

## **IC 28-13-11**

### **Chapter 11. Standards of Conduct for Directors**

#### **IC 28-13-11-1**

##### **Discharge of duties; good faith; ordinary prudence; best interests of corporation**

Sec. 1. A director shall, based on facts then known to the director, discharge the duties of 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.

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

#### **IC 28-13-11-2**

##### **Right to rely on data and other information; financial statements and data**

Sec. 2. 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) at least one (1) officer or employee 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.

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

#### **IC 28-13-11-3**

##### **Bad faith; knowledge making reliance on information unwarranted**

Sec. 3. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by section 2 of this chapter unwarranted.

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

#### **IC 28-13-11-4**

##### **Best interests of corporation; factors considered**

Sec. 4. 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 the communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent.

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

#### **IC 28-13-11-5**

##### **Exemption from personal liability; inapplicability in departmental proceedings**

Sec. 5. (a) A director is not liable for any action taken as a director, or any failure to take any action, unless:

- (1) the director has breached or failed to perform the duties of the director's office under sections 1 through 4 of this chapter; and
- (2) the breach or failure to perform constitutes willful misconduct or recklessness.

(b) The exemption from liability provided by this section does not apply to any proceeding brought by the department against a director.

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

#### **IC 28-13-11-6**

##### **Legislative intent; business judgment and discretion of directors; corporate takeovers**

Sec. 6. (a) 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 consider appropriate the effects of the action on the corporation's constituents, that the action is not in the best interests of the corporation.

(b) In making a determination under this section, 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 this section, directors are not required to redeem any rights under or to make inapplicable a shareholder rights plan adopted under IC 28-13-2-5, 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 the acquisition.

(c) Certain judicial decisions in Delaware and other jurisdictions, which might otherwise be looked to for guidance in interpreting the duties of directors of corporations, 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 section 4 of this

chapter as they consider appropriate; and  
(2) to protect both directors and the validity of corporate action taken by the directors in the good faith exercise of their business judgment after reasonable investigation.

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

#### **IC 28-13-11-7**

##### **Additional considerations affecting board actions or recommendations; approval of majority of disinterested directors; conclusive presumption of validity**

Sec. 7. (a) 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 of a corporation may, in the board's discretion, consider both the short term and long term best interests of the corporation.

(b) The board of directors shall take into account, and weigh as the directors consider appropriate, the effects of the action or recommendation on the corporation's shareholders and the other corporate constituent groups and interests listed or described in section 4 of this chapter, as well as any other factors considered pertinent by the directors under section 4 of this chapter.

(c) If a determination is made under this section with the approval of a majority of the disinterested directors of the board of the directors, that determination shall conclusively be presumed to be valid unless, after reasonable investigation, it can be demonstrated that the determination was not made in good faith.

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

#### **IC 28-13-11-8**

##### **Disinterested persons; director or shareholder of corporation**

Sec. 8. (a) For the purposes of section 7 of this chapter, a director is disinterested if:

(1) the director does not have a conflict of interest, within the meaning of section 9(a) of this chapter, in connection with the action or recommendation in question;

(2) in connection with matters described in IC 28-13-8 the director is disinterested (as defined in IC 28-13-8-4(d)); and

(3) in connection with any matter involving or otherwise affecting a transaction under IC 28-1-7, IC 28-1-8, or IC 28-3-2 that would result in a change of the person or persons that have control (as defined in IC 28-2-14-6) over the corporation if the director is not an employee of the corporation or an affiliate or associate of or was not nominated or designated as a director by a person proposing the transaction.

(b) 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.14-1992, SEC.163.*

#### **IC 28-13-11-9**

##### **Conflict of interest transactions; direct or indirect interest of**

**director; nonvoidability by corporation; voting for authorization, approval, or ratification**

Sec. 9. (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. Unless otherwise provided under federal or state laws, regulations, or rules, 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 subsection (a), 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, an officer, or a 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 the transaction 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.14-1992, SEC.163.*

**IC 28-13-11-10**

**Unlawful distribution; liability of director; right to contribution**

Sec. 10. (a) Subject to section 5 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 5 of this chapter; and
- (2) from each shareholder for the amount the shareholder accepted.

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