer has the status of an agent of the limited liability company for purposes of section 3 of this chapter.

(3) If an officer acts within the officer's apparent authority to carry on the business of the limited liability company in the usual way, the officer's actions bind the limited liability company to the same extent as the actions of a manager would bind a limited liability company under section 1.1(c)(2) and 1.1(d) of this chapter.

(4) Notice to an officer of a matter relating to the business or affairs of the limited liability company, or the knowledge of the officer acting in the particular matter, is notice to the limited liability company to the same extent that notice to a manager or knowledge of a manager would be treated as notice to a limited liability company under section 2(b)(1) of this chapter.

As added by P.L.40-2013, SEC.7. Amended by P.L.63-2014, SEC.30.

IC 23-18-3-2.6

Intent; validity of operating agreements and acts before July 1, 2014

Sec. 2.6. Section 2.5 of this chapter and IC 23-18-4-4(a)(3) are not intended to adversely affect the validity of:

(1) any provision of a written operating agreement in effect before July 1, 2014, that:

(A) provides for an officer or officers; or

(B) sets forth the powers or duties of an officer or officers; or

(2) any act by an officer before July 1, 2014.

As added by P.L.63-2014, SEC.31.

IC 23-18-3-3

Personal liability of members, managers, agents, or employees

Sec. 3. (a) A member, a manager, an agent, or an employee of a limited liability company is not personally liable for the debts, obligations, or liabilities of the limited liability company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company. A member, a manager, an agent, or an employee of a limited liability company may be personally liable for the person's own acts or omissions.

(b) This article and Indiana law exclusively govern any conflict between Indiana law and the laws of another state with regard to the liability of a member, a manager, an agent, or an employee of a limited liability company organized and existing under this article for the debts, obligations, or liabilities of the limited liability company, or for the acts or omissions of other members, managers, agents, or employees of the limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-3-4

Professional services; liability

Sec. 4. (a) This article does not alter any law applicable to the relationship between a person rendering professional services and a person receiving professional services, including liability arising out of the professional services.

(b) A person rendering professional services as a member, a manager, an employee, or an agent of a limited liability company is personally liable for the consequences of the person's acts or omissions to the extent provided by Indiana law or the laws of another state where the person is considered responsible.

As added by P.L.8-1993, SEC.301.

IC 23-18-3-5

Member as party to proceeding

Sec. 5. A member of a limited liability company may not be made a party to a proceeding by or against a limited liability company solely by reason of being a member of the limited liability company, except:

(1) when the object of the proceeding is to enforce a member's right against or liability to the limited liability company; or

(2) in an action brought under IC 23-18-8-1.

As added by P.L.8-1993, SEC.301.

IC 23-18-4
Chapter 4. Rights and Duties of Members and Managers

IC 23-18-4-1
Authority of members or managers

Sec. 1. (a) Unless the articles of organization provide for a manager or managers, management of the business or affairs of the limited liability company is vested in the members. Subject to any provisions in the operating agreement or this article restricting or enlarging the management rights and duties of any person or group or class of persons, the members have the right and authority to manage the affairs and make all decisions of the limited liability company.

(b) If the articles of organization provide for a manager or managers, except to the extent that the operating agreement reserves the authority to any members or class or group of members, the manager or managers have the authority to manage the business or affairs of the limited liability company. Unless otherwise provided in a written operating agreement, a manager or managers:

(1) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority in interest of the members;

(2) do not need to be members of the limited liability company or natural persons; and

(3) unless they have been earlier removed or have earlier resigned, shall act as managers until their successors have been elected and qualified.

As added by P.L.8-1993, SEC.301.

IC 23-18-4-2
Acts and omissions liability; trustee for personal benefits derived through company; duties of member in company providing for manager

Sec. 2. (a) Unless otherwise provided in a written operating agreement, a member or manager is not liable for damages to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company, unless the act or omission constitutes willful misconduct or recklessness.

(b) Unless otherwise provided in a written operating agreement, each member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager or member without the consent of a majority of the disinterested managers or members or other persons participating in the management of the business or affairs of the limited liability company from:

(1) a transaction connected with the conduct or winding up of the limited liability company; or

(2) any use by the manager or member of the limited liability company's property, including confidential or proprietary

information of the limited liability company or other matters entrusted to the manager or member because of the manager's or member's status as manager or member.

(c) Unless otherwise provided in a written operating agreement, a member of a limited liability company in which the articles of organization provide for a manager or managers and who is not a manager has no duties to the limited liability company or to the other members solely by reason of acting in the capacity as a member.

As added by P.L.8-1993, SEC.301.

IC 23-18-4-3

Affirmative vote, approval, or consent; requirements

Sec. 3. (a) Unless the articles of organization provide for a manager or managers, and except as otherwise provided in a written operating agreement or this article and subject to subsection (c), the affirmative vote, approval, or consent of a majority in interest of the members is required to decide a matter connected with the business or affairs of the limited liability company.

(b) If the articles of organization provide for more than one (1) manager and except as provided otherwise in a written operating agreement or this article, the affirmative vote, approval, or consent of a majority of the managers shall be required to decide any matter that requires the approval of the managers.

(c) Except as provided otherwise in a written operating agreement, the affirmative vote, approval, or consent of all members is required to do the following:

(1) Amend the operating agreement.

(2) Authorize a manager, a member, or another person to do an act on behalf of the limited liability company that contravenes the operating agreement, including a written provision of the operating agreement that expressly limits the purpose, business, affairs, or conduct of the limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-4-4

Written operating agreement

Sec. 4. (a) A written operating agreement may do one (1) or more of the following:

(1) Modify, increase, decrease, limit, or eliminate the duties (including fiduciary duties) or the liability of a member or manager for breach of the duties set forth in section 2(a) of this chapter.

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which a person is a party because the person is or was a member or manager.

(3) Provide for officers of a limited liability company that is:

(A) managed by a manager or managers; or

(B) managed by a member or members;

by specifying the title, powers, duties, and term of office (either

perpetual or for a specific term) for each officer and the means by which each officer is to be appointed, elected, or reelected, or by authorizing in the written operating agreement the authority of the manager or managers of a manager-managed limited liability company or the member or members of a member-managed limited liability company to otherwise establish officers and the titles, powers, duties, and terms of office of the officers.

(4) Provide that one (1) or more persons who are not members or managers have the right to approve or disapprove any of one (1) or more specified actions with respect to the limited liability company, including:

(A) voluntary dissolution;

(B) merger; or

(C) amending the written operating agreement.

(b) If a person who is not a member or manager is given the right to approve or disapprove specified actions as permitted by subsection (a)(4), the person does not have the general right to vote with the members or managers regarding any matters unless specifically provided otherwise in the written operating agreement.

As added by P.L.8-1993, SEC.301. Amended by P.L.40-2013, SEC.8; P.L.63-2014, SEC.32.

IC 23-18-4-5

Operating agreements; objectives

Sec. 5. Members may enter into an operating agreement to regulate or establish any aspect of the affairs of the limited liability company or the relations of the members and managers, if any, including provisions establishing the following:

(1) The manner in which the business and affairs of the limited liability company shall be managed, controlled, and operated, which may include the granting of exclusive authority to manage, control, and operate the limited liability company to managers who are not members.

(2) The manner in which the members will share in distributions of the assets and the profits or losses of the limited liability company.

(3) The rights of members to assign all or a portion of their interests in the limited liability company.

(4) Classes or groups of at least one (1) member having certain relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the operating agreement, of additional classes or groups of members having certain relative rights, powers, or duties, including voting rights, expressed either in the operating agreement or at the time the classes or groups are created, including rights, powers, or duties senior to those of at least one (1) existing class or group of members.

(5) Classes or groups of at least one (1) manager having certain relative rights, powers, and duties, including voting rights, and

may provide for the future creation, in the manner provided in the operating agreement, of additional classes or groups of managers having certain relative rights, powers, or duties, including voting rights, expressed either in the operating agreement or at the time the classes or groups are created, including rights, powers, or duties senior to those of at least one (1) existing class or group of managers.

(6) The circumstances in which an assignee of a member's interest may be admitted as a member of the limited liability company.

(7) The procedure for the following:

(A) The right to have a member's interest in the limited liability company evidenced by a certificate issued by the limited liability company.

(B) Assignment, pledge, or transfer of an interest represented by the certificate.

(C) Any other provisions dealing with the certificate.

(8) The method by which the operating agreement may be amended.

As added by P.L.8-1993, SEC.301.

IC 23-18-4-6

Initial operating agreement; amendments; power of attorney

Sec. 6. (a) The initial operating agreement must be agreed to by all persons who are members at the time the initial agreement is accepted.

(b) An amendment to an oral operating agreement must be approved by the unanimous consent of all members.

(c) An amendment to a written operating agreement must be in writing and must, unless otherwise provided in the operating agreement before the amendment, be approved by the unanimous consent of all members.

(d) A copy of any written amendment to an operating agreement must be delivered to each member who did not consent to the amendment and to each assignee who has not been admitted as a member.

(e) A person may sign articles of organization, an operating agreement, or an amendment to articles of organization or an operating agreement as an attorney in fact. A power of attorney relating to the signing of a document under this subsection by an attorney in fact may but is not required to be:

(1) sworn to, verified, or acknowledged;

(2) signed in the presence of a notary public;

(3) filed with the secretary of state; or

(4) included in another written agreement.

However, the power of attorney must be retained in the records of the limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.27.

IC 23-18-4-7
Enforcement of operating agreement; injunctive or other relief

Sec. 7. (a) A court may enforce an operating agreement by injunction or by granting other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(b) As an alternative to injunctive or other equitable relief, when the provisions under IC 23-18-9-2 are applicable, the court may order dissolution of the limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-4-8
Records; inspection; full disclosure; omissions

Sec. 8. (a) A limited liability company must keep at its principal office the following records and information:

(1) A list with the full name and last known mailing address of each member and manager, if any, of the limited liability company from the date of organization.

(2) A copy of the articles of organization and all amendments.

(3) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years, or if the returns and statements were not prepared, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the same period.

(4) Copies of any written operating agreements and all amendments and copies of any written operating agreements no longer in effect.

(5) Unless otherwise set forth in a written operating agreement, a writing setting out the following:

(A) The amount of cash, if any, and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made.

(B) The events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(C) Other writings, if any, required by the operating agreement.

(b) A member may, at the member's own expense, inspect and copy the limited liability company records described in subsection (a) where the records are located during ordinary business hours if the member gives the limited liability company written notice of the member's request at least five (5) business days before the date on which the member wishes to inspect and copy the records.

(c) Unless greater rights of access to records or other information are provided in a written operating agreement, members or managers, if any, shall give to the extent the circumstances allow just, reasonable, true, and full information of all things affecting the

members to any member or to the legal representative of any deceased member or of any member under legal disability upon reasonable demand for any purpose reasonably related to a member's interest as a member of the limited liability company.

(d) If a limited liability company is managed by one (1) or more managers, a member or the legal representative of a deceased member or a member under a legal disability may obtain information under subsection (c) only if:

(1) the member makes the request at least five (5) business days before the date on which the member wishes to obtain the information;

(2) the member makes the request in good faith and for a proper purpose;

(3) the member describes with reasonable particularity the member's purpose and the information that the member wishes to obtain; and

(4) the information is directly connected to the member's purpose.

(e) Failure of the limited liability company to keep or maintain the records or information required by this section is not grounds for imposing liability on any member for the debts and obligations of the limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.28; P.L.1-2007, SEC.163.

IC 23-18-4-9

Managerial omissions; penalties or consequences

Sec. 9. If set forth in writing, an operating agreement may provide that:

(1) a manager who fails to perform and comply with the terms and conditions of the operating agreement is subject to penalties or consequences specified in the operating agreement; and

(2) at the time or upon the happening of events specified in the operating agreement, a manager is subject to penalties or consequences specified in the operating agreement.

As added by P.L.8-1993, SEC.301.

IC 23-18-4-10

Good faith reliance on records by members or managers; liability

Sec. 10. A member or manager of a limited liability company is not liable when relying in good faith upon the records of the limited liability company and on the information, opinions, reports, or statements presented to the limited liability company by its other managers, members, agents, or employees, or by any other person, concerning matters the member or manager reasonably believes are within the other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements concerning the value and amount of the assets, liabilities, profits, or losses of the limited liability company or other facts

pertinent to the existence and amount of assets from which distributions to members might properly be paid.
As added by P.L.8-1993, SEC.301.

IC 23-18-4-11
Resignation of manager

Sec. 11. (a) A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in an operating agreement and in accordance with the operating agreement.

(b) A written operating agreement may provide that a manager does not have the right to resign as a manager of a limited liability company. Notwithstanding any provision in an operating agreement to the contrary, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount payable to the resigning manager.
As added by P.L.8-1993, SEC.301.

IC 23-18-4-12
Business between company and member or manager

Sec. 12. Except when prohibited in a written operating agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect to the transaction as a person who is not a member or manager.
As added by P.L.8-1993, SEC.301.

IC 23-18-4-13
Policy

Sec. 13. The policy of this article is to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of limited liability companies.
As added by P.L.40-2013, SEC.9.

IC 23-18-5

Chapter 5. Finance

IC 23-18-5-1

Promises to contribute property or services; enforceability

Sec. 1. (a) A promise by a member to make a contribution to the limited liability company is not enforceable unless the promise is written and signed by the member.

(b) Except as otherwise provided in a written operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform for any reason, including death and disability.

(c) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to the value of that portion of the contribution that has not been made. This option is in addition to and not in lieu of any other rights, including the right to specific performance, that the limited liability company may have against the member under the operating agreement or applicable law. *As added by P.L.8-1993, SEC.301.*

IC 23-18-5-2

Obligation to make capital contribution or other payment; compromise; effect; remedies or consequences of nonpayment

Sec. 2. (a) The obligation of a member to make a capital contribution or return money or other property paid or distributed in violation of this article may be compromised only:

(1) in compliance with a written operating agreement; or

(2) if a written operating agreement does not so provide, with the unanimous consent of the members.

(b) Any compromise does not affect the rights, if any, of any creditor of a limited liability company who, before the compromise, extends credit or acts in reliance on the obligation after the member signs a writing that reflects the obligation.

(c) An operating agreement may provide that a member who fails to make a capital contribution or other payment that the member is required to make is subject to specified remedies for or specified consequences of the failure. The remedy or consequence may include the following form:

(1) Reducing the defaulting member's interest in the limited liability company.

(2) Subordinating the defaulting member's interest in the limited liability company to that of nondefaulting members.

(3) A forced sale of the defaulting member's interest in the limited liability company.

(4) Forfeiture of the defaulting member's interest in the limited liability company.

(5) A loan by the nondefaulting members of the amount necessary to meet the commitment.

(6) A determination of the value of the member's interest in the limited liability company by appraisal or by formula and redemption and sale of the defaulting member's interest in the limited liability company at that value.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-3

Allocation of profits and losses

Sec. 3. Unless otherwise provided in the operating agreement, profits and losses must be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent the contributions have been received by the limited liability company and not previously returned.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-4

Shared distributions of cash or other assets

Sec. 4. Except as provided in section 5 or 5.1 of this chapter and IC 23-18-9-6, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in the operating agreement. If the operating agreement does not provide otherwise, distributions must be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent the contributions have been received by the limited liability company and not previously returned. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the operating agreement or at the times determined by the members or managers, if any, voting under IC 23-18-4-3.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.3.

IC 23-18-5-5

Dissociation; companies existing on or before June 30, 1999

Sec. 5. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5 that does not cause dissolution, a dissociating member is entitled to receive:

(1) any distribution that the member is entitled to under this article or the operating agreement; and

(2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, less a

distribution received under subdivision (1).

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.4; P.L.130-2006, SEC.29.

IC 23-18-5-5.1
Dissociation; companies formed after June 30, 1999

Sec. 5.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5, a dissociating member is entitled to receive:

(1) any distribution that the member is entitled to under this article or the operating agreement; and

(2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, less a distribution received under subdivision (1).

As added by P.L.269-1999, SEC.5. Amended by P.L.130-2006, SEC.30.

IC 23-18-5-6
Distributions

Sec. 6. (a) A distribution may not be made if after giving effect to the distribution:

(1) the limited liability company would not be able to pay its debts as the debts become due in the usual course of business; or

(2) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed if the affairs of the limited liability company were to be wound up at the time of the distribution to satisfy any preferential rights that are superior to the rights of members receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under subsection (a) upon one (1) of the following:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances.

(2) A fair valuation of assets and liabilities or other reasonable method approved by the members or managers, if any.

(c) Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured as of:

(1) the date the distribution is authorized if the payment occurs not more than one hundred twenty (120) days after the date of authorization; or

(2) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(d) A limited liability company's indebtedness to a member incurred by reason of an obligation to make a distribution in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.

(e) If terms of the indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (b).

(f) If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-7

Unlawful distributions; liability

Sec. 7. (a) A member or manager who votes for or assents to a distribution in violation of the operating agreement or section 6 of this chapter is personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without violating the operating agreement or section 6 of this chapter or if it is established that the member or manager did not act in compliance with section 6 of this chapter.

(b) Each member or manager held liable under subsection (a) for an unlawful distribution is entitled to contribution from the following:

(1) Each other member or manager who could be held liable under subsection (a) for the unlawful distribution.

(2) Each member for the amount the member received knowing that the distribution was made in violation of the operating agreement or section 6 of this chapter.

(c) A proceeding under this section is barred unless it is commenced not more than two (2) years after the date on which the effect of the distribution is measured under section 6 of this chapter.

As added by P.L.8-1993, SEC.301.

IC 23-18-5-8

Distributions in kind

Sec. 8. (a) Except as provided in the operating agreement, a member, regardless of the nature of the member's contribution, does not have a right to demand and receive a distribution from a limited liability company in a form other than cash.

(b) Except as provided in the operating agreement, a member may not be compelled to accept a distribution in kind from a limited liability company to the extent that the member's percentage interest in the assets being distributed in kind exceeds the percentage of distributions that the member is entitled to receive under section 4 of

this chapter.
As added by P.L.8-1993, SEC.301.

IC 23-18-5-9
Status of member entitled to receive distribution

Sec. 9. At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.
As added by P.L.8-1993, SEC.301.

IC 23-18-6
Chapter 6. Membership

IC 23-18-6-0.5
Minimum membership

Sec. 0.5. A limited liability company formed under this article or a foreign limited liability company admitted to transact business in Indiana under IC 23-18-11 may have at least one (1) member.
As added by P.L.34-1997, SEC.16.

IC 23-18-6-1
Acquisition of membership

Sec. 1. (a) Subject to subsection (b), a person may become a member in a limited liability company:

(1) in the case of a person acquiring an interest directly from the limited liability company, upon compliance with the operating agreement or if the operating agreement does not provide in writing, upon the written consent of all members; and

(2) in the case of an assignee of an interest, as provided in section 4 or 4.1 of this chapter.

(b) The effective time of admission of a member to a limited liability company is the later of the following:

(1) The date the limited liability company is organized.

(2) The time provided in the operating agreement, or if no time is provided, when the person's admission is reflected in the records of the limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.6.

IC 23-18-6-2
Interest of member; nature

Sec. 2. The interest of a member in a limited liability company is personal property.
As added by P.L.8-1993, SEC.301.

IC 23-18-6-2.5
Member interest designated as transfer on death property or held in joint tenancy

Sec. 2.5. (a) Unless otherwise limited or prohibited in a written operating agreement, any member interest in a limited liability company:

(1) may be designated as a transfer on death property under IC 32-17-14, with:

(A) the member as the owner of the interest; and

(B) one (1) or more transfer on death beneficiaries designated; or

(2) may be titled and held in joint tenancy with right of survivorship between two (2) or more individuals.

(b) The following apply upon the death of a person who is the owner of a member interest designated as a transfer on death

property:

(1) Each surviving transfer on death beneficiary has the status of an assignee of all or a fractional or percentage portion of the entire member interest owned by the deceased owner, depending on the number of surviving transfer on death beneficiaries, consistent with the transfer on death beneficiary designation, until that transfer on death beneficiary is admitted as a member of the limited liability company.

(2) The rights and obligations of each surviving transfer on death beneficiary with respect to the member interest are subject to all:

(A) transfer restrictions;

(B) redemption options; or

(C) other provisions;

that apply to the member's interest or member interests generally under a written operating agreement.

(c) The following apply upon the death of a person who is the owner of a member interest held in joint tenancy:

(1) Each surviving joint tenant has the status of an assignee of all or a fractional or percentage portion of the entire member interest, depending on the number of surviving joint tenants, until the surviving joint tenant is admitted as a member of the limited liability company unless the surviving joint tenant was already a member under subsection (d) before the death of each other joint tenant.

(2) The rights and obligations of each surviving joint tenant with respect to the member interest are subject to all:

(A) transfer restrictions;

(B) redemption options; or

(C) other provisions;

that apply to the member interest generally under a written operating agreement.

(d) If a member interest in a limited liability company is originally and initially issued in joint tenancy form to two (2) or more individuals, each joint tenant has the voting rights of a member unless otherwise provided in the written operating agreement. If an individual member:

(1) receives and holds a member interest as the sole owner; and

(2) at a later date, makes a lawful transfer of the member interest to be held in joint tenancy between the member and one (1) or more other persons;

then, unless otherwise provided in a written operating agreement, each other person, while all joint tenants are alive, has the status of an assignee of a fractional part of the member interest until the other person is admitted as a member of the limited liability company.

As added by P.L.40-2013, SEC.10. Amended by P.L.63-2014, SEC.33.

IC 23-18-6-3

Assignment of interest; companies existing on or before June 30,

1999

Sec. 3. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as provided in a written operating agreement:

(1) an interest is assignable in whole or in part;

(2) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;

(3) an assignment of an interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

(4) until the assignee of an interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the other members' right to remove the assignor under section 5(a)(3)(B) of this chapter;

(5) until an assignee of an interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(6) the assignor of an interest is not released from liability as a member solely as a result of the assignment.

(c) Unless otherwise provided in an operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the interest of a member is not an assignment and does not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.7.

IC 23-18-6-3.1

Assignment of interest; companies formed after June 30, 1999

Sec. 3.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as provided in a written operating agreement:

(1) an interest is assignable in whole or in part;

(2) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;

(3) an assignment of an interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

(4) until an assignee of an interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(5) the assignor of an interest is not released from liability as a member solely as a result of the assignment.

(c) Unless otherwise provided in an operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the interest of a member is not an assignment and does not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

As added by P.L.269-1999, SEC.8. Amended by P.L.14-2000, SEC.54.

IC 23-18-6-4

Assignee membership; companies existing on or before June 30, 1999

Sec. 4. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as otherwise provided in a written operating agreement, an assignee of an interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of a specification, consent must be evidenced by a written instrument, dated and signed by the member.

(c) An assignee who becomes a member:

(1) has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement, and this article; and

(2) is liable for any obligations of the member's assignor for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7.

However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from a written operating agreement.

(d) Whether or not an assignee of an interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7 that are solely a result of the assignment.

(e) Unless otherwise provided in a written operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when an assignee of the member's interest becomes a member with respect to the assigned interest.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.9.

IC 23-18-6-4.1

Assignee membership; companies formed after June 30, 1999

Sec. 4.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as otherwise provided in a written operating agreement, if a limited liability company has at least two (2) members, an assignee of an interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of a specification, consent must be evidenced by a written instrument, dated and signed by the member. If a limited liability company has one (1) member, an assignee of an interest may become a member in accordance with the terms of an agreement between the assignor and the assignee.

(c) An assignee who becomes a member:

(1) has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement, and this article; and

(2) is liable for any obligations of the member's assignor for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7.

However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from a written operating agreement.

(d) Whether or not an assignee of an interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7 that are solely a result of the assignment.

(e) Unless otherwise provided in a written operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member.

As added by P.L.269-1999, SEC.10.

IC 23-18-6-5

Cessation of membership

Sec. 5. (a) A person ceases to be a member of a limited liability company upon the occurrence of any of the following events:

(1) The person withdraws from the limited liability company as provided in section 6 of this chapter.

(2) The person ceases to be a member as provided in section 4(e) or 4.1(e) of this chapter.

(3) The person is removed as a member:

(A) in accordance with the operating agreement; or

(B) unless otherwise provided in a written operating agreement, by the affirmative vote, approval, or consent of a majority in interest of the members after the member has assigned the member's entire interest in the limited liability company.

(4) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of

a member who is an individual, the individual's death.

(5) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member who is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.

(6) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is a partnership, limited partnership, or another limited liability company, the dissolution and commencement of winding up of the partnership, limited partnership, or limited liability company.

(7) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is a corporation, the dissolution of the corporation.

(8) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(b) A written operating agreement may provide for other events that result in a person ceasing to be a member of the limited liability company, including insolvency, bankruptcy, and adjudicated incompetency.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.11.

IC 23-18-6-6

Withdrawal of member; companies existing on or before June 30, 1999

Sec. 6. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Unless a written operating agreement provides that a member does not have the power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days written notice to the other members or other notice required under the operating agreement. If the member has the power to withdraw but the withdrawal is a breach of the operating agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement, including the reasonable cost of obtaining the replacement of services that the withdrawn member was obligated to perform. The limited liability company may offset the damages against amounts otherwise distributable to the withdrawn member, in addition to pursuing any remedies provided for in the operating agreement or available under applicable law.

(c) Unless otherwise provided in a written operating agreement, in the case of a limited liability company for a definite term or

particular undertaking, a withdrawal by a member before the expiration of the term is a breach of the operating agreement.
As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.12.

IC 23-18-6-6.1
Withdrawal of member; companies formed after June 30, 1999

Sec. 6.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Unless otherwise provided in a written operating agreement, a member may not withdraw from a limited liability company before the dissolution and winding up of the limited liability company. A member may withdraw from a limited liability company only at the time or upon the occurrence of events specified in the operating agreement and in accordance with the operating agreement.
As added by P.L.269-1999, SEC.13.

IC 23-18-6-7
Judgment creditors of members; rights

Sec. 7. (a) On application to a court with jurisdiction by a judgment creditor of a member, the court may charge the interest of the member in the limited liability company with the payment of the unsatisfied amount of the judgment with interest.

(b) To the extent the court charges under subsection (a), the judgment creditor has only the rights of an assignee of the member's interest in the limited liability company.

(c) This article does not deprive a member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.
As added by P.L.8-1993, SEC.301.

IC 23-18-7

Chapter 7. Merger

IC 23-18-7-1

Planned merger; exchange or conversion of interests

Sec. 1. (a) Unless otherwise provided in writing by the operating agreement, a limited liability company may merge with or into another limited liability company according to a plan of merger.

(b) An interest in a limited liability company that is a party to the merger may be exchanged for or converted into an interest, obligation, or other securities of the surviving limited liability company or into cash or other property.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-2

Written plan of merger; contents

Sec. 2. (a) Each constituent limited liability company shall enter into a written plan of merger that is approved under section 3 of this chapter.

(b) The plan of merger must include the following:

(1) The name of each limited liability company planning to merge and the name of the surviving limited liability company into which each other limited liability company plans to merge.

(2) The terms and conditions of the merger.

(3) The manner and basis of converting the interests of each limited liability company, in whole or in part, into interests, obligations, or other securities of the surviving limited liability company or cash or other property.

(c) The plan of merger may include the following:

(1) Amendments to the articles of organization of the surviving limited liability company.

(2) Other provisions relating to the merger.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-3

Approval of plan of merger; abandonment

Sec. 3. (a) Unless otherwise provided in writing in the operating agreement, a limited liability company that is a party to a proposed merger must approve the plan of merger by the unanimous consent of the members.

(b) A party to the merger may abandon the merger under the plan of merger or this chapter.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-4

Articles of merger; effective date of merger; recordation; dissolution effect

Sec. 4. (a) After a plan of merger is approved, the surviving limited liability company shall deliver to the secretary of state for filing articles of merger setting forth the following:

(1) The name and jurisdiction of organization of each limited liability company that is a party to merger.

(2) A statement that the plan of merger was approved by each limited liability company as required by the laws of the state of its organization.

(3) Any amendments to the articles of organization set forth in the plan of merger.

(b) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

(c) The surviving limited liability company resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county where the limited liability company has real property at the time of the merger, the title that will be transferred by the merger, a file-stamped copy of the articles of merger. If the plan of merger sets forth amendments to the articles of organization that change the name of the surviving limited liability company, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county where the surviving limited liability company has real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in the limited liability company's name.

(d) Articles of merger are articles of dissolution for each domestic limited liability company that is not the surviving limited liability company in the merger.

As added by P.L.8-1993, SEC.301. Amended by P.L.40-2013, SEC.11.

IC 23-18-7-5

Effect of merger

Sec. 5. When a merger takes effect:

(1) every other party to the merger merges into the surviving limited liability company and the separate existence of every limited liability company except the surviving limited liability company ceases;

(2) the title to all real estate and other property owned by each party to the merger is vested in the surviving limited liability company without reversion or impairment;

(3) the surviving limited liability company has all liabilities of each party to the merger;

(4) a proceeding pending against a party to the merger may be continued as if the merger did not occur or the surviving limited liability company may be substituted in the proceeding for each limited liability company whose existence ceased;

(5) the articles of organization of the surviving limited liability company are amended to the extent provided in the plan of merger; and

(6) the interests of each party to the merger that are to be converted into interests, obligations, or other securities of the surviving limited liability company or cash or other property are

converted and the former holders of interests are entitled only to the rights provided in the articles of merger.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-6

Foreign and domestic company merger

Sec. 6. (a) A foreign limited liability company may participate in a merger with a domestic limited liability company if the following conditions are satisfied:

(1) The merger is permitted by the laws of the jurisdiction under whose laws the foreign limited liability company is organized and the foreign limited liability company complies with the laws in effecting the merger.

(2) The foreign limited liability company complies with section 4 of this chapter if it is the surviving limited liability company of the merger.

(3) Each domestic limited liability company complies with the applicable provisions of sections 1 through 3 of this chapter and, if it is the surviving limited liability company of the merger, with section 4 of this chapter.

(b) Upon the merger taking effect, the surviving foreign limited liability company agrees to the following:

(1) That it may be served with process in Indiana in any proceeding for enforcement of any obligation of any limited liability company to the merger that was organized under Indiana law, and for enforcement of any obligation of the surviving limited liability company arising from the merger.

(2) That the surviving foreign limited liability company appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving limited liability company shall specify the address to which a copy of the process shall be mailed by the secretary of state.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-7

Abandonment of proposed merger

Sec. 7. (a) Unless the plan of merger precludes the right to abandon the merger, a proposed merger may be abandoned before the effective date of the articles of merger, unless provided otherwise in the operating agreement, by the affirmative vote, approval, or consent of a majority in interest of the members of each limited liability company that is party to the merger.

(b) If the articles of merger have been filed with the secretary of state, notice of the abandonment must be given promptly to the secretary of state.

(c) If the proposed merger is abandoned as provided in this section, no liability arises under the articles of merger.

(d) An abandonment does not prejudice the rights of a person under any other contract made by a limited liability company that is a party to the merger in connection with the proposed merger.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-8
Certificates of merger

Sec. 8. The secretary of state shall prepare certificates of merger that specify the following:

(1) The name of each party to the articles of merger.

(2) The name of the successor and the location of the successor's registered office in Indiana.

(3) The date the articles of merger are accepted for record by the secretary of state.

As added by P.L.8-1993, SEC.301.

IC 23-18-7-9
Requirements for merger of domestic limited liability company with other business entity; plan of merger

Sec. 9. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited liability companies may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited liability company and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic limited liability partnership or other business entity into which each other domestic limited liability partnership or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the limited liability company that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management thereof is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic limited liability company that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(f) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited liability companies with or into one (1) or more other business entities.

(g) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited liability company with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

As added by P.L.178-2002, SEC.106.

IC 23-18-7-10

Entity conversion

Sec. 10. (a) As used in this section, "other entity" has the meaning set forth in IC 23-1-38.5-1.

(b) A domestic business corporation, domestic other entity, foreign business corporation, or foreign other entity may convert to a domestic limited liability company in accordance with IC 23-1-38.5.

(c) A domestic limited liability company may convert to a domestic business corporation, domestic other entity, foreign business corporation, or foreign other entity in accordance with IC 23-1-38.5.

As added by P.L.130-2006, SEC.31.

IC 23-18-8
Chapter 8. Suits By and Against a Limited Liability Company

IC 23-18-8-1
Persons entitled to bring suit in name of company

Sec. 1. Except as otherwise provided in a written operating agreement, a suit on behalf of a limited liability company may be brought in the name of the limited liability company by the following:

(1) A member of a limited liability company, whether or not the articles of organization provide for a manager or managers, who is authorized to sue by the affirmative vote of a majority in interest of the members, unless the vote of all members is required under IC 23-18-4-3. In determining the vote, the vote of a member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

(2) If the articles of organization provide for a manager or managers, a manager who is authorized to do so by the articles of organization, an operating agreement, or a vote required under IC 23-18-4-3(b). In determining the vote, the vote of a manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

As added by P.L.8-1993, SEC.301.

IC 23-18-8-2
Determination of lack of authority to sue; prohibited assertions

Sec. 2. A determination that a member or manager does not have authority to sue on behalf of the limited liability company under section 1 of this chapter may not be asserted for the following:

(1) As a defense to an action brought by the limited liability company.

(2) As a basis for the limited liability company to bring a subsequent suit on the same cause of action.

As added by P.L.8-1993, SEC.301.

IC 23-18-9
Chapter 9. Voluntary Dissolution

IC 23-18-9-1
Circumstances requiring dissolution; companies existing on or before June 30, 1999

Sec. 1. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) A limited liability company is dissolved and its affairs must be wound up on the first of the following to occur:

(1) At the time or on the occurrence of events specified in writing in the articles of organization or operating agreement.

(2) Written consent of all the members.

(3) An event of dissociation occurs with respect to a member, unless the business of the limited liability company is continued by the consent of all the remaining members not more than ninety (90) days after the occurrence of the event or as otherwise provided in writing in the articles of organization or operating agreement.

(4) Entry of a decree of judicial dissolution under section 2 of this chapter.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.14.

IC 23-18-9-1.1
Circumstances requiring dissolution; companies formed after June 30, 1999

Sec. 1.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) A limited liability company is dissolved and the limited liability company's affairs must be wound up when the first of the following occurs:

(1) At the time or on the occurrence of events specified in writing in the articles of organization or operating agreement.

(2) Subject to IC 23-18-4-4(a)(4)(A), for a limited liability company:

(A) formed under this article after June 30, 2013, the unanimous consent of the members, unless a written operating agreement provides that dissolution may be authorized by the vote of members holding fewer than all the interests in the limited liability company or holding fewer than all interests in one (1) or more classes of members; or

(B) formed under this article after June 30, 1999, and before July 1, 2013, if there is:

(i) one (1) class or group of members, written consent of two-thirds (2/3) in interest of the members; or

(ii) more than one (1) class or group of members, written consent of two-thirds (2/3) in interest of each class or group of members.

(3) Entry of a decree of judicial dissolution under section 2 of this chapter.

(c) A limited liability company is dissolved and the limited liability company's affairs must be wound up if there are no members. However, this subsection does not apply if, under a provision in the operating agreement, not more than ninety (90) days after the occurrence of the event that caused the last remaining member to cease to be a member, either:

(1) the personal representative of the last remaining member agrees in writing:

(A) to continue the business of the limited liability company; and

(B) to the admission of the personal representative or the personal representative's nominee or designee to the limited liability company as a member; or

(2) a member is admitted to the limited liability company in the manner provided for in the operating agreement specifically for the admission of a member to the limited liability company after the last remaining member ceases to be a member;

effective as of the time of the event that caused the last remaining member to cease to be a member.

As added by P.L.269-1999, SEC.15. Amended by P.L.130-2006, SEC.32; P.L.40-2013, SEC.12.

IC 23-18-9-2

Court-decreed dissolution

Sec. 2. On application by or for a member, the circuit or superior court of the county in which the limited liability company's principal office, or if there is none in Indiana, in which the registered office is located, may decree dissolution of the limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

As added by P.L.8-1993, SEC.301.

IC 23-18-9-3

Powers of dissolved company; effect of dissolution

Sec. 3. (a) A dissolved limited liability company may only carry on business that is appropriate to wind up and liquidate its business and affairs, including the following:

(1) Collecting its assets.

(2) Disposing of properties that will not be distributed in kind to members.

(3) Discharging or making provision for discharging liabilities.

(4) Distributing the remaining property among the members.

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a limited liability company does not do the following:

(1) Transfer title to the limited liability company's property.

(2) Alter the personal liability of members under IC 23-18-3-3.

(3) Subject members or managers to standards of conduct different from those prescribed under IC 23-18-4-2.
(4) Change the:
(A) voting requirements for members or managers;
(B) provisions for appointment, resignation, or removal of managers, if any; or
(C) provisions for amending the operating agreement.
(5) Prevent commencement of a proceeding by or against the limited liability company in its name.
(6) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution.
(7) Terminate the authority of the registered agent of the limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-9-4
Entities entitled to wind up company's business or affairs

Sec. 4. Unless otherwise provided in a written operating agreement, the following may wind up the business or affairs of the limited liability company:
(1) The members or managers with authority to manage the limited liability company under IC 23-18-4-1.
(2) If a member or manager has engaged in wrongful conduct or upon other cause shown, the circuit or superior court of:
(A) the county in which the limited liability company's principal office is located; or
(B) if there is none in Indiana the county in which its registered office is located;
on application by a member or the member's legal representative or assignee.

As added by P.L.8-1993, SEC.301.

IC 23-18-9-5
Binding acts of members following dissolution

Sec. 5. (a) Except as provided in subsections (c), (d), and (e), following dissolution a member may bind the limited liability company:
(1) by an act appropriate for winding up the affairs of the limited liability company or completing transactions unfinished at the time of dissolution; and
(2) in a transaction that would have been binding on the limited liability company had the limited liability company not been dissolved if each party to the transaction does not have notice of the dissolution.

(b) The filing of articles of dissolution under section 7 of this chapter constitutes notice of dissolution for purposes of subsection (a)(2).

(c) An act of a member that is not binding on the limited liability company under subsection (a) is binding if the act is authorized by the limited liability company.

(d) An act of a member that would be binding under subsection (a) or would be authorized except for a restriction on authority does not bind the limited liability company to persons having knowledge of the restriction.

(e) If the articles of organization provide for a manager or managers and the manager or managers have delegated the exclusive authority to manage the affairs of the limited liability company, then a manager has the authority of a member under subsection (a), and a member does not have authority while acting solely in the capacity of a member.

As added by P.L.8-1993, SEC.301.

IC 23-18-9-6
Distribution of assets

Sec. 6. Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) To creditors, including members and managers who are creditors to the extent permitted by law, to satisfy the liabilities of the limited liability company whether by payment or by the establishment of adequate reserves except for liabilities for distributions to members under IC 23-18-5-4, and IC 23-18-5-5 or IC 23-18-5-5.1.

(2) Unless otherwise provided in a written operating agreement, to members and former members to satisfy the liabilities for distributions under IC 23-18-5-4 and IC 23-18-5-5.

(3) Unless otherwise provided in a written operating agreement, to members in proportion to the returned contribution.

As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.16.

IC 23-18-9-7
Articles of dissolution; filing

Sec. 7. At any time after a limited liability company dissolves, the limited liability company may deliver to the secretary of state for filing articles of dissolution setting forth the following:

(1) The name of the limited liability company.

(2) The date of filing of the articles of organization.

(3) The address of the principal office of the limited liability company.

(4) The date dissolution occurred.

(5) Other information the members or managers filing the articles determine.

As added by P.L.8-1993, SEC.301.

IC 23-18-9-7.5
Revocation of dissolution

Sec. 7.5. (a) A limited liability company may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution must be authorized in the same

manner as the dissolution was authorized unless the authorization for dissolution permitted revocation of the dissolution by action of the managers alone. If the authorization for dissolution permitted revocation of the dissolution by action of the managers alone, the managers may revoke the dissolution without member action.

(c) After the revocation of dissolution is authorized, the limited liability company may revoke the dissolution by delivering to the secretary of state for filing articles of dissolution and articles of revocation of dissolution. The articles of revocation of dissolution must set forth the following:

(1) The name of the limited liability company.

(2) The effective date of the revocation of dissolution.

(3) The date that the revocation of dissolution was authorized.

(4) If applicable, a statement that the limited liability company's members or managers revoked the dissolution.

(5) If the limited liability company's members or managers revoked a dissolution authorized by the members or managers, a statement that the authorization permitted revocation of the dissolution by action of the members or of the managers alone.

(d) Unless otherwise specified, a revocation of dissolution is effective when articles of revocation of dissolution are filed.

(e) A revocation of dissolution relates back to and takes effect as of the effective date of the dissolution. A limited liability company whose dissolution is revoked resumes carrying on business as if there had been no dissolution.

As added by P.L.130-2006, SEC.33. Amended by P.L.1-2007, SEC.164.

IC 23-18-9-8

Claims

Sec. 8. (a) As used in this section, "claim" does not include a contingent liability or a claim based on an event occurring after the date of dissolution.

(b) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(c) The dissolved limited liability company shall notify known claimants in writing of the dissolution at any time after the dissolution. The written notice must contain the following:

(1) The amount that the dissolved limited liability company believes will satisfy the claim.

(2) A statement that the creditor has the right to dispute the amount of the claim and a description of the procedure for disputing the amount of the claim.

(3) A mailing address where a dispute of the amount of the claim may be sent.

(4) The deadline for receiving disputing claims. The deadline may not be less than sixty (60) days after the effective date of the written notice.

(5) A statement that the claim will be fixed at the amount

specified by the dissolved limited liability company if a dispute of the amount of the claim is not received by the deadline.

(d) If the amount of the claim is disputed, the claimant must notify the dissolved limited liability company of the dispute by the deadline. If the dissolved limited liability company rejects the disputed amount, the claimant must commence a proceeding to enforce the claim not more than ninety (90) days after the effective date of the limited liability company's rejection notice.

(e) The amount of the claim is fixed under one (1) of the following conditions:

(1) The claimant does not notify the dissolved limited liability company by the deadline.

(2) The claimant has notified the dissolved limited liability company of a dispute and has received a rejection notice and does not commence a proceeding within ninety (90) days from the effective date of the rejection notice.

(f) Regardless of a dispute in the amount of the claim, the dissolved limited liability company must tender to the claimant the amount of the claim specified in the notice of the claim given under subsection (c) not more than thirty (30) days after the earlier of the following dates:

(1) The date that the claim becomes fixed.

(2) The date that the claimant commences the proceeding to enforce the claim.

As added by P.L.8-1993, SEC.301.

IC 23-18-9-9

Notice of dissolution

Sec. 9. (a) A dissolved limited liability company may publish notice of its dissolution and request that persons with claims against the limited liability company present them in accordance with the notice.

(b) The notice must meet the following requirements:

(1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or if there is none in Indiana its registered office, is or was last located.

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

(3) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced not more than two (2) years after the publication of the notice.

(c) If the dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company not more than two (2) years after the publication date of the notice:

(1) A claimant who did not receive written notice under section 8 of this chapter.

(2) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.

(3) A claimant whose claim is contingent or based on an event occurring after the date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved limited liability company to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

As added by P.L.8-1993, SEC.301.

IC 23-18-9-10

Claimants not found or incompetent to receive assets; deposits for safekeeping; disbursement upon proof of entitlement

Sec. 10. Assets of a dissolved limited liability company that should be transferred to a creditor, claimant, or member of the limited liability company who cannot be found or who is not competent to receive the assets must be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official must pay to the creditor, claimant, or member or a representative of the creditor, claimant, or member that amount.

As added by P.L.8-1993, SEC.301.

IC 23-18-10
Chapter 10. Administrative Dissolution

IC 23-18-10-1
Grounds for administrative dissolution

Sec. 1. The secretary of state may commence a proceeding under section 2 of this chapter to administratively dissolve a limited liability company if:

(1) the limited liability company does not deliver its biennial report to the secretary of state not more than sixty (60) days after the biennial report is due;

(2) the limited liability company is without a registered agent or registered office in Indiana for at least sixty (60) days;

(3) the limited liability company does not notify the secretary of state not more than sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued;

(4) the period of duration stated in the limited liability company's articles of organization expires; or

(5) the limited liability company fails to pay franchise taxes or penalties imposed by this article or another law within sixty (60) days after the date that the franchise taxes or penalties are due.

As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.27; P.L.63-2014, SEC.34.

IC 23-18-10-2
Notice; failure to correct deficiencies; certificate of dissolution

Sec. 2. (a) If the secretary of state determines that one (1) or more grounds exist under section 1 of this chapter for dissolving a limited liability company, the secretary of state shall serve the limited liability company with written notice of the determination under IC 23-18-2-13 unless the secretary of state:

(1) receives a receipt showing failure of service of process upon the limited liability company's registered agent at the address of the registered office; and

(2) determines that the secretary of state's office has no record of the limited liability company's principal office address.

(b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist not more than sixty (60) days after service of the notice is perfected under IC 23-18-2-13, the secretary of state shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the limited liability company under IC 23-18-2-13.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.35.

IC 23-18-10-3
Effect of administrative dissolution

Sec. 3. (a) A limited liability company that is administratively dissolved continues in existence but may not carry on any business except business necessary to wind up and liquidate its business and affairs under IC 23-18-9-4 and notify claimants under IC 23-18-9-8 and IC 23-18-9-9.

(b) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

As added by P.L.8-1993, SEC.301.

IC 23-18-10-4
Reinstatement; application

Sec. 4. (a) A limited liability company administratively dissolved under section 2 of this chapter may apply to the secretary of state for reinstatement. The application must:

(1) state the name of the limited liability company and the effective date of its administrative dissolution;

(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) state that the limited liability company's name satisfies the requirements under IC 23-18-2-9; and

(4) contain a certificate from the department of state revenue stating that all taxes owed by the limited liability company have been paid.

(b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall:

(1) cancel the certificate of dissolution and prepare a certificate of reinstatement that states the determination and the effective date of reinstatement;

(2) file the original of the certificate; and

(3) serve a copy on the limited liability company.

(c) When the reinstatement is effective, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the limited liability company resumes carrying on business as if the administrative dissolution had never occurred.

As added by P.L.8-1993, SEC.301.

IC 23-18-10-5
Denial of reinstatement; appeal

Sec. 5. (a) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the limited liability company under IC 23-18-2-13 with a written notice that explains the reason or reasons for denial.

(b) The limited liability company may appeal the denial of reinstatement to the circuit or superior court of the county where the limited liability company's principal office, or if there is none in Indiana its registered office, is located not more than thirty (30) days

after service of the notice of denial by doing the following:

(1) Filing a petition with the court to set aside the dissolution.

(2) Attaching to the petition a copy of the secretary of state's certificate of dissolution, the limited liability company's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may order the secretary of state to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.8-1993, SEC.301.

IC 23-18-11

Chapter 11. Foreign Limited Liability Companies

IC 23-18-11-1

Law governing; denial of registration; prohibited business

Sec. 1. (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization, internal affairs, and the liability of members.

(b) A foreign limited liability company may not be denied registration by reason of a difference between the laws of the state or other jurisdiction where it was organized and Indiana law.

(c) A foreign limited liability company may not do any kind of business in Indiana that Indiana law prohibits a domestic limited liability company from doing.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-2

Certificate of authority; activities not constituting transaction of business

Sec. 2. (a) A foreign limited liability company may not transact business in Indiana until it obtains a certificate of authority from the secretary of state.

(b) Activities that do not constitute transacting business within the meaning of subsection (a) include the following:

(1) Maintaining, defending, or settling a proceeding.

(2) Holding meetings of the managers or members or carrying on other activities concerning internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's interests or other securities or maintaining trustees or depositaries with respect to those securities.

(5) Selling through independent contractors.

(6) Soliciting or obtaining orders, including those by mail or through employees or agents if the orders require acceptance outside Indiana before the orders become contracts.

(7) Making loans or creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(9) Owning real or personal property.

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not in the course of repeated transactions of a like nature.

(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-3

Transaction of business without certificate of authority; sanctions

Sec. 3. (a) A foreign limited liability company transacting business in Indiana without a certificate of authority may not maintain a court proceeding in Indiana until it obtains a certificate of authority.

(b) The successor to a foreign limited liability company that transacted business in Indiana without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a court proceeding in Indiana based on that cause of action until the foreign limited liability company or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until the court determines whether the foreign limited liability company or its successor or assignee requires a certificate of authority. If the court determines that a certificate of authority is needed, the court may stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

(d) A foreign limited liability company is liable for a civil penalty of not more than ten thousand dollars ($10,000) if it transacts business in Indiana without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in Indiana.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-4

Application for certificate of authority; contents; certificate of existence

Sec. 4. (a) A foreign limited liability company may apply for a certificate of authority to transact business in Indiana by delivering an application to the secretary of state for filing. The application must set forth the following:

(1) The name of the foreign limited liability company, or if its name is unavailable for use in Indiana, a name that satisfies the requirements of section 7 of this chapter.

(2) The name of the state or country under whose law it is organized.

(3) The date of its organization and the latest date, if any, upon which it is to dissolve.

(4) The street address of its principal office.

(5) The address of its registered office in Indiana and the name of its registered agent at that office.

(6) If the organizational documents of the foreign limited liability company provide for a manager or managers, a statement to that effect.

(b) The foreign limited liability company must deliver, with the completed application, a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of business records of the foreign limited liability

company in the state or country where the foreign limited liability company was organized.
As added by P.L.8-1993, SEC.301.

IC 23-18-11-5
Amended certificate of authority

Sec. 5. (a) A foreign limited liability company authorized to transact business in Indiana must obtain an amended certificate of authority from the secretary of state if it does any of the following:

(1) Changes its name.
(2) Changes the latest date, if any, upon which it is to dissolve.
(3) Changes the state or country of its organization.
(4) Converts to a different form of entity.

(b) The requirements of section 4 of this chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.
As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.3; P.L.130-2006, SEC.34.

IC 23-18-11-6
Revocation of certificate of authority; powers and duties of foreign company with valid certificate

Sec. 6. (a) A certificate of authority authorizes the foreign limited liability company to transact business in Indiana. The state may revoke the certificate as provided in this article.

(b) Except as provided by this article, a foreign limited liability company with a valid certificate of authority has the same rights and privileges and is subject to the same duties, restrictions, penalties, and liabilities as a domestic limited liability company of like character.
As added by P.L.8-1993, SEC.301.

IC 23-18-11-7
Name

Sec. 7. (a) If the name of a foreign limited liability company does not satisfy the requirements under IC 23-18-2-8, the foreign limited liability company, to obtain or maintain a certificate of authority to transact business in Indiana:

(1) may add the words "limited liability company" or the abbreviations "L.L.C." or "LLC" to its name for use in Indiana; or
(2) may use a fictitious name to transact business in Indiana if the company's real name is unavailable.

(b) Except as authorized by subsections (c) and (d), the limited liability company name, including a fictitious name, of a foreign limited liability company must be distinguishable upon the records of the secretary of state from the following:

(1) The name of a limited liability company organized or authorized to transact business in Indiana.
(2) A name reserved under IC 23-18-2-9.
(3) The fictitious name of another foreign limited liability

company authorized to transact business in Indiana.

(c) A foreign limited liability company may apply to the secretary of state for authorization to use in Indiana the name of another limited liability company organized or authorized to transact business in Indiana that is not distinguishable from the name applied for. The secretary of state must authorize use of the name applied for if:

(1) the other limited liability company consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a circuit or superior court establishing the applicant's right to use the name applied for in Indiana.

(d) A foreign limited liability company may use in Indiana the name, including the fictitious name, of another domestic or foreign limited liability company that is used in Indiana if the other limited liability company is organized or authorized to transact business in Indiana and the foreign limited liability company:

(1) has merged with the other limited liability company;

(2) has been formed by reorganization of the other limited liability company; or

(3) has acquired all or substantially all of the assets, including the name, of the other limited liability company.

(e) If a foreign limited liability company authorized to transact business in Indiana changes its name to a name that does not satisfy the requirements under IC 23-18-2-8, it may not transact business in Indiana under the changed name until it adopts a name satisfying the requirements and obtains an amended certificate of authority under section 5 of this chapter.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-8
Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation

Sec. 8. (a) Each foreign limited liability company authorized to transact business in Indiana must continuously maintain in Indiana the following:

(1) A registered office.

(2) A registered agent, who may be:

(A) an individual who resides in Indiana and whose business office is identical with the registered office;

(B) a domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office; or

(C) a foreign limited liability company, foreign corporation, or foreign nonprofit corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each foreign limited liability company that qualifies after June 30, 2014, to do business in Indiana shall file with the secretary of state:

(1) the registered agent's written consent; or

(2) a representation that the registered agent has consented.

(c) Each foreign limited liability company qualified to do business in Indiana shall provide to the foreign limited liability company's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

(1) an officer, a director, an employee, or a designated agent of the foreign limited liability company; and

(2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the foreign limited liability company.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a foreign limited liability company under subsection (c).

(e) If a foreign limited liability company fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 10 of this chapter, as the registered agent for the foreign limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.36.

IC 23-18-11-9
Change of registered office or agent

Sec. 9. (a) A foreign limited liability company authorized to transact business in Indiana may change its registered office or

registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

(1) Its name.

(2) The street address of its current registered office.

(3) If the current registered office is to be changed, the street address of its new registered office.

(4) The name of its current registered agent.

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent or a representation that the new registered agent has consented to the change either on the statement or attached it to the appointment.

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company that the registered agent serves by notifying the limited liability company in writing of the change and signing either manually or in facsimile and delivering to the secretary of state for filing, a statement of change that complies with the requirements of subsection (a) and states that the limited liability company has been notified of the change.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-10

Resigning agency appointment

Sec. 10. (a) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-18-12 a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office, if the registered office is not discontinued. The secretary of state shall mail one (1) copy to the foreign limited liability company at its principal office address shown on the records of the secretary of state.

(c) The agency appointment is terminated, and the registered office is discontinued if so provided, thirty-one (31) days after the statement is filed.

As added by P.L.8-1993, SEC.301. Amended by P.L.228-1995, SEC.27.

IC 23-18-11-11

Service of process; perfection

Sec. 11. (a) The registered agent of a foreign limited liability company authorized to transact business in Indiana is the limited liability company's agent for service of process, notice, or demand

required or permitted by law to be served on the foreign limited liability company.

(b) A foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the foreign limited liability company at its principal office shown in its application for a certificate of authority or as shown on the records of the secretary of state if at least one (1) of the following conditions apply to the foreign limited liability company:

(1) It does not have a registered agent or its registered agent cannot with reasonable diligence be served.

(2) It has withdrawn from transacting business in Indiana under section 13 of this chapter.

(3) Its certificate of authority was revoked under section 16 of this chapter.

(c) Service is perfected under subsection (b) at the earliest of the following:

(1) The date the foreign limited liability company receives the mail.

(2) The date shown on the return receipt if signed on behalf of the foreign limited liability company.

(3) Five (5) days after deposit in the United States mail if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-12

Withdrawal from state

Sec. 12. A foreign limited liability company authorized to transact business in Indiana may not withdraw from Indiana until it obtains a certificate of withdrawal from the secretary of state.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-13

Certificate of withdrawal; application

Sec. 13. A foreign limited liability company authorized to transact business in Indiana may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth the following:

(1) The name of the foreign limited liability company and the name of the state or country under whose law it is organized.

(2) That it is not transacting business in Indiana and that it surrenders its authority to transact business in Indiana.

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in Indiana.

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under

subsection 3.

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-14

Service of process on secretary of state; withdrawn companies

Sec. 14. After the withdrawal of the limited liability company is effective, service of process on the secretary of state under this chapter is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth in its application for withdrawal.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-15

Revocation of certificate of authority; grounds

Sec. 15. The secretary of state may commence a proceeding under section 16 of this chapter to revoke the certificate of authority of a foreign limited liability company authorized to transact business in Indiana if at least one (1) of the following applies:

(1) The foreign limited liability company does not deliver its biennial report to the secretary of state within sixty (60) days after the biennial report is due.

(2) The foreign limited liability company is without a registered agent or registered office in Indiana for at least sixty (60) days.

(3) The foreign limited liability company does not inform the secretary of state under section 9 or 10 of this chapter that its:

(A) registered agent or registered office has changed;

(B) registered agent has resigned; or

(C) registered office has been discontinued;

within sixty (60) days of the change, resignation, or discontinuance.

(4) A member, a manager, or an agent of the foreign limited liability company signed a document the member, manager, or agent knew was false in a material respect with the intent that the document be delivered to the secretary of state for filing.

(5) The secretary of state receives an authenticated certificate from the secretary of state or other official having custody of business entity records in the state or country under whose laws the foreign limited liability company is organized stating that it has dissolved or disappeared as the result of a merger.

(6) The foreign limited liability company fails to pay franchise taxes or penalties imposed by this article or another law within sixty (60) days after the date the franchise taxes or penalties are due.

As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.4; P.L.11-1996, SEC.28; P.L.63-2014, SEC.37.

IC 23-18-11-16

Notice of revocation; failure to correct; service of process; authority or registered agent

Sec. 16. (a) If the secretary of state determines that one (1) or more grounds exist under section 15 of this chapter for revocation of a certificate of authority, the secretary of state shall, under section 11 of this chapter, serve the foreign limited liability company with written notice of the determination unless the secretary of state:

(1) receives a receipt showing failure of service of process upon the foreign limited liability company's registered agent at the address of the registered office; and

(2) determines that the secretary of state's office has no record of the foreign limited liability company's principal office address.

(b) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist not more than sixty (60) days after service of the notice is perfected under section 11 of this chapter, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign limited liability company under section 11 of this chapter.

(c) The authority of a foreign limited liability company to transact business in Indiana ceases on the date shown on the certificate revoking the certificate of authority.

(d) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state the foreign limited liability company's agent for service of process in a proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at its principal office shown in the most recent communication received from the corporation stating the current mailing address of its principal office or, if it is not on file, in its application for a certificate of authority.

(e) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.38.

IC 23-18-11-16.5

Application for reinstatement; effective date of reinstatement

Sec. 16.5. (a) A foreign limited liability company that has had its certificate of authority revoked under section 16 of this chapter may apply to the secretary of state for reinstatement. The application for reinstatement must include all the following:

(1) The name of the foreign limited liability company.
(2) The effective date of the revocation of the foreign limited liability company's certificate of authority.
(3) A statement that the ground or grounds for revocation of the foreign limited liability company's certificate of authority either did not exist or have been eliminated.
(4) A statement that the foreign limited liability company's name satisfies the requirements of IC 23-18-2-8 or section 7 of this chapter.
(5) A certificate from the department of state revenue stating that all taxes owed by the foreign limited liability company have been paid.

(b) If the secretary of state determines that the application contains the information required under subsection (a) and that the information is correct, the secretary of state shall:
(1) cancel the certificate of revocation; and
(2) prepare a certificate of reinstatement that states:
(A) that the certificate of revocation has been canceled; and
(B) the date that the reinstatement is effective;
(3) file the original certificate of reinstatement; and
(4) serve, as provided in section 11 of this chapter, a copy of the certificate of reinstatement on the foreign limited liability company.

(c) When the certificate of reinstatement is effective, the certificate of reinstatement relates back to and is considered to take effect as of the effective date of the revocation of the foreign limited liability company's certificate of authority and the foreign limited liability company resumes carrying on its business as if the revocation of the foreign limited liability company's certificate of authority had never occurred.

As added by P.L.63-2014, SEC.39.

IC 23-18-11-17

Denial of application for reinstatement; written notice; appeal

Sec. 17. (a) If the secretary of state denies a foreign limited liability company's application for reinstatement following revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company under IC 23-18-11-11 with a written notice that explains the reason or reasons for the denial.

(b) A foreign limited liability company may appeal the secretary of state's denial of reinstatement to the circuit or superior court of the county where the foreign limited liability company's registered office is located not more than thirty (30) days after service of the certificate of revocation is perfected. If the foreign limited liability company appeals to the court to set aside the revocation, the foreign limited liability company shall attach to the petition copies of the:
(1) secretary of state's certificate of revocation of the limited liability company's certificate of authority;
(2) foreign limited liability company's application for reinstatement; and

(3) secretary of state's notice of denial.

(c) The court may order the secretary of state to reinstate the certificate of authority or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.40.

IC 23-18-11-18

Uniform Partnership Act company

Sec. 18. A foreign limited liability company authorized to transact business in Indiana under the Indiana Revised Uniform Partnership Act (IC 23-16-10.1) (before its repeal July 1, 1993), is subject to this article, but is not required to obtain a new certificate of authority under this article to continue to transact business in Indiana.

As added by P.L.8-1993, SEC.301.

IC 23-18-12

Chapter 12. Filing Requirements, Fees, and Other Administrative Provisions

IC 23-18-12-1

Requirements for documents; filing fee

Sec. 1. (a) A document required or permitted under this article may be filed with the secretary of state if the document meets the requirements under this article, including the following requirements:

(1) The document must contain the information required by this article, however, it may also contain additional information.

(2) The document must be typewritten or printed.

(3) The document must be legible.

(4) The document must be in the English language. A limited liability company's name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(A) by a member or an agent designated by the limited liability company if the articles of organization do not provide for a manager or managers;

(B) by a manager or an agent designated by the limited liability company if the articles of organization do provide for a manager or managers;

(C) if the limited liability company is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary; or

(D) for purposes of biennial reports, by:

(i) a registered agent;

(ii) a certified public accountant; or

(iii) an attorney;

employed or retained by the business entity.

(6) The person executing the document must sign the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. A signature on a document authorized to be filed under this article may be a facsimile. A signature on a document under this subdivision that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(A) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(B) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(7) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in or on the prescribed form.

(8) The document must be delivered to the secretary of state for filing and must be accompanied by the correct filing fee. The filing fee must be paid in the manner and form required by the secretary of state.

(b) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.5; P.L.228-1995, SEC.28; P.L.11-1996, SEC.29; P.L.277-2001, SEC.24; P.L.40-2013, SEC.13.

IC 23-18-12-1.1
Documents delivered for filing

Sec. 1.1. (a) For purposes of this article, a document is delivered for filing if the document is transferred to the secretary of state by hand, mail, or a form of electronic transmission meeting the requirements established by the secretary of state.

(b) If a document is delivered for filing by hand or mail, the document must be accompanied by:

(1) two (2) exact or conformed copies of a document filed under IC 23-18-2-12 or IC 23-18-11-10; or

(2) one (1) exact or conformed copy of any other document filed under this article.

As added by P.L.228-1995, SEC.29. Amended by P.L.63-2014, SEC.41.

IC 23-18-12-2
Forms

Sec. 2. (a) The secretary of state may prescribe and furnish on request forms for the following:

(1) Biennial report forms for domestic and foreign limited liability companies.

(2) A foreign limited liability company's application for a certificate of authority to transact business in Indiana.

(3) A foreign limited liability company's application for a

certificate of withdrawal.

If the secretary of state requires and the form so states, use of these forms is mandatory.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this article, but their use is not mandatory.

As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.30.

IC 23-18-12-3

Fees

Sec. 3. (a) The secretary of state shall collect the following fees when the documents described in this section are delivered for filing:

Document	Electronic Filing Fee	Filing Fee (Other than electronic filing)
(1) Articles of organization	$75	$90
(2) Application for use of indistinguishable name	$10	$20
(3) Application for reservation of name	$10	$20
(4) Application for renewal of reservation	$10	$20
(5) Notice of transfer or cancellation of reservation	$10	$20
(6) Application of registered name	$20	$30
(7) Application for renewal of registered name	$20	$30
(8) Certificate of change of registered agent's business address	No Fee	No Fee
(9) Certificate of resignation of agent	No Fee	No Fee
(10) Articles of amendment	$20	$30
(11) Restatement of articles of organization	$20	$30
(12) Articles of dissolution	$20	$30
(13) Application for certificate of authority	$75	$90
(14) Application for amended certificate of authority	$20	$30
(15) Application for certificate of withdrawal	$20	$30
(16) Application for reinstatement following administrative dissolution	$20	$30
(17) Articles of correction	$20	$30
(18) Certificate of change of registered agent	No Fee	No Fee
(19) Application for certificate of existence or authorization	$15	$15
(20) Biennial report	$20	$30

(21) Articles of merger involving a domestic limited liability company	$75	$90
(22) Any other document required or permitted to be filed under this article	$20	$30
(23) Registration of intent to sell sexually explicit materials, products, or services		$250

The secretary of state shall prescribe the electronic means of filing documents to which the electronic filing fees set forth in this section apply.

(b) The fee set forth in subsection (a)(20) for filing a biennial report is:

(1) for an electronic filing, ten dollars ($10) per year; or

(2) for a filing other than an electronic filing, fifteen dollars ($15) per year;

to be paid biennially.

(c) The secretary of state shall collect a fee of $10 each time process is served on the secretary of state under this article. If the party to a proceeding causing service of process prevails in the proceeding, that party is entitled to recover this fee as costs from the nonprevailing party.

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed documents relating to a domestic or foreign limited liability company:

(1) One dollar ($1) per page for copying.

(2) Fifteen dollars ($15) for certification stamp.

As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.31; P.L.277-2001, SEC.25; P.L.60-2007, SEC.6; P.L.92-2008, SEC.2; P.L.106-2008, SEC.53; P.L.1-2009, SEC.132.

IC 23-18-12-4

Effective date of document

Sec. 4. (a) Except as provided in subsection (b) and section 6(c) of this chapter, a document accepted for filing is effective:

(1) at the time of filing on the date the document is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(2) at a time later than the date the document is filed as specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date the document is filed.

As added by P.L.8-1993, SEC.301.

IC 23-18-12-5
Corrected documents

Sec. 5. (a) A domestic or foreign limited liability company may correct a document filed by the secretary of state if the document:

(1) contains an incorrect statement; or

(2) was defectively executed.

(b) A document is corrected:

(1) by preparing articles of correction that:

(A) describe the document, including the filing date, or attach a copy of it to the articles;

(B) specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) corrects the incorrect statement or defective execution; and

(2) by delivering the articles of correction to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document being corrected except as to persons reasonably relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed or when the reliance ceases to be reasonable, whichever occurs first.

As added by P.L.8-1993, SEC.301.

IC 23-18-12-6
Filing documents

Sec. 6. (a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 1 of this chapter, the secretary of state must file the document.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed" together with the secretary of state's name and official title and the date and time of receipt on both the original and the document copy and on the receipt for the filing fee. After filing a document, except as provided under IC 23-18-2-13 and IC 23-18-11-10, the secretary of state shall deliver the document copy, with the filing fee receipt attached, or acknowledgement of receipt if no fee is required, to the domestic or foreign limited liability company or its representative.

(c) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign limited liability company or its representative not more than ten (10) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(1) affect the validity or invalidity of the document in whole or in part;

(2) relate to the correctness or incorrectness of the information contained in the document; or

(3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

As added by P.L.8-1993, SEC.301.

IC 23-18-12-7

Refusal to file document; appeal

Sec. 7. (a) If the secretary of state refuses to file a document delivered to the secretary of state for filing, the domestic or foreign limited liability company may appeal the refusal to the circuit or superior court of the county where the limited liability company's principal office, or if there is none in Indiana its registered office, is or will be located. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.8-1993, SEC.301.

IC 23-18-12-8

Certification as conclusive evidence of filing

Sec. 8. A certification stamp affixed on or a certification certificate attached to a copy of a document under this chapter, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state is conclusive evidence that the original document is on file with the secretary of state.

As added by P.L.8-1993, SEC.301.

IC 23-18-12-9

Certificate of existence or authorization

Sec. 9. (a) A person may request the secretary of state to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence or authorization sets forth the following:

(1) The domestic limited liability company's name or the foreign limited liability company's name used in Indiana.

(2) If a domestic limited liability company:

(A) that the domestic limited liability company is organized under Indiana law;

(B) the date of its organization; and

(C) the latest date, if any, on which the limited liability company is to be dissolved.

(3) If a foreign limited liability company, that the foreign limited liability company is authorized to transact business in Indiana.

(4) That articles of dissolution have not been filed.

(5) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in Indiana.

As added by P.L.8-1993, SEC.301.

IC 23-18-12-10

False document; offense

Sec. 10. A person commits a Class A misdemeanor if the person signs a document that the person knows is false in a material respect with the intent that the document be delivered to the secretary of state for filing.

As added by P.L.8-1993, SEC.301.

IC 23-18-12-11

Biennial report

Sec. 11. (a) A domestic limited liability company and a foreign limited liability company authorized to transact business in Indiana must file with the secretary of state a biennial report that sets forth the following:

(1) The name of the limited liability company.

(2) The address of its registered office and the name of its registered agent at the office in Indiana.

(3) The address of its principal office.

(b) Information in the biennial report must be current as of the date the biennial report is executed on behalf of the limited liability company.

(c) The first biennial report must be delivered to the secretary of state in the second year following the calendar year in which a domestic limited liability company was organized or a foreign limited liability company was authorized to transact business. The report is due during the same month as the month in which the limited liability company was organized or authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state during the same month every two (2) calendar years thereafter. The secretary of state may accept biennial reports during the two (2) months before the month the limited liability company's report is due.

As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.6; P.L.11-1996, SEC.32; P.L.2-1997, SEC.64.

IC 23-18-13

Chapter 13. Applicability of Other Provisions

IC 23-18-13-1

Application of state and federal constitutions; IC 1-1

Sec. 1. All provisions of the Constitution of the United States, the Constitution of the State of Indiana, and IC 1-1 apply to this article.

As added by P.L.8-1993, SEC.301.

IC 23-19

ARTICLE 19. INDIANA UNIFORM SECURITIES ACT

IC 23-19-1

Chapter 1. General Provisions

IC 23-19-1-0.2

Effect and application of predecessor act

Sec. 0.2. (a) The predecessor act exclusively governs all actions or proceedings that are pending on June 30, 2008, or may be instituted on the basis of conduct occurring before July 1, 2008, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after June 30, 2008, whichever is earlier.

(b) All effective registrations under the predecessor act and all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no-action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this article had not been enacted, and are considered to have been filed, issued, or imposed under this article, but are exclusively governed by the predecessor act.

(c) The predecessor act exclusively applies to an offer or sale made within one (1) year after June 30, 2008, under an offering made in good faith before July 1, 2008, on the basis of an exemption available under the predecessor act.

As added by P.L.220-2011, SEC.384.

IC 23-19-1-1

Short title

Sec. 1. This article may be cited as the Indiana Uniform Securities Act.

As added by P.L.27-2007, SEC.23.

IC 23-19-1-2

Definitions

Sec. 2. In this article, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. However, a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this article.

(2) "Bank" means:

(A) a banking institution organized under the laws of the

United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency under Section 1 of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this article; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C).

(3) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this article.

(4) "Commissioner" means the securities commissioner appointed under IC 23-19-6-1(a).

(5) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an insured depository institution as defined in Section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or

any successor federal statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted under that provision.

(8) "Filing" means the receipt under this article of a record by the commissioner or a designee of the commissioner.

(9) "Fraud", "fraudulent", "deceit", and "defraud" mean a misrepresentation of a material fact, a promise, representation, or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of the terms as applied by or defined in courts of law or equity. The terms are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal, dividends, and interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment

Advisers Act of 1940, an investment adviser registered under this article, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of ten million dollars ($10,000,000), its trustee is a depository institution, and its participants are exclusively plans of the types identified in clause (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars ($10,000,000);

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million dollars ($10,000,000);

(K) a private business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million dollars ($10,000,000);

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer", as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 CFR 230.144A);

(N) a "major U.S. institutional investor", as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of ten million dollars ($10,000,000) not organized for the specific purpose of evading this article; or

(P) any other person specified by rule adopted or order issued under this article.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a federal covered investment adviser;

(F) a bank, a savings institution, or a trust company that is a wholly owned subsidiary of a bank or savings institution;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) any other person excluded by rule adopted or order issued under this article.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of

business" in this state, as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a), and is:

(i) an "investment adviser representative", as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); or

(ii) not a "supervised person", as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(25)); or

(D) is excluded by rule adopted or order issued under this article.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager under the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or

otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means IC 23-2-1 (before its repeal).

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record", except in the phrases "of record", "official record", and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) a gift of assessable stock involving an offer and sale; and

(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index

of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or another specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E) includes as an "investment contract", among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(32) "Accredited investor" has the meaning set forth in 17 CFR 230.501(a).

As added by P.L.27-2007, SEC.23. Amended by P.L.106-2014, SEC.2.

IC 23-19-1-3

Federal statutes

Sec. 3. As used in this article:

(1) "Securities Act of 1933" (15 U.S.C. 77a et seq.);

(2) "Securities Exchange Act of 1934" (15 U.S.C. 78a et seq.);

(3) "Public Utility Holding Company Act of 1935" (15 U.S.C. 79 et seq.);

(4) "Investment Company Act of 1940" (15 U.S.C. 80a-1 et seq.);

(5) "Investment Advisers Act of 1940" (15 U.S.C. 80b-1 et seq.);

(6) "Employee Retirement Income Security Act of 1974" (29 U.S.C. 1001 et seq.);

(7) "National Housing Act" (12 U.S.C. 1701 et seq.);

(8) "Commodity Exchange Act" (7 U.S.C. 1 et seq.);

(9) "Internal Revenue Code" (26 U.S.C. 1 et seq.);

(10) "Securities Investor Protection Act of 1970" (15 U.S.C. 78a et seq.);

(11) "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227);

(12) "Small Business Investment Act of 1958" (15 U.S.C. 661 et seq.); and

(13) "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. 7001 et seq.);

mean those statutes, and the rules and regulations adopted under those statutes, as in effect on July 1, 2008.

As added by P.L.27-2007, SEC.23. Amended by P.L.3-2008, SEC.171.

IC 23-19-1-4

Construction in relation to corporation

Sec. 4. Nothing in this article shall be construed to relieve corporations from making reports required by law to be made to the secretary of state or any other state officer, or paying the fees to be paid by corporations. This article shall not be construed to repeal any law regulating the organization of corporations in this state, or the admission of any foreign corporation, but the provisions of this article shall be construed to be additional to any provisions regulating the organization of a corporation under the laws of this state, or the admission of a foreign corporation to do business in this state.

As added by P.L.27-2007, SEC.23.

IC 23-19-1-5

Official comments incorporated

Sec. 5. Official comments adopted and published by the:

(1) secretary of state Indiana uniform securities act advisory committee; and

(2) National Conference of Commissioners on Uniform State Laws to the extent the comments are not inconsistent with the comments adopted by the committee under subdivision (1);

may be consulted by the courts to determine the underlying reasons,

purposes, and policies of this article and may be used as a guide in this article's construction and application.
As added by P.L.27-2007, SEC.23.

IC 23-19-2

Chapter 2. Exemptions From Registration of Securities

IC 23-19-2-1

Exempt securities

Sec. 1. The following securities are exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

(1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 CFR 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one (1) or more states; by a political subdivision of one (1) or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by Congress; or a certificate of deposit for any of the foregoing.

(2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

(3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial part of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency under Section 1 of Public Law 87-722 (12 U.S.C. 92a); or

(C) any other depository institution, unless by rule or order the commissioner proceeds under section 4 of this chapter.

(4) A security issued by and representing an interest in or a debt of, or insured or guaranteed by, an insurance company authorized to do business in Indiana.

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) regulated in respect to its rates and charges by the United States or a state;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary

of such a registered holding company within the meaning of that act.

(6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this article; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)).

(7) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

(8) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)).

(9) A security issued by a nonprofit corporation as defined by Section 501(c)(3) of the Internal Revenue Code that is designated by the governor as the secondary market for guaranteed student loans under IC 20-12-21.2.

As added by P.L.27-2007, SEC.23.

IC 23-19-2-2 Version a
Exempt transactions

Note: This version of section amended by P.L.71-2014, SEC.1. See also following version of this section amended by P.L.106-2014, SEC.3.

Sec. 2. The following transactions are exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this article, and a

resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this article or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System.

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years.

(iv) The issuer of the security has total assets of at least two million dollars ($2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System.

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years, or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article effecting an unsolicited order or offer to purchase.

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this article.

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others.

(9) A transaction in a security, whether or not the security or

transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing.

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this article as a broker-dealer or as an agent.

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(13) A sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this article.

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(A) not more than twenty-five (25) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subdivision (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article or an agent registered under this article for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subdivision (13), are purchasing for investment.

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

(17) An offer to sell, but not a sale of, a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this article, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this article; and

(C) a stop order of which the offeror is aware has not been issued by the commissioner under this article and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

(19) A rescission offer, sale, or purchase under IC 23-19-5-10.

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this article.

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations.

(22) A transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this article, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this article; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this article, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with this article, the commissioner, by rule adopted or order issued under this article, may revoke the designation of a securities exchange under this subdivision, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(24) An offer to sell or a sale of a security of an issuer under an offering made and completed solely within Indiana, if:

(A) the transaction is part of a single issue in which:

(i) not more than twenty-five (25) purchasers are present in Indiana during any twelve (12) consecutive months, other than those designated in subdivision (13);

(ii) general solicitation or general advertising is not made

in connection with the offer to sell or the sale of the security;

(iii) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article, or to an agent registered under this article, for soliciting a prospective purchaser in Indiana; and

(iv) the issuer reasonably believes that all the purchasers in Indiana, other than those designated in subdivision (13), are purchasing for investment; and

(B) the issuer:

(i) is not a registered securities broker-dealer; and

(ii) does not sell issue by or through a registered securities broker-dealer; and

(C) the issuer files a notice of the issuer's intent to sell a security in accordance with this subdivision on a form prescribed by the commissioner.

The commissioner may require the issuer to furnish any additional information considered necessary by the commissioner to determine the issuer's qualifications.

(25) An offer to sell or a sale of a security of an issuer, if the following apply:

(A) The transaction is part of a single issue in which:

(i) the offer or sale is made in compliance with 17 CFR 230.504, 17 CFR 230.505, and 17 CFR 230.506, including any offer or sale made exempt by the application of 17 CFR 508(a);

(ii) the issuer is required to submit a notice filing on a Form D not later than fifteen (15) days after the first sale of securities in this state; and

(iii) by submitting the notice described in item (ii), the issuer agrees, upon written request by the commissioner, to furnish to the commissioner any information the issuer furnished to offerees.

(B) For offerings made in compliance with 17 CFR 230.504, no commission, fee, or other remuneration is paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this state unless the broker-dealer is appropriately registered under this article. It is a defense to a violation of this clause if the issuer sustains the burden of proof that the issuer did not know and, in the exercise of reasonable care could not have known, that the person who received the commission, fee, or other remuneration was not properly registered.

(C) In all sales to purchasers other than those described in subdivision (13) for offerings made in compliance with 17 CFR 230.504, at least one (1) of the following is satisfied:

(i) The investment is suitable for the purchaser upon the basis of facts, if any facts are disclosed by the purchaser, as to the purchaser's other securities holdings, financial

situation, and needs. For purposes of this item only, it is presumed that, if the investment does not exceed ten percent (10%) of the investor's net worth, the investment is suitable.

(ii) The purchaser, either alone or with the purchaser's representative or representatives, has the knowledge and experience in financial and business matters that demonstrate that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(26) Subject to section 2.4 of this chapter, an offer to sell or a sale of a security by an issuer in a transaction that meets all the following requirements:

(A) The sale of the security is made only to a person who:

(i) is; or

(ii) the issuer reasonably believes is;

an accredited investor as defined in 17 CFR 230.501(a).

(B) The issuer complies with the requirements in section 2.6 of this chapter.

(C) The issuer:

(i) reasonably believes that all purchasers are purchasing for investment; and

(ii) is not selling or offering to sell the security with the view to or for sale in connection with a distribution of the security.

If a security is resold within twelve (12) months after the date that the security was sold in reliance on the exemption under this subdivision, the sale of the security in reliance on this exemption is presumed to be with a view to distribution and not for investment. However, the presumption does not apply to a security resold under a registration statement effective under IC 23-19-3-4 or IC 23-19-3-5 or to an accredited investor under an exemption available under this section.

As added by P.L.27-2007, SEC.23. Amended by P.L.71-2014, SEC.1.

IC 23-19-2-2 Version b

Exempt transactions

Note: This version of section amended by P.L.106-2014, SEC.3. See also preceding version of this section amended by P.L.71-2014, SEC.1.

Sec. 2. The following transactions are exempt from the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this article, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the

transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this article or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System.

(ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years.

(iv) The issuer of the security has total assets of at least two million dollars ($2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a

reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System.

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) a default has not occurred during the current fiscal year or within the three (3) previous fiscal years, or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this article effecting an unsolicited order or offer to purchase.

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this article.

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others.

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and

exchange and the fairness of the terms and conditions have been approved by the commissioner after a hearing.

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this article as a broker-dealer or as an agent.

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(13) A sale or offer to sell to:

(A) an institutional investor;

(B) a federal covered investment adviser; or

(C) any other person exempted by rule adopted or order issued under this article.

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(A) not more than twenty-five (25) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subdivision (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this article or an agent registered under this article for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in subdivision (13), are purchasing for investment.

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR

230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

(17) An offer to sell, but not a sale of, a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this article, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this article; and

(C) a stop order of which the offeror is aware has not been issued by the commissioner under this article and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

(19) A rescission offer, sale, or purchase under IC 23-19-5-10.

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this article.

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations.

(22) A transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this article, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subdivision or by rule adopted or order issued under this article; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subdivision or by rule adopted or order issued under this article, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subdivision, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with this article, the commissioner, by rule adopted or order issued under this article, may revoke the designation of a securities exchange under this subdivision, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(24) Subject to the following, an offer or sale of securities by an issuer made after June 30, 2014, only to persons who are or the issuer reasonably believes are accredited investors:

(A) The exemption under this subdivision is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with:

(i) an unidentified company or companies; or

(ii) another entity or person.

(B) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for

sale in connection with a distribution of the security. Any resale of a security sold in reliance on the exemption under this subdivision within twelve (12) months after sale is presumed to be with a view to distribution and not for investment, except:

(i) a resale under a registration statement effective under IC 23-19-3; or

(ii) a resale to an accredited investor under an exemption available under the Indiana Uniform Securities Act.

(C) Except as provided in clause (D), the exemption under this subdivision is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of the underwriter:

(i) within the last five (5) years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;

(ii) within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or any criminal offense involving fraud or deceit;

(iii) is currently subject to any state or federal administrative enforcement order or judgment entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) is currently subject to any order, judgment, or decree of any court with jurisdiction, entered within the last five (5) years, temporarily, preliminarily, or permanently restraining or enjoining the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(D) Clause (C) does not apply if:

(i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against the party;

(ii) before the first offer under the exemption described in this subdivision, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.

(E) A general announcement of the proposed offering may be made by any means. A general announcement described in this clause must include only the following information, unless additional information is specifically permitted by the commissioner:

(i) The name, address, and telephone number of the issuer of the securities.

(ii) The name, a brief description, and price (if known) of any security to be issued.

(iii) A brief description of the business of the issuer in twenty-five (25) words or less.

(iv) The type, number, and aggregate amount of securities being offered.

(v) The name, address, and telephone number of the person to contact for additional information.

(vi) A statement that indicates that sales will be made only to accredited investors, that no money or other consideration is being solicited or will be accepted by way of the general announcement, that the securities have not been registered with or approved by any state securities agency or the Securities and Exchange Commission, and that the securities are being offered and sold under an exemption from registration.

(F) The issuer, in connection with an offer, may provide information in addition to the general announcement under clause (E), if the information:

(i) is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or

(ii) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(G) No telephone solicitation is permitted unless before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(H) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this subdivision.

(I) The issuer shall file with the division a notice of transaction, a consent to service of process, a copy of the general announcement, and a fee established by the commissioner within fifteen (15) days after the first sale in Indiana.

(25) An offer to sell or a sale of a security of an issuer made after June 30, 2014, if:

(A) the transaction is part of a single issue in which:

(i) the offer or sale is made in compliance with 17 CFR 230.504, 17 CFR 230.505, and 17 CFR 230.506, including any offer or sale made exempt by the application of 17

CFR 508(a);

(ii) the issuer is required to submit a notice filing on a Form D not later than fifteen (15) days after the first sale of securities in this state; and

(iii) by submitting the notice described in item (ii), the issuer agrees, upon written request by the commissioner, to furnish to the commissioner any information the issuer furnished to offerees;

(B) for offerings made in compliance with 17 CFR 230.504, no commission, fee, or other remuneration is paid or given, directly or indirectly, to any broker-dealer for soliciting any prospective purchaser in this state unless the broker-dealer is appropriately registered under this article. It is a defense to a violation of this clause if the issuer sustains the burden of proof that the issuer did not know and, in the exercise of reasonable care could not have known, that the person who received the commission, fee, or other remuneration was not properly registered; and

(C) in all sales to purchasers other than those described in subdivision (13) for offerings made in compliance with 17 CFR 230.504, at least one (1) of the following is satisfied:

(i) The investment is suitable for the purchaser upon the basis of facts, if any facts are disclosed by the purchaser, as to the purchaser's other securities holdings, financial situation, and needs. For purposes of this item only, it is presumed that, if the investment does not exceed ten percent (10%) of the investor's net worth, the investment is suitable.

(ii) The purchaser, either alone or with the purchaser's representative or representatives, has the knowledge and experience in financial and business matters that demonstrate that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(26) Any offer or sale of securities after June 30, 2014, by an issuer that meets the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. 77c(a)(11), and Securities and Exchange Commission Rule 147, 17 CFR 230.147. However, all the following apply:

(A) The issuer must make a notice filing with the division on a form prescribed by the commissioner within thirty (30) days after the first sale in Indiana.

(B) Any commission, discount, or other remuneration for sales of securities in Indiana must be paid or given only to dealers or salespersons licensed under this article.

(C) The issuer must pay the fee established by the commissioner. However, no filing fee is required to file amendments to Form D of the Securities and Exchange Commission.

(D) Within ten (10) days of receiving the form required by

this subdivision, the commissioner may require the issuer to furnish any additional information considered necessary by the commissioner to determine the issuer's qualifications.

(27) An offer or sale of a security made after June 30, 2014, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(A) The issuer of the security is a business entity organized under the laws of Indiana and authorized to do business in Indiana.

(B) The transaction meets the requirements of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

(C) Except as provided in clause (E), the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor or institutional investor, does not exceed the following amount:

(i) If the issuer has not undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars ($1,000,000), less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale made in reliance on the exemption under this subdivision.

(ii) If the issuer has undergone and made available to each prospective investor and the commissioner the documentation resulting from a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars ($2,000,000), less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale made in reliance on the exemption under this subdivision.

(D) An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in clause (C).

(E) The issuer does not accept more than five thousand dollars ($5,000) from any single purchaser unless the purchaser is an accredited investor.

(F) Unless waived by written consent by the commissioner, not less than ten (10) days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(i) Make a notice filing with the division on Form D of the

Securities and Exchange Commission.

(ii) Pay the fee established by the commissioner. However, no filing fee is required to file amendments to Form D of the Securities and Exchange Commission.

(iii) Provide the commissioner a copy of the disclosure document to be provided to prospective investors under clause (L).

(iv) Provide the commissioner a copy of an escrow agreement with a bank, regulated trust company or corporate fiduciary, savings bank, savings and loan association, or credit union authorized to do business in Indiana in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company or corporate fiduciary, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person.

(v) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement.

(vi) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement.

(G) The issuer is not, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), an entity that would be an investment company but for the exclusions provided in Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)), or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 15 U.S.C. 78o(d)).

(H) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

"IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES

HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 (17 CFR 230.147(e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.".

(I) The issuer requires each purchaser to certify in writing or electronically as follows:

"I UNDERSTAND AND ACKNOWLEDGE THAT I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.".

(J) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Indiana and, if applicable, is an accredited investor.

(K) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in clause (F)(iv). The commissioner may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection.

(L) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the offer of securities is

made to the prospective investor that contains all the following:

(i) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

(ii) The identity of all persons owning more than twenty percent (20%) of the ownership interests of any class of securities of the company.

(iii) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

(iv) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered.

(v) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Internet web site operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital.

(vi) For each person identified as required in this clause, a description of the consideration being paid to the person for such assistance.

(vii) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management.

(viii) The names and addresses, including the Uniform Resource Locator, of each Internet web site that will be used by the issuer to offer or sell securities under an exemption under this subdivision.

(ix) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be

limited to risks that could apply to any issuer or any offering.

(M) The exemption under this subdivision may not be used in conjunction with any other exemption under this article, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve (12) month period.

(N) The exemption described in this subdivision does not apply if an issuer or person affiliated with the issuer or offering is subject to disqualification established by the commissioner by rule or contained in the Securities Act of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.262). However, this clause does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the commissioner, the commissioner determines that it is not necessary under the circumstances that an exemption is denied.

(ii) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(O) The offering exempted under this subdivision is made exclusively through one (1) or more Internet web sites and each Internet web site is subject to the following:

(i) Before any offer or sale of securities, the issuer must provide to the Internet web site operator evidence that the issuer is organized under the laws of Indiana and is authorized to do business in Indiana.

(ii) Subject to items (iii) and (v), the Internet web site operator must register with the division by filing a statement, accompanied by the filing fee established by the commissioner, that includes all the information described in section 2.3(b) of this chapter.

(iii) The Internet web site operator is not required to register as a broker-dealer if all the conditions in section 2.3(c) of this chapter apply with respect to the Internet web site and its operator.

(iv) If any change occurs that affects the Internet web site's registration exemption, the Internet web site operator must notify the division within thirty (30) days after the change occurs.

(v) The Internet web site operator is not required to register as a broker-dealer under item (ii) if the Internet web site operator is registered as a broker-dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78o) or is a funding portal registered under the Securities Act of 1933

(15 U.S.C. 77d-1) and the Securities and Exchange Commission has adopted rules under authority of Section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(h)) and P.L.112-106, Section 304, governing funding portals. This item does not require an Internet web site operator to register as a broker-dealer under the Securities Exchange Act of 1934 or as a funding portal under the Securities Act of 1933.

(vi) The issuer and the Internet web site operator must maintain records of all offers and sales of securities effected through the Internet web site and must provide ready access to the records to the division, upon request. The records of an Internet web site operator under this clause are subject to the reasonable periodic, special, or other audits or inspections by a representative of the commissioner, in or outside Indiana, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this item.

(vii) The Internet web site operator shall limit web site access to the offer or sale of securities to only Indiana residents.

(viii) The Internet web site operator shall not hold, manage, possess, or handle investor funds or securities.

(ix) The Internet web site operator may not be aninvestor in any Indiana offering under this subdivision or subdivision (26).

(P) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding. An issuer may satisfy the reporting requirement of this clause by making the information available on an Internet web site if the information is made available within forty-five (45) days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this clause with the division and, if the quarterly report is made available on an Internet web site, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses,

stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(Q) In 2019 and every fifth year thereafter, the commissioner shall cumulatively adjust the dollar limitations provided in clause (C) to reflect the change in the Consumer Price Index for all Urban Consumers published by the federal Bureau of Labor Statistics rounding each dollar limitation to the nearest fifty thousand dollars ($50,000).

As added by P.L.27-2007, SEC.23. Amended by P.L.106-2014, SEC.3.

IC 23-19-2-2.3
Internet web site operators

Sec. 2.3. (a) This section applies to an offering under section 2(27)(O) of this chapter that is made exclusively through one (1) or more Internet web sites and each Internet web site.

(b) As required by section 2(27)(O)(ii) of this chapter, the Internet web site operator shall register with the division by filing a statement, accompanied by the filing fee established by the commissioner, that includes all the following:

(1) That the Internet web site operator is a business entity organized under the laws of Indiana and authorized to do business in Indiana.

(2) That the Internet web site is being used to offer and sell securities pursuant to the exemption under section 2(27) of this chapter.

(3) The identity and location of, and contact information for, the Internet web site operator.

(4) Except as provided in subsection (c), that the Internet web site operator is registered as a broker-dealer under IC 23-19-4.

(c) The Internet web site operator is not required to register as a broker-dealer if all the following apply with respect to the Internet web site and its operator:

(1) It does not offer investment advice or recommendations.

(2) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet web site.

(3) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet web site.

(4) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities.

(5) The fee it charges an issuer for an offering of securities on the Internet web site is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the Internet web site, or a combination of the fixed and variable amounts.

(6) It does not identify, promote, or otherwise refer to any individual security offered on the Internet web site in any advertising for the Internet web site.

(7) It does not engage in any other activities that the division, by rule, determines are prohibited of the Internet web site.

(8) Neither the Internet web site operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the Internet web site operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 CFR 230.506(d)(1)) that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933 (17 CFR 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 CFR 230.506(a) to 17 CFR 230.506(c)).

As added by P.L.106-2014, SEC.4.

IC 23-19-2-2.4

Exempt transaction; conditions

Sec. 2.4. (a) As used in this section, "person associated with the issuer" includes the following:

(1) A predecessor of an issuer.

(2) An issuer affiliated with the issuer.

(3) A director, an officer, or a general partner of the issuer.

(4) A beneficial owner of at least ten percent (10%) of any class of the issuer's equity securities.

(5) A promoter presently connected with the issuer in any capacity.

(6) An underwriter of the securities of the issuer that are to be offered.

(7) A partner, a director, or an officer of an underwriter described in subdivision (6).

(b) A transaction described in section 2(26) of this chapter is not exempt under section 2(26) of this chapter if:

(1) the issuer of the security or a person associated with the issuer:

(A) has, within the past five (5) years, filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;

(B) has, within the past five (5) years, been convicted of any criminal offense:

(i) in connection with the offer, purchase, or sale of any security; or

(ii) involving fraud or deceit;

(C) is currently subject to any state or federal administrative enforcement order or judgment, entered within the past five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or

(D) is currently subject to any order, judgment, or decree of any court with jurisdiction, entered within the past five (5) years, temporarily, preliminarily, or permanently restraining or enjoining the issuer or a person associated with the issuer from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security; and

(2) one (1) or more of the following do not apply:

(A) The issuer of the security or a person associated with the issuer described in subdivision (1) is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification of the exemption was entered against the issuer of the security or a person associated with the issuer.

(B) Before the first offer of a security in reliance on the exemption in section 2(26) of this chapter, the:

(i) state securities administrator; or

(ii) court or regulatory authority that entered the order, judgment, or decree waived;

the disqualification of the exemption.

(C) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification of the exemption existed under this subsection.

(c) A transaction described in section 2(26) of this chapter is not exempt under section 2(26) of this chapter if the issuer of the security is in the development stage of the issuer's business and:

(1) does not have a specific business plan or purpose; or

(2) has indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company, companies, entity, or other person.

As added by P.L.71-2014, SEC.2.

IC 23-19-2-2.6

Exemption transaction; requirements; general announcement; additional information; filing

Sec. 2.6. (a) This section applies only to the sale of or offer to sell a security in reliance on the exemption under section 2(26) of this chapter.

(b) A general announcement of a proposed offering of securities may be made by any means.

(c) Except as provided in subsection (d), a general announcement described in subsection (b) may include only the following information unless additional information is specifically permitted by the commissioner:

(1) The name, address, and telephone number of the issuer of the securities.

(2) The name and a brief description and price, if known, of any security to be issued.

(3) A brief description of the business of the issuer in less than

twenty-six (26) words.

(4) The type, number, and aggregate amount of securities being offered.

(5) The name, address, and telephone number of the person to contact for additional information.

(6) A statement that:

(A) sales will be made only to accredited investors;

(B) no money or other consideration is being solicited or will be accepted by way of the general announcement; and

(C) the securities:

(i) have not been registered with or approved by any state securities agency or the Securities and Exchange Commission; and

(ii) are being offered and sold pursuant to an exemption from registration.

(d) An issuer, in connection with an offer to sell a security in reliance on the exemption under section 2(26) of this chapter, may provide information in addition to the general announcement described in subsection (c) if one (1) or more of the following apply:

(1) The information is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors.

(2) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(e) The issuer may not make solicitations by telephone for the sale of or offer to sell securities in reliance on the exemption under section 2(26) of this chapter unless before placing the telephone call the issuer reasonably believes that the prospective purchaser the issuer will be soliciting is an accredited investor.

(f) Any dissemination of the general announcement of the proposed offering described in this section does not disqualify the issuer from claiming the exemption under section 2(26) of this chapter.

(g) The issuer shall file with the securities division a:

(1) Model Accredited Investor Exemption Uniform Notice of Transaction, along with a consent to service of process; and

(2) copy of the general announcement;

not later than fifteen (15) days after the first sale of the security in Indiana.

As added by P.L.71-2014, SEC.3.

IC 23-19-2-3

Additional exemptions; waivers

Sec. 3. A rule adopted or order issued under this article may exempt a security, transaction, or offer; a rule under this article may exempt a class of securities, transactions, or offers from any or all of the requirements of IC 23-19-3-1 through IC 23-19-3-6 and IC 23-19-5-4; and an order under this article may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 1 and 2 of this chapter.

As added by P.L.27-2007, SEC.23.

IC 23-19-2-4
Denial, suspension, revocation, condition, or limitation of exemptions; knowledge of order

Sec. 4. (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this article may deny, suspend application of, condition, limit, or revoke an exemption created under section 1(3)(C), (1)(7), 1(8), or 2 of this chapter or an exemption or waiver created under section 3 of this chapter with respect to a specific security, transaction, or offer. An order under this section may be issued only under the procedures in IC 23-19-3-6(d) or IC 23-19-6-4 and only prospectively.

(b) A person does not violate IC 23-19-3-1, IC 23-19-3-3 through IC 23-19-3-6, IC 23-19-5-4, or IC 23-19-5-10 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.
As added by P.L.27-2007, SEC.23.

IC 23-19-2-5
Emergency rules

Sec. 5. The commissioner may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to implement this chapter.
As added by P.L.106-2014, SEC.5.

IC 23-19-3

Chapter 3. Registration of Securities and Notice Filing of Federal Covered Securities

IC 23-19-3-1

Unlawful acts

Sec. 1. It is unlawful for a person to offer or sell a security in this state unless:

(1) the security is a federal covered security;

(2) the security, transaction, or offer is exempted from registration under IC 23-19-2-1 through IC 23-19-2-3; or

(3) the security is registered under this article.

As added by P.L.27-2007, SEC.23.

IC 23-19-3-2

Filing and fee requirements

Sec. 2. (a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under IC 23-19-2-1 through IC 23-19-2-3, a rule adopted or order issued under this article may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with IC 23-19-6-11 signed by the issuer and the payment of a fee of:

(A) five hundred dollars ($500) for an issuer with net assets not exceeding ten million dollars ($10,000,000); or

(B) one thousand dollars ($1,000) for other issuers.

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission, under the Securities Act of 1933.

(3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission, and payment of a fee of five-hundredths of one percent (0.05%) of the excess of the dollar amount of securities sold during the fiscal year over the dollar amount of securities redeemed, not to exceed two thousand dollars ($2,000) in any one (1) year. The fee required in subdivision (1) shall be applied as a credit against the fee required under this subdivision.

(b) A notice filing under subsection (a) is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this

article to be filed and by paying a renewal fee of two hundred fifty dollars ($250). A previously filed consent to service of process complying with IC 23-19-6-11 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)), a rule under this article may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with IC 23-19-6-11 signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this state.

(d) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), if the commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

As added by P.L.27-2007, SEC.23.

IC 23-19-3-3

Registration under Securities Act of 1933; registration by coordination; registration statement; required information; notice

Sec. 3. (a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 5 of this chapter and a consent to service of process complying with IC 23-19-6-11:

(1) A copy of the latest form of prospectus filed under the Securities Act of 1933.

(2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this article.

(3) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the commissioner.

(4) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration

statement when all the following conditions are satisfied:

(1) A stop order under subsection (d) or section 6 of this chapter or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under section 6 of this chapter.

(2) The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this article.

(d) The registrant shall promptly notify the commissioner in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The commissioner shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the commissioner, the registration statement is automatically effective under this article when all the conditions are satisfied or waived. If the registrant notifies the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the commissioner intends the institution of a proceeding under section 6 of this chapter. The notice by the commissioner does not preclude the institution of such a proceeding.

As added by P.L.27-2007, SEC.23.

IC 23-19-3-4

Registration by qualification; registration statement; required information; prospectus

Sec. 4. (a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in section 5 of this chapter, a consent to service of process complying with IC 23-19-6-11, and, if required by rule adopted under this article, the following information or records:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is

or will be engaged.
(2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected.
(3) With respect to persons covered by subdivision (2), the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.
(4) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (2) other than the person's occupation.
(5) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in subdivision (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.
(6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering.
(7) The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities.
(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the

underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

(9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in subdivision (2), (4), (5), (6), or (8) and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options.

(11) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract.

(12) A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities.

(13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any

solicitation of interest used in compliance with IC 23-19-2-2(17)(B).

(14) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered.

(15) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

(16) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record that is public, which is used in connection with the registration statement.

(17) A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant. If the maximum aggregate offering price at which the securities registered under this section are to be offered in Indiana is in excess of one million dollars ($1,000,000), the balance sheet, statement of income, statement of cash flows, and any other financial statement required under this subdivision must be prepared using U.S. generally accepted accounting principles and must be audited by an independent certified public accountant under U.S. generally accepted auditing standards or standards of the Public Company Accounting Oversight Board.

(18) Any additional information or records required by rule adopted or order issued under this article.

(c) A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by rule adopted or order issued under this article, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under section 6 of this chapter;

(2) the commissioner has not issued an order under section 6 of this chapter delaying effectiveness; and

(3) the applicant or registrant has not requested that

effectiveness be delayed.

(d) The commissioner may delay effectiveness once for not more than ninety (90) days if the commissioner determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The commissioner may also delay effectiveness for a further period of not more than thirty (30) days if the commissioner determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this article may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment under such a sale; or

(4) delivery of the security under such a sale.

As added by P.L.27-2007, SEC.23. Amended by P.L.146-2013, SEC.1.

IC 23-19-3-5

Filing registration statement; fee; incorporation by reference; nonissuer distribution; escrow and impoundment; effective period; reports; amendment

Sec. 5. (a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this article.

(b) A person filing a registration statement shall pay a filing fee of five-hundredths of one percent (0.05%) of the maximum aggregate offering price at which the registered securities are to be offered in Indiana, but the fee may not be less than two hundred fifty dollars ($250) and may not be more than one thousand dollars ($1,000). If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 6 of this chapter, the commissioner shall retain two hundred fifty dollars ($250) of the fee.

(c) A registration statement filed under section 3 or 4 of this chapter must specify:

(1) the amount of securities to be offered in this state;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this article or the predecessor act within

five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or section 4 of this chapter, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this article may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this article, but the commissioner may not reject a depository institution solely because of its location in another state.

(g) A rule adopted or order issued under this article may require as a condition of registration that a security registered under this article be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this article or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

(h) Except while a stop order is in effect under section 6 of this chapter, a registration statement is effective for one (1) year after its effective date, or for any longer period designated in an order under this article during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this article are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the commissioner.

(i) While a registration statement is effective, a rule adopted or order issued under this article may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the commissioner so orders. If a posteffective amendment is made to

increase the number of securities specified to be offered or sold, the person filing the amendment shall pay the greater of one hundred dollars ($100) or the difference between the amount originally paid and the amount the registration fee would have been if all the securities to be offered had been registered. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one (1) year after the date of the sale, the amendment is filed and the additional registration fee is paid. *As added by P.L.27-2007, SEC.23.*

IC 23-19-3-6

Stop orders; denial, suspension, or revocation of registration; standards; postponement; hearing; process; modification or vacating order

Sec. 6. (a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the commissioner finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 5(j) of this chapter as of its effective date, or a report under section 5(i) of this chapter, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this article, a rule adopted or order issued under this article, or a condition imposed under this article has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; by a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court with jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this article applicable to the offering, but the commissioner may not institute a proceeding against an effective registration statement under this subdivision more than one (1) year after the date of the order or injunction on which it is based, and the commissioner may not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under section 3 of this chapter, there has been a failure to comply with the undertaking required by section 3(b)(4) of this chapter;
(6) the applicant or registrant has not paid the filing fee, but the commissioner shall void the order if the deficiency is corrected; or
(7) the offering:
(A) will work or tend to work a fraud upon purchasers or would so operate; or
(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options.

(b) To the extent practicable, the commissioner by rule adopted or order issued under this article shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

(d) The commissioner may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the commissioner shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without:
(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
(2) an opportunity for hearing; and
(3) findings of fact and conclusions of law in a record.

(f) The commissioner may modify or vacate a stop order issued under this section if the commissioner finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

As added by P.L.27-2007, SEC.23.

IC 23-19-3-7
Waiver or modification of requirements

Sec. 7. The commissioner may waive or modify, in whole or in

part, any or all of the requirements of sections 2, 3, and 4(b) of this chapter or the requirement of any information or record in a registration statement or in a periodic report filed under section 5(i) of this chapter.

As added by P.L.27-2007, SEC.23.

IC 23-19-4

Chapter 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers

IC 23-19-4-1

Broker-dealer registration; exemptions; restrictions on employment or association; foreign transactions

Sec. 1. (a) It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this article as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered as a broker-dealer under this article or not required to be registered as a broker-dealer under this article;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others under discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this state, and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this state but who was not present in this state when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the

application for good cause;

(G) not more than three (3) customers in this state during the previous twelve (12) months, in addition to those customers specified in clauses (A) through (F) and under clause (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this article.

(2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the commissioner under this article, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this article may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) A rule adopted or order issued under this article may permit:

(1) a broker-dealer that is registered in Canada or another foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or another foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or another foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in subdivision (1).

As added by P.L.27-2007, SEC.23.

IC 23-19-4-2

Agent registration; exemptions; restrictions on employment or association; restrictions if no affiliation

Sec. 2. (a) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this article as an agent or is exempt from registration as an agent under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)(2)).

(2) An individual who represents a broker-dealer that is exempt under section 1(b) or 1(d) of this chapter.

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by IC 23-19-2-2, other than IC 23-19-2-2(11) and IC 23-19-2-2(14).

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(6) An individual who represents a broker-dealer registered in this state under section 1(a) of this chapter or exempt from registration under section 1(b) of this chapter in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others under discretionary authority in a signed record.

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities.

(8) An individual who represents an issuer and who restricts

participation to performing clerical or ministerial acts.

(9) Any other individual exempted by rule adopted or order issued under this article.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this article or an issuer that is offering, selling, or purchasing its securities in this state.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) An individual may not act as an agent for more than one (1) broker-dealer or one (1) issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this article.
As added by P.L.27-2007, SEC.23.

IC 23-19-4-3
Investment adviser registration; exemptions; restrictions on employment or association

Sec. 3. (a) It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this article as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this article, or broker-dealers registered under this article;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this article.

(2) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subdivision (1).

(3) Any other person exempted by rule adopted or order issued under this article.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the

individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this article, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the commissioner, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this article as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 4(a) of this chapter or is exempt from registration under section 4(b) of this chapter.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-4

Investment adviser representative registration; exemptions; restrictions on conducting business; referrals

Sec. 4. (a) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this article as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who is employed by or associated with an investment adviser that is exempt from registration under section 3(b) of this chapter or a federal covered investment adviser that is excluded from the notice filing requirements of section 5 of this chapter.

(2) Any other individual exempted by rule adopted or order issued under this article.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this article or a federal covered investment adviser that has made or is required to make a notice filing under section 5 of this chapter.

(d) An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or order issued under this article prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser

representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this article, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the commissioner, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this article, a federal covered investment adviser that has filed a notice under section 5 of this chapter, or a broker-dealer registered under this article is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this article, a federal covered investment adviser who has filed a notice under section 5 of this chapter, or a broker-dealer registered under this article with which the individual is employed or associated as an investment adviser representative.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-5

Federal covered investment adviser requirements; exemptions; filing

Sec. 5. (a) Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) The following federal covered investment advisers are not required to comply with subsection (c):

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this article, and broker-dealers registered under this article;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by rule adopted or order issued under this article.

(2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subdivision (1).

(3) Any other person excluded by rule adopted or order issued under this article.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with IC 23-19-6-11, and such records as have

been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this article and pay the fees specified in section 10(e) of this chapter.

(d) The notice under subsection (c) becomes effective upon its filing.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-6

Application for initial registration; requirements; amendments; national criminal history background check for investment adviser representative; effective date; renewal; conditions and waivers

Sec. 6. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with IC 23-19-6-11, and paying the fee specified in section 10 of this chapter and any reasonable fees charged by the designee of the commissioner for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the commissioner, any other financial or other information or record that the commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) At the time of application for an initial registration as an investment adviser representative under this article, the commissioner shall require each applicant to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the applicant should be denied registration under this chapter for any reason set forth in section 12(d) of this chapter. The applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection.

(d) If an order is not in effect and a proceeding is not pending under section 12 of this chapter, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this article may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(e) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 12 of this chapter, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this article, by paying the fee specified in section 10 of this chapter, and by paying costs charged by the designee of the commissioner for processing the

filings.

(f) A rule adopted or order issued under this article may impose other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this article may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

As added by P.L.27-2007, SEC.23. Amended by P.L.114-2010, SEC.9.

IC 23-19-4-7

Succession; organization change; name change; change of control

Sec. 7. (a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration under section 1 or 3 of this chapter or a notice under section 5 of this chapter for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this article. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this article shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this article.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-8

Termination notice; transfer of employment or association; temporary registration; prevention or suspension of transfer; cancellation or termination of registration; reinstatement

Sec. 8. (a) If an agent registered under this article terminates employment by or association with a broker-dealer or issuer, or if an

investment adviser representative registered under this article terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this article terminates employment by or association with a broker-dealer registered under this article and begins employment by or association with another broker-dealer registered under this article, or if an investment adviser representative registered under this article terminates employment by or association with an investment adviser registered under this article or a federal covered investment adviser that has filed a notice under section 5 of this chapter and begins employment by or association with another investment adviser registered under this article or a federal covered investment adviser that has filed a notice under section 5 of this chapter, then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of section 6(a) of this chapter and payment of the filing fee required under section 10 of this chapter, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) The commissioner may withdraw a temporary registration if there are or were grounds for discipline as specified in section 12 of this chapter and the commissioner does so within thirty (30) days after the filing of the application. If the commissioner does not withdraw the temporary registration within the thirty (30) day period, registration becomes automatically effective on the thirty-first day after filing.

(d) The commissioner may prevent or suspend the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (b)(2) based on the public interest and the protection of investors. The commissioner, by order, may also extend a temporary registration to permit further time to review the qualifications of an applicant.

(e) If the commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this article may require the registration be canceled or terminated or the application denied. The commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.
As added by P.L.27-2007, SEC.23.

IC 23-19-4-9
Withdrawal of registration

Sec. 9. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this article unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this article. The commissioner may institute a revocation or suspension proceeding under section 12 of this chapter within one (1) year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.
As added by P.L.27-2007, SEC.23.

IC 23-19-4-10
Fees; transmittal of fee; exception

Sec. 10. (a) A person shall pay a fee of two hundred fifty dollars ($250) when initially filing an application for registration as a broker-dealer and a fee of one hundred twenty-five dollars ($125) when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(b) The fee for an individual is twenty-five dollars ($25) when filing an application for registration as an agent, a fee of twenty-five dollars ($25) when filing a renewal of registration as an agent, and a fee of twenty-five dollars ($25) when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(c) A person shall pay a fee of one hundred dollars ($100) when filing an application for registration as an investment adviser and a fee of fifty dollars ($50) when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(d) The fee for an individual is twenty-five dollars ($25) when filing an application for registration as an investment adviser

representative, a fee of twenty-five dollars ($25) when filing a renewal of registration as an investment adviser representative, and a fee of twenty-five dollars ($25) when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(e) A federal covered investment adviser required to file a notice under section 5 of this chapter shall pay an initial fee of fifty dollars ($50) and an annual notice fee of fifty dollars ($50).

(f) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this article.

(g) An investment adviser representative who is registered as an agent under section 2 of this chapter and who represents a person that is both registered as a broker-dealer under section 1 of this chapter and registered as an investment adviser under section 3 of this chapter or required as a federal covered investment adviser to make a notice filing under section 5 of this chapter is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-11

Minimum financial requirements; financial reports; amendment; records; audits or inspections; insurance or posting bond; supervision; continuing education; compliance reports

Sec. 11. (a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may establish minimum financial requirements for broker-dealers registered or required to be registered under this article and investment advisers registered or required to be registered under this article.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a(b)), a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall file such financial reports as are required by a rule adopted or order issued under this article. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a):

(1) a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this

article;

(2) broker-dealer records required to be maintained under subdivision (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the commissioner; and

(3) investment adviser records required to be maintained under subdivision (1) may be maintained in any form of data storage required by rule adopted or order issued under this article.

(d) The records of a broker-dealer registered or required to be registered under this article and of an investment adviser registered or required to be registered under this article are subject to such reasonable periodic, special, or other audits or inspections by a representative of the commissioner, within or outside this state, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed fifty thousand dollars ($50,000). The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this article whose net capital exceeds, or of an investment adviser registered under this article whose minimum financial requirements exceed, the amounts required by rule or order under this article. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in IC 23-19-5-9(g).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this article may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding

custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this article, a rule adopted or order issued under this article may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this article may require an individual registered under section 2 or 4 of this chapter to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this article may require continuing education for an individual registered under section 4 of this chapter.

(i) Subject to section 11.5 of this chapter, the commissioner may annually select as many as twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. Subject to section 11.5 of this chapter, each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under this article not later than forty-five (45) days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under IC 23-19-6-2(a).

As added by P.L.27-2007, SEC.23. Amended by P.L.149-2009, SEC.1; P.L.156-2009, SEC.22; P.L.1-2010, SEC.94.

IC 23-19-4-11.5

Prohibit selection of broker-dealer for completion of compliance report in consecutive years; prohibit selection of certain offices

Sec. 11.5. (a) As used in this section, "office of supervisory jurisdiction" has the meaning set forth in the National Association of Securities Dealers Conduct Rule 3010(g) (as in effect on January 1, 2009).

(b) A broker-dealer registered or required to be registered under this article may not be selected for completion of a compliance report under section 11(i) of this chapter in consecutive years unless the commissioner has reason to believe that the broker-dealer has committed a violation of this article.

(c) The commissioner may not select for completion of a compliance report under section 11(i) of this chapter any office that:

(1) reports to an office of supervisory jurisdiction located within Indiana;

(2) reflects the address of the office of supervisory jurisdiction described in subdivision (1) on all of the office's business cards, stationery, advertisements, and other communications to the public; and

(3) is included in the definition of branch office under the

National Association of Securities Dealers Conduct Rule 3010(g) because the office:

(A) handles funds or securities as described under the National Association of Securities Dealers Conduct Rule 3010(g)(2)(A)(ii)(c); or

(B) uses the residential address on all business cards, stationery, advertisements, or other communications to the public under the National Association of Securities Dealers Conduct Rule 3010(g)(2)(A)(ii)(d).

As added by P.L.149-2009, SEC.2.

IC 23-19-4-12

Denial, condition, revocation, suspension, or limitation of registration; censure, bar, or civil penalty for violation; grounds; examination; procedure

Sec. 12. (a) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may deny an application, or may condition or limit registration, of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(b) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the commissioner may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the commissioner or a designee of the commissioner more than one (1) year after the date of the order on which it is based; or

(2) under subsection (d)(5)(A) and (d)(5)(B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) If the commissioner finds that the order is in the public interest and subsection (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(8), (d)(9), (d)(11), (d)(12), or (d)(13) authorizes the action, an order under this article may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars ($10,000) per violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a

person directly or indirectly in control of the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this state under this article or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) knowingly violated or knowingly failed to comply with this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act within the previous ten (10) years;

(3) has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court with jurisdiction in an action instituted by the commissioner under this article or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing, by:

(A) the securities, depository institution, insurance, or other financial services regulator of a state or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent;

(F) a depository institution regulator suspending or barring the person from the depository institution business; or

(G) any state regulatory body or organization governing real

estate brokers or sales persons denying, suspending, or revoking a person's registration or license in the real estate industry;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the commissioner may not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under section 11(d) of this chapter or refuses access to a registrant's office to conduct an audit or inspection under section 11(d) of this chapter;

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act within the previous ten (10) years;

(10) has not paid the proper filing fee within thirty (30) days after having been notified by the commissioner of a deficiency, but the commissioner shall vacate an order under this subdivision when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) by a court with jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign

jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years;

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subdivision if the individual has successfully completed all examinations required by subsection (e). The commissioner may require an applicant for registration under section 2 or 4 of this chapter who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination;

(15) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue; or

(16) is an individual who is:

(A) an applicant for registration as an agent for a broker-dealer or as an investment adviser representative; or

(B) registered as an agent for a broker-dealer or as an investment adviser representative;

and has failed to comply with a court order imposing a child support obligation.

(e) A rule adopted or order issued under this article may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this article may waive, in whole or in part, an examination as to an individual and a rule adopted under this article may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for

hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order may not be issued under this section, except under subsection (f), without:

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one (1) year after the commissioner actually acquires knowledge of the material facts.

(j) All fines and penalties collected under this section shall be deposited into the securities division enforcement account as established by IC 23-19-6-1(f).

As added by P.L.27-2007, SEC.23. Amended by P.L.85-2012, SEC.3.

IC 23-19-5

Chapter 5. Fraud and Liabilities

IC 23-19-5-1

Fraudulent or deceitful acts

Sec. 1. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

As added by P.L.27-2007, SEC.23.

IC 23-19-5-2

Unlawful practices; investment advisers and investment adviser representatives; investment advisory contract

Sec. 2. (a) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, or that receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice:

(1) to employ a device, scheme, or artifice to defraud another person; or

(2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) A rule adopted under this article may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) A rule adopted under this article may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

As added by P.L.27-2007, SEC.23.

IC 23-19-5-3

Evidentiary burden

Sec. 3. (a) In a civil action or administrative proceeding under this article, a person claiming an exemption, exception, preemption, or

exclusion has the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this article, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

As added by P.L.27-2007, SEC.23.

IC 23-19-5-4

Sales and advertising literature filing

Sec. 4. (a) Except as otherwise provided in subsection (b), a rule adopted or order issued under this article may require the filing of a prospectus, a pamphlet, a circular, a form letter, an advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this article.

(b) This section does not apply to sales and advertising literature specified in subsection (a) that relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by IC 23-19-2-1, IC 23-19-2-2, or IC 23-19-2-3 except as required under IC 23-19-2-1(7).

As added by P.L.27-2007, SEC.23.

IC 23-19-5-5

Filing false or misleading statements

Sec. 5. It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this article, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

As added by P.L.27-2007, SEC.23.

IC 23-19-5-6

Filings related to fact of registration; unlawful act

Sec. 6. The filing of an application for registration, a registration statement, a notice filing under this article, the registration of a person, the notice filing by a person, or the registration of a security under this article does not constitute a finding by the commissioner that a record filed under this article is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective purchaser, customer, or client a representation inconsistent with this section.

As added by P.L.27-2007, SEC.23.

IC 23-19-5-7
Qualified immunity

Sec. 7. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the commissioner or designee of the commissioner, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

As added by P.L.27-2007, SEC.23.

IC 23-19-5-8
Violations; felony; assistance in prosecution

Sec. 8. (a) A person who knowingly violates this article, or a rule adopted under this article, except sections 4 and 11 of this chapter or the notice filing requirements of IC 23-19-3-2 or IC 23-19-4-5, commits a Level 5 felony.

(b) A person who knowingly violates section 1 of this chapter commits a Level 4 felony if the person harmed, defrauded, misled, or deceived by the violation is at least sixty (60) years of age.

(c) A person who knowingly violates section 1 of this chapter:

(1) while using or taking advantage of; or

(2) in connection with;

a relationship that is based on religious affiliation or worship commits a Level 4 felony.

(d) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this article. If the commissioner determines that an action based on the securities division's investigations is meritorious:

(1) the commissioner or a designee empowered by the commissioner shall refer the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;

(2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;

(3) a prosecuting attorney to whom facts concerning fraud are referred under subdivision (1) may refer the matter to the attorney general;

(4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:

(A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and

(B) prosecute the alleged offense; and

(5) if a matter has been referred to the attorney general under subdivision (3), the commissioner and the securities division shall assist the attorney general in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy attorney general appointed by the attorney general.

(e) This article does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

As added by P.L.27-2007, SEC.23. Amended by P.L.156-2009, SEC.23; P.L.146-2013, SEC.2; P.L.158-2013, SEC.267; P.L.168-2014, SEC.34.

IC 23-19-5-9

Civil liability; defense; rights and remedies; joint and several liability; right of contribution; statute of limitations; contractual waivers void

Sec. 9. (a) Except as provided in section 11 of this chapter, a person is liable to the purchaser if the person sells a security in violation of this article, including a violation of IC 23-19-4-12(d)(9) or IC 23-19-4-12(d)(13). It is a defense if the person selling the security sustains the burden of proof that either the person did not know, and in the exercise of reasonable care could not have known, of the violation or the purchaser knowingly participated in the violation. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the purchase, costs, and reasonable attorney's fees determined by the court or arbitrator, upon the tender of the security, or for actual damages as provided in subdivision (3).

(2) The tender referred to in subdivision (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (3).

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the purchase, costs, and reasonable attorneys' fees determined by the court or arbitrator.

(b) Except as provided in section 11 of this chapter, a person is liable to the seller if the person buys a security in violation of this

article, including a violation of IC 23-19-4-12(d)(9) or IC 23-19-4-12(d)(13). It is a defense if the person purchasing the security sustains the burden of proof that either the person did not know, and in the exercise of reasonable care could not have known, of the conduct constituting the violation or the seller knowingly participated in the violation. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney's fees determined by the court or arbitrator, upon the tender of the purchase price, or for actual damages as provided in subdivision (3).

(2) The tender referred to in subdivision (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (3).

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the sale of the security, costs, and reasonable attorney's fees determined by the court or arbitrator.

(c) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of this article is liable to the client. An action under this subsection shall be governed by the following:

(1) For a violation of section 1 or 2 of this chapter, the client may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court less the amount of any income received as a result of the fraudulent conduct.

(2) For a violation of any other section of this article, the client may maintain an action to recover the consideration paid for the advice, interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of payment, costs, and reasonable attorney's fees determined by the court or arbitrator.

(3) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(d) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (a) through (c):

(1) A person that directly or indirectly controls a person liable under subsections (a) and (b), unless the controlling person sustains the burden of proof that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(2) An individual who is a managing partner, executive officer, or director of a person liable under subsections (a) through (c), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

(3) An individual who is an employee of or associated with a person liable under subsections (a) through (c) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

(4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (a) through (c), unless the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(e) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(f) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(g) Action under this section shall be commenced within three (3) years after discovery by the person bringing the action of a violation of this article, and not afterwards.

(h) A person that has made, or has engaged in the performance of, a contract in violation of this article or a rule adopted or order issued under this article, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this article, may not base an action on the contract.

(i) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this article or a rule adopted or order issued under this article is void.

(j) The rights and remedies provided by this article are in addition to any other rights or remedies that may exist.

As added by P.L.27-2007, SEC.23. Amended by P.L.146-2013, SEC.3.

IC 23-19-5-10
Rescission offers

Sec. 10. A purchaser, seller, or recipient of investment advice may not maintain an action under section 9 of this chapter if:

(1) the purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under section 9 of this chapter may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this article to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation described in section 9(a) of this chapter, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the rate of eight percent (8%) per annum from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the rate of eight percent (8%) per annum from the date of the purchase in cash equal to the damages computed in the manner provided in this clause;

(C) if the basis for relief under this section may have been a violation described in section 9(b) of this chapter, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest from the date of the sale, or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability, and interest at the rate of eight percent (8%) per annum from the date of the sale; or

(D) if the basis for relief under this section may have been a violation described in section 9(c) of this chapter, an offer to reimburse in cash the consideration paid for the advice and interest from the date of payment;

(2) the offer under subdivision (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three (3) days, that the commissioner, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under subdivision (1);

(4) the offer under subdivision (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under subdivision (1) in a record within the period specified under subdivision (2) is paid in accordance with the terms of the offer.

As added by P.L.27-2007, SEC.23.

IC 23-19-5-11

Violation of agreement

Sec. 11. (a) It is unlawful for a person to violate any agreement that is:

(1) entered into between the securities division and the person; and

(2) ordered by the commissioner under this article.

(b) A person is not liable under section 9(a) or 9(b) of this chapter for a violation of this section.

As added by P.L.146-2013, SEC.4.

IC 23-19-6

Chapter 6. Administration and Judicial Review

IC 23-19-6-1

Securities division; securities commissioner; unlawful use of nonpublic information; investor education initiatives; securities division enforcement account; securities restitution fund; assistance from attorney general; police powers

Sec. 1. (a) This article shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this article under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this article. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

(1) shall employ a chief deputy, attorneys, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this article; and

(2) shall fix their compensation with the approval of the budget agency.

(c) It is unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the commissioner that is not public under section 7(b) of this chapter. This article does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with section 2, 7(c), or 8 of this chapter.

(d) This article does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(e) Subject to IC 4-2-6-15, the commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an investor education program.

(f) The securities division enforcement account is established. Fees and funds of whatever character accruing from the administration of this article shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be

deposited by the treasurer of the state in either the state general fund or the securities division enforcement account. Subject to IC 4-2-6-15, expenses incurred in the administration of this article shall be paid from the state general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. The following shall be deposited by the treasurer of state in the securities division enforcement account:

(1) Grants and donations received under subsection (e).

(2) Costs of investigations recovered under section 4(e) of this chapter.

(3) Fifty percent (50%) of the first two million dollars ($2,000,000):

(A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;

(B) recovered in a settlement of an action initiated to enforce this article; or

(C) awarded as a judgment in an action to enforce this article.

(g) The following shall be deposited by the treasurer of state in the state general fund:

(1) Fifty percent (50%) of the first two million dollars ($2,000,000):

(A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;

(B) recovered in a settlement of an action initiated to enforce this article; or

(C) awarded as a judgment in an action to enforce this article.

(2) Any amount exceeding two million dollars ($2,000,000):

(A) of a civil penalty recovered under section 3(b) or 4(d) of this chapter;

(B) recovered in a settlement of an action initiated to enforce this article; or

(C) awarded as a judgment in an action to enforce this article.

(3) Other fees and revenues that are not designated for deposit in the securities division enforcement account or the securities restitution fund.

(h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7, IC 23-19-4-12, IC 25-11-1-15, and this chapter, five percent (5%) of funds received for deposit in the securities division enforcement account shall instead be deposited in the securities restitution fund established by IC 23-20-1-25. Subject to IC 4-2-6-15, the funds deposited in the enforcement account shall be available, with the approval of the budget agency:

(1) to augment and supplement the funds appropriated for the administration of this article; and

(2) for grants and awards to nonprofit entities for programs and activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(i) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving enforcement or defense of this article.

(j) Neither the secretary of state, the commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this article.

(k) The commissioner shall take, prescribe, and file the oath of office prescribed by law. The commissioner, chief deputy commissioner, and each attorney or investigator designated by the commissioner are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this article, or in serving any process, notice, or order connected with the enforcement of this article by whatever officer, authority, or court issued and shall comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(l) The provisions of this article delegating and granting power to the secretary of state, the securities division, and the commissioner shall be liberally construed to the end that:

(1) the practice or commission of fraud may be prohibited and prevented;

(2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and

(3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this article to delegate and grant to and vest in the secretary of state, the securities division, and the commissioner full and complete power to carry into effect and accomplish the purpose of this article and to charge them with full and complete responsibility for its effective administration.

(m) Copies of any statement and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner shall be admissible in any prosecution, action, suit, or proceeding based upon, arising out of, or under this

article to the same effect as the original of such statement, document, or record would be if actually produced.

(n) IC 4-21.5 is not applicable to any of the proceedings under this article.

As added by P.L.27-2007, SEC.23. Amended by P.L.114-2010, SEC.10; P.L.85-2012, SEC.4; P.L.92-2013, SEC.80; P.L.205-2013, SEC.338; P.L.2-2014, SEC.103.

IC 23-19-6-2

Investigations; subpoenas; depositions; relief; hearings; use immunity; certificate of compliance or noncompliance; witness fees

Sec. 2. (a) The commissioner may:

(1) conduct public or private investigations within or outside this state which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this article or a rule adopted or order issued under this article, or to aid in the enforcement of this article or in the adoption of rules and forms under this article;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this article or a rule adopted or order issued under this article if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this article, the commissioner or the commissioner's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation. Upon order of the commissioner or a hearing officer appointed by the commissioner in any hearing, depositions may be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner or a hearing officer appointed by the commissioner.

(c) If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by this article, the commissioner or hearing officer appointed by the commissioner may apply to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the commissioner or hearing officer appointed by the commissioner;

(3) order the person to testify about the matter under

investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) impose a civil penalty of not more than twenty thousand dollars ($20,000) for each violation; and

(7) grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) If a witness, in any hearing, inquiry, or investigation conducted under this article, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the items requested. A grant of use immunity does not prohibit the use of evidence that the witness gives in a hearing, investigation, or inquiry from being used in a prosecution for perjury under IC 35-44.1-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

(f) At the request of the securities regulator of another state or a foreign jurisdiction, the commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The commissioner may provide the assistance by using the authority to investigate and the powers conferred by this section as the commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this article or other law of this state if occurring in this state. In deciding whether to provide the assistance, the commissioner may consider

whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the commissioner on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the commissioner to carry out the request for assistance.

(g) In any prosecution, action, suit, or proceeding based upon or arising out of or under the provisions of this article, a certificate duly signed by the commissioner showing compliance or noncompliance with the provisions of this article, respecting the security in question or respecting compliance or noncompliance of this article, by any issuer, broker-dealer, investment advisor, or agent, shall constitute prima facie evidence of compliance or noncompliance with the provisions of this article, as the case may be, and shall be admissible in evidence in any action at law or in equity to enforce this article.

(h) Each witness who shall appear before the commissioner or a hearing officer appointed by the commissioner by order shall receive for the witness's attendance the fees and mileage provided for witnesses in civil cases, which shall be audited and paid by the state in the same manner as other expenses of the securities division are audited and paid upon the presentation of proper vouchers sworn to by the witnesses and approved by the commissioner. However, no witnesses subpoenaed at the instance of parties other than the commissioner or a hearing officer appointed by the commissioner shall be entitled to any fee or compensation from the state.

As added by P.L.27-2007, SEC.23. Amended by P.L.126-2012, SEC.40.

IC 23-19-6-3

Violations; injunctions; other remedies

Sec. 3. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this article or a rule adopted or order issued under this article, the commissioner may maintain an action in the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enjoin the act, practice, or course of business and to enforce compliance with this article or a rule adopted or order issued under this article.

(b) In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator;

(B) ordering a receiver or conservator appointed under clause (A) to take charge and control of a respondent's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to ten thousand dollars ($10,000) per violation and an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) The commissioner may not be required to post a bond in an action or proceeding under this article.

(d) Penalties collected under this section shall be deposited in the securities division enforcement account established under section 1 of this chapter.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-4

Violations; investigations; cease and desist orders and other orders; hearings; civil penalties; appeals; civil contempt; certified copy of order

Sec. 4. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this article or a rule adopted or order issued under this article, the commissioner may:

(1) investigate and may issue, with or without a prior hearing, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the legal rate of interest, directed to a person who has violated this article or a rule or order under this article;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under IC 23-19-4-1(b)(1)(D) or IC 23-19-4-1(b)(1)(F) or an investment adviser under IC 23-19-4-3(b)(1)(C); or

(3) issue an order under IC 23-19-2-4.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must

include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within forty-five (45) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered under subsection (b), the hearing must be held not later than fifteen (15) business days after receipt if the original order issued by the commissioner was a summary suspension, summary revocation, or denial of a license and not later than forty-five (45) business days after receipt for all other orders. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may impose a civil penalty up to ten thousand dollars ($10,000) per violation. Penalties collected under this section shall be deposited in the securities division enforcement account established under section 1 of this chapter.

(e) In a final order, the commissioner may charge the cost of an investigation or proceeding for a violation of this article or a rule adopted or order issued under this article.

(f) If a petition for judicial review of a final order is not filed in accordance with section 9 of this chapter, the commissioner may file a certified copy of the final order with the clerk of a court with jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court with jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than twenty thousand dollars ($20,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) The commissioner shall send a certified copy of every final order that suspends or revokes a person's registration under this article, or that orders a person who is not registered under this article

to cease and desist from violating this article, to the insurance commissioner appointed under IC 27-1-1-2. The insurance commissioner shall act in accordance with IC 27-1-15.6-29.5.
As added by P.L.27-2007, SEC.23. Amended by P.L.156-2009, SEC.24.

IC 23-19-6-5
Rules, forms, and orders; financial statements; interpretive opinions and determinations; good faith conduct; public hearings

Sec. 5. (a) The commissioner may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this article and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this article, but those definitions may not be inconsistent with this article; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this article, a rule or form may not be adopted or amended, or an order issued or amended, unless the commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this article.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1938 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), the commissioner may require that a financial statement filed under this article be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this article. A rule adopted or order issued under this article may establish:

(1) subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), the form and content of financial statements required under this article;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) The commissioner may provide interpretative opinions or issue determinations that the commissioner will not institute a proceeding or an action under this article against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this article. The commissioner shall charge a fee of one hundred dollars ($100) for an interpretative opinion or determination.

(e) A penalty under this article may not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith and reasonably believed to be conforming to a rule, form,

or order of the commissioner under this article.

(f) A hearing in an administrative proceeding under this article must be conducted in public unless the commissioner finds a statutory basis that would allow the hearing to be closed to the public.
As added by P.L.27-2007, SEC.23. Amended by P.L.230-2007, SEC.19; P.L.3-2008, SEC.172.

IC 23-19-6-6
Public register of filings; charges

Sec. 6. (a) The commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this article or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this article or the predecessor act; and interpretative opinions or no-action determinations issued under this article.

(b) The commissioner shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The commissioner shall furnish a copy of a record that is a public record, or a certification that the public record does not exist, to a person that so requests. A rule adopted under this article may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the commissioner of a record's nonexistence is prima facie evidence of a record or its nonexistence.
As added by P.L.27-2007, SEC.23.

IC 23-19-6-7
Public records; inspection and copying; confidential records

Sec. 7. (a) Except as otherwise provided in subsection (b), records obtained by the commissioner or filed under this article, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for inspection and copying.

(b) The following records are confidential and are not available for public inspection and copying under subsection (a):

(1) A record obtained by the commissioner in connection with an audit or inspection under IC 23-19-4-11(d) or an investigation under section 2 of this chapter.

(2) A part of a record filed in connection with a registration statement under IC 23-19-3-1 and IC 23-19-3-3 through IC 23-19-3-5 or a record under IC 23-19-4-11(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law and approved by the commissioner.

(3) A record that is not required to be provided to the

commissioner or filed under this article and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure.

(4) Confidential records received from a person specified in section 8(a) of this chapter.

(5) Any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

(6) A record obtained by the commissioner through a designee of the commissioner that a rule or order under this article determines has been:

(A) expunged from the commissioner's records by the designee; or

(B) determined to be confidential by that designee if the commissioner finds the determination to be based on statutory authority.

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 8(a) of this chapter, the commissioner may disclose a record obtained in connection with an audit or inspection under IC 23-19-4-11(d) or a record obtained in connection with an investigation under section 2 of this chapter.

As added by P.L.27-2007, SEC.23. Amended by P.L.230-2007, SEC.20.

IC 23-19-6-8

Uniformity objective; cooperation with agencies; policies

Sec. 8. (a) The commissioner shall, in its discretion, cooperate, coordinate, consult, and, subject to section 7 of this chapter, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, or a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this article, the commissioner shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(1) Maximizing effectiveness of regulation for the protection of investors.

(2) Maximizing uniformity in federal and state regulatory standards.

(3) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) establishing or employing one (1) or more designees as a central depository for registration and notice filings under this article and for records required or allowed to be maintained under this article;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint administrative hearing;

(5) instituting and prosecuting a joint civil or administrative proceeding;

(6) sharing and exchanging personnel;

(7) coordinating registrations under IC 23-19-3 and IC 23-19-4-1 through IC 23-19-4-4 and exemptions under IC 23-19-2-3;

(8) sharing and exchanging records, subject to section 7 of this chapter;

(9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy, and guidelines;

(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, considered necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-9

Appeals from orders; transcripts; trial de novo

Sec. 9. (a) An appeal may be taken by:

(1) any issuer, investment adviser, or registered broker-dealer whose application for registration of an issue of securities may have been granted or denied, from any final order of the commissioner respecting that application or registration;

(2) any applicant for registration as a broker-dealer, investment adviser, or agent of any registered broker-dealer, investment advisor, or agent, from any final order of the commissioner affecting the application or registration as a broker-dealer, investment adviser, or agent;

(3) any person against whom a civil penalty has been imposed under section 3(b) or 4(d) of this chapter, from the final order of the commissioner imposing the civil penalty; or

(4) any person who is named a respondent, from any final order

issued by the commissioner under section 2, 3, or 4 of this chapter;

to the circuit or superior court of Marion County or the county wherein the person taking the appeal resides or maintains a place of business.

(b) Within twenty (20) days after the entry of the order, the commissioner shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and

(3) a bond in the penal sum of five hundred dollars ($500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that shall be adjudged against the appellant.

(c) After the commissioner has been served with the items specified in subsection (b), the commissioner shall within ten (10) days make, certify, and deliver to the appellant the transcript, and the appellant shall within five (5) days file the same and a copy of the notice of appeal with the clerk of the court, which notice of appeal shall stand as appellant's complaint, and the commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter, including the making and entering of any order or orders in connection therewith and the conditions, limitations, or restrictions to be contained. The commissioner is not barred from revoking or altering the order for any proper cause that may thereafter accrue or be discovered. If the order is affirmed, the appellant is not barred after thirty (30) days from filing a new application if the application is not otherwise barred or limited. The appeal shall not in any way suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the court. An appeal may be taken from the judgment of the court on any appeal on the same terms and conditions as an appeal is taken in civil actions. *As added by P.L.27-2007, SEC.23.*

IC 23-19-6-10
Jurisdiction

Sec. 10. (a) IC 23-19-3-1, IC 23-19-3-2, IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not apply to a

person that sells or offers to sell a security unless the offer to sell or the sale is made in Indiana or the offer to purchase or the purchase is made and accepted in Indiana.

(b) IC 23-19-4-1(a), IC 23-19-4-2(a), IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-5-1, IC 23-19-5-6, IC 23-19-5-9, and IC 23-19-5-10 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in Indiana or the offer to sell or the sale is made and accepted in Indiana.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in Indiana, whether or not either party is then present in Indiana, if the offer:

(1) originates from within Indiana;

(2) is directed by the offeror to a place in Indiana and received at the place to which it is directed; or

(3) is directed by the offeror to a resident of Indiana.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in Indiana, whether or not either party is then present in Indiana, if the acceptance:

(1) is communicated to the offeror in Indiana and the offeree reasonably believes the offeror to be present in Indiana and the acceptance is received at the place in Indiana to which it is directed or to another place in Indiana; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in Indiana when a publisher circulates, or there is circulated on the publisher's behalf, in Indiana a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in Indiana, or that is published in Indiana but has had more than two-thirds (2/3) of its circulation outside Indiana during the previous twelve (12) months, or when a radio or television program or other electronic communication originating outside Indiana is received in Indiana. A radio or television program or other electronic communication is considered as having originated in Indiana if either the broadcast studio or the originating source of transmission is located in Indiana, unless:

(1) the program or communication is syndicated and distributed from outside Indiana for redistribution to the general public in Indiana;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside Indiana for redistribution to the general public in Indiana;

(3) the program or communication is an electronic communication that originates outside Indiana and is captured for redistribution to the general public in Indiana by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic

communication that originates in Indiana, but which is not intended for distribution to the general public in Indiana.

(f) IC 23-19-4-3(a), IC 23-19-4-4(a), IC 23-19-4-5(a), IC 23-19-5-2, IC 23-19-5-5, and IC 23-19-5-6 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

As added by P.L.27-2007, SEC.23.

IC 23-19-6-11

Consent to service of process; conduct constituting agent for service of process; procedures; continuances

Sec. 11. (a) An irrevocable consent to service of process required by this article must be signed and filed in the form required by a rule or order under this article. A consent appointing the secretary of state as the person's agent for service of process in an action or proceeding against the person, or the person's successor or personal representative under this article or a rule adopted or order issued under this article after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this article or a rule adopted or order issued under this article and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the secretary of state as the person's agent for service of process in an action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the secretary of state, but it is not effective unless:

(1) the plaintiff, which may be the commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address of the respondent, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the commissioner in a proceeding before the commissioner, allows.

(d) Service under subsection (c) may be used in a proceeding before the commissioner or by the commissioner in a civil action in which the commissioner is the moving party.

(e) If process is served under subsection (c), the court, or the commissioner in a proceeding before the commissioner, shall order

continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.
As added by P.L.27-2007, SEC.23.

IC 23-19-6-12
Repealed
(Repealed by P.L.85-2012, SEC.5.)

IC 23-19-7

Chapter 7. Awards for Reporting Securities Violations

IC 23-19-7-1

"Commissioner"

Sec. 1. As used in this chapter, "commissioner" refers to the securities commissioner appointed by the secretary of state under IC 23-19-6-1(a).

As added by P.L.85-2012, SEC.6.

IC 23-19-7-2

"Division"

Sec. 2. As used in this chapter, "division" refers to the securities division of the office of the secretary of state.

As added by P.L.85-2012, SEC.6.

IC 23-19-7-3

"Fund"

Sec. 3. As used in this chapter, "fund" refers to the securities restitution fund established by IC 23-20-1-25.

As added by P.L.85-2012, SEC.6.

IC 23-19-7-4

"Informant"

Sec. 4. (a) As used in this chapter, "informant" means an individual who provides original information concerning a violation of this article to the division.

(b) The term does not include an individual who is:

(1) a journalist, a reporter, or any other member of the news media if the individual discovers or acquires the original information in the course of investigating or reporting a story, as part of an assignment, or through any other means related to the individual's work for, or in connection with, the news media; or

(2) an employee of the division.

As added by P.L.85-2012, SEC.6.

IC 23-19-7-5

"Monetary sanction"

Sec. 5. As used in this chapter, "monetary sanction" refers to money required to be paid under this article as the result of a judicial or an administrative action, including any penalties imposed or amounts ordered through an order of disgorgement. However, the term does not include any amounts ordered or identified as restitution.

As added by P.L.85-2012, SEC.6. Amended by P.L.71-2014, SEC.4.

IC 23-19-7-6

"Original information"

Sec. 6. As used in this chapter, "original information" means

information that:

(1) is provided to the division by an informant;

(2) is derived from the independent knowledge or analysis of the informant;

(3) is not known to or derived by the informant exclusively from:

(A) an allegation made in a judicial or an administrative proceeding;

(B) a government audit, investigation, hearing, or report; or

(C) a media report or an individual described in section 4(b)(1) of this chapter; and

(4) would not otherwise be known to the division if the informant had not provided the information to the division.

As added by P.L.85-2012, SEC.6.

IC 23-19-7-7

Award to informant for original information leading to succcessful enforcement action; commissioner to determine amount; award to be paid from fund; limit on aggregate amount of awards

Sec. 7. (a) Except as provided in section 9 of this chapter, and subject to subsection (b) and section 8 of this chapter, if:

(1) an informant:

(A) voluntarily provides in writing, and in the form or manner required by the commissioner, original information to the division; and

(B) includes, as part of the writing provided under clause (A), a signed statement indicating that the informant reasonably believes that the act or omission disclosed through the original information provided constitutes a violation of this article; and

(2) the original information provided by the informant leads to the successful enforcement of a judicial or an administrative action under this article;

the commissioner may award an amount, to be determined by the commissioner and paid from the fund, to the informant for the original information provided.

(b) The commissioner may provide an award to one (1) or more informants in any single judicial or administrative proceeding under this article. However, the aggregate amount of the awards in any single judicial or administrative proceeding may not exceed ten percent (10%) of the total monetary sanctions imposed or ordered in the action.

As added by P.L.85-2012, SEC.6.

IC 23-19-7-8

Considerations in determining amount of award

Sec. 8. In determining the amount of an award to be paid under this chapter, the commissioner shall consider:

(1) the significance of the original information provided by the informant to the successful enforcement of the judicial or

administrative action under this article;

(2) the degree of assistance or cooperation provided by the informant in connection with the judicial or administrative proceedings;

(3) the programmatic interest of the commissioner in deterring a violation of this article by making awards to informants who provide original information leading to the successful enforcement of this article; and

(4) any other factors the commissioner considers relevant.

As added by P.L.85-2012, SEC.6.

IC 23-19-7-9

Circumstances when award prohibited

Sec. 9. The commissioner may not provide an award to an informant under this chapter if the informant:

(1) is convicted of a crime in connection with the judicial or administrative proceeding for which the informant provided the original information;

(2) acquired the original information in performing an examination of financial statements required under securities laws or regulations, if the informant's subsequent disclosure of the information acquired constitutes a violation of 15 U.S.C. 78j-1;

(3) fails to provide the original information to the division in the manner prescribed by section 7(a)(1) of this chapter and in accordance with any other requirements prescribed by the commissioner;

(4) knowingly or recklessly makes a false, fictitious, or fraudulent statement or a misrepresentation as part of, or in connection with:

(A) the original information provided; or

(B) the judicial or administrative proceeding for which the original information was provided;

(5) uses, relies on, or provides a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information;

(6) knows that, or has a reckless disregard as to whether, the original information provided is false, fictitious, or fraudulent; or

(7) has a legal duty to provide the original information to the division.

As added by P.L.85-2012, SEC.6.

IC 23-19-7-10

Right or obligation to present evidence to grand jury or share evidence in criminal investigation unaffected

Sec. 10. This chapter does not limit or negate any right or obligation of any individual to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course

of an ongoing criminal investigation.
As added by P.L.85-2012, SEC.6.

IC 23-20

ARTICLE 20. VICTIMS OF SECURITIES VIOLATIONS

IC 23-20-1

Chapter 1. Restitution for Victims of Securities Violations

IC 23-20-1-1

"Claimant"

Sec. 1. (a) As used in this chapter, "claimant" means a victim filing an application for restitution assistance under this chapter.

(b) The term includes:

(1) a named party in an award;

(2) the executor of a named party in an award; or

(3) the heirs and assigns of a named party in an award.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-2

"Division"

Sec. 2. As used in this chapter, "division" refers to the securities division of the office of the secretary of state.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-3

"Fund"

Sec. 3. As used in this chapter, "fund" refers to the securities restitution fund established by section 25 of this chapter.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-4

"Out-of-pocket loss"

Sec. 4. As used in this chapter, "out-of-pocket loss" means an amount equal to the amount of restitution ordered under any of the following:

(1) A final court order.

(2) A final administrative order.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-5

"Person"

Sec. 5. As used in this chapter, "person" includes a sole proprietorship, a partnership, a corporation, an association, a fiduciary, or an individual.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-6

"Securities violation"

Sec. 6. As used in this chapter, "securities violation" means a violation of any of the following:

(1) The Securities Act of 1933, as amended, and any regulations

related to that act.

(2) The Securities Exchange Act of 1934, as amended, and any regulations related to that act.

(3) The Investment Company Act of 1940, as amended, and any regulations related to that act.

(4) The Investment Advisers Act of 1940, as amended, and any regulations related to that act.

(5) The Indiana Uniform Securities Act (IC 23-19) and any rules related to that act.

(6) Other state securities acts and any rules or regulations related to those acts.

As added by P.L.114-2010, SEC.12. Amended by P.L.42-2011, SEC.47.

IC 23-20-1-7
"Victim"

Sec. 7. As used in this chapter, "victim" means an individual who suffers monetary injury as a result of a securities violation.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-8
Duties of division

Sec. 8. The division shall do the following:

(1) Prescribe forms for processing applications for restitution assistance.

(2) Determine whether a claim for restitution assistance filed under this chapter should be awarded.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-9
Order awarding restitution to claimant required

Sec. 9. The division shall require a claimant to produce a copy of:

(1) a court order; or

(2) an administrative order;

that demonstrates that restitution has been awarded to the claimant as described in section 16 of this chapter.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-10
Confidentiality of claimant's personal information

Sec. 10. A claimant's personal information (as defined in IC 9-14-3.5-5) is confidential.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-11
Persons eligible for restitution assistance

Sec. 11. Except as otherwise provided in this chapter, the following persons are eligible for restitution assistance under this chapter:

(1) A resident of Indiana who is a victim of a securities violation

committed:

(A) in Indiana; or

(B) in a jurisdiction other than Indiana, including a foreign country, if the jurisdiction in which the securities violation occurred does not offer to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under this chapter.

(2) A nonresident of Indiana who is a victim of a securities violation committed in Indiana if the jurisdiction in which the victim resides offers to Indiana residents who are victims of securities violations in that jurisdiction assistance that is substantially similar to the assistance offered under this chapter.

(3) A surviving spouse or dependent child of a victim described in subdivision (1) or (2).

(4) Any other person legally dependent for principal support upon a victim described in subdivision (1) or (2).

As added by P.L.114-2010, SEC.12.

IC 23-20-1-12

Application for restitution assistance; filing with division

Sec. 12. (a) A person eligible for restitution assistance under section 11 of this chapter may file an application for restitution assistance with the division.

(b) The application must be received by the division not more than one hundred eighty (180) days after the date of the order described in section 16 of this chapter. The division may grant an extension of time for good cause shown by the claimant. However, the division may not accept an application that is received more than two (2) years after the date of the order described in section 16 of this chapter.

(c) The application must be filed in the office of the division in person, through the division's Internet web site, or by first class or certified mail. If requested, the division shall assist a claimant in preparing the application.

(d) The division shall accept all applications filed in compliance with this chapter. Upon receipt of a complete application, the division shall promptly begin processing the application.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-13

Division's review of applications; request for additional information

Sec. 13. (a) The division shall review all applications to ensure that the applications are complete.

(b) If an application is not complete, the application shall be returned to the claimant with a brief statement of the additional information required.

(c) The claimant may, not more than thirty (30) days after receipt of the request for additional information, either supply the

information or appeal to the securities commissioner as to the completeness of the application.

(d) The decision of the securities commissioner as to the completeness of the application is final.

(e) The division shall deny the application if:

(1) the applicant does not furnish additional information; or

(2) additional time is not granted by the securities commissioner for good cause.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-14

Denial of assistance to victim participating in or profiting from securities violation

Sec. 14. (a) Subject to subsection (b), the division may not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in; or

(B) attempting to commit or committing;

a securities violation; or

(2) profited or would have profited from the securities violation.

(b) If the victim is a dependent child or dependent parent of the person who commits a securities violation, restitution assistance may be awarded if justice requires.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-15

Assistance limited to one claimant per victim

Sec. 15. The division may not award restitution assistance under this chapter to more than one (1) claimant per victim.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-16

Adjudication of violation required; final order; failure of party to pay

Sec. 16. (a) The division may not award restitution assistance under this chapter unless the securities violation was adjudicated in a state or federal court or a regulatory agency administrative proceeding.

(b) The division may not award restitution assistance under this chapter unless:

(1) a final order has been entered ordering restitution to the victim in a proceeding described in subsection (a); and

(2) the party ordered to pay restitution has not paid the full amount.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-17

Denial of assistance; order not containing restitution award

Sec. 17. The division shall deny an award of restitution assistance under this chapter if a court or administrative order does not contain

an award of restitution to the victim.
As added by P.L.114-2010, SEC.12.

IC 23-20-1-18
Restitution award overturned on appeal; denial or forfeiture of assistance

Sec. 18. (a) The division may not award restitution assistance under this chapter on behalf of a victim whose award of restitution under a court or administrative order is overturned on appeal.

(b) If:

(1) restitution assistance is awarded under this chapter; and

(2) after the award of restitution assistance under this chapter, the victim's award of restitution under a court or administrative order is overturned on appeal;

the claimant shall forfeit the restitution assistance received under this chapter.
As added by P.L.114-2010, SEC.12.

IC 23-20-1-19
Subrogation rights of state

Sec. 19. (a) The state is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

(b) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.
As added by P.L.114-2010, SEC.12.

IC 23-20-1-20
State's lien on victim's recovery; deduction of state's share of court expenses

Sec. 20. (a) In addition to the subrogation rights under section 19 of this chapter, the state is entitled to a lien in the amount of the award on a recovery made by or on behalf of the victim.

(b) The state may:

(1) recover the amount under subsection (a) in a separate action; or

(2) intervene in an action brought by or on behalf of the victim.

(c) If a claimant brings an action described in subsection (b)(2), the claimant may deduct from the money owed to the state under the lien the state's pro rata share of the reasonable expenses for the court suit, including attorney's fees. The amount the claimant deducts under this subsection for the state's pro rata share of the expenses may not be more than fifteen percent (15%) of the money owed under the lien.
As added by P.L.114-2010, SEC.12.

IC 23-20-1-21
Recovery by claimant receiving assistance; refund to state of overpayment

Sec. 21. If:

(1) an award is made under this chapter; and

(2) a claimant receives a sum required to be deducted under

section 20(a) of this chapter;

the claimant shall refund to the state the amount of overpayment.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-22

Victim's contribution to monetary injury; consideration in amount of assistance; basis for denial

Sec. 22. (a) In determining the amount of restitution assistance to award under this chapter, the division shall determine whether a victim contributed to the infliction of the victim's monetary injury.

(b) If the division finds that the victim contributed to the infliction of the victim's monetary injury, the division may deny an award of restitution assistance.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-23

Limitations on award

Sec. 23. An award under this chapter may not exceed the lesser of the following:

(1) Fifteen thousand dollars ($15,000).

(2) Twenty-five percent (25%) of the amount of the out-of-pocket loss.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-24

Award not subject to execution, attachment, or garnishment

Sec. 24. An award made by the division under this chapter is not subject to execution, attachment, garnishment, or other process.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-25

Securities restitution fund; establishment; funding sources

Sec. 25. (a) The securities restitution fund is established.

(b) The fund consists of amounts:

(1) from funds received for deposit in the securities division enforcement account as provided in IC 23-19-6-1(f); and

(2) appropriated from the general assembly.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-26

Securities restitution fund; funds continually appropriated; purposes

Sec. 26. The money in the fund is continually appropriated to the division for purposes of:

(1) awarding restitution assistance under this chapter;

(2) paying expenses incurred in administering this chapter; and

(3) making awards to informants under IC 23-19-7.

As added by P.L.114-2010, SEC.12. Amended by P.L.85-2012, SEC.7.

IC 23-20-1-27
Securities restitution fund; funds and income nonreverting

Sec. 27. Money in the fund and income derived from money in the fund do not revert to the state general fund at the end of a state fiscal year.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-28
Securities restitution fund; threshold; suspension of payment of claims; proration of claims after suspension period

Sec. 28. (a) If the fund would be reduced below two hundred fifty thousand dollars ($250,000) by payment in full of all awards that become final in a month, the division shall suspend payment of the claims that become final during the month and the following two (2) months.

(b) At the end of the suspension period, the division shall pay the suspended claims. If the fund would be exhausted by payment in full of the suspended claims, the amount paid to each claimant shall be prorated.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-29
State's liability for award; limited to availability of money in fund

Sec. 29. The state is not liable for a written determination made by the division under this chapter except to the extent that money is available in the fund on the date the award is computed by the division under this chapter.

As added by P.L.114-2010, SEC.12.

IC 23-20-1-30
Claimant convicted of forgery, fraud, or deception; forfeiture of award; civil action by division to recover funds

Sec. 30. (a) A claimant convicted of forgery, fraud, or deception in connection with a claim under this chapter forfeits an award paid to the claimant under this chapter.

(b) The division may file a civil action to recover funds against a claimant described in subsection (a).

As added by P.L.114-2010, SEC.12.

IC 23-20-1-31
False or misleading statements; Level 5 felony

Sec. 31. A person commits a Level 5 felony if the person knowingly makes or causes to be made:

(1) in any document filed with or sent to the securities commissioner or the division; or

(2) in any proceeding, investigation, or examination;

under this chapter any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

As added by P.L.114-2010, SEC.12. Amended by P.L.158-2013,

SEC.268.

IC 23-20-1-32
Division's authority to adopt rules

Sec. 32. The division may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.114-2010, SEC.12.