

### IC 28-13-3

#### **Chapter 3. Preemptive Rights—Reacquisition and Reissue of Shares**

##### IC 28-13-3-1

##### **Unissued shares; acquisition rights subject to articles of incorporation**

Sec. 1. 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.

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

##### IC 28-13-3-2

##### **Security convertible into or carrying right to subscribe for or acquire shares; election to have preemptive rights; applicable principles**

Sec. 2. (a) For purposes of sections 1 and 2 of this chapter, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or similar words) 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 the shares.
- (2) A shareholder may waive the preemptive right. A waiver evidenced by a writing is irrevocable even though the waiver is not supported by consideration.
- (3) There is no preemptive right with respect to any of the following:
  - (A) Shares issued as compensation to directors, officers, agents, or employees of the corporation, the corporation's subsidiaries, or the corporation's affiliates.
  - (B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, the corporation's subsidiaries, or the corporation's affiliates.
  - (C) Shares authorized in the articles of incorporation that are issued within six (6) months from the effective date of incorporation.
  - (D) Shares sold otherwise than for money or promissory notes.
- (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 the 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 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.

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

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

#### **Acquisition of own shares by corporation; reduction of authorized shares; contents of articles; treasury shares; unlawful reduction of shares producing insolvency**

Sec. 3. (a) A corporation may acquire its own shares pursuant to an adopted resolution that is submitted to and approved by the director prior to such acquisition of 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 board resolution or 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 subsections (b) and (f):

(1) may be adopted by the board of directors without shareholder action;

(2) shall be delivered to the director of the department for approval or disapproval; and

(3) if approved by the director of the department, shall be delivered to the secretary of state for filing by the director of the department.

(d) The articles filed with the secretary of state must state the following:

(1) The name of the corporation.

(2) The reduction in the number of authorized shares, itemized by class and series.

(3) The action resulting in the reduction and a copy of the board resolution authorizing the action.

(4) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(e) A corporation has authority to use, hold, acquire, cancel, and dispose of treasury shares.

(f) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, as provided in subsection (c), treasury shares of the

corporation that are canceled shall be treated as authorized but unissued shares. Such shares may be canceled by the adoption of a board resolution stating that the shares are to be canceled. The resolution shall be submitted to and approved by the director.

(g) A reduction of the issued and outstanding shares of capital stock of a corporation that renders the corporation insolvent is not lawful.

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