

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

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

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

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

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

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

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

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

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

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

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

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

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

##### **Proposal authorized**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

##### **Vote required**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If an appraisal is obtained:

(A) the corporation shall disclose to its shareholders:

(i) that an appraisal has been obtained; and

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

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

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

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

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

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

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

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

(1) its board of directors; or

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

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

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

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

**Articles of amendment; contents**

Sec. 10. A corporation amending its articles of incorporation shall prepare articles of amendment setting forth the following:

- (1) The name of the corporation.
- (2) The text of each amendment adopted.
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.
- (4) The date of each amendment's adoption.
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.
- (6) If an amendment was approved by the shareholders:
  - (A) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group represented at the meeting; and
  - (B) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

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

**IC 28-13-14-11**

**Articles of amendment; form**

Sec. 11. The form of the articles of amendment shall be prescribed and furnished by the department.

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

**IC 28-13-14-12**

**Articles of amendment; preparation and signature; presentation for approval or disapproval and filing**

Sec. 12. (a) The articles of amendment shall be prepared and signed in triplicate by:

- (1) an officer of the corporation;
- (2) if the corporation has not yet issued shares, by a director of the corporation; or
- (3) if the board of directors has not been selected, by the incorporator;

and shall be presented in triplicate to the department at its office for the approval or disapproval of the director.

(b) When the articles of amendment have been approved by the director, the articles shall be presented to the secretary of state for filing.

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

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

**Change of corporate name; record of articles of amendment**

Sec. 13. If a corporation amends its articles of incorporation to change its corporate name, the corporation may, after the amendment has become effective, file for record with the county recorder of each county in Indiana in which the corporation has real property at the time the amendment becomes effective a file-stamped copy of the articles of amendment. The validity of a change in name is not affected by a corporation's failure to record the articles of amendment.

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

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

##### **Restatement of articles; inclusion of amendment; shareholder notification; articles of restatement; changes not constituting amendment**

Sec. 14. (a) A corporation's board of directors or, if the board of directors has not been selected, the incorporators may restate the corporation's articles of incorporation at any time with or without shareholder action.

(b) The restatement may include at least one (1) amendment to the articles. If the restatement includes an amendment requiring shareholder approval, the amendment must be adopted as provided in sections 3 through 7 of this chapter.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 28-13-5-8. The notice must also do the following:

- (1) State that the purpose or one (1) of the purposes of the meeting is to consider the proposed restatement.
- (2) Contain or be accompanied by a copy of the restatement that identifies any amendment or other change the corporation would make in the articles.

(d) A corporation restating the corporation's articles of incorporation shall prepare articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

- (1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if the restatement does not, that the board of directors adopted the restatement; or
- (2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 10 of this chapter.

Notwithstanding IC 28-12-2-1(4), the corporation is not required to include in the articles of restatement the name and address of each incorporator.

(e) The following do not constitute an amendment to a corporation's articles of incorporation:

- (1) A reordering or renumbering of the articles or sections of the articles.
- (2) The correction of grammatical or spelling errors.

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

*SEC.27 and P.L.134-2001, SEC.29; P.L.141-2005, SEC.26.*

#### **IC 28-13-14-15**

##### **Articles of restatement; form**

Sec. 15. (a) The form of articles of restatement shall be prescribed and furnished by the department.

(b) Articles of restatement shall be prepared and signed in triplicate by:

- (1) an officer of the corporation;
- (2) if the corporation has not yet issued shares, by a director of the corporation; or
- (3) if the board of directors has not been selected, by the incorporator;

and shall be presented in triplicate to the department at the department's office, for the approval or disapproval of the director.

(c) When the articles of restatement have been approved by the director, the articles shall be presented to the secretary of state for filing.

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

#### **IC 28-13-14-16**

##### **Adopted restated articles; superseding original articles and amendments**

Sec. 16. Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

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

#### **IC 28-13-14-17**

##### **Restated articles of incorporation; certification**

Sec. 17. The department and the secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by section 14(d) of this chapter.

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

#### **IC 28-13-14-18**

##### **Effect of amendment on existing rights, causes of action, and proceedings**

Sec. 18. (a) An amendment to articles of incorporation does not affect the following:

- (1) A cause of action existing against or in favor of the corporation.
- (2) A proceeding to which the corporation is a party.
- (3) The preexisting rights of persons other than shareholders of the corporation.

(b) An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

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