



March 30, 1999

ENGROSSED HOUSE BILL No. 1597

DIGEST OF HB 1597 (Updated March 25, 1999 12:32 pm - DI 100)

Citations Affected: IC 28-1; IC 28-2; IC 28-5; IC 28-6; IC 28-10; IC 28-11; IC 28-13; IC 28-14; IC 28-15; noncode.

Synopsis: Various financial institutions matters. Eliminates regulation on charges for dormant accounts. Eliminates provisions of state law preempted by federal law. Provides regulations for financial institution subsidiaries. Provides for registration of names assumed by a financial institution. Specifies department of financial institution powers over a holding company that owns a state chartered financial institution. Allows mutual savings associations and mutual savings banks to establish voting party rights through articles of incorporation or conversion. Updates a reference to federal law. Corrects a reference to federal law. Allows a corporate fiduciary to act as an agent for the sale of a life insurance policy. Makes other specific changes. Makes conforming amendments.

Effective: July 1, 1999.

Oxley, Burton, Bodiker, Whetstone

(SENATE SPONSOR — PAUL)

January 21, 1999, read first time and referred to Committee on Financial Institutions.
February 15, 1999, amended, reported — Do Pass.
February 18, 1999, read second time, ordered engrossed. Engrossed.
February 22, 1999, read third time, passed. Yeas 98, nays 0.

SENATE ACTION

March 4, 1999, read first time and referred to Committee on Insurance and Financial Institutions.
March 29, 1999, reported favorably — Do Pass.

EH 1597—LS 7771/DI 94+



C
O
P
Y

March 30, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1597

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

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

1 SECTION 1. IC 28-1-1-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 3. Unless a different meaning is
3 required by the context, the following definitions apply throughout this
4 article:

5 (1) "Financial institution" means any bank, trust company,
6 corporate fiduciary, savings association, credit union, savings
7 bank, bank of discount and deposit, or industrial loan and
8 investment company organized or reorganized under the laws of
9 this state, and includes a consumer finance institution licensed to
10 make supervised or regulated loans under IC 24-4.5.

11 (2) "Bank" or "bank or trust company" means a financial
12 institution organized or reorganized as a bank, bank of discount
13 and deposit, or trust company under the laws of this state with the
14 express power to receive and accept deposits of money subject to
15 withdrawal by check, and possessing such other rights and powers
16 granted by the provisions of this article in express terms or by

EH 1597—LS 7771/DI 94+



C
O
P
Y

- 1 implication. The term "bank" or "bank or trust company" does not
2 include a savings association, credit union, or industrial loan and
3 investment company.
4 (3) "Domestic corporation" means a corporation formed under the
5 laws of this state, and "foreign corporation" means every other
6 corporation.
7 (4) "Articles of incorporation" includes both the original articles
8 of incorporation and any and all amendments thereto, except
9 where the original articles of incorporation only are expressly
10 referred to, and includes articles of merger and consolidation, and,
11 in the case of corporations organized before July 1, 1933, articles
12 of reorganization, and all amendments thereto.
13 (5) "Incorporator" means one (1) of the signers of the original
14 articles of incorporation.
15 (6) "Subscriber" means one who subscribes for shares of stock in
16 a financial institution.
17 (7) "Shareholder" means one who is a holder of record of shares
18 of stock in a financial institution.
19 (8) "Capital stock" means the aggregate amount of the par value
20 of all shares of capital stock.
21 (9) "Capital" means the aggregate amount paid in on the shares of
22 capital stock of a financial institution issued and outstanding.
23 (10) "Sound capital" means and includes the paid-in and
24 unimpaired capital, the unimpaired surplus, and the unimpaired
25 proceeds of the notes and debentures of any bank which have
26 been issued under the authority and with the approval, in writing,
27 of the department.
28 (11) "Assets" includes all of the property and rights of every kind
29 of a financial institution and the term "fixed assets" means such
30 assets as are not intended to be sold or disposed of in the ordinary
31 course of business.
32 (12) "Principal office" means that office maintained by the
33 financial institution in this state, the address of which is required
34 by the provisions of this article to be kept on file in the office of
35 the secretary of state.
36 (13) "Subscription" means any written agreement or undertaking,
37 accepted by a financial institution, for the purchase of shares of
38 capital stock in the financial institution.
39 (14) "Department" means the department of financial institutions.
40 (15) "Member" means a member of the department of financial
41 institutions.
42 (16) "Branch" means any office, agency, or other place of



1 business, other than the principal office of a financial institution,
2 at which deposits are received, checks paid, or money lent.

3 (17) "Subsidiary" means any foreign or domestic corporation or
4 limited liability company in which the parent bank, ~~has~~ **savings**
5 **bank, savings association, or industrial loan and investment**
6 **company had** at least eighty percent (80%) ownership **before**
7 **July 1, 1999, or is formed or acquired in accordance with**
8 **IC 28-13-16 after June 30, 1999.**

9 (18) "Savings bank" means a financial institution that:

10 (A) was organized, reorganized, or operating under IC 28-6
11 (before its repeal) before January 1, 1993;

12 (B) is formed as the result of a conversion under:

13 (i) IC 28-1-21.7;

14 (ii) IC 28-1-21.8; or

15 (iii) IC 28-1-21.9; or

16 (C) is incorporated under IC 28-12.

17 (19) "Corporate fiduciary" means a financial institution whose
18 primary business purpose is to engage in the trust business (as
19 defined in IC 28-14-1-8) and the execution and administration of
20 fiduciary accounts as a nondepository trust company incorporated
21 under Indiana law.

22 SECTION 2. IC 28-1-11-3.1 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.1. (a) Any bank or
24 trust company shall have the power to discount, negotiate, sell and
25 guarantee promissory notes, bonds, drafts, acceptances, bills of
26 exchange, and other evidences of debt; to buy and sell, exchange, coin
27 and bullion; to loan money; to borrow money and to issue its notes,
28 bonds, or debentures to evidence any such borrowing and to mortgage,
29 pledge, or hypothecate any of its assets to secure the repayment thereof;
30 to receive savings deposits and deposits of money subject to check, and
31 deposits of securities or other personal property from any person or
32 corporation, upon such terms as may be agreed upon by the parties; to
33 contract for and receive on loans and discounts the highest rate of
34 interest allowed by the laws of this state to be contracted for and
35 received by individuals; to accept, for payment at a future date, drafts
36 drawn upon it by its customers and to issue letters of credit authorizing
37 the holders thereof to draw drafts upon it or its correspondents at sight
38 or on time, however, the letter of credit must state a specific expiration
39 date; and to exercise all the powers incidental and proper or which may
40 be necessary and usual in carrying on a general banking business, but
41 it shall have no right to issue bills to circulate as money.

42 (b) Subject to such regulations as the department finds to be



C
O
P
Y

1 necessary and proper, any bank or trust company shall have the
2 following powers:

3 (1) To make such loans and advances of credit and purchases of
4 obligations representing loans and advances of credit as are
5 eligible for insurance by the federal housing administrator, and to
6 obtain such insurance.

7 (2) To make such loans secured by mortgages on real property or
8 leasehold, as the federal housing administrator insures or makes
9 a commitment to insure, and to obtain such insurance.

10 (3) To purchase, invest in, and dispose of notes or bonds secured
11 by mortgage or trust deed insured by the federal housing
12 administrator or debentures issued by the federal housing
13 administrator, or bonds or other securities issued by national
14 mortgage associations.

15 (4) To extend credit to any state agency, with the approval of the
16 department, notwithstanding any other provisions or limitations
17 of IC 28-1. No law of this state prescribing the nature, amount, or
18 form of security or requiring security upon which loans or
19 advances of credit may be made, or prescribing or limiting
20 interest rates upon loans or advances of credit, or prescribing or
21 limiting the period for which loans or advances of credit may be
22 made, shall be deemed to apply to loans, advances of credit, or
23 purchases made pursuant to subdivisions (1), (2), and (3) and this
24 subdivision.

25 (5) To purchase, take, hold, and dispose of notes, and mortgages
26 securing such notes, made to any joint stock land bank heretofore
27 incorporated, in any case in which not less than ninety-nine
28 percent (99%) of the stock of said joint stock land bank is owned
29 by the bank or trust company at the time such notes or mortgages
30 be acquired by the bank or trust company; and upon dissolution
31 of any such joint stock land bank, or at any stage in the process of
32 such dissolution, any bank or trust company then owning not less
33 than ninety-nine percent (99%) of the stock of such joint stock
34 land bank may take, hold, and dispose of any notes, mortgages, or
35 other assets of such joint stock land bank of whatsoever nature,
36 including real estate, wheresoever situated, which such joint stock
37 land bank shall assign, transfer, convey, or otherwise make over
38 to such bank or trust company by way of final or partial
39 distribution of its assets to its stockholders upon such dissolution
40 or in connection with the process of such dissolution. No law of
41 this state prescribing the nature, amount, location, or form of
42 security, or requiring security upon which loans or advances of



1 credit may be made, or prescribing or limiting interest rates upon
 2 loans or advances of credit, or prescribing or limiting the period
 3 for which loan or advances of credit may be made, or prescribing
 4 any ratio between the amount of any loan and the appraised value
 5 of the security for such loan, or requiring periodical reductions of
 6 the principal of any loan, shall be deemed to apply to loans, notes,
 7 mortgages, real estate, or other assets mentioned in this
 8 subdivision.

9 (6) To adopt stock purchase programs for employees and to grant
 10 options to purchase, and to issue and sell, shares of its capital
 11 stock to its employees, or to a trustee on their behalf (which may
 12 be the bank or trust company issuing such capital stock), without
 13 first offering the same to its shareholders, for such consideration,
 14 not less than par value, and upon such terms and conditions as
 15 shall be approved by its board of directors and by the holders of
 16 a majority of its shares entitled to vote with respect thereto, and
 17 by the department. In the absence of actual fraud in the
 18 transaction, the judgment of the directors as to the consideration
 19 for the issuances of such options and the sufficiency thereof shall
 20 be conclusive. Any bank or trust company exercising the powers
 21 granted in this subsection may, to the extent approved by the
 22 department, have authorized and unissued stock required to fulfill
 23 any stock option or other arrangement authorized herein.

24 (7) Subject to such restrictions as the department may impose, to
 25 become the owner or lessor of personal or real property acquired
 26 upon the request and for the use of a customer and to incur such
 27 additional obligations as may be incident to becoming an owner
 28 or lessor of such property.

29 (8) To purchase or construct buildings and hold legal title thereto
 30 to be leased to municipal corporations or other public authorities,
 31 for public purposes, having resources sufficient to make payment
 32 of all rentals as they become due. Each lease agreement shall
 33 provide that upon expiration, the lessee will become the owner of
 34 the building.

35 (8.1) Subject to the prior written approval of the department, and
 36 notwithstanding section 5 of this chapter, to purchase, hold, and
 37 convey real estate which is:

38 (A) improved or to be improved by a single, freestanding
 39 building; and

40 (B) to be used, in part, as a branch of that bank or trust
 41 company and, in part, as rental property for one (1) lessee.

42 Unless a written extension of time is given by the department, the

C
O
P
Y



1 bank or trust company shall open its branch within two (2) years
 2 from the acquisition date of the real estate. If the bank or trust
 3 company does not open a branch on the real estate in that time
 4 period or if the bank or trust company removes its branch from
 5 the real estate, the bank or trust company shall divest itself of all
 6 interest in the real estate within five (5) years from the acquisition
 7 date of the real estate, if a branch was not opened, or five (5)
 8 years from the removal date of the branch office. Except with the
 9 written approval of the department, the sum invested in real estate
 10 and buildings used for the convenient transaction of its business
 11 as provided in this subdivision shall not exceed fifty percent
 12 (50%) of the sound capital of that bank or trust company as
 13 provided in section 5 of this chapter.

14 ~~(9) To exercise any right or power through a subsidiary, and to~~
 15 ~~purchase, own, and hold shares of stock of each such subsidiary;~~
 16 ~~but such subsidiary shall exercise no power or engage in any~~
 17 ~~activity which the bank or trust company would not be permitted~~
 18 ~~to do. Each subsidiary shall be subject to examination by the~~
 19 ~~department and by appropriate federal banking supervisory~~
 20 ~~authorities to the same extent as though it were comprised within~~
 21 ~~the legal entity of the bank or trust company.~~

22 ~~(10) To invest in community development corporations and~~
 23 ~~projects of a predominantly civic, community, or public nature,~~
 24 ~~including equity investments in corporations or limited liability~~
 25 ~~companies organized for such purposes. Investments by a bank or~~
 26 ~~trust company under this subdivision may not exceed:~~

27 (A) in any one (1) project, two percent (2%); and

28 (B) in the aggregate, five percent (5%);

29 of the capital and surplus of the bank or trust company, unless the
 30 director makes the determination set forth in subsection (c). As
 31 used in this subdivision and in subsection (c), "capital and
 32 surplus" has the meaning set forth in IC 28-1-13-1.1.

33 ~~(10)~~ **(10)** Subject to section 3.2 of this chapter, to exercise the
 34 rights and privileges (as defined in section 3.2(a) of this chapter)
 35 that are or may be granted to national banks domiciled in Indiana.

36 (c) Investments by a bank or trust company under subsection (b)(10)
 37 may exceed the limit set forth in subsection (b)(10)(B) if the director
 38 determines that:

39 (1) the aggregate investments by the bank or trust company under
 40 subsection (b)(10) in excess of five percent (5%) of the capital
 41 and surplus of the bank or trust company will not pose a
 42 significant risk to the affected deposit insurance fund; and

C
O
P
Y

1 (2) the bank or trust company is adequately capitalized.
 2 However, in no case shall the aggregate investments by a bank or trust
 3 company under subsection (b)(10) exceed ten percent (10%) of the
 4 capital and surplus of the bank or trust company.

5 (d) A bank or trust company shall not make any investment under
 6 subsection (b)(10) if the investment would expose the bank or trust
 7 company to unlimited liability.

8 (e) Any rule made and promulgated under and pursuant to this
 9 section may apply to one (1) or more banks or trust companies or to one
 10 (1) or more localities in the state as the department, in its discretion,
 11 may determine.

12 SECTION 3. IC 28-1-20-1.1 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1.1. (a) When a
 14 statement of account has been delivered by a bank or savings bank to
 15 a depositor, the account, after the period of three (3) years from the
 16 date of its delivery, shall be deemed finally adjusted and its correctness
 17 conclusively presumed. A statement of account or a passbook is
 18 delivered to a depositor, within the meaning of this subsection, when
 19 received by the depositor or the depositor's agent in person or when
 20 mailed to the depositor at the depositor's last known address. This
 21 section does not relieve the depositor from the duty of exercising due
 22 diligence in the examination of the statement of account. A depositor
 23 must immediately notify the bank or savings bank upon discovery of
 24 any error in the statement of account.

25 (b) Any bank, savings bank, or trust company may impose and
 26 collect a monthly service charge and maintenance charge on dormant
 27 accounts, whether time or demand, in such reasonable amounts as may
 28 be determined by resolution of the board of directors ~~within the limits~~
 29 ~~fixed by the department by rule: and that are properly disclosed to its~~
 30 **depositors.**

31 ~~(c) The department shall fix the maximum service or maintenance~~
 32 ~~charge which may be imposed upon dormant accounts with reference~~
 33 ~~to the additional expense of operation caused by the maintenance of the~~
 34 ~~accounts and the effect of dormant accounts upon the expenses of~~
 35 ~~operation of banks, savings banks, and trust companies. The maximum~~
 36 ~~amount of such service or maintenance charge fixed by the department~~
 37 ~~shall not exceed seventy-five cents (\$0.75) per month. For the purpose~~
 38 ~~of this subsection: section:~~

39 (1) every demand deposit account is considered a dormant
 40 account after one (1) year from the date of the last transaction
 41 recorded on the books of the bank, savings bank, or trust company
 42 with respect to the account; and

C
O
P
Y

1 (2) every time deposit account is considered a dormant account
 2 after three (3) years from the date of the last transaction recorded
 3 on the books of the bank, savings bank, or trust company with
 4 respect to the account.

5 (d) Any bank, savings bank, or trust company may impose and
 6 collect monthly service charges and maintenance charges on active
 7 accounts, whether time or demand, that are carried by it on its books,
 8 in such amounts as may be agreed upon between it and its depositors.

9 (e) This section is applicable to national banking associations doing
 10 business in this state.

11 SECTION 4. IC 28-1-20-4 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Except as
 13 provided in subsections ~~(b)~~, ~~(d)~~, and ~~(g)~~, **(c), (d), (g), and (k)** it is
 14 unlawful for any person, firm, limited liability company, or corporation
 15 (other than a bank or trust company or corporate fiduciary organized or
 16 reorganized under IC 28 or statutes in effect at the time of organization
 17 or reorganization or under the laws of the United States):

18 (1) to use the word "trust" or the word "bank" as a part of the
 19 name or title of the person, firm, or corporation; or

20 (2) to advertise or represent the person, firm, limited liability
 21 company, or corporation to the public:

22 (A) as a bank or trust company or a corporate fiduciary; or

23 (B) as affording the services or performing the duties which by
 24 law only a bank or trust company or a corporate fiduciary is
 25 entitled to afford and perform.

26 **(b) A financial institution organized under the laws of any state
 27 or the United States that establishes a branch office under this title
 28 is authorized to do business at that branch using a name other than
 29 the name of its home office.**

30 **(c) Notwithstanding the prohibitions of this section, an
 31 out-of-state financial institution with the word "bank" in its legal
 32 name may use the word "bank" if the financial institution is
 33 insured by the Federal Deposit Insurance Corporation or its
 34 successor.**

35 ~~(b)~~ (d) Notwithstanding subsection (a), a building and loan
 36 association organized under IC 28-4 (before its repeal) may include in
 37 its name or title:

38 (1) the words "savings bank"; or

39 (2) the word "bank" if the name or title also includes either the
 40 words "savings bank" or letters "SB".

41 A building and loan association that includes "savings bank" in its title
 42 under this section does not by that action become a savings bank for



C
O
P
Y

1 purposes of IC 28-6.1.

2 ~~(e)~~ (e) The name or title of a savings bank governed by IC 28-6.1
3 must include the words "savings bank" or the letters "SB".

4 **(f) A savings association may include in its name the words**
5 **"building and loan association".**

6 ~~(g)~~ (g) Notwithstanding subsection (a), a bank holding company (as
7 defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a
8 part of its name. However, this subsection does not permit a bank
9 holding company to advertise or represent itself to the public as
10 affording the services or performing the duties that by law a bank or
11 trust company only is entitled to afford and perform.

12 ~~(h)~~ (h) The department is authorized to investigate the business
13 affairs of any person, firm, limited liability company, or corporation
14 that uses "bank" or "trust" in its title or holds itself out as a bank or
15 trust for the purpose of determining whether the person, firm, limited
16 liability company, or corporation is violating any of the provisions of
17 this article, and, for that purpose, the department and its agents shall
18 have access to any and all of the books, records, papers, and effects of
19 the person, firm, limited liability company, or corporation. In making
20 its examination, the department may examine any person and the
21 partners, officers, members, or agents of the firm, limited liability
22 company, or corporation under oath, subpoena witnesses, and require
23 the production of the books, records, papers, and effects considered
24 necessary. On application of the department, the circuit or superior
25 court of the county in which the person, firm, limited liability company,
26 or corporation maintains a place of business shall, by proper
27 proceedings, enforce the attendance and testimony of witnesses and the
28 production and examination of books, papers, records, and effects.

29 **(i) The department is authorized to exercise the powers under**
30 **IC 28-11-4 against a person, firm, limited liability company, or**
31 **corporation that improperly holds itself out as a financial**
32 **institution.**

33 ~~(j)~~ (j) A person, firm, limited liability company, or corporation who
34 violates this section is subject to a penalty of two hundred dollars
35 (\$200) per day for each and every day during which the violation
36 continues. The penalty imposed shall be recovered in the name of the
37 state on relation of the department and, when recovered, shall be paid
38 into the financial institutions fund established by IC 28-11-2-9.

39 ~~(k)~~ (k) The word "bank" may not be included in the name of a
40 corporate fiduciary.

41 SECTION 5. IC 28-1-21.4-7 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. As used in this

C
O
P
Y



1 chapter, "voting parties" means the:
 2 (1) depositors; and
 3 (2) borrowers;
 4 of a mutual savings association as provided in ~~IC 28-13-6-2(e)~~.
 5 **IC 28-13-6-2(f)**.
 6 SECTION 6. IC 28-5-1-6 IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) Every company may exercise
 8 all the powers conferred upon domestic corporations by IC 23-1 but
 9 only to the extent that those powers may be necessary, convenient, or
 10 expedient to accomplish the purposes for which it is organized. Subject
 11 to the restrictions and limitations contained in this chapter, every
 12 company may exercise the following powers:
 13 (1) To issue, negotiate, and sell its secured or unsecured
 14 certificates of investment or indebtedness, subject to subdivision
 15 (17), upon terms and conditions, in any form, and payable at times
 16 that are not inconsistent with this chapter and, subject to
 17 subsection (c), bearing a rate of interest approved by the
 18 department.
 19 (2) To make, purchase, discount, or otherwise acquire extensions
 20 of credit under IC 24-4.5.
 21 (3) To lend money without security or upon the security of
 22 comakers, personal endorsement, or the mortgage of real or
 23 personal property or the mortgage or pledge of bailment leases or
 24 rentals due and to become due thereunder and other choses in
 25 action, and to contract for interest, discount, fees, charges, or
 26 other consideration fixed or permitted by any laws of Indiana
 27 concerning interest, discount, or usury.
 28 (4) To discount, purchase, or otherwise acquire notes, bills of
 29 exchange, acceptances, bailment leases, and the property covered
 30 thereby or the rentals due or to become due thereunder or other
 31 choses in action and, subject to such restrictions the department
 32 imposes, to become owner or lessor of personal or real property
 33 acquired upon the request and for the use of a customer, and to
 34 incur additional obligations incident to becoming an owner or
 35 lessor of the property. The liability of a lessee under the lease
 36 does not constitute an obligation (as defined in section 8 of this
 37 chapter).
 38 (5) To purchase or construct buildings and hold legal title to them,
 39 to be leased for public purposes to municipal corporations or
 40 other public authorities having resources sufficient to make
 41 payment of all rentals as they become due. Each lease agreement
 42 shall provide that upon expiration, the lessee shall become owner

C
O
P
Y



- 1 of the building.
- 2 (6) To invest in bonds, notes, or certificates which are:
- 3 (A) the direct or indirect obligations of the United States or of
- 4 the state;
- 5 (B) obligations of mutual funds or financial institutions if the
- 6 obligations represent a participation in a fund invested in, or
- 7 are secured by, direct or indirect obligations of the United
- 8 States owned by the mutual fund or financial institution;
- 9 (C) the direct obligations of a civil or school county, township,
- 10 city, town, other taxing district, municipality of Indiana;
- 11 (D) a special taxing district in Indiana;
- 12 (E) issued by or in the name of the trustees of Indiana
- 13 University, the trustees of Purdue University, the trustees of
- 14 Ball State University, the trustees of Indiana State University,
- 15 or the Indiana educational facilities authority;
- 16 (F) issued by or in the name of any municipality of Indiana and
- 17 payable from the revenues to be derived from the operation of
- 18 facilities for the production or distribution of water, electricity,
- 19 gas, or from the operation of sewage works; or
- 20 (G) the obligations of any Indiana toll road commission, public
- 21 library, or schoolhouse holding corporation first mortgage
- 22 bonds;
- 23 which district, municipality, taxing unit, or corporation is not then
- 24 in default in the payment of either principal or interest on any of
- 25 its funded obligations and has not so defaulted for a period of
- 26 more than six (6) months within the five (5) year period
- 27 immediately preceding the purchase of the securities.
- 28 (7) To invest in bonds, notes, or debentures rated in one (1) of the
- 29 first four (4) classifications established by one (1) or more
- 30 standard rating services specified by the department that satisfy
- 31 requirements of marketability prescribed periodically by the
- 32 department that are the obligations of a person, a firm, a limited
- 33 liability company, a corporation, a state, a territory, an insular
- 34 possession of the United States, or a county, township, town, city,
- 35 taxing district, or municipality thereof which is not then in default
- 36 in the payment of either principal or interest on any of its funded
- 37 obligations and has not so defaulted within the five (5) year
- 38 period immediately preceding the purchase of the securities and
- 39 other investment securities prescribed by the department by rule.
- 40 As used in this section, the term "investment securities" means
- 41 marketable obligations evidencing indebtedness of a person, firm,
- 42 limited liability company, or corporation in the form of bonds,

C
O
P
Y

1 notes, or debentures commonly known as "investment securities"
2 and the definition of the term "investment securities" prescribed
3 by the department by rule. Except as is otherwise provided in this
4 chapter or otherwise permitted by law, nothing contained in this
5 subdivision authorizes the purchase by an industrial loan and
6 investment company of shares of stock or other securities, unless
7 the purchase is necessary to prevent loss under a debt previously
8 contracted in good faith and stocks or other securities so
9 purchased or acquired shall, within six (6) months from the time
10 of its purchase, be sold or disposed of at public or private sale,
11 unless otherwise ordered by the department.

12 (8) To invest in bonds or debentures issued under and by the
13 authority of the Federal Home Loan Bank Act (12 U.S.C. 1421
14 through 1429), or of the Home Owners' Loan Act (12 U.S.C. 1461
15 through 1468), or obligations issued by or for farm credit banks,
16 and banks for cooperatives under the Farm Credit Act of 1971 (12
17 U.S.C. 2001 through 2279aa-14).

18 (9) To invest in insured shares of an insured savings association
19 organized under the laws of Indiana, and in insured shares of an
20 insured federal savings association whose principal place of
21 business is located in Indiana; and in certificates of indebtedness
22 or investment of an industrial loan and investment company
23 organized under the laws of Indiana. However, not more than
24 twenty percent (20%) of the resources of the company may be
25 invested in the insured shares of any such association, nor more
26 than ten percent (10%) of sound capital in such certificates of
27 industrial loan and investment companies.

28 (10) To make loans and advances of credit and purchases of
29 obligations representing loans and advances of credit as are
30 eligible for insurance by the federal housing administrator, and to
31 obtain insurance from the administrator.

32 (11) To make loans secured by mortgage on real property or
33 leasehold, insured by the federal housing administrator, or makes
34 a commitment to insure and to obtain insurance from the
35 administrator.

36 (12) To purchase, invest in, and dispose of notes or bonds secured
37 by mortgage or trust deed insured by the federal housing
38 administrator or debentures issued by the federal housing
39 administrator, or bonds or other securities insured by national
40 mortgage associations.

41 (13) To discount, purchase, or otherwise acquire charge accounts,
42 and drafts and bills of exchange evidencing charge accounts and

C
O
P
Y

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

to impose and collect monthly service charges and maintenance charges on charge accounts, drafts, or bills of exchange which are owned or acquired in amounts agreed upon between the company and the obligor, or obligors, on charge accounts, drafts, and bills of exchange.

(14) To purchase or otherwise acquire property, real or personal, tangible or intangible, in which the company has a security interest to secure a debt owing to the company contracted in good faith or the purchase or acquisition of which property is considered expedient to prevent loss from a debt owing to the company contracted in good faith, and for such purpose to engage in any lawful business considered necessary or expedient by the company to preserve, protect, or make saleable the property. Property thus purchased or acquired shall be sold and disposed of within two (2) years, or a longer period permitted by the department, after the purchase or acquisition.

~~(15) To exercise any right or power through a subsidiary approved by the department, and to purchase, own, and hold shares of stock of each subsidiary, but a subsidiary may not exercise a power or engage in an activity which the company would not be permitted to do. Each subsidiary shall be subject to examination by the department to the same extent as though it were comprised within the legal entity of the company, and unless otherwise provided by statute or rule, pertinent book figures of the company and its subsidiaries shall be consolidated for the purpose of applying applicable provisions of this chapter. Any such subsidiary may be organized under the laws of this state or any other state, territory, or insular possession of the United States and may qualify as a foreign corporation authorized to do business in any other state, territory, or insular possession of the United States.~~

~~(16) To act as trustee of a trust created in the United States and forming part of a stock bonus, pension, or profit sharing plan that is qualified for tax treatment under Section 401(d) of the Internal Revenue Code, and to act as trustee or custodian of an individual retirement account within the meaning of Section 408 of the Internal Revenue Code, if the funds of that trust or account are only invested in certificates of investment or indebtedness of the company or in obligations or securities issued by that company. All funds held under this subdivision in a fiduciary capacity may be commingled by the company for appropriate investment purposes; however, individual records shall be kept by the fiduciary for each participant and shall show in proper detail all~~

C
O
P
Y



1 transactions engaged in under the authority of this subdivision.
 2 ~~(17)~~ **(16)** To do anything necessary and appropriate to obtain or
 3 maintain federal deposit insurance under the Federal Deposit
 4 Insurance Corporation Act (12 U.S.C. 1811 through 1833e), or
 5 insurance under any other federal or Indiana law providing
 6 insurance for certificates of investment or indebtedness issued by
 7 a company. A company that obtains and maintains federal deposit
 8 insurance is not required to obtain approval from the department
 9 concerning the rate of interest payable on, or the form, the terms,
 10 or the conditions of the certificates of investment or indebtedness,
 11 and the company may exercise all of the powers that are conferred
 12 upon institutions maintaining federal deposit insurance that are
 13 not in conflict with Indiana law.

14 ~~(18)~~ **(17)** To become a member of a federal home loan bank and
 15 acquire, own, pledge, sell, assign, or otherwise dispose of shares
 16 of the capital stock of a federal home loan bank.

17 ~~(19)~~ **(18)** To borrow money and procure advances from a federal
 18 home loan bank and to transfer, assign to, and pledge with the
 19 federal home loan bank any of the bonds, notes, contracts,
 20 mortgages, securities, or other property of the company held or
 21 acquired as security for the payment of the loans and advances.

22 ~~(20)~~ **(19)** To possess and exercise all rights, powers, and
 23 privileges conferred upon and do and perform all acts and things
 24 required of members or shareholders of a federal home loan bank,
 25 or by the provisions of 12 U.S.C. 1421 through 1449.

26 ~~(21)~~ **(20)** Subject to section 6.3 of this chapter, to exercise the
 27 rights and privileges (as defined in section 6.3(a) of this chapter)
 28 that are or may be granted to national banks domiciled in Indiana.

29 (b) No law of this state prescribing the nature, amount, or form of
 30 security or requiring security upon which loans or advances of credit
 31 may be made, or prescribing or limiting interest rates upon loans or
 32 advances of credit, or prescribing or limiting the period for which loans
 33 or advances of credit may be made, applies to loans, advances of credit,
 34 or purchases made pursuant to subsection (a)(10), (a)(11), or (a)(12).

35 (c) If any national or state chartered bank or savings association is
 36 not limited by law with regard to the rate of interest payable on any
 37 type or category of checking account, savings account, or deposit,
 38 certificate of deposit, membership share, or other account, then
 39 industrial loan and investment companies are similarly not limited with
 40 regard to the interest payable on certificates of investment or
 41 indebtedness.

42 SECTION 7. IC 28-10-1-1 IS AMENDED TO READ AS

EH 1597—LS 7771/DI 94+



C
O
P
Y

1 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A reference to a
 2 federal law or federal regulation in IC 28 is a reference to the law or
 3 regulation in effect January 1, ~~1998~~: **1999**.

4 SECTION 8. IC 28-11-4-12 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 1999]: **Sec. 12. (a) The director of the department may exercise
 7 the enforcement powers of this chapter against an affiliate of a
 8 financial institution as if the affiliate were a financial institution if
 9 the director determines that a practice of the affiliate could cause
 10 either:**

11 (1) the financial institution to suffer substantial loss or other
 12 damage; or

13 (2) the interests of the financial institution's depositors to be
 14 seriously prejudiced by reason of a violation, practice, or
 15 breach of fiduciary duty.

16 (b) The director of the department may issue and serve upon the
 17 director or the officer of the affiliate a notice of charges of the
 18 practice, violation, or act.

19 (c) For purposes of this section, affiliate has the meaning set
 20 forth in IC 28-1-18.2.

21 SECTION 9. IC 28-13-6-2 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Except as
 23 provided in subsections (b), (c), (d), and (e) or unless the articles of
 24 incorporation provide otherwise, each outstanding share, regardless of
 25 class, is entitled to one (1) vote on each matter voted on at a
 26 shareholders' meeting.

27 (b) Absent special circumstances, the shares of a corporation are not
 28 entitled to vote if the shares are owned, directly or indirectly, by a
 29 second corporation, domestic or foreign, and the corporation owns,
 30 directly or indirectly, a majority of the shares entitled to vote for
 31 directors of the second corporation.

32 (c) Subsection (b) does not limit the power of a corporation to vote
 33 any shares, including its own shares, held by the corporation in or for
 34 an employee benefit plan or in any other fiduciary capacity.

35 (d) Redeemable shares are not entitled to vote after notice of
 36 redemption is mailed to the holders and a sum sufficient to redeem the
 37 shares has been deposited with a corporation, trust company, or other
 38 financial institution under an irrevocable obligation to pay the holders
 39 the redemption price on surrender of the shares.

40 (e) ~~If the corporation is~~ A mutual savings association ~~each~~
 41 ~~shareholder is entitled at every shareholders' meetings to cast one (1)~~
 42 ~~vote for each one hundred dollars (\$100) or fraction thereof of the total~~



C
O
P
Y

1 amount paid in on all shares standing in the shareholder's name on the
 2 books of the association, unless the articles of incorporation provide
 3 otherwise. Each borrowing member who is not a shareholder is entitled
 4 to cast one (1) vote as a borrower. A person may not, except as proxy,
 5 cast more than fifty (50) votes at any election held by the association.
 6 **or mutual savings bank may establish the rights of its voting**
 7 **parties in its articles of incorporation or articles of conversion.**

8 (f) Except as provided in subsection (g), if the corporation is A
 9 **member or a shareholder of** a mutual savings bank **each member or**
 10 **a mutual savings association that has not established the rights of**
 11 **its voting parties under subsection (e)** is entitled at a members' **or**
 12 **shareholders'** meeting to cast one (1) vote for each one hundred
 13 dollars (\$100) or fraction of one hundred dollars (\$100) of the total
 14 amount paid in on all deposits in the member's name **or all shares**
 15 **standing in the shareholder's name** on the books of the mutual
 16 savings bank **or mutual savings association.** Each borrowing member
 17 is entitled to cast one (1) vote as a borrower. A person may not, except
 18 as proxy, cast more than fifty (50) votes at an election held by the
 19 mutual savings bank unless a greater number of votes is permitted in
 20 the articles of mutual savings bank conversion adopted under
 21 ~~IC 28-1-21.7.~~

22 (g) Notwithstanding subsection (f), a mutual savings bank formed
 23 by charter conversion may provide in the articles of mutual bank
 24 conversion that only depositors are voting members of the mutual
 25 savings bank. **or mutual savings association.**

26 SECTION 10. IC 28-13-16 IS ADDED TO THE INDIANA CODE
 27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 1999]:

29 **Chapter 16. Financial Institution Subsidiaries**

30 **Sec. 1. As used in this chapter, "qualifying subsidiary" means**
 31 **a foreign or domestic corporation or limited liability company in**
 32 **which a financial institution has more than fifty percent (50%)**
 33 **ownership.**

34 **Sec. 2. As used in this chapter, "nonqualifying subsidiary"**
 35 **means a foreign or domestic corporation or limited liability**
 36 **company in which a financial institution has fifty percent (50%) or**
 37 **less ownership.**

38 **Sec. 3. As used in this chapter, "financial institution" means:**

- 39 (1) a bank (as defined by IC 28-1-1-3);
 40 (2) a savings bank;
 41 (3) a savings association; or
 42 (4) an industrial loan and investment company that maintains



C
O
P
Y

1 federal deposit insurance.

2 **Sec. 4. (a)** A financial institution may acquire or establish a
3 qualifying subsidiary by providing the department with written
4 notice before acquiring or establishing the subsidiary. The
5 department shall notify the requesting financial institution of the
6 department's receipt of the notice.

7 (b) A subsidiary may exercise a power or engage in an activity
8 permitted to be performed by a financial institution under the
9 same conditions and restrictions as if the power or activity is
10 performed by the financial institution itself, or the activity has been
11 authorized by 12 CFR 5.34(e)(2)(ii).

12 (c) The qualified subsidiary may exercise or engage in the
13 activity thirty (30) days after the date on which the department
14 receives the notification unless otherwise notified by the
15 department.

16 **Sec. 5.** A financial institution may acquire or establish a
17 nonqualifying subsidiary by submitting an application to the
18 department containing:

- 19 (1) a complete description of the financial institution's
20 investment in the subsidiary;
21 (2) the activity to be conducted; and
22 (3) a representation that the activity:
23 (A) could be performed by a financial institution under
24 statutory authority of this title;
25 (B) is a part of or incidental to the business of banking as
26 determined by the director; or
27 (C) has been authorized by 12 CFR 5.34(e)(2)(ii).

28 The department shall notify the requesting financial institution of
29 the department's receipt of the application.

30 **Sec. 6.** The department shall review a financial institution's
31 notice or application to acquire or establish a qualifying or
32 nonqualifying subsidiary to determine:

- 33 (1) whether the proposed activities are legally permissible;
34 and
35 (2) whether the proposal endangers the safety or soundness of
36 the financial institution.

37 The director shall either approve or disapprove the application for
38 a nonqualifying subsidiary within sixty (60) days after the date on
39 which the department receives the application. The period for
40 approval or disapproval of the application may be extended by the
41 department based on a determination that additional information
42 from the financial institution or additional time for analysis is



C
O
P
Y

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

required.

Sec. 7. (a) Each qualifying subsidiary and nonqualifying subsidiary is subject to examination by the department or the appropriate federal banking supervisory authorities.

(b) If, upon examination, the department determines that a qualifying subsidiary or a nonqualifying subsidiary is operating in violation of law, regulation, or written condition or in an unsafe or unsound manner or otherwise threatens the safety and soundness of the financial institution, the department may direct the financial institution or subsidiary to take appropriate remedial action, which may include requiring the financial institution to divest or liquidate the subsidiary or discontinue specified activities.

Sec. 8. The department may adopt rules under IC 4-22-2 or policies to implement this chapter.

SECTION 11. IC 28-14-1-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9. "Subsidiary" means a foreign or domestic corporation or a limited liability company in which a corporate fiduciary has more than a fifty percent (50%) ownership.**

SECTION 12. IC 28-14-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 8. (a) A corporate fiduciary may:**

- (1) exercise any power through a subsidiary; and
 - (2) purchase, own, and hold shares of stock of a subsidiary.
- (b) A subsidiary of a corporate fiduciary may not:**
- (1) exercise a power that the corporate fiduciary could not exercise; or
 - (2) engage in an activity in which the corporate fiduciary would not be permitted to engage.

(c) A corporate fiduciary may acquire or establish a subsidiary by submitting an application to the department containing a complete description of the corporate fiduciary's investment in the subsidiary and the activity to be conducted.

(d) The department shall review a corporate fiduciary's application to acquire or establish a subsidiary to determine:

- (1) whether the proposed activities are legally permissible; and
- (2) whether the proposal endangers the safety and soundness of the corporate fiduciary.

The director shall either approve or disapprove the application within sixty (60) days after the date on which the department receives the application. The period for approval or disapproval

C
O
P
Y



1 **may be extended by the department based on a determination that**
 2 **additional information from the corporate fiduciary or additional**
 3 **time for analysis is required.**

4 ~~(e)~~ (e) Each subsidiary of a corporate fiduciary is subject to
 5 examination by the department to the same extent as though the
 6 subsidiary were included within the legal entity of the corporate
 7 fiduciary.

8 SECTION 13. IC 28-14-3-10 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. A corporate
 10 fiduciary has the power to act as fiscal or transfer agent of the United
 11 States or any state, municipality, body politic, or corporation, and may,
 12 in that capacity:

- 13 (1) receive and disburse money;
- 14 (2) transfer, register, and countersign certificates of stocks, bonds,
 15 and other evidence of indebtedness;
- 16 (3) authenticate and certify bonds and certificates of indebtedness
 17 referred to in subdivision (2);
- 18 (4) act as agent to buy and sell domestic and foreign
 19 transportation;
- 20 (5) solicit and write insurance as agent or broker for any insurance
 21 company authorized to do business in Indiana; ~~other than a life~~
 22 ~~insurance company~~; and
- 23 (6) act as attorney in fact or agent of any person or corporation,
 24 foreign or domestic, for any lawful purpose.

25 SECTION 14. IC 28-14-3-11 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) Notwithstanding
 27 any other provision of this title, a corporate fiduciary may act as an
 28 agent for the sale of any annuity contract **or any life insurance policy**
 29 issued by a life insurance company (as defined in IC 27-1-2-3)
 30 authorized to do business in Indiana under IC 27-1.

31 (b) A corporate fiduciary that acts as an agent for the sale of an
 32 annuity contract **or a life insurance policy:**

- 33 (1) is subject to all requirements of IC 27 relating to the sale and
 34 solicitation of insurance, including licensing as an agent under
 35 IC 27-1-15.5; and
- 36 (2) must comply with the disclosure requirements under
 37 IC 28-1-11-2.6.

38 ~~(c) This section does not give power to; or otherwise affect the~~
 39 ~~power of; a corporate fiduciary to act as an agent for the sale of life~~
 40 ~~insurance other than an annuity contract.~~

41 SECTION 15. IC 28-15-9-1 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A savings



C
O
P
Y

1 association may form and invest in a service corporation to the same
2 extent and with the same limitations as a federally chartered savings
3 association, as provided for by 12 CFR ~~545.74~~. **559.**

4 SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE
5 JULY 1, 1999]: IC 28-1-20-2; IC 28-2-16-24; IC 28-6.1-7-10.

6 SECTION 17. [EFFECTIVE JULY 1, 1999] **750 IAC 2-4-1 is void.**
7 **The publisher of the Indiana Administrative Code and Indiana**
8 **Register shall remove this rule from the Indiana Administrative**
9 **Code.**

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1597, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 18, line 10, delete "bank" and insert "**financial institution**".
and when so amended that said bill do pass.

(Reference is to HB 1597 as introduced.)

BODIKER, Chair

Committee Vote: yeas 11, nays 0.

C
o
p
y



COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1597, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1597 as printed February 16, 1999.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

C
o
p
y

