

## IC 27-1-7

### Chapter 7. General Corporate Powers and Responsibilities of Insurance Companies

#### IC 27-1-7-1

##### **"Corporation" defined**

Sec. 1. The term "corporation", as used in this chapter and IC 27-1-8, means any company organized or reorganized under the provisions of this article and any company organized or reorganized under the provisions of any statute of this state enacted prior to March 8, 1935.

*(Formerly: Acts 1935, c.162, s.79.) As amended by P.L.252-1985, SEC.25.*

#### IC 27-1-7-2

##### **Capacity and authority to act; general rights, privileges, and powers; excluded powers**

Sec. 2. (a) Every corporation has the capacity to act that is possessed by natural persons, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

(b) Subject to any limitations or restrictions imposed by law or the articles of incorporation, each corporation has the following general rights, privileges, and powers:

- (1) To continue as a corporation, under its corporate name, for the period set forth in its articles of incorporation.
- (2) To sue and be sued in its corporate name.
- (3) To have a corporate seal and to alter the same at pleasure.
- (4) To acquire, own, hold, lease, mortgage, pledge, convey, or otherwise dispose of property, real and personal, tangible and intangible.
- (5) To acquire, subscribe for, own, hold, vote, mortgage, lend, pledge, convey, or otherwise dispose of, and to guarantee or otherwise deal in and with, shares or other interests in, or obligations of, any entity, including itself, except as otherwise prohibited or limited by this article.
- (6) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.
- (7) To borrow money, and to issue its notes or debentures to evidence such borrowings, but any debentures so issued shall be subordinate to the rights of policyholders, members, or creditors of such corporations.
- (8) To conduct business in this state and elsewhere; to have one (1) or more offices out of this state; to acquire, own, hold and use, and to lease, mortgage, pledge, sell, convey, or otherwise dispose of property, real and personal, tangible and intangible, out of this state.
- (9) To appoint such officers and agents as the business of the

corporation may require, and to define their duties and fix their compensation.

(10) To lend money, invest and reinvest its funds, and receive and hold real estate and personal property as security for repayment, except as otherwise limited in this title.

(11) To pay pensions and establish and administer pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, welfare plans, qualified and nonqualified retirement plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

(12) To make donations for the public welfare or for charitable, scientific, or education purposes.

(13) To make bylaws for the government and regulation of its affairs.

(14) To cease doing business and to dissolve and surrender its corporate franchise and authority and license to transact an insurance business in this state.

(15) To do all acts and things necessary, convenient, or expedient to carry out the purposes for which it is formed.

(16) To become a member of any federal home loan bank; to purchase stock therein, to borrow money or obtain advances from any such bank and to transfer, assign, and pledge property to or with such bank as security for the payment of such loans or advances, to do and perform all acts required of members of a federal home loan bank, and to possess and exercise all rights, powers, and privileges conferred upon such members under the provisions of the act of Congress entitled Federal Home Loan Bank Act.

(c) No corporation shall, by any implication or construction, be deemed to possess the power of carrying on the business of receiving deposits of money, bullion, or foreign coins, or receiving deposits of securities or other personal property from any person or corporation or acting as a safe deposit company, or of issuing bills, notes, or other evidences of debt for circulation as money.

(d) A corporation that is a stock company may establish one (1) or more procedures by which it regulates transactions that would, when consummated, result in a change of control of such corporation.

(e) For purposes of this section "control" means:

(1) for any corporation having one hundred (100) or more shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than ten percent (10%) of the voting shares of a corporation's outstanding voting shares; or

(2) for any corporation having fewer than one hundred (100) shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than fifty percent (50%) of the voting shares of the corporation's outstanding voting

shares.

- (f) A procedure established under this section may be adopted:
- (1) in a corporation's original articles of incorporation or bylaws;
  - (2) by amending the articles of incorporation; or
  - (3) notwithstanding that a vote of the shareholders would otherwise be required by any other provision of this article or the articles of incorporation for the adoption or implementation of all or any portion of the procedure, by amending the bylaws.

*(Formerly: Acts 1935, c.162, s.80; Acts 1939, c.63, s.1; Acts 1973, P.L.271, SEC.1.) As amended by P.L.266-1987, SEC.1.*

### **IC 27-1-7-3**

#### **Principal office; change of location**

Sec. 3. Each corporation shall maintain an office or place of business in this state, to be known as the "Principal Office." The post-office address of the principal office shall be stated in the original articles of incorporation at the time of incorporating. Thereafter, the location of the principal office, may be changed at any time or from time to time when authorized by the board of directors by:

- (1) filing with the department and secretary of state, on or before the day any change is to take effect, a certificate signed by the president or a vice-president and the secretary or an assistant secretary of the corporation, and verified under oath, stating the change to be made and reciting that such change is made pursuant to authorization by the board of directors; and
- (2) notifying each policyholder of the address and telephone number of the new location.

*(Formerly: Acts 1935, c.162, s.81.) As amended by P.L.94-1999, SEC.1.*

### **IC 27-1-7-4**

#### **Shares of stock; classes; sale for less than par; shareholders' liability; preemptive rights**

Sec. 4. (a) Every stock company organized under this article shall have the right, when authorized by its articles of incorporation, to issue one (1) or more classes or kinds of shares of capital stock, any or all of which classes or kinds may consist of shares with par value or shares without par value, with full, limited, or no voting powers as provided in the articles of incorporation and with such designations, and such relative rights, preferences, qualifications, limitations, or restrictions as shall be stated and expressed in the articles of incorporation.

(b) No stock company organized under this article shall issue or sell any of its shares of stock having a par value for less than the par value thereof.

(c) The shareholders of any stock company organized under this

article shall be liable for the debts of such stock company only to the extent of any unpaid portion of their subscriptions for shares of such company or any unpaid portion of the consideration for the issuance to them of shares of such stock company.

(d) The shareholders of such stock company shall not have preemptive rights to subscribe to any additional issues of shares of the capital stock of such company, except to the extent, if any, that such rights shall be fixed and prescribed in the articles of incorporation, or in a bylaw adopted by the board of directors of such stock company.

*(Formerly: Acts 1935, c.162, s.82; Acts 1969, c.164, s.3.) As amended by P.L.252-1985, SEC.26.*

#### **IC 27-1-7-5**

##### **Stock certificate; contents; transferability**

Sec. 5. In the case of a stock company, every shareholder shall be entitled to a certificate, or other evidence of stock ownership, signed by the president or a vice president and by the secretary or an assistant secretary, which shall state the name of the registered holder, the number of shares represented thereby and the par value of each share. Where such certificate is also signed by a transfer agent or registrar, or both, the signatures of any such president, vice president, secretary or assistant secretary may be facsimiled. The shares represented thereby shall be transferable on the books of the company in such manner and under such regulations, not inconsistent with the laws of this state relating to the transfer of shares of stock in corporations, as may be provided in the by-laws. If such company is authorized to issue shares of more than one (1) class, every certificate shall state the kind and class of shares represented thereby, and the relative rights, interests, preferences and restrictions of such class, or a summary thereof.

*(Formerly: Acts 1935, c.162, s.83; Acts 1963, c.144, s.1.)*

#### **IC 27-1-7-6**

##### **Bylaws**

Sec. 6. Unless otherwise provided in the articles of incorporation, the power to make, alter, amend or repeal the bylaws of a company is hereby vested in the board of directors. The bylaws so adopted may contain any provision for the regulations and management of the affairs of the corporation which is not inconsistent with this article or of any law of this state or with the articles of incorporation and may include provisions concerning:

- (a) the time and place of holding, and the manner of conducting meetings of the shareholders, members, or policyholders, and of directors;
- (b) the manner of calling special meetings of shareholders, members, or policyholders and directors;
- (c) the powers, duties, tenure, and qualifications of the officers

of the corporation and the time, place, and manner of electing them;

(d) the creation and appointment of executive or other committees and the number of members thereof and prescribing their powers;

(e) the classification of its risks and of its members, the payment of dividends and the creation of a surplus fund or funds, if other than a stock company; and

(f) the form of stock certificates or other evidences of stock ownership and the manner of transferring shares of capital stock if a stock company, and the manner of creating and exercising proxies.

*(Formerly: Acts 1935, c.162, s.84.) As amended by P.L.252-1985, SEC.27.*

#### **IC 27-1-7-7**

#### **Meetings of shareholders, members, or policyholders; location; annual meeting; special meetings; notice; quorum; actions taken without meeting**

Sec. 7. (a) All meetings of shareholders, members, or policyholders shall be held within this state and at the principal office of the corporation, unless otherwise provided in the articles of incorporation.

(b) An annual meeting of shareholders, members, or policyholders shall be held within five (5) months after the close of each fiscal year of the corporation and at such time within that period as the bylaws may provide. The failure to hold the annual meeting at the designated time shall not work any forfeiture or a dissolution of the corporation. The time and place of such annual meeting of a mutual company may be stated in the policies thereof or notice of such meeting shall be given as provided in subsection (d).

(c) Special meetings of the shareholders, members, or policyholders may be called by the president, by the board of directors, by shareholders, members, or policyholders holding not less than one-fourth (1/4) of all of the shares or policies outstanding and entitled by the articles of incorporation to vote on the business proposed to be transacted thereat, or by such other officers or persons as the bylaws may provide.

(d) A written or printed notice stating the place, day, and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the secretary, or by the officers or persons calling the meeting, to each shareholder, member, or policyholder of record, entitled by the articles of incorporation and by this article to vote at such meeting, at such address as appears upon the records of the corporation, at least thirty (30) days before the date of the meeting. Notice of any meeting of the shareholders, members, or policyholders may be waived in writing by any shareholder, member, or policyholder if the

waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

(e) Unless otherwise provided in the articles of incorporation or by the provisions of this article or the bylaws, at any meeting of the shareholders, members, or policyholders, a majority of the shares of the outstanding capital stock entitled by the articles of incorporation to vote at such meeting or in the case of a company other than a stock company, not less than ten percent (10%) of the policyholders or members entitled to vote at such meeting, represented in person or by proxy, shall constitute a quorum.

(f) Unless otherwise provided in the articles of incorporation or bylaws, action to be taken at a meeting of shareholders, members, or policyholders may be taken without a meeting if the action is taken by all the shareholders, members, or policyholders entitled to vote on the action. The action must be evidenced by one (1) or more written consents that:

- (1) describe the action taken;
- (2) are signed by all the shareholders, members, or policyholders entitled to vote on the action; and
- (3) are delivered to the corporation for inclusion in the minutes or for filing with the corporate records.

(g) The record date for determining shareholders, members, or policyholders entitled to take action without a meeting is the date the first shareholder, member, or policyholder signs the consent under subsection (f).

(h) Action taken under subsection (f) is effective when the last shareholder, member, or policyholder signs the consent, unless the consent specifies a different prior or subsequent effective date.

(i) A consent signed under subsection (f) has the effect of a meeting vote and may be described as a meeting vote in any document.

*(Formerly: Acts 1935, c.162, s.85; Acts 1965, c.6, s.1.) As amended by P.L.252-1985, SEC.28; P.L.185-1997, SEC.1.*

#### **IC 27-1-7-8**

#### **Voting rights of shareholders; shares that cannot be voted; voting by particular shareholders; proxy votes**

Sec. 8. (a) Except as otherwise provided in the articles of incorporation or in this section, every shareholder in a stock insurance company shall have the right, at every shareholders' meeting, to one (1) vote for each share of stock standing in his name on the books of the corporation. No share shall be voted at any meeting:

- (1) which shall have been transferred on the books of the corporation within such number of days, not exceeding fifty (50), next preceding the date of such meeting as the board of

directors shall determine, or, in the absence of such determination, within ten (10) days next preceding the date of such meeting; or

(2) which belongs to the corporation that issued it.

(b) Shares standing in the name of a corporation, other than the issuing corporation, may be voted by such officer, agent or proxy as the board of directors of such corporation may appoint or as the by-laws of such corporation may prescribe.

(c) Shares held by fiduciaries may be voted by the fiduciaries in such manner as the instrument or order appointing such fiduciaries may direct. In the absence of such direction, or the inability of the fiduciaries to act in accordance therewith, the following provisions shall apply:

(1) Where shares are held jointly by three (3) or more fiduciaries, such shares shall be voted in accordance with the will of the majority.

(2) Where the fiduciaries, or a majority of them, can not agree, or where they are equally divided upon the question of voting such shares, any court having general equity jurisdiction may, upon petition filed by any of such fiduciaries, or by any party in interest, direct the voting of such shares as it may deem to be for the best interest of the beneficiaries, and such shares shall be voted in accordance with such direction.

(d) Unless otherwise provided in the agreement of pledge, or in the by-laws of the corporation, shares that are pledged may be voted by the shareholder pledging such shares until the shares shall have been transferred to the pledgee on the books of the corporation, and thereafter such shares may be voted by the pledgee.

(e) Shares issued and held in the names of two (2) or more persons shall be voted in accordance with the will of the majority, and if a majority of them can not agree, or if they are equally divided as to the voting of such shares, the shares shall be divided equally between or among such persons for voting purposes.

(f) A shareholder, including any fiduciary, may vote either in person or by proxy executed in writing by the shareholder or a duly authorized attorney in fact. Unless a longer time is expressly provided therein, no proxy shall be valid after eleven (11) months from the date of its execution.

*(Formerly: Acts 1935, c.162, s.86.) As amended by Acts 1981, P.L.234, SEC.1.*

#### **IC 27-1-7-9**

##### **Voting rights of policyholders and members; proxy votes**

Sec. 9. Except as otherwise provided in the articles of incorporation every policyholder or member, in all companies other than stock companies, shall have the right to one (1) vote at every policyholders' or members' meeting, regardless of the number of policies or amount of insurance he may have with such company.

Any policyholder or member may vote either in person or by proxy executed in writing by the policyholder or by a duly authorized attorney in fact. Unless a longer time is expressly provided therein, no proxy hereafter given shall be valid after eleven (11) months from the date of its execution.

*(Formerly: Acts 1935, c.162, s.87.)*

#### **IC 27-1-7-9.5**

##### **Shareholders' derivative proceedings; procedure**

Sec. 9.5. (a) As used in this section, "shareholder" includes:

- (1) with respect to a stock company formed under this article, a shareholder or a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf; and
- (2) with respect to a mutual company formed under this article, a member or policyholder.

(b) A person may not commence a proceeding in the right of a corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding may not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.

(c) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors, and either that the demand was refused or ignored or why the shareholder did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint (including an investigation commenced under subsection (e)), the court may stay any proceeding until the investigation is completed.

(d) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected. On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses (including attorney's fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(e) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of three (3) or more disinterested directors or other disinterested persons to determine:

- (1) whether the corporation has a legal or equitable right or remedy; and
- (2) whether it is in the best interests of the corporation to pursue that right or remedy, if any, or to dismiss a proceeding that



seeks to assert that right or remedy on behalf of the corporation.

(f) In making a determination under subsection (e), the committee is not subject to the direction or control of or termination by the board. A vacancy on the committee may be filled by the majority of the remaining members by selection of another disinterested director or other disinterested person.

(g) If the committee determines that pursuit of a right or remedy through a derivative proceeding or otherwise is not in the best interests of the corporation, the merits of that determination shall be presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to such right or remedy, unless such shareholder can demonstrate that:

- (1) the committee was not disinterested, as described in subsection (h); or
- (2) the committee's determination was not made after an investigation conducted in good faith.

(h) For purposes of this section, a director or other person is disinterested if the director or other person:

- (1) has not been made a party to a derivative proceeding seeking to assert the right or remedy in question, or has been made a party but only on the basis of a frivolous or insubstantial claim or for the sole purpose of seeking to disqualify the director or other person from serving on the committee;
- (2) is able under the circumstances to render a determination in the best interests of the corporation; and
- (3) is not an officer, employee, or agent of the corporation or of a related corporation. However, an officer, employee, or agent of the corporation or a related corporation who meets the standards of subdivisions (1) through (2) shall be considered disinterested in any case in which the right or remedy under scrutiny is not assertable against a director or officer of the corporation or the related corporation.

*As added by P.L.266-1987, SEC.2.*

#### **IC 27-1-7-10**

##### **Board of directors; general provisions; management of business; executive committee; removal of directors**

Sec. 10. (a) The business of every corporation shall be managed by a board of directors, composed of not less than five (5) nor more than the maximum number fixed in the articles of incorporation. The exact number of directors to serve for each year shall be determined from time to time, in such manner as the bylaws prescribe.

(b) The first board of directors shall be elected by the incorporators and shall hold office until the first annual meeting of the shareholders, members or policyholders. At the first annual meeting of the shareholders, members or policyholders, and at each annual meeting thereafter, directors shall be elected by the shareholders, members or policyholders for the term or terms

hereinafter prescribed.

(c) The articles of incorporation or the bylaws may provide that the directors may be divided into two (2) or more classes whose terms of office expire at different times, but no term shall continue longer than six (6) years. In the absence of such provision, each director, except members of the first board of directors, shall be elected for a term of one (1) year and shall hold office until the director's successor is elected and has qualified.

(d) Any vacancy which may occur in the membership of the board of directors, caused by an increase in the number of directors or otherwise (except death, resignation, or disqualification), shall be filled by a majority vote of the remaining members of the board, until the next annual meeting of the shareholders, members or policyholders. A vacancy in the membership in the board of directors caused by death, resignation or disqualification of a member shall be filled by a majority vote of the remaining membership of the board for the unexpired term of the directorship.

(e) A majority of the whole board of directors is necessary to constitute a quorum for the transaction of any business except the filling of vacancies, and the act of a majority of the board of directors present at any meeting at which a quorum is present is the act of the board of directors, unless a greater number is required by this article, or by the articles of incorporation or the bylaws.

(f) The board of directors may, by a resolution adopted by a majority of the whole board, pursuant to a provision of the bylaws, designate two (2) or more of their number to constitute an executive committee, which, to the extent provided in that resolution or in the bylaws, has all of the authority of the board of directors in the management of the corporation, during the interval between the meetings of the board, but the designation of the committee and the delegation to the committee of such authority does not operate to relieve the board of directors or any member of the board of directors of any responsibility imposed upon it or the member by this article. The minutes of each meeting of the executive committee shall be read at the next succeeding meeting of the board of directors.

(g) Meetings of the board of directors may be held at such time at the principal office of the corporation or at such other place as may be unanimously designated by the board of directors, and upon the notice provided in the bylaws. Unless otherwise provided by the articles of incorporation or bylaws, a member of the board of directors or of a committee designated by the board may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other, and participation by these means constitutes presence in person at the meeting.

(h) Unless otherwise provided in the articles of incorporation or bylaws, an action required or permitted to be taken at a meeting of

the board of directors or of a committee of the board may be taken without a meeting if:

- (1) before the action is taken, a written consent to the action is signed by all members of the board or of the committee; and
- (2) the written consent is filed with the minutes of the proceedings of the board or the committee.

(i) Every director, when elected, shall take and subscribe an oath that he will, insofar as the duty devolves upon him, faithfully, honestly and diligently administer the affairs of such corporation, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to any such corporation.

(j) A director may be removed in any manner provided by the articles of incorporation. Unless the articles of incorporation provide otherwise, a director may be removed, with or without cause, by a majority vote of:

- (1) the shareholders of a stock company;
- (2) the members or policyholders of a mutual company qualified to elect directors; or
- (3) the directors.

(k) A director may be removed under this subsection:

- (1) only at a meeting called for the purpose of removing the director; and
- (2) the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

*(Formerly: Acts 1935, c.162, s.88; Acts 1969, c.164, s.4; Acts 1971, P.L.1, SEC.7.) As amended by Acts 1982, P.L.161, SEC.1; P.L.266-1987, SEC.3.*

#### **IC 27-1-7-11**

##### **Citizenship and residence qualifications of directors**

Sec. 11. A majority of directors must, during their entire terms of service, be citizens of the United States or Canada. At least one (1) of the directors must reside in Indiana.

*(Formerly: Acts 1935, c.162, s.89; Acts 1941, c.127, s.1; Acts 1947, c.18, s.1; Acts 1969, c.164, s.5.) As amended by P.L.245-1989, SEC.1.*

#### **IC 27-1-7-12**

##### **Directors; attendance record and report; record of communications; annual examination and report of condition**

Sec. 12. In addition to such other duties as may be imposed upon the directors by any other provisions of this article, such directors shall keep a record of the attendance of directors at meetings of the board, and shall make a report showing the names of the directors, the number of meetings of the board, regular and special, the number of meetings attended, and the number of meetings from which each director was absent, which report shall be read at and incorporated

in the minutes of the annual meeting of the shareholders, members, or policyholders. Such directors, at such times as they are meeting as a board of directors, shall also require the secretary of such board, or some other duly designated agent, to make such communications from the department as the department designates a matter of record in the minutes of the meetings of such board of directors. The board of directors, a committee therefrom, or the auditor, actuary, or comptroller of such corporation shall examine the corporation once each year and submit a complete statement of the condition of such corporation to the department. Such report of examination, if made by other than the board of directors or a committee thereof, shall be approved by the board of directors before the same is submitted to the department.

*(Formerly: Acts 1935, c.162, s.90.) As amended by P.L.252-1985, SEC.29.*

#### **IC 27-1-7-12.5**

#### **Directors; good faith discharge of duties; liability; conflict of interest; authorization of unlawful payments to shareholders**

Sec. 12.5. (a) A director shall, based on facts then known to the director, discharge the duties as 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.

(b) 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) one (1) or more officers or employees 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.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director may, in considering the best interests of a corporation, consider the effects of any action on shareholders, members, policyholders, agents, 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.

(e) 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 subsections (a) through (d); and
- (2) the breach or failure to perform constitutes willful misconduct or recklessness.

(f) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. 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.

(g) For purposes of subsection (f), 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, officer, or 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.

(h) For purposes of subsection (f)(1), a conflict of interest transaction is authorized, approved, or ratified if it 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 (f)(1) if the transaction is otherwise authorized, approved, or ratified as provided in subsection (f)(1).

(i) For purposes of subsection (f)(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 (g), may be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction.

(j) Subject to subsection (e), a director who votes for or assents to

a payment in the form of a dividend or otherwise to the corporation's shareholders made in violation of this article or the articles of incorporation is personally liable to the corporation for the amount of the payment that exceeds what could have been paid without violating this article or the articles of incorporation.

(k) A director held liable for an unlawful payment under subsection (j) is entitled to contribution:

(1) from every other director who voted for or assented to the distribution, subject to subsection (e); and

(2) from each shareholder for the amount the shareholder accepted.

(l) The purchase and holding of a contract of insurance or annuity or a certificate in a group policy by a director does not constitute a conflict of interest.

*As added by P.L.266-1987, SEC.4.*

### **IC 27-1-7-13**

#### **Officers; secretary; duties; resignation; removal; contract rights**

Sec. 13. (a) A corporation has the officers described in its bylaws. However, a corporation must have at least one (1) officer.

(b) An officer of a corporation may appoint one (1) or more officers or assistant officers if authorized to do so by the bylaws or the board of directors.

(c) The bylaws or the board of directors must delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation, and that officer is the secretary for purposes of this article. The same individual may simultaneously hold more than one (1) office in the corporation.

(d) Each officer of a corporation has the authority and shall perform the duties set forth in the bylaws, to the extent consistent with the bylaws or, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

(e) An officer of a corporation may resign at any time by delivering notice to the board of directors, its chairman, the secretary of the corporation or, if the articles of incorporation or bylaws so provide, to another designated officer. A resignation is effective when the notice is delivered unless the notice specifies a later date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(f) The board of directors of a corporation may remove an officer of the corporation at any time with or without cause. An officer who appoints another officer or assistant officer may remove the appointed officer or assistant officer at any time with or without

cause.

(g) The election or appointment of an officer of a corporation does not itself create contract rights.

(h) The removal of an officer of a corporation does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

*(Formerly: Acts 1935, c.162, s.91.) As amended by P.L.266-1987, SEC.5.*

#### **IC 27-1-7-14**

##### **Bonding officers having access to money or securities; blanket bond**

Sec. 14. All officers and home office employees of every corporation having control of or access to moneys or securities of such corporation in the regular discharge of their duties, shall, before entering upon the performance of their duties, execute their individual bonds with adequate surety payable to the corporation to indemnify the corporation for any pecuniary loss it shall sustain of money or other personal property by any act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or willful misapplication. The amount and form of such bonds and the sufficiency of the sureties thereon shall be approved by the board of directors of the corporation and by the department and shall be filed with the department within such time as it may prescribe. In lieu of individual bonds, a blanket bond covering all such officers and employees may be used, subject to the same approval as individual bonds. No officer or director of the corporation shall sign the bond of any other person as surety thereon required by this article. If any bonds required by this section are signed by individuals as sureties, the bonds must contain separate affidavits as to the net worth of each surety.

*(Formerly: Acts 1935, c.162, s.92.) As amended by P.L.252-1985, SEC.30.*

#### **IC 27-1-7-15**

##### **Loans to or borrowing by directors or officers; offense; exceptions**

Sec. 15. A board of directors, director, or officer of any insurance company doing business in this state who lends any of its money or other property, to any director or officer of the insurance company commits a Class B misdemeanor. A director or officer who borrows from the insurance company any money or other property commits a Class B misdemeanor. However, this section does not apply to:

- (1) the continuation to maturity of any loan that did not violate this section when it was made; or
- (2) a loan made by a life insurance company to any director or officer of the company in an amount not greater than the net cash surrender value of, and secured by, a policy with the

company held by the borrower; or  
(3) a loan made by any insurance company to an officer, other than a director, secured by a first mortgage loan upon a single-family dwelling, condominium unit or cooperative apartment unit, which is the borrower's personal residence acquired on account of the officer's relocation or initial employment.

*(Formerly: Acts 1935, c.162, s.93.) As amended by Acts 1978, P.L.2, SEC.2707; Acts 1981, P.L.235, SEC.1.*

#### **IC 27-1-7-16**

##### **Books and records to be kept at principal office**

Sec. 16. Every corporation shall keep correct and complete books of account and minutes of the proceedings of its shareholders, members or policyholders, directors, executive and/or finance committees, and it shall likewise keep, at its principal office, an original or a duplicate stock transfer book and/or records giving the names and addresses of all shareholders, members or policyholders, and if a stock company the number of shares held by each.

*(Formerly: Acts 1935, c.162, s.94.)*

#### **IC 27-1-7-17**

##### **Restrictions on dividend payments**

Sec. 17. No domestic company shall make any payments in form of dividends or otherwise to its shareholders, for or on account of any interest in or relation to the company as shareholders, unless it possesses assets in the amount of such payment, in excess of its liabilities, including its capital stock: Provided, That in no instance shall such dividend reduce the surplus below an amount equal to fifty per cent (50%) of the capital stock of such company; and no domestic company shall make any payments to its members or policyholders for or on account of any interest in or relation to the company as members or policyholders, except for matured claims or other policy obligations and in the purchase of surrender values, unless it possesses assets in the amount of such payments in excess of its liabilities.

*(Formerly: Acts 1935, c.162, s.95.)*

#### **IC 27-1-7-18**

##### **Repealed**

*(Repealed by P.L.260-1983, SEC.8.)*

#### **IC 27-1-7-19**

##### **Mutual or stock companies; borrowing for surplus funds**

Sec. 19. (a) A mutual or stock company organized under this article may borrow or assume a liability for the repayment of a sum of money to provide itself with surplus funds with the prior approval of the department. The rate of interest on any loan or advance may



not exceed the following:

- (1) The corporate base rate in effect on the first business day of the month in which the loan document is executed, as reported by the bank or branch with the greatest amount of assets in Indiana, plus three percent (3%) per annum.
- (2) A variable rate determined by a formula that:
  - (A) is specified in the loan document;
  - (B) is based on objective data or information that is reasonably related to commercial lending rates;
  - (C) provides an initial rate that is not more than the corporate base rate in effect on the first business day of the month in which the loan document is executed, as reported by the bank or branch with the greatest amount of assets in Indiana, plus two percent (2%) per annum; and
  - (D) is approved by the department as reasonable and appropriate in relation to the company's financial condition.

The company shall elect and state in the written agreement whether the interest rate is to be fixed or floating for the term of the agreement. The agreement shall be submitted to and approved by the department before the agreement's execution.

(b) The loan or advance, with interest at a rate not exceeding the maximum rate of interest as defined in subsection (a), shall be repaid only out of the surplus of the company. Repayment of principal or payment of interest may be made only when approved by the department whenever in its judgment the financial condition of the company shall warrant. However, the department may not withhold approval if:

- (1) the company has and submits to the department satisfactory evidence that a surplus that is equal to or greater than the surplus existing immediately after the issuance of the loan or advance will exist after the repayment; and
- (2) the surplus that will exist immediately after repayment of principal or payment of interest is:
  - (A) reasonable in relation to the company's outstanding liabilities; and
  - (B) adequate to the company's financial needs; in light of the factors set forth in IC 27-1-23-4(f).

(c) A loan or advance made under this section, or interest accruing on the loan or advance, may not form a part of the legal liabilities of the company until authorized for payment by the department. However, until a loan or an advance is repaid, all statements published by the company or filed with the department must show the amount of the loan or advance then remaining unpaid, including any accrued and unpaid interest charges.

*(Formerly: Acts 1935, c.162, s.97.) As amended by P.L.138-1984, SEC.1; P.L.253-1985, SEC.1; P.L.184-1996, SEC.1; P.L.111-2000, SEC.1.*

**IC 27-1-7-20****Authority of corporations, boards, and associations to insure with mutual insurance company**

Sec. 20. Any public or private corporation, board or association in this state or elsewhere may make applications, enter into agreements for, and hold policies in, any mutual insurance company. Any officer, stockholder, trustee or legal representative of any such company, board, association, or estate may be recognized as acting for or on its behalf for the purposes of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity.

*(Formerly: Acts 1935, c.162, s.97a.)*

**IC 27-1-7-21****Mutual companies; statement of maximum premium in policy; limitation of liability for single risk; reinsurance requirements**

Sec. 21. (a) The maximum premium shall be expressed in the policy of a mutual company and shall be solely a cash premium without contingent premium but no such company other than a life insurance company shall issue any policy providing limits of liability for any one (1) risk under any one (1) line of insurance in an amount exceeding five percent (5%) of its surplus, including contingent reserves, if any, until and unless it either possesses a surplus, including contingent reserves, if any, of at least four hundred thousand dollars (\$400,000), or has reinsured in a reinsurer (or reinsurers) admitted to do business in this state and authorized to make such kind or kinds of reinsurance in this state all of such liability in excess of such amount or such greater amount as the commissioner may authorize and such reinsurance contract or contracts shall have been submitted to and approved by the commissioner. Such reinsurance contract or contracts shall be in such form as to enable the insured under such policy or the holder of a judgment against the insured for which such company is liable under such policy to maintain an action on such reinsurance contract or contracts against such reinsured company jointly with the reinsurer and, upon recovering judgment, to have recovery against such reinsurer or reinsurers for payment to the extent to which it or they may be liable under such reinsurance contract (or contracts) and in discharge thereof. In no event shall the unreinsured liability assumed under this section on any one (1) risk exceed the amount otherwise authorized by this article to be written upon any one (1) risk.

(b) Any determination of permissible limits of liability and amount of surplus pursuant to the provisions of subsection (a) shall be made as of December 31 immediately preceding except that in the case of a newly formed company such determination shall be made as of the date it receives the certificate of the department authorizing it to commence business.

(c) Any reinsurance contract submitted to and approved by the

commissioner in accordance with the requirements of this section shall continue in full force and effect until notice of its termination or amendment has been filed with the commissioner, and in the case of an amendment has been approved by him.

(d) Subsection (a) shall apply only to companies organized under this article after July 26, 1967, except that any company in existence on July 26, 1967, under any of the insurance statutes of this state and to which subsection (a) would otherwise apply may, by appropriate action of its policyholders and board of directors, elect to comply with subsection (a).

(e) This section shall not affect nor invalidate any policy of any mutual insurance company in existence on July 26, 1967, issued pursuant to Acts 1935, c.162, s.98. Any such policy issued on or after July 26, 1967, by a mutual insurance company in existence on July 26, 1967, and the rights and obligations thereunder shall continue to be subject to the provisions of Acts 1935, c.162, s.98 until such company has exercised the right of election provided in this section and has complied with the provisions of this section.

*(Formerly: Acts 1935, c.162, s.98; Acts 1967, c.233, s.1.) As amended by P.L.252-1985, SEC.31.*

#### **IC 27-1-7-22**

##### **Vouchers for disbursements**

Sec. 22. No domestic insurance corporation shall make any disbursement of one hundred dollars (\$100) or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, limited liability company, or corporation receiving the money and correctly describing the consideration for the payment, and if the same be for services and disbursements, setting forth the services rendered and an itemized statement of the disbursements made, and if it be in connection with any matter pending before any legislative or public body or before any department or officer of any government, correctly describing in addition the nature of the matter and of the interest of such corporation therein, or, if such a voucher can not be obtained by an affidavit stating the reasons therefor and setting forth the particulars above mentioned.

*(Formerly: Acts 1935, c.162, s.99.) As amended by P.L.8-1993, SEC.411.*

#### **IC 27-1-7-23**

##### **Annual or other required statements; material false statement**

Sec. 23. A director, officer, agent, or employee of any company who knowingly subscribes, makes, or concurs in making or publishing any annual or other statement required by law, containing any material statement which is false, commits a Class A misdemeanor.

*(Formerly: Acts 1935, c.162, s.100.) As amended by Acts 1978, P.L.2, SEC.2708.*