

IC 28-13-10

Chapter 10. Meetings and Action of Board of Directors

IC 28-13-10-1

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

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

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

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

IC 28-13-10-2

Action taken without meeting; signed consent; effect

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

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

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

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

IC 28-13-10-3

Notice of meetings

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

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

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

IC 28-13-10-4

Waiver of required notice; attendance or participation in meeting

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

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

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

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

IC 28-13-10-5

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

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

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

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

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

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

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

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

IC 28-13-10-6

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

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

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

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

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

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

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

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

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

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

IC 28-13-10-7

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

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

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

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

(3) The number of meetings attended.

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

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

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

IC 28-13-10-8

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

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

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

IC 28-13-10-9

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

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

(1) any condition or occurrence that:

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

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

(2) any condition or occurrence that:

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

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

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

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

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

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

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

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

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

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

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

IC 28-13-10-10

Commission of crime

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

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

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

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

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

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

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

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

IC 28-13-10-11

Records retention

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

(b) A corporation shall permanently retain:

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

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

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

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

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

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