

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

HOUSE ENROLLED ACT No. 1187

AN ACT to amend the Indiana Code concerning financial institutions.

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

SECTION 1. IC 28-1-3.1-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 21. Whenever the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Resolution Trust Corporation, or a federal supervisory agency is bidding, consolidating, merging, selling, or otherwise resolving or disposing of a troubled, an insolvent, or an imminently insolvent financial institution, the director of the department may approve any transaction, including the purchase of assets, the assumption of liabilities, a merger, or the formation of a new financial institution, if the transaction ~~involves a financial institution over which~~ **requires the approval of** the department. ~~has jurisdiction.~~

SECTION 2. IC 28-1-22-8, AS AMENDED BY P.L.171-1996, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. A foreign corporation that has been issued a certificate of admission by the secretary of state shall be admitted and shall have authority to transact the business set forth in the certificate. ~~after the corporation records the certificate under section 9 of this chapter.~~

SECTION 3. IC 28-1-22-10, AS AMENDED BY P.L.171-1996,

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SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10. If a foreign corporation transacts business in this state before it has ~~recorded its certificate of admission; received the approval of the department~~, the officers and directors of the corporation shall be severally liable for the liabilities of the corporation that result from the corporation's transaction of business in Indiana. ~~The certificate of admission shall then be subject to revocation by the department.~~

SECTION 4. IC 28-1-22-19, AS AMENDED BY P.L.171-1996, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 19. A foreign corporation that has been issued an amended certificate of admission by the secretary of state shall have authority to transact in this state the business set forth in ~~such certificate after the corporation records the certificate. under section 20 of this chapter.~~

SECTION 5. IC 28-1-22-20, AS AMENDED BY P.L.171-1996, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 20. ~~Within ten (10) days after the secretary of state issues an amended certificate of admission to a foreign corporation; the corporation shall file the duplicate amended certificate of admission with the county recorder of the county in which the principal office of the corporation in Indiana is located. If a foreign corporation transacts business in this state authorized by such amended certificate before it has recorded its amended certificate of admission;~~ **changes the nature of the business it transacts in Indiana before the business receives the department's approval**, the officers and directors of such corporation shall be severally liable for the liabilities of the corporation that result from the corporation's transaction ~~in Indiana of that business authorized by the amended certificate. The certificate of admission shall then be subject to revocation by the department. in Indiana.~~

SECTION 6. IC 28-2-13-20.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 20.5. Notwithstanding any other provision of this title, upon receipt of approval by the department and all required federal regulatory approvals, a **state** bank is entitled to establish a branch through a transaction with a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), if the transaction:

- (1) is permissible under Section 5(d)(2)(C) or 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(C) and 12 U.S.C. 1815(d)(3), respectively); and
- (2) otherwise complies with this chapter.

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SECTION 7. IC 28-2-14-18, AS AMENDED BY P.L.262-1995, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 18. (a) As used in this section, "~~Indiana~~" affiliate" includes the following:

(1) Any bank that is an affiliate under IC 28-1-18.2-1.

(2) Any company that:

(A) ~~has its principal office in Indiana;~~

~~(B)~~ is controlled by a bank holding company;

~~(C)~~ **(B)** is an affiliate under IC 28-1-18.2-1; and

~~(D)~~ **(C)** is: ~~either:~~

(i) a national banking association to which the Comptroller of the Currency has issued a certificate authorizing the commencement of business, and the operations of which are required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto; ~~or~~

(ii) a trust company organized under the laws of ~~Indiana;~~ **any state**, the operations of which are ~~required by the department to be~~ limited to those of a trust company and activities related thereto; ~~or~~

(iii) a corporate fiduciary organized under the laws of any state.

(b) As used in this section, "trust business" means all rights, powers, and duties of a bank:

(1) acting as the administrator, coadministrator, executor, coexecutor, trustee, or cotrustee of or in respect to any estate or trust, guardian of any person or estate that is being administered under Indiana law, agent, custodian (including custodian under the Indiana Uniform Gifts to Minors Act), attorney-in-fact, and any other duties, powers, and appointments regularly administered by, granted to, or conferred upon trust departments established and maintained under IC 28-1-12-3(a) or the departments of national banks that are authorized to exercise trust powers; or

(2) arising from having been named or designated as such in any will or other writing whenever executed, including wills and other writings naming the predecessor ~~Indiana~~ affiliate that are executed after the effective date of the resolution anticipated by subsection (c).

(c) The board of directors of any bank holding company may adopt a resolution to cause an ~~Indiana~~ affiliate it controls to succeed to part or all of the trust business of another ~~Indiana~~ affiliate controlled by the bank holding company. If the board of directors adopts such a

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resolution and files a certified copy of it as required by subsection (d), the successor ~~Indiana~~ affiliate becomes successor fiduciary in place of the predecessor ~~Indiana~~ affiliate with all the rights, powers, and duties that were granted to or imposed on the predecessor ~~Indiana~~ affiliate. The rights, powers, and duties vest in the successor ~~Indiana~~ affiliate, after the taking effect of the succession, irrespective of the date upon which the relation is established, and irrespective of the date of any related written agreement establishing the relationship or of the date of the death of any decedent whose estate is being so administered. Nothing done in connection with the succession effects a renunciation or revocation of any letters of administration or letters testamentary pertaining to the relation, nor does it effect a removal or resignation from the executorship, trusteeship, or other fiduciary relationship.

(d) If a resolution is adopted under this section, the board of directors shall file a certified copy of the resolution with the department. The board of directors may file the copy in person or by certified mail. The effective date of the succession to part or all of the trust business, as set forth in the resolution, is the date provided in the resolution, which must not be before or more than thirty (30) days after the date of filing of the resolution. If the resolution provides no effective date, the effective date is the date of filing.

SECTION 8. IC 28-2-17-20.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 20.1. (a) As used in this section, "interim bank" means a bank that may not accept deposits, make loans, pay checks, or engage in the general business of banking or any part of the business of banking, and is chartered solely for the purpose of:**

(1) merging with;
(2) acquiring control of; or
(3) acquiring all or substantially all of the assets of;
an existing Indiana bank.

(b) An out-of-state bank may not merge with or into, or acquire all or substantially all of the assets of, an Indiana bank that has existed and continuously operated as a bank for not more than five (5) years.

(c) For purposes of subsection (b), an Indiana bank that is the resulting bank following a merger involving an Indiana interim bank is considered to have been in existence and continuously operated during the existence and continuous operation of the Indiana merged bank.

(d) Subsection (b) does not apply to a merger or acquisition of



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an Indiana bank if the:

- (1) merger or acquisition is part of a purchase or acquisition with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.);**
- (2) Indiana bank is insolvent or is in imminent danger of insolvency as provided under IC 28-3; or**
- (3) Indiana bank existed before July 1, 1998.**

SECTION 9. IC 28-2-17-22, AS ADDED BY P.L.171-1996, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 22. An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving an Indiana state bank shall:

- (1) notify the department of the proposed merger;
- ~~(2) submit to the department a copy of the application filed with the federal supervisory agency for the approval of the merger; and~~
- ~~(3)~~ (2) provide satisfactory evidence to the department of compliance with applicable requirements of IC 28-1-22.

SECTION 10. IC 28-5-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 16. (a) ~~Each company operating under this chapter shall keep such books and records as are deemed necessary by the department. The board of directors shall develop a records retention policy. In developing the policy, the board of directors shall consider:~~

- ~~(1) legal actions and administrative proceedings in which the production of company records is necessary or desirable;~~
- ~~(2) state and federal statutes of limitation applicable to legal actions and administrative proceedings; and~~
- ~~(3) the availability of information contained in the company records from other sources.~~

~~(b) Except for records that must be permanently retained, a company may dispose of a record that has been retained for the period required and in the manner required by the records retention policy. A company is not under a duty to produce the record in an action or proceeding after the disposal of the record.~~

~~(c) The department may require each such company to prepare and submit such reports of condition as are deemed necessary in any year, and if the department so orders, any such company shall publish such statement of condition in the manner and form prescribed by the department.~~

SECTION 11. IC 28-6.1-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. Subject to any

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restrictions the department may impose, a savings bank may:

- (1) become the owner or lessor of personal or real property **upon the request of and for the use of a customer;** and
- (2) incur additional obligations incident to becoming an owner or a lessor of the property.

SECTION 12. IC 28-6.2-1-13, AS ADDED BY P.L.122-1994, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 13. "Mutual savings bank" ~~has the meaning set forth~~ **means a financial institution:**

- (1) **defined** in IC 28-6.1-2-5; or
- (2) **organized, reorganized, or operating before January 1, 1993, under IC 28-6 (before its repeal).**

SECTION 13. IC 28-6.2-1-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 25. As used in this chapter, "voting parties" means the:**

- (1) **depositors; and**
- (2) **borrowers;**

of a mutual savings bank.

SECTION 14. IC 28-6.2-2-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 2.5. The voting parties of a reorganizing mutual savings bank have the voting rights set forth in IC 28-13-6-2 with respect to a reorganization of a mutual savings bank under this chapter.**

SECTION 15. IC 28-7-1-0.5, AS AMENDED BY P.L.192-1997, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 0.5. The following definitions apply throughout this chapter:

- (1) "Automated teller machine" (ATM) means a piece of unmanned electronic or mechanical equipment that performs routine financial transactions for authorized individuals.
- (2) "Branch office" means an office, agency, or other place of business at which deposits are received, share drafts are paid, or money is lent to members of a credit union. The term does not include:
 - (A) the principal office of a credit union;
 - (B) the principal office of a credit union affiliate;
 - (C) a branch office of a credit union affiliate;
 - (D) an automated teller machine; or
 - (E) a night depository.
- (3) "Credit union" is a cooperative, nonprofit association,

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incorporated under this chapter, for the purposes of educating its members in the concepts of thrift and to encourage savings among its members. A credit union should provide a source of credit at a fair and reasonable rate of interest and provide an opportunity for its members to use and control their own money in order to improve their economic and social condition.

(4) "Department" refers to the department of financial institutions.

(5) "Surplus" means the credit balance of undivided earnings after losses. The term does not include statutory reserves.

(6) "Unimpaired shares" means paid in shares less any losses for which no reserve exists and for which there is no charge against undivided earnings.

(7) "Related credit union service organization" means, in reference to a credit union, a credit union service organization in which the credit union has invested under section 9(4)(J) of this chapter.

(8) "Premises" means any office, branch office, suboffice, service center, parking lot, real estate, or other facility where the credit union transacts or will transact business.

(9) "Furniture, fixtures, and equipment" means office furnishings, office machines, computer hardware, computer software, automated terminals, and heating and cooling equipment.

(10) "Fixed assets" means:

(A) premises; and

(B) furniture, fixtures, and equipment.

(11) "Audit period" means a twelve (12) month period designated by the board of directors of a credit union.

SECTION 16. IC 28-7-1-9, AS AMENDED BY P.L.192-1997, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 9. A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.

(3) To make loans to officers, directors, or committee members, but only if:

(A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

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- (B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;
 - (C) the loan is approved by the credit committee or loan officer; and
 - (D) the borrower takes no part in the consideration of or vote on the application.
- (4) To invest in any of the following:
- (A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.
 - (B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).
 - (C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.
 - (D) Mortgages on real estate situated in Indiana which are fully insured under Title 2 of the National Housing Act (12 U.S.C. 1707 through 1715z).
 - (E) Obligations issued by farm credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14).
 - (F) In savings and loan associations, other credit unions that are insured under IC 28-7-1-31.5 and certificates of indebtedness or investment of an industrial loan and investment company if the association or company is federally insured. Not more than twenty percent (20%) of the assets of a credit union may be invested in the shares or certificates of an association or company; nor more than forty percent (40%) in all such associations and companies.
 - (G) Corporate credit unions.
 - (H) Federal funds or similar types of daily funds transactions with other financial institutions.
 - (I) Mutual funds created and controlled by credit unions, credit union associations, or their subsidiaries. Mutual funds referred to in this clause may invest only in instruments that are approved for credit union purchase under this chapter.
 - (J) Shares, stocks, or obligations of any credit union service

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organization (as defined in Section 701.27 of the Rules and Regulations of the National Credit Union Administration) with the approval of the department. Not more than five percent (5%) of the total paid in and unimpaired capital of the credit union may be invested under this clause.

- (5) To deposit its funds into:
 - (A) depository institutions that are federally insured; or
 - (B) state chartered credit unions that are privately insured by an insurer approved by the department.
- (6) To purchase, hold, own, or convey real estate as may be conveyed to the credit union in satisfaction of debts previously contracted or in exchange for real estate conveyed to the credit union.
- (7) To own, hold, or convey real estate as may be purchased by the credit union upon judgment in its favor or decrees of foreclosure upon mortgages.
- (8) To issue shares of stock and upon the terms, conditions, limitations, and restrictions and with the relative rights as may be stated in the bylaws of the credit union, but no stock may have preference or priority over the other to share in the assets of the credit union upon liquidation or dissolution or for the payment of dividends except as to the amount of the dividends and the time for the payment of the dividends as provided in the bylaws.
- (9) To charge the member's share account for the actual cost of necessary locator service when the member has failed to keep the credit union informed about the member's current address. However, the charge shall not exceed ten dollars (\$10). The charge shall be made only for amounts paid to a person or concern normally engaged in providing such service, and shall be made against the account or accounts of any one (1) member not more than once in any twelve (12) month period.
- (10) To transfer to an accounts payable, a dormant account, or a special account share accounts which have been inactive, except for dividend credits, for a period of two (2) years. The credit union shall not consider the payment of dividends on the transferred account.
- (11) To ~~provide buildings or other office space from funds of the credit union invest in fixed assets with the funds of the credit union. provided that expenditures for buildings or other office space~~ **An investment in fixed assets** in excess of five percent (5%) of its assets ~~are is~~ subject to the approval of the department.
- (12) To establish branch offices, upon approval of the department,

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provided that all books of account shall be maintained at the principal office.

(13) To pay an interest refund on loans proportionate to the interest paid during the dividend period by borrowers who are members at the end of the dividend period.

(14) To purchase life savings and loan protection insurance for the benefit of the credit union and its members, if:

(A) the coverage is placed with an insurance company licensed to do business in Indiana; and

(B) no officer, director, or employee of the credit union personally benefits, directly or indirectly, from the sale or purchase of the coverage.

(15) To sell and cash negotiable checks, travelers checks, and money orders for members.

(16) To purchase members' notes from any liquidating credit union, with written approval from the department, at prices agreed upon by the boards of directors of both the liquidating and the purchasing credit unions. However, the aggregate of the unpaid balances of all notes of liquidating credit unions purchased by any one (1) credit union shall not exceed ten percent (10%) of its unimpaired capital and surplus unless special written authorization has been granted by the department.

(17) To exercise such incidental powers necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(18) To act as a custodian or trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under Section 408(a) or Section 401(d) of the Internal Revenue Code, if the funds of the trust are invested only in share accounts or insured certificates of the credit union.

(19) To issue shares of its capital stock or insured certificates to a trustee or custodian of a pension plan, profit sharing plan, or stock bonus plan which qualifies for specific tax treatment under Sections 401(d) or 408(a) of the Internal Revenue Code.

(20) Subject to the restrictions in section 9.1 of this chapter, to engage in any activities in which the credit union could engage if the credit union were a federally chartered credit union, if the department authorizes the credit union to engage in the activities.

(21) To sell, pledge, or discount any of its assets, to purchase all or part of the assets of another credit union, and to assume the liabilities of the selling credit union. However, a credit union may

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not pledge any of its assets as security for the safekeeping and prompt payment of any money deposited, except that a credit union may, for the safekeeping and prompt payment of money deposited, give security as authorized by federal law.

(22) To act as a fiscal agent of the United States and to receive deposits from nonmember units of the federal, state, or county governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ten percent (10%) of the total assets of that credit union, excluding those public funds.

(23) To join the National Credit Union Administration Central Liquidity Facility.

(24) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(25) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(26) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the

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discharge and performance of its duties; and

(C) unless otherwise agreed upon, interest at the legal rate on the advances referred to in clause (B).

SECTION 17. IC 28-7-1-17, AS AMENDED BY P.L.192-1997, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 17. (a) Every loan application shall be submitted on a form approved by the board of directors. When making an application, a member shall state the security offered. Loans may be dispersed upon written approval by a majority of the credit committee or a loan officer, except under conditions described in section 16(g) of this chapter. If the credit committee or loan officer fails to approve an application for a loan, the applicant may appeal to the board of directors, providing such appeal is authorized by the bylaws.

(b) Loans to members may be made only under the following terms and conditions:

(1) All loans shall be evidenced by notes signed by the borrowing member. A loan shall not be made to a member if it would cause the member to become indebted to the credit union in an aggregate amount in excess of ten percent (10%) of the total unimpaired shares and surplus.

(2) Unsecured loans shall not exceed five percent (5%) of the current assets of the credit union. The board of directors shall establish written lending policies and maintain such policies on file in the credit union. For the purposes of this section, an assignment of shares or the endorsement of a note is considered security.

(3) Except as otherwise provided in this section, the terms of any loan to a member with a maturity of more than six (6) months shall provide for principal and interest payments that will amortize the obligation in full within the terms of the loan contract. If the income of the borrowing member is seasonal, the terms of the loan contract may provide for seasonal amortization.

(4) Loans may be made upon the security of improved or unimproved real estate. Except as otherwise specified in this section, such loans must be secured by a first lien upon real estate prior to all other liens, except for taxes and assessments not delinquent, and may be made with repayment terms other than as provided in subdivision (3). When the amount of a loan is at least two hundred fifty thousand dollars (\$250,000), the fair cash value of real estate security shall be determined by a written appraisal made by one (1) or more qualified state licensed or certified appraisers designated by the board of directors. The credit union

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loan folder for real estate mortgage loans shall include, when applicable:

- (A) the loan application;
- (B) the mortgage instrument;
- (C) the note;
- (D) the disclosure statement;
- (E) the documentations of property insurance;
- (F) an appraisal on the real estate for which the loan is made; and
- (G) the attorney's opinion of titles or a certificate of title insurance on the real estate upon which the mortgage loan is made.

(5) The total unpaid balance of all loans authorized by this subdivision shall, at no time, exceed thirty-three and one-third percent (33 1/3%) of the total assets of the credit union at the time the loans are granted. This section does not limit unpaid balances secured by adjustable rate mortgages. Loans made upon security of real estate are subject to the following restrictions:

- (A) Real estate loans in which no principal amortization is required shall provide for the payment of interest at least annually and shall mature within five (5) years of the date of the loan unless extended and shall not exceed fifty percent (50%) of the fair cash value of the real estate used as security.
- (B) Real estate loans on improved real estate, except for variable rate mortgage loans and rollover mortgage loans provided for in subdivision (6), shall require substantially equal payments at successive intervals of not more than one (1) year, shall mature within thirty (30) years, and shall not exceed ninety percent (90%) of the fair cash value of the real estate used as security, unless the excess of any loan over the authorized percentage of fair cash value is guaranteed or insured by a government agency or a private insurer authorized to engage in such business in Indiana.
- (C) Real estate loans on unimproved real estate may be made only if such real estate is included as additional security on eligible improved residential real estate, or the funds borrowed will be used for the construction of improvements that will make such real estate eligible as security and the funds will be advanced as the work progresses. The terms of the loan shall require the borrower to commence development of the real estate within one (1) year after the date of the loan, shall require the payment of interest at least annually, shall mature

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within five (5) years, and shall not exceed seventy-five percent (75%) of the fair cash value of the real estate used as security. The fair cash value for purposes of this clause shall be based upon the condition of the real estate after such improvements have been made.

(D) Loans primarily secured by a mortgage which constitutes a second lien on improved real estate may be made only if the aggregate amount of all loans on the real estate does not exceed ~~ninety one hundred percent (90%)~~ **(100%)** of the fair cash value of the real estate after such loan is made.

Repayment terms shall be in accordance with subdivision (3).

(6) Subject to the limitations of subdivision (4), variable rate mortgage loans and rollover mortgage loans may be made under the same limitations and rights provided state chartered building and loan associations under IC 28-1-21.5 **(before its repeal) or IC 28-15** or federal credit unions. ~~A credit union is not, however, subject to the limitations or rights set out in IC 28-1-21-25.~~

(7) A credit union may participate with other financial institutions in making loans to credit union members and may sell a participating interest in any of its loans. However, the credit union may not sell more than ninety percent (90%) of the principal of participating loans outstanding at the time of sale.

(c) Nothing in this section prevents any credit union from taking an indemnifying or second mortgage on real estate as additional security.

SECTION 18. IC 28-7-1-18, AS AMENDED BY P.L.192-1997, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 18. (a) The supervisory committee shall cause the share and loan accounts of the members to be verified with the records of the treasurer at least each biennium.

(b) The supervisory committee shall supervise the acts of the board of directors, credit committee, and officers.

(c) By a majority vote, the supervisory committee may call a meeting of the shareholders to consider any violation of this chapter, or of the bylaws, or any practice of the credit union which, in the opinion of the committee is unsafe and unauthorized.

(d) The supervisory committee shall fill vacancies in its own number until the next annual meeting of the members.

(e) At the close of the ~~fiscal year~~, **audit period**, the supervisory committee shall make or cause to be made a thorough audit of the credit union for each ~~fiscal year~~ **audit period** and shall make a full report to the directors. The audit shall be made at any time during the one hundred twenty (120) days following the close of the ~~fiscal year~~.

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audit period. Tapes, work papers, schedules, and evidence of verification of accounts shall be retained until the next examination by the department. A summary of the report shall be read at the annual meeting and shall be filed and preserved with the records of the credit union.

(f) A credit union with assets of at least ten million dollars (\$10,000,000) shall have an annual audit performed by an outside professional accounting firm. The department may require a professional outside audit to be performed upon any credit union when the department questions the safety and soundness of the credit union.

SECTION 19. IC 28-7-1-34, AS AMENDED BY P.L.192-1997, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 34. (a) A credit union organized under the laws of another state may establish a branch office in Indiana if:

- (1) the credit union files an application with the department;
- (2) the branch office is necessary to serve members within the field of membership of the credit union;
- (3) the field of membership of the credit union is consistent with the laws of Indiana;
- (4) the law of the state in which the credit union was organized provides for the establishment of a branch office in that state by an Indiana credit union; and
- (5) the department approves the application of the credit union.

(b) If the credit union that has established a branch office in Indiana is subsequently granted an expansion of its field of membership by its chartering state, the expanded field of membership must be approved by the department before the expanded field of membership can be served in Indiana. If an out-of-state credit union desires to establish a branch office in Indiana and that credit union's field of membership is an incorporated entity, the incorporated entity may not be admitted to do business in Indiana as a foreign corporation by the secretary of state's office until the department has approved the entry of the credit union to establish a branch office.

(c) The department shall provide to a credit union desiring to establish a branch office in Indiana an application, which must provide at least the following information:

- (1) The credit union's financial condition.
- (2) The credit union's field of membership and the number of members to be served in Indiana.
- (3) The proposed location of any branch offices.
- (4) A letter of approval from the supervisory agency in the state in which the credit union's principal office is located, including a

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statement indicating whether such supervisory agency conducts periodic examinations of the credit union.

(5) A statement that the credit union, with respect to its operation in this state, will comply with all laws, rules, and regulations applicable to state or federal credit unions in Indiana.

(d) The department shall approve or deny the application within one hundred twenty (120) days. The department may deny the application or suspend or revoke an application previously approved if it finds any of the following:

(1) That the credit union is insolvent or in imminent danger of insolvency.

(2) That the credit union does not have the approval of its supervisory agency.

(3) That the credit union fails to meet the requirements of subsection (e).

(4) A failure to comply with any written agreement or final order of the department or chartering supervisory agency that has regulatory authority over the credit union.

(5) Serving an expanded field of membership in Indiana before obtaining the approval of the department for the expansion in the field of membership.

(e) Any out-of-state credit union that has been approved to establish branch offices in this state shall, in addition to such other provisions of law applicable to credit unions, comply with the following:

(1) Designate a resident agent for the service of process in this state.

(2) Submit a copy of all reports required by its supervisory agency, unless otherwise required by the department to submit reports prescribed by the department.

(3) Submit a copy of every:

(A) regulatory examination report; and

(B) insurance examination report;

to the department.

(4) Conduct its lending activities in accordance with Indiana law.

(f) The department may examine such a branch office if it has reason to believe that the branch office is not operating in compliance with laws, rules, or regulations. The reasonable cost of any such examination authorized by this subsection shall be paid by the credit union.

(g) For purposes of this section, IC 28-1-2-30 applies to information obtained by or provided to the department concerning branch offices established under this section.

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(h) The department may enter into cooperative, coordinating, and information sharing agreements with an organization listed in IC 28-11-3-3 with respect to the periodic examination or other supervision of a branch:

- (1) in Indiana of an out-of-state credit union; or
- (2) of an Indiana state credit union in a host state;

and the department may accept the organization's reports of examination and reports of investigation instead of conducting the department's own examinations or investigations.

(i) The department may enter into agreements with a financial institution supervisory agency that has concurrent jurisdiction over an Indiana state credit union or an out-of-state credit union operating a branch in Indiana under this chapter to:

- (1) engage the services of the agency's examiners at a reasonable rate of compensation; or
- (2) provide the services of the department's examiners to the agency at a reasonable rate of compensation.

An agreement under this subsection is subject to IC 36-1-7.

(j) The department may enter into joint examinations or joint enforcement actions with other credit union supervisory agencies having concurrent jurisdiction over a branch established and maintained in Indiana by an out-of-state credit union or a branch established and maintained by an Indiana state credit union in a host state. The department may take action independently if the department considers the action to be necessary or appropriate to carry out its responsibilities under this chapter or to ensure compliance with Indiana law.

(k) An out-of-state credit union that maintains at least one (1) branch in Indiana is subject to IC 28-11-3-5. Fees may be shared with other financial institution supervisory agencies or an organization affiliated with or representing at least one (1) credit union supervisory agency under agreements between those parties and the department.

SECTION 20. IC 28-10-1-1, AS AMENDED BY P.L.192-1997, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, 1997. **1998.**

SECTION 21. IC 28-12-8-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 3. If a corporation organized under this title does not complete its organization and proceeds with the transaction of**

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business within six (6) months after its articles of incorporation have been approved and filed, the approval is revoked and the articles of incorporation are void, unless an extension is granted by the director of the department.

SECTION 22. IC 28-13-4-3, AS AMENDED BY P.L.176-1996, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) A **bank, trust company, corporate fiduciary, or stock savings bank corporation** may declare a dividend of so much of the undivided profits of the **bank, trust company, or corporate fiduciary corporation** as shall be deemed **is considered** expedient by the board of directors.

(b) A **bank, savings bank, trust company, or corporate fiduciary corporation** must obtain the approval of the department for the payment of a dividend if the total of all dividends declared by the **bank, savings bank, trust company, or corporate fiduciary corporation** during the calendar year, including the proposed dividend, would exceed the sum of

- (1) the total of the net profits of the **bank, savings bank, trust company, or corporate fiduciary** for that year; and
- (2) the retained net profits of the **bank, savings bank, trust company, or corporate fiduciary income for the year to date combined with its retained net income** for the previous two (2) years.

(c) As used in subsection (b), "net profits" "retained net income" means the figure determined in STEP THREE of the following formula:

STEP ONE: Add together all earnings from current operations plus actual recoveries on loans and investments and other assets.

STEP TWO: Add together all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all federal, state, and local taxes.

STEP THREE: Subtract the figure determined under STEP TWO from the figure determined under STEP ONE: **net income of a specified period, calculated under the consolidated report of income instructions, less the total amount of all dividends declared for the specified period.**

(d) The department may establish criteria for a corporation to be exempt from the dividend approval requirements of this section. In establishing the criteria, the department shall consider:

- (1) the corporation's composite uniform financial institutions rating assigned as a result of the corporation's most recent federal or state examination, or in the case of a corporate



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fiduciary, the corporate fiduciary rating assigned as a result of the corporate fiduciary's most recent state examination;
(2) the resulting Tier 1 leverage capital ratio; and
(3) the existence of any corrective or supervisory order or agreement.

SECTION 23. IC 28-13-10-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) A corporation shall retain its business records under this section for the period required by this section.

(b) A corporation shall permanently retain:

- (1) minute books of meetings of shareholders and directors;
- (2) the capital stock ledger and capital stock certificate ledger or stubs;
- (3) the general ledger;
- (4) the daily statements of condition;
- (5) the investment ledger;
- (6) the copies of examination reports; and
- (7) other records required by the department of financial institutions under this section.

(c) A corporation's board of directors shall develop a records retention policy. In developing the policy, the board of directors shall consider:

- (1) legal actions and administrative proceedings in which the production of company records is necessary or desirable;
- (2) state and federal statutes of limitation applicable to legal actions and administrative proceedings; and
- (3) availability of information contained in the company records from other sources.

(d) Except for records under subsection (b) and for other records required to be permanently retained, a corporation may dispose of a record that has been retained for the period required and in the manner required by this section. A corporation is not under a duty to produce the record in an action or proceeding after the disposal of the record.

(e) This section applies to a corporation under IC 28 and to national banking associations to the extent that this section does not contravene federal law.

SECTION 24. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 1998]: IC 28-1-22-9; IC 28-1-23-3; IC 28-2-12.

SECTION 25. [EFFECTIVE JULY 1, 1998] 750 IAC 2-9 and 750 IAC 5-2-1 are void. The publisher of the Indiana Administrative

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**Code and Indiana Register shall remove these rules from the
Indiana Administrative Code.**

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