

## IC 23-1-27

### Chapter 27. Subsequent Acquisition of Shares by Shareholders and Corporation

#### IC 23-1-27-1

##### Preemptive rights

Sec. 1. (a) 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.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or words of similar import) 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 them.

(2) A shareholder may waive the preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(A) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(B) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(C) shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation; or

(D) shares sold otherwise than for money.

(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 any 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 a period of 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.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. *As added by P.L.149-1986, SEC.11.*

#### **IC 23-1-27-2**

##### **Corporation acquiring its own shares**

Sec. 2. (a) A corporation may acquire its own 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 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 subsection (b) may be adopted by the board of directors without shareholder action, shall be delivered to the secretary of state for filing, and shall set forth:

- (1) the name of the corporation;
- (2) the reduction in the number of authorized shares, itemized by class and series; and
- (3) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(d) A corporation has authority to use, hold, acquire, cancel, and dispose of treasury shares (as defined in prior law).

(e) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, treasury shares of the corporation that are cancelled shall be treated as authorized but unissued shares.

*As added by P.L.149-1986, SEC.11. Amended by P.L.107-1987, SEC.6.*