

June 26, 2008

2008 Legislative Amendments to the Indiana Code Relating to Banks, Trust Companies, Thrifts, Holding Companies, Corporate Fiduciaries, Industrial Loan And Investment Companies and Credit Unions

Effective July 1, 2008

Questions, Answers, and Administrative Interpretations

1. What changes have been made to the recordkeeping provisions for depository and non-depository financial institutions under Title 28?

Answer – New § 30.5 has been added to IC 28-1-2 addressing recordkeeping security issues. These recordkeeping requirements apply to the following individuals and entities:

- (a) depository and non-depository financial institutions under Title 28,
- (b) consumer creditor licensees and registrants under the UCCC,
- (c) rent to own companies under IC 24-7 and
- (d) other persons subject to the regulation of the Department under Title 28, including pawnbrokers, money transmitters and check cashers.

The provisions define such terms as “personal information” (i.e. names, addresses, social security numbers, credit card numbers, etc.) and “personal records” (i.e. any paper or electronic records with unencrypted, unredacted personal information of customers or potential customers). The security provisions require that personal records be reasonably safeguarded from destruction, theft or other loss and protected from misuse. If a breach of the security of any personal records occurs, the person maintaining the records is subject to the disclosure requirements under IC 24-4.9-3 (law requiring database owners to disclose security breaches, unless the person is exempt from the disclosure requirements under IC 24-4.9-3-4 (i.e. the database owner is subject to other information security laws). [IC 28-1-2-30.5]

2. What changes have been made to the voting provisions relating to mergers and consolidations of banks, trust companies and building and loan associations?

Answer – The amendments are largely technical and clarify the order for obtaining approval of the DFI and the shareholders of financial institutions engaging in certain mergers and consolidations. [IC 28-1-7-4, IC 28-1-7-5, IC 28-1-7-12 and IC 28-1-7-13]

3. What changes have been made to the naming convention law?

Answer – For consistency, the naming convention provisions have been amended to add limited liability company to the list of entities that are prohibited from using the words “bank,” “banc” or “banco.” Additionally, the law has been amended to clarify that a person may not mislead a

consumer by referencing the consumer's financial institution (which includes any type of depository institution as defined in IC 28-1-1-6 or its holding company) in a mailing to that consumer. Finally, the naming convention provisions have been further refined to make it clear that the words "bank", "banc" and "banco" can be used by non-banks if there is no substantial likelihood of misleading the public. [IC 28-1-20-4]

4. Do financial institutions need DFI approval to establish a facility in a school for educational purposes?

Answer – A new provision has been adopted in the Indiana Financial Institutions Act to allow state banks to set up facilities at schools for educational purposes without having to get DFI approval. [IC 28-1-2-22.6]

5. What changes have been made to the statute allowing banks to transfer trust business among its affiliates?

Answer – The law has been amended to clarify that the procedure for transferring trust business is only available to allow the transfer to occur between entities with trust powers. [IC 28-2-14-18]

6. What changes have been adopted to the Indiana Industrial Loan and Investment Act?

Answer – The amendments to the Act are not substantive and are intended to modernize the terminology relating to industrial loan companies. [IC 28-5-1-4]

7. What changes have been adopted relating to federal mutual holding companies?

Answer – A definition for federal mutual holding company has been adopted and the procedures for converting from a mutual saving bank to a federal mutual holding company have been clarified. [IC 28-6.2-1-10]

8. What administrative changes have been adopted relating to the operation of the Department?

Answer – A new provision has been adopted allowing the DFI to accept payments by credit and debit cards. Also, the organization of the Department has been changed to eliminate the building and loan associations division due to the fact that there remains only one Indiana chartered building and loan. [IC 28-10-1-1 and 28-11-2-2]

9. What changes have been adopted relating to the examination of financial institutions?

Answer – A new provision now allows a bank to provide a copy of its DFI examination report to the Federal Home Loan Bank in connection with fulfilling its membership requirements.

10. What changes have been adopted relating to confidential information?

Answer – The provisions on confidential information as described in IC 28-1-2-30 have been amended to allow the Director or the Director’s designee under certain circumstances to disclose confidential information to two new types of organizations: state, federal and foreign money services business supervisory agencies and the Federal Home Loan Bank. The Director or the Director’s designee are also authorized to disclose confidential information to state, federal and foreign law enforcement, financial institution supervisory agencies, prosecutorial agencies, private insurers of deposit or share accounts and other agencies responsible for licensing or supervising any regulated business or nonprofit activity. In addition, the law has been clarified to provide that the confidential information provided by the Director or the Director's designee is privileged by law, remains the property of the Department and is not subject to inspection under IC 5-14-3; subject to subpoena; subject to discovery or admissible in evidence in any civil action. Finally, the Director may enter into information sharing agreements with parties authorized to receive such confidential information. [IC 28-11-3-3]

11. Under what circumstances can final enforcement orders issued by the Department be kept confidential?

Answer – The Director may keep a final order confidential if the Director determines that the immediate release of the order would endanger the stability of the financial institution or the security of depositors' funds. However, after two (2) years after the date of its issuance, a final order is no longer confidential under IC 28-1-2-30. [IC 28-11-4-7]

12. Under what circumstances can the Department seek judicial relief on enforcement matters?

Answer – The Department may enforce by applying for appropriate relief to a court having jurisdiction orders issued under IC 28-11-4 and written conditions or agreements between the Department and a financial institution or any of its directors, officers, employees or agents. [IC 28-11-4-10]

13. How have the Director’s enforcement powers been extended as they relate to a financial institution’s affiliates?

Answer – In bringing enforcement actions against an affiliate of a financial institution, the Director is authorized to remove from office or employment the affiliate’s officers, directors or employees and prohibit any participation by the affiliate’s officers, directors or employees in the conduct of the affairs of any financial institution. [IC 28-11-14-12]

14. How have the procedures for approval of an application to establish a financial institution changed?

Answer – In addition to other background checks considered necessary by the Director, each of the officers, directors, incorporators and principal shareholders of the proposed financial institution will have their credit histories reviewed and will be required to undergo a national criminal history background check (as defined in IC 10-13-3-12) maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification. [IC 28-11-5-4.5]

15. Do fingerprints have to be submitted for any individuals described in Item 14?

Answer – Yes, the individuals described in Item 14, above, will be required to submit fingerprints to the Department for processing by the Indiana State Police Department. The individuals submitting their fingerprints are responsible to pay any fees or costs associated with preparing the fingerprints and obtaining the criminal background check. [IC 28-11-5-4.5] Check the DFI website for more information on the fingerprinting process.

16. How do I obtain a national criminal background check and what does it cost?

Answer – The Indiana State Police Department is working with the DFI and other agencies to establish a system that will allow national criminal history background checks to be performed electronically by the State Police, thereby eliminating the need to submit fingerprints on paper forms. Until such a system is operational (expected in January 2009), individuals described in Item 14, above, must obtain a fingerprint card and instructions from the DFI, and be fingerprinted by their local law enforcement authority. The fingerprint card will then be submitted to the DFI by the law enforcement agency, and forwarded by the DFI to the State Police. [IC 28-11-5-4.5]

17. May a financial institution be organized as a limited liability company in Indiana?

Answer – Yes, the Indiana Financial Institutions Act has been amended so that effective as of July 1, 2008, a financial institution with the prior approval of the Department may be organized as a limited liability company; convert to a limited liability company or merge with or into a limited liability company under the laws of Indiana or the United States. [IC 28-11-5-10]

18. What changes have been made to the definition of “emergency” that relate to the circumstances allowing a financial institution to be closed for part or all of a day?

Answer – A financial institution is permitted to close one or more of its offices upon the occurrence of an emergency. The definition of "emergency" has been amended to add item 2 relating to declarations of emergency by the governor and to clarify item 3 to allow for closings in the case of the death of a former employee, officer or director. [IC 28-13-10-9]

19. What procedures are to be followed if a qualifying and nonqualifying subsidiary of a financial institution wishes to change the scope or nature of its activities?

Answer – If there is a change in the scope or nature of the business activity of a qualifying subsidiary of a financial institution, the financial institution is required to provide the Department with written notice before the change occurs. The Department will determine whether the proposed change is legally permissible and will not endanger the safety or soundness of the financial institution. The qualifying subsidiary may exercise or engage in the proposed activity thirty (30) days after the date on which the Department receives the financial institution's notice, unless otherwise extended by the Department.

If there is a change in the scope or nature of the business activity of a nonqualifying subsidiary of a financial institution, the financial institution is required to submit an application containing a complete description of the proposed change. The Department will determine whether the proposed change is legally permissible and will not endanger the safety or soundness of the financial institution. The Director will either approve or disapprove the application not later than sixty (60) days after the date on which the Department received the application unless otherwise extended by the Department. [IC 28-13-16-6]

20. What changes have been made to the loans to directors, committee members and officers of credit unions?

Answer – Article 7 of the Indiana Financial Institutions Act relating to credit unions has been amended to bring Indiana laws on loans to directors, committee members and officers in line with similar provisions under federal law. Note that for directors and committee members loans which are secured by certain securities or segregated deposit accounts are excluded from the provisions on loan limitations. With respect to loans for officers, an aggregate limit of \$100,000 has been adopted which is in addition to other loans limitations also applicable to directors and committee members. Further, for loans to officers there are a number of circumstances (i.e. loans for children's education, purchase of a residence, etc.) to which the loans limitation do not apply. Regular reporting of the status of loans to officers, directors and committee members to the board of directors at least quarterly is also required. [IC 28-7-1-17.1, 28-7-1-17.2 and 28-7-1-17.3]