

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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.149-1986, SEC.65.)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Repealed

(Repealed by P.L.239-1983, SEC.3.)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Repealed

(Repealed by P.L.239-1983, SEC.3.)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Repealed

(Repealed by P.L.239-1983, SEC.3.)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Repealed

(Repealed by P.L.239-1983, SEC.3.)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Repealed

(Repealed by P.L.131-1984, SEC.1.)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to all domestic corporations in existence on July 31, 1987, that were incorporated under IC 23-1-1 through IC 23-1-12 (repealed August 1, 1987) or any other prior law.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 its 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.