

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1464

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-0.5-3-1, AS AMENDED BY P.L.52-2018, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as otherwise provided in subsection (d), after December 31, 2017, the name under which a domestic filing entity may be formed, the name under which a foreign entity may register to do business in Indiana, a name reserved under section 3 of this chapter, or an assumed name registered under section 4 of this chapter must be distinguishable on the records of the secretary of state from any:

- (1) name of an existing domestic filing entity;
- (2) name of a domestic filing entity that has not been administratively dissolved for more than one hundred twenty (120) days;
- (3) name of a foreign entity registered to do business in this state under IC 23-0.5-5;
- (4) name reserved under section 3 of this chapter, IC 23-1-23 (before its repeal), IC 23-16-2-2 (before its repeal), IC 23-17-5 (before its repeal), or IC 23-18-2-9 (before its repeal);
- (5) assumed name registered under IC 23-15-1-1(e) (before that chapter's repeal); or
- (6) assumed name registered under section 4(e) of this chapter.

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(b) If an entity consents in a record to the use of its name in a form satisfactory to the secretary of state, the name of the consenting entity may be used by the entity to which the consent was given. Consent may not be given for the use of a reserved name.

(c) Except as otherwise provided in subsection (d), in determining whether a name is the same as or not distinguishable on the records of the secretary of state from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "company", "co", "professional corporation", "PC", "P.C.", "professional service corporation", "PSC", "P.S.C.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "limited liability company", "LLC", "L.L.C.", "limited liability company-s", "LLC-s", or "L.L.C.-s", may not be taken into account.

(d) Consent is not needed in the following cases in which an entity's name is no longer distinguishable on the records of the secretary of state from an assumed business name of another entity:

- (1) In the case of an entity that files an entity filing that changes only the word, phrase, or abbreviation described in subsection (c) that indicates what type of entity the entity is.
- (2) In the case of an entity that files its public organic record or certificate of registration using a name the entity has reserved under this title before January 1, 2018.
- (3) In the case of an entity that files an application for reinstatement not more than one hundred twenty (120) days after the effective date of a dissolution under IC 23-0.5-6.

(e) The name or assumed name of a domestic filing entity or foreign filing entity shall not contain language that falsely indicates or implies that the domestic filing entity or the foreign filing entity is, or is connected with, a government agency of this state, another state, or the United States.

(f) If the name or assumed name of a domestic filing entity or foreign filing entity on record with the secretary of state violates subsection (e), the secretary of state may remove the name or assumed name from the record.

SECTION 2. IC 23-0.5-6-2, AS AMENDED BY P.L.177-2019, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) If the secretary of state determines that one (1) or more grounds exist under section 1 of this chapter for administratively dissolving an entity, the secretary of state shall provide to the entity written notice of the determination unless the secretary of state:



- (1) receives a receipt showing failure of a previous attempt of service of process upon the entity's registered agent at the address of the registered office; and
- (2) determines that the secretary of state's office has no record of the filing entity's principal office address.

(b) If a domestic filing entity, not later than sixty (60) days after receiving the notice provided under subsection (a), does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state shall administratively dissolve the entity by signing a certificate of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the certificate and provide to the entity a copy of the certificate.

(c) A domestic filing entity that is dissolved administratively continues its existence as the same type of entity but may not carry on any activities except:

- (1) to apply for reinstatement under section 3 of this chapter; or
- (2) as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law as follows:

(A) For corporations, under:

- (i) IC 6-8.1-10-9;
- (ii) IC 23-1-45-5;
- (iii) IC 23-1-45-6; and
- (iv) IC 23-1-45-7.

(B) For nonprofit corporations, under:

- (i) IC 6-8.1-10-9;
- (ii) IC 23-17-22-5;
- (iii) IC 23-17-22-6; and
- (iv) IC 23-17-22-7.

(C) For limited liability companies, under:

- (i) IC 23-18-9-3;**
- ~~(ii)~~ **(ii) IC 23-18-9-4;**
- (iii) IC 23-18-9-5;**
- (iv) IC 23-18-9-6;**
- ~~(v)~~ **(v) IC 23-18-9-8; and**
- ~~(vi)~~ **(vi) IC 23-18-9-9; and**
- (vii) IC 23-18-9-10.**

(D) For limited partnerships, under:

- (i) IC 23-16-9-3; and
- (ii) IC 23-16-9-4.

(E) For limited liability partnerships, under:

- (i) IC 23-4-1-36; and



(ii) IC 23-4-1-37.

(d) The administrative dissolution of a domestic filing entity does not terminate the authority of its registered agent.

SECTION 3. IC 23-0.6-3-1, AS ADDED BY P.L.118-2017, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as otherwise provided in this ~~section~~, **chapter**, by complying with this article:

(1) a domestic entity may acquire all of one (1) or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing; or

(2) all of one (1) or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing.

(b) Except as otherwise provided in this ~~section~~, **chapter**, by complying with the provisions of this article applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under this article if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

SECTION 4. IC 23-1-21-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws may make all provisions necessary for managing the corporation during the emergency, including:

- (1) procedures for calling a meeting of the board of directors;
- (2) quorum requirements for the meeting; and
- (3) designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) binds the corporation; and
- (2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if **any of the following occur**:

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- (1) An extraordinary event **that** prevents a quorum of the corporation's directors from assembling in time to deal with the business for which the meeting has been or is to be called.
- (2) **An attack on the United States or a location where a corporation conducts its business or customarily holds meetings of its board of directors or shareholders.**
- (3) **A nuclear or atomic disaster.**
- (4) **A catastrophe, including an epidemic or pandemic.**
- (5) **A declaration of a national emergency by the United States.**

(e) During an emergency described in subsection (d), the board of directors, or a majority of the directors present if a quorum cannot be readily convened for a meeting, may take the following actions:

- (1) With respect to a meeting of shareholders of the corporation, any action that the board of directors, or a majority of the directors present if a quorum cannot be readily convened for a meeting, considers necessary to address the emergency, notwithstanding anything contrary to this article, the corporation's articles of incorporation, or bylaws, including the following:
 - (A) Postpone the meeting to a later time or date (with the record date for determining the shareholders entitled to notice of and to vote at the meeting that the directors postponed irrespective of the requirements set forth in IC 23-1-29-7).
 - (B) Conduct a meeting by means of remote communication.
 - (C) With respect to a corporation subject to the reporting requirements of Subsection 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 15 U.S.C. 78o(d)), as amended, and any rules and regulations promulgated thereunder, notify stockholders of any postponement decision, including a determination to conduct a meeting by means of remote communication solely by publicly filing a document with the Securities and Exchange Commission pursuant to Sections 13, 14, or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78n, or 78o(d)), as applicable, and any rules and regulations promulgated thereunder.
- (2) With respect to any dividend that has been declared to which a record date has not occurred, change each record



date and payment date to a later date, but not later than sixty (60) days after the initial record date. However, if the record date or payment date is changed, then the corporation shall issue notice to the shareholders as promptly as practicable, and in any event before the initial record date, which notice, in the case of a corporation subject to the reporting requirements of Subsection 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 15 U.S.C. 78o(d)), as amended, and any rules and regulations promulgated thereunder, may be issued solely by publicly filing a document with the Securities and Exchange Commission pursuant to Sections 13, 14, or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78n, or 78o(d)), as applicable, and any rules and regulations promulgated thereunder.

(f) During an emergency described in subsection (d), no person shall be liable for failure to make a shareholders' list available for inspections as required by IC 23-1-30-1, if it was not practicable to allow inspection during the emergency. However, a meeting of shareholders shall not be postponed or voided solely based upon the failure to make a shareholders' list available for inspection under IC 23-1-30-1.

SECTION 5. IC 23-1-33-6, AS AMENDED BY P.L.133-2009, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. (a) The articles of incorporation or the bylaws may provide for staggering their 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) if there are more than two (2) directors, three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) In the event that terms are staggered under subsection (a), the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, 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.

(c) A corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the



Securities Exchange Act of 1934 shall provide for staggering the terms of directors in accordance with this section unless, not later than thirty (30) days after the later of:

- (1) July 1, 2009; or
- (2) the time when the corporation's voting shares are registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934;

the board of directors of the corporation adopts a bylaw expressly electing not to be governed by this subsection. **A public corporation governed by this article on July 1, 2021, may elect to not be governed by this subsection if the board of directors of the public corporation adopts a bylaw expressly electing not to be governed by this subsection.** ~~However,~~ An election not to be governed by this subsection may be rescinded by a subsequent action of the board of directors unless the original articles of incorporation contain a provision expressly electing not to be governed by this subsection.

(d) If the board fails to provide for the staggering of the terms of directors as required by subsection (c), the board must be staggered as follows:

- (1) The first group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without any remaining.
- (2) The second group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without two (2) remaining.
- (3) The third group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest lower whole number if the number of directors is not divisible by three (3) without any remaining.

The directors shall be placed into the groups established by this subsection alphabetically by last name.

SECTION 6. IC 23-13-16-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. Any university or college organized before July 8, 1941, under the laws of this state, whether by special law or under general laws, whose charter, whether by virtue of the special law creating such university or college or by virtue of general laws whose provisions have been accepted by it, contains provisions concerning the appointment and number of the board of trustees or board of directors of such university or college may have and is hereby given the right to amend its charter in respect to the



number of persons on its board of trustees or board of directors by the adoption of a resolution passed by a majority vote of its board to that effect, and by filing proof of such adoption, verified by at least a majority of its directors. ~~and sworn to before a notary public or other officer authorized by law to administer oaths, in the office of the secretary of state of Indiana. Said~~ **The** charter shall be deemed to be amended as of the date when such proof is filed in the office of the secretary of state. ~~provided,~~ However, ~~that~~ the provision of this section shall not apply to any state college or university.

SECTION 7. IC 23-17-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A corporation with members must hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held inside of or outside of Indiana at the place stated in or fixed in accordance with the bylaws.

(d) A corporation's bylaws adopted under this chapter may provide that an annual or regular membership meeting will not be held in any place, but may instead be held solely by means of remote communication. If a place for meeting is not stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office: the board of directors may either:

- (1) determine the location of the annual or regular membership meeting; or**
- (2) elect that the meeting will not be held at any place but solely by means of remote communication.**

(e) If provided for in the bylaws or authorized by the board of directors, and subject to any guidelines and procedures the board of directors adopts, members not physically present at an annual or regular membership meeting may do the following:

- (1) Participate in the annual or regular membership meeting by means of remote communication.**
- (2) If the conditions under subsection (f) are met, be considered present in person and vote at the annual or regular membership meeting, regardless of whether the meeting is held in person or by means of remote communication.**

(f) To conduct an annual or regular membership meeting by means of remote communication, a corporation must do the following:



(1) Implement reasonable measures to verify the identity of each member considered present and permitted to vote at the meeting.

(2) Implement reasonable measures to ensure all members have an opportunity to participate and vote on matters discussed at the meeting, including an opportunity to read or hear the proceedings.

(3) Maintain minutes of the meeting, including a record of any votes cast or actions taken by a member.

~~(d)~~ **(g)** At the annual meeting:

(1) the president and chief financial officer or the president's and the chief financial officer's designees shall report on the activities and financial condition of the corporation; and

(2) the members shall consider and act upon other matters as may be raised consistent with the notice requirements of section 5 of this chapter and IC 23-17-11-4(b).

~~(e)~~ **(h)** At regular meetings the members shall consider and act upon matters as may be raised consistent with the notice requirements of section 5 of this chapter and IC 23-17-11-4(b).

~~(f)~~ **(i)** The failure to hold an annual or a regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not do any of the following:

(1) Affect the validity of any corporate action.

(2) Work any forfeiture or dissolution of the corporation.

~~(g)~~ If provided in the articles of incorporation or bylaws, a member of a corporation may participate in an annual or a regular meeting of the members by or through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member of a corporation participating in a meeting by this means is considered to be present in person at the meeting.

SECTION 8. IC 23-17-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A corporation with members must hold a special meeting of members as follows:

(1) On call of the corporation's president or board of directors or other person, including a member or an officer, specifically authorized to do so by the articles of incorporation or bylaws.

(2) Except as provided in the articles of incorporation or bylaws of a religious corporation, if the holders of at least ten percent (10%) of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and



deliver to the corporation's secretary at least one (1) written demand for the meeting describing the purpose for which the meeting is to be held.

(b) Unless otherwise provided under section 7 of this chapter, the close of business on the thirtieth day before delivery of the demand for a special meeting to a corporate officer is the record date for the purpose of determining if the ten percent (10%) requirement of subsection (a) has been met.

(c) If a notice for a special meeting demanded under subsection (a)(2) is not given under section 5 of this chapter within thirty (30) days after the date the written demand is delivered to the corporation's secretary, regardless of the requirements of subsection (d), a person signing the demand may do the following:

- (1) Set the time and place of the meeting.
- (2) Give notice under section 5 of this chapter.

(d) A special meeting of members may be held inside or outside of Indiana at the place stated in or fixed in accordance with the bylaws. ~~If a place is not stated or fixed in accordance with the bylaws, a special meeting shall be held at the corporation's principal office.~~

(e) The bylaws may provide that a special membership meeting will not be held in any place but may instead be held solely by means of remote communication. If a place for meeting is not stated in or fixed in accordance with the bylaws, the board of directors may either:

- (1) determine the location of the special meeting; or**
- (2) elect that the special membership meeting will not be held at any place, but solely by means of remote communication.**

(f) If provided for in the bylaws or authorized by the board of directors, and subject to any guidelines and procedures the board of directors adopts, members not physically present at a special meeting of members may:

- (1) participate in the special meeting of members by means of remote communication; and**
- (2) if the conditions under subsection (g) are met, be considered present in person and vote at the special meeting of members, regardless of whether the meeting is held at a designated place or solely by means of remote communication.**

(g) To conduct a special meeting by means of remote communication, the corporation must do the following:

- (1) Implement reasonable measures to verify the identity of each member considered present and permitted to vote at the meeting.**



(2) Implement reasonable measures to ensure all members have an opportunity to participate and vote on matters discussed at the meeting, including an opportunity to read or hear the proceedings.

(3) Maintain minutes of the meeting, including a record of any votes cast or actions taken by a member.

(e) (h) Only those matters that are within the purposes described in the meeting notice required under section 5 of this chapter may be conducted at a special meeting of members.

(f) If the articles of incorporation or bylaws provide, a member of a corporation may participate in a special meeting of the members by or through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is considered to be present in person at the meeting.

SECTION 9. IC 24-2-1-8, AS AMENDED BY P.L.177-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A mark and the registration of a mark under this chapter are assignable **by electronic application as described by section 4 of this chapter** with the:

- (1) good will of the business in which the mark is used; or
- (2) part of the good will of the business:
 - (A) connected with the use of the mark; and
 - (B) symbolized by the mark.

(b) An assignment:

- (1) must be made by an instrument in writing duly executed; and
- (2) may be electronically recorded with the secretary upon the payment of a recording fee to the secretary.

(c) The secretary, after recording an assignment, shall issue in the name of the assignee a new certificate of registration for the remainder of the term of the:

- (1) registration; or
- (2) most recent renewal of the registration.

(d) An assignment of a registration under this chapter is void against a subsequent purchaser for valuable consideration without notice unless the assignment is recorded with the secretary not more than three (3) months:

- (1) after the date of the assignment; or
- (2) before the subsequent purchase.

SECTION 10. IC 24-2-1-8.5, AS AMENDED BY P.L.59-2018, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. (a) A registrant or an applicant who

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changes the name of the person to whom the mark is issued or for whom an electronic application is filed may record a certificate of change of name of the registrant or applicant **by electronic application** with the secretary upon the payment of a recording fee.

(b) The secretary may issue a new certificate of registration or an assigned application in the name of the assignee. The secretary may issue a new certificate of registration in the name of the assignee for the remainder of the term of the:

- (1) certificate of registration; or
- (2) most recent renewal of the certificate of registration.

SECTION 11. IC 24-2-1-10, AS AMENDED BY P.L.59-2018, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. The secretary shall cancel from the register in whole or in part:

- (1) a registration for which the secretary receives a voluntary request for cancellation **by electronic application** from the registrant or the assignee of record;
- (2) all registrations granted under this chapter and not renewed under section 6 of this chapter;
- (3) a registration for which a court of competent jurisdiction finds that:
 - (A) the registered mark has been abandoned;
 - (B) the registrant is not the owner of the mark;
 - (C) the registration was granted improperly;
 - (D) the registration was obtained fraudulently;
 - (E) the registered mark is or has become the generic name for the good or the service, or a part of the good or the service, for which the mark was registered; or
 - (F) the registered mark is so similar to a mark registered by another person on the principal register in the United States Patent and Trademark Office as to be likely to cause deception, confusion, or mistake between the marks, and the mark registered in the United States Patent and Trademark Office was filed before the filing of the electronic application for registration by the registrant under this chapter. However, a mark may not be canceled under this clause if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including Indiana; or
- (4) a registration if a court of competent jurisdiction orders cancellation of the registration on any ground.

SECTION 12. IC 26-1-9.1-525, AS AMENDED BY P.L.177-2019,



SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 525. (a) Beginning on October 1, 2019, and except as otherwise provided in subsection (e), the fee for filing and indexing a record under IC 26-1-9.1-501 through IC 26-1-9.1-527, other than an initial financing statement of the kind described in ~~IC 26-1-9.1-502(c)~~, **IC 26-1-9.1-502(a)**, is:

- (1) twelve dollars (\$12) if the record is communicated in writing; and
- (2) no statutory fee if the record is communicated by electronic filing.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the kind described in ~~IC 26-1-9.1-502(c)~~ **IC 26-1-9.1-502(a)** is:

- (1) twelve dollars (\$12) if the financing statement indicates that it is filed in connection with a public-finance transaction; and
- (2) twelve dollars (\$12) if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) The number of names under which a record must be indexed does not affect the amount of a fee under subsection (a) or (b).

(d) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

- (1) five dollars (\$5) if the request is communicated in writing; and
- (2) no statutory fee if the request is communicated electronically.

(e) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under IC 26-1-9.1-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

SECTION 13. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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