

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

### **Chapter 9. Board of Directors Generally**

#### **IC 28-13-9-1**

##### **Necessity of board; powers**

Sec. 1. (a) 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, the corporation's board of directors, subject to any limitation set forth in the articles of incorporation.

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

#### **IC 28-13-9-2**

##### **Qualifications of directors; articles and bylaws prescribing; waiver of citizenship requirement**

Sec. 2. (a) Except as provided in subsection (c), every director must, during the director's whole term of service, be a citizen of the United States. A director must be at least eighteen (18) years of age. At least one-half (1/2) of the directors must reside in Indiana or within a distance of not to exceed fifty (50) miles of any office of the corporation of which the director is a director.

(b) The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(c) The director of the department may waive the United States citizenship requirement set forth in subsection (a) for a particular corporation if the waiver would affect only a minority of the total number of directors of the corporation.

*As added by P.L.14-1992, SEC.163. Amended by P.L.192-2003, SEC.7; P.L.213-2007, SEC.104; P.L.217-2007, SEC.102.*

#### **IC 28-13-9-3**

##### **Size of board; articles and bylaws; annual election of directors**

Sec. 3. (a) A board of directors must consist of at least three (3) individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws. The articles of incorporation or bylaws may provide that the number of directors may be determined by resolution of the board of directors.

(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. However, the minimum must be at least three (3) 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, in the bylaws or by resolution of the board of directors.

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

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

#### **IC 28-13-9-4**

##### **Election of directors; voting groups; classes of shares**

Sec. 4. (a) 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 at least one (1) authorized class of shares.

(b) Each class of shares entitled to elect at least one (1) director is a separate voting group for purposes of the election of directors.  
*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-9-5**

##### **Terms of office; vacancies; continuation until qualification of successor**

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

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless the directors' terms are staggered under section 6 of this chapter.

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

#### **IC 28-13-9-6**

##### **Staggering terms; groups of directors; expiration of terms**

Sec. 6. (a) The articles of incorporation or, if the articles of incorporation so authorize, the bylaws may provide for staggering the board of directors' 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) three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) If terms are staggered under subsection (a):

(1) the terms of directors in the first group expire at the first annual shareholders' meeting after the directors' election;

(2) the terms of the second group expire at the second annual shareholders' meeting after the directors' election; and

(3) the terms of the third group, if any, expire at the third annual shareholders' meeting after the directors' election.

At each annual shareholders' meeting held after the meetings specified in this subsection, 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.

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

### **IC 28-13-9-7**

#### **Resignation; notice; effective date**

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 a later effective date.

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

### **IC 28-13-9-8**

#### **Removal from office; meeting; notice**

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 for cause or, unless the articles of incorporation provide otherwise, without cause.

(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) 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 the shareholders are otherwise authorized to do so, only at a meeting called for the purpose of removing the director. 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.14-1992, SEC.163.*

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

#### **Vacancies; filling known future vacancies; temporary appointment by director of department**

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, the directors 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. However, the new director may not take office until the vacancy

occurs.

(d) If a vacancy is not filled through a corporation's normal process for filling vacancies within a time considered reasonable by the department, the director of the department may make a temporary appointment to the board of directors to fill the vacancy. The director of the department shall appoint a person whom the director considers capable of providing competent leadership and decision making ability. A person appointed to a board of directors under this subsection shall serve on the board until the corporation fills the position through the corporation's normal process for filling vacancies on the board. However, a person appointed to a board of directors by the director of the department under this subsection may not serve on the board for more than two (2) years, unless the person is selected to fill the vacancy through the corporation's normal process for filling vacancies. For purposes of this subsection, in determining whether a corporation has had a reasonable period in which to fill a vacancy, the department shall consider the following:

- (1) The financial condition of the corporation.
- (2) The number of remaining board members.
- (3) The likelihood the board of directors will be able to establish a quorum for the transaction of business.
- (4) The potential harm to the corporation that could result without an appointment under this subsection.

*As added by P.L.14-1992, SEC.163. Amended by P.L.141-2005, SEC.25.*

#### **IC 28-13-9-10**

##### **Compensation; fixing**

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.14-1992, SEC.163.*