

**Summary of Changes to Indiana Nonprofit Law by the Indiana Society of  
Association Executives  
1-7-08**

To see the current legislation, [click here](#). The proposed legislation will be made available after a bill number is assigned.

The legislation is being promoted by the Indiana Society of Association Executives (ISAE).

It began as a Sarbanes Oxley exercise in looking at Association practices and Indiana Law. The legislation is the result of a task force formed within ISAE to examine how associations communicate with their members and whether that communication is allowed in Indiana Code. Changes to the code are reflective of a need on behalf of Association Executives-

- To allow non-profit corporations to use modern communications
- To provide non-profit boards and directors more specific guidelines, to avoid future litigation.
- To allow for low cost dispute resolution

This legislation is drafted from current corporate code, model non-profit corporation 2006 and the Indiana Uniform Transactions Act. It amends and / or expands five different areas of IC 23-17, Indiana's Non-Profit Corporation Law.

**In Chapter 2, *Definitions*** for "Electronic Transmission", "Sign or Signature", "Vote, casting a vote and voting", and "in Writing" are added to bring non-profit code into the electronic age. Although faxing, emailing and voice mail are common ways to deliver messages, Indiana law has provisions for "in writing" and "mailed" throughout the non-profit corporation act. New definitions will bring actions performed daily by Association Executives into compliance with Indiana Law.

**In Chapter 10 *Meetings and Action Without Meetings***, changes were made to current code to include electronic transmission, telecommunication and in some cases radio communication as a fair and reasonable method of communication for meeting notices, to define the effective date of the notice and to require that a notice must be kept in a record. These changes will do two things:

- (1) They will allow non-profits to use faster and more cost effective methods of communication.
- (2) They give non-profit directors more specific guidelines for sending and retaining meeting notices. Without these guidelines Association Executives cannot prove that membership was notified of a meeting in a timely manner.

**Chapter 13, *Standards of Conduct for Directors***, changes are motivated by a desire to protect board members from liability by being more specific. Many non-profit groups purchase liability policies for their board but insurance does not cover board actions that are not in compliance with the law. The changes in this section add modernization and

clarity.

**Section 1** is about reliance on statements of information given by others. Because it is imperative that directors are relying upon sound financial advice, ISAE would like to add the condition that public accountants should be “Certified”. This clarification that a director listens to the advice of a CPA does not eliminate the use of a PA. The sentence still includes- “or other persons as to matters the director reasonably believes are within the person's professional or expert competence.” The burden of proof is eliminated by using the CPA.

There are numerous changes to **Chapter 13, section 2** *Contracts and transactions in which director has financial interest*. These changes add clarity to the complex arena of conflict of interest by including additional parties who could have conflicts of interest, by clarifying a quorum after interested parties are excluded and providing cover for directors making decisions by clarifying that they made the best decision they could “at the time”.

The ISAE believes that Standards of liability for directors should also be added to this chapter regarding Standards of Conduct for Directors. This is a Good Samaritan clause for nonprofit boards; it establishes immunity from liability for directors unless the party asserting liability meets certain requirements. Corporate code examines this issue in **IC 23-1-37** Indemnification of Directors, Officers, Employees, and Agents.

**Chapter 15, Meetings and Action of Board of Directors**, amendments make the formation of Board committees easier and make committee meetings more efficient. It allows boards of directors and Board members present at a committee meeting to appoint alternate members of a committee. It also allows corporations to create or authorize the creation of advisory committees. These changes were made to meet the needs of non-profit groups with volunteer members who cannot always volunteer for long-term committees or always attend meetings.

**ADDED Chapter, Derivative Proceedings**, establishes requirements regarding derivative proceedings and allows a director or member of a non-profit corporation to bring a derivative proceeding. This chapter will give non-profit corporations a lower cost dispute resolution. Indiana Law allows that derivative proceedings be an option for corporations in IC 23-1- Chapter 32. Derivative Proceedings.

