



February 16, 1999

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## HOUSE BILL No. 1597

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DIGEST OF HB 1597 (Updated February 15, 1999 4:09 pm - DI 75)

**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.

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**Bodiker, Oxley, Burton, Whetstone**

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January 21, 1999, read first time and referred to Committee on Financial Institutions.  
February 15, 1999, amended, reported — Do Pass.

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HB 1597—LS 7771/DI 94+



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February 16, 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.

## HOUSE BILL No. 1597

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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  
17 implication. The term "bank" or "bank or trust company" does not

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

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1 at which deposits are received, checks paid, or money lent.

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

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

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

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

12 (i) IC 28-1-21.7;

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

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

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

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

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

41 (b) Subject to such regulations as the department finds to be  
42 necessary and proper, any bank or trust company shall have the



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1 following powers:

- 2 (1) To make such loans and advances of credit and purchases of  
3 obligations representing loans and advances of credit as are  
4 eligible for insurance by the federal housing administrator, and to  
5 obtain such insurance.
- 6 (2) To make such loans secured by mortgages on real property or  
7 leasehold, as the federal housing administrator insures or makes  
8 a commitment to insure, and to obtain such insurance.
- 9 (3) To purchase, invest in, and dispose of notes or bonds secured  
10 by mortgage or trust deed insured by the federal housing  
11 administrator or debentures issued by the federal housing  
12 administrator, or bonds or other securities issued by national  
13 mortgage associations.
- 14 (4) To extend credit to any state agency, with the approval of the  
15 department, notwithstanding any other provisions or limitations  
16 of IC 28-1. No law of this state prescribing the nature, amount, or  
17 form of security or requiring security upon which loans or  
18 advances of credit may be made, or prescribing or limiting  
19 interest rates upon loans or advances of credit, or prescribing or  
20 limiting the period for which loans or advances of credit may be  
21 made, shall be deemed to apply to loans, advances of credit, or  
22 purchases made pursuant to subdivisions (1), (2), and (3) and this  
23 subdivision.
- 24 (5) To purchase, take, hold, and dispose of notes, and mortgages  
25 securing such notes, made to any joint stock land bank heretofore  
26 incorporated, in any case in which not less than ninety-nine  
27 percent (99%) of the stock of said joint stock land bank is owned  
28 by the bank or trust company at the time such notes or mortgages  
29 be acquired by the bank or trust company; and upon dissolution  
30 of any such joint stock land bank, or at any stage in the process of  
31 such dissolution, any bank or trust company then owning not less  
32 than ninety-nine percent (99%) of the stock of such joint stock  
33 land bank may take, hold, and dispose of any notes, mortgages, or  
34 other assets of such joint stock land bank of whatsoever nature,  
35 including real estate, wheresoever situated, which such joint stock  
36 land bank shall assign, transfer, convey, or otherwise make over  
37 to such bank or trust company by way of final or partial  
38 distribution of its assets to its stockholders upon such dissolution  
39 or in connection with the process of such dissolution. No law of  
40 this state prescribing the nature, amount, location, or form of  
41 security, or requiring security upon which loans or advances of  
42 credit may be made, or prescribing or limiting interest rates upon

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

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

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

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

34 (8.1) Subject to the prior written approval of the department, and  
 35 notwithstanding section 5 of this chapter, to purchase, hold, and  
 36 convey real estate which is:

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

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

41 Unless a written extension of time is given by the department, the  
 42 bank or trust company shall open its branch within two (2) years

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

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

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

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

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

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

32 ~~(11) (10) Subject to section 3.2 of this chapter, to exercise the~~  
 33 ~~rights and privileges (as defined in section 3.2(a) of this chapter)~~  
 34 ~~that are or may be granted to national banks domiciled in Indiana.~~

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

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

42 (2) the bank or trust company is adequately capitalized.



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

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

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

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

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

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

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

42 (2) every time deposit account is considered a dormant account

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1 after three (3) years from the date of the last transaction recorded  
 2 on the books of the bank, savings bank, or trust company with  
 3 respect to the account.

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

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

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

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

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

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

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

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

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

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

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

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

40 A building and loan association that includes "savings bank" in its title  
 41 under this section does not by that action become a savings bank for  
 42 purposes of IC 28-6.1.

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

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

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

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

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

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

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

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

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1 (1) depositors; and  
 2 (2) borrowers;  
 3 of a mutual savings association as provided in ~~IC 28-13-6-2(c)~~.  
 4 **IC 28-13-6-2(f).**

5 SECTION 6. IC 28-5-1-6 IS AMENDED TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) Every company may exercise  
 7 all the powers conferred upon domestic corporations by IC 23-1 but  
 8 only to the extent that those powers may be necessary, convenient, or  
 9 expedient to accomplish the purposes for which it is organized. Subject  
 10 to the restrictions and limitations contained in this chapter, every  
 11 company may exercise the following powers:

12 (1) To issue, negotiate, and sell its secured or unsecured  
 13 certificates of investment or indebtedness, subject to subdivision  
 14 (17), upon terms and conditions, in any form, and payable at times  
 15 that are not inconsistent with this chapter and, subject to  
 16 subsection (c), bearing a rate of interest approved by the  
 17 department.

18 (2) To make, purchase, discount, or otherwise acquire extensions  
 19 of credit under IC 24-4.5.

20 (3) To lend money without security or upon the security of  
 21 comakers, personal endorsement, or the mortgage of real or  
 22 personal property or the mortgage or pledge of bailment leases or  
 23 rentals due and to become due thereunder and other choses in  
 24 action, and to contract for interest, discount, fees, charges, or  
 25 other consideration fixed or permitted by any laws of Indiana  
 26 concerning interest, discount, or usury.

27 (4) To discount, purchase, or otherwise acquire notes, bills of  
 28 exchange, acceptances, bailment leases, and the property covered  
 29 thereby or the rentals due or to become due thereunder or other  
 30 choses in action and, subject to such restrictions the department  
 31 imposes, to become owner or lessor of personal or real property  
 32 acquired upon the request and for the use of a customer, and to  
 33 incur additional obligations incident to becoming an owner or  
 34 lessor of the property. The liability of a lessee under the lease  
 35 does not constitute an obligation (as defined in section 8 of this  
 36 chapter).

37 (5) To purchase or construct buildings and hold legal title to them,  
 38 to be leased for public purposes to municipal corporations or  
 39 other public authorities having resources sufficient to make  
 40 payment of all rentals as they become due. Each lease agreement  
 41 shall provide that upon expiration, the lessee shall become owner  
 42 of the building.

COPY



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

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

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

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

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

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

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

40 (13) To discount, purchase, or otherwise acquire charge accounts,  
41 and drafts and bills of exchange evidencing charge accounts and  
42 to impose and collect monthly service charges and maintenance

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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 transactions engaged in under the authority of this subdivision.~~

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

13           ~~(18)~~ **(17)** To become a member of a federal home loan bank and  
 14 acquire, own, pledge, sell, assign, or otherwise dispose of shares  
 15 of the capital stock of a federal home loan bank.

16           ~~(19)~~ **(18)** To borrow money and procure advances from a federal  
 17 home loan bank and to transfer, assign to, and pledge with the  
 18 federal home loan bank any of the bonds, notes, contracts,  
 19 mortgages, securities, or other property of the company held or  
 20 acquired as security for the payment of the loans and advances.

21           ~~(20)~~ **(19)** To possess and exercise all rights, powers, and  
 22 privileges conferred upon and do and perform all acts and things  
 23 required of members or shareholders of a federal home loan bank,  
 24 or by the provisions of 12 U.S.C. 1421 through 1449.

25           ~~(21)~~ **(20)** Subject to section 6.3 of this chapter, to exercise the  
 26 rights and privileges (as defined in section 6.3(a) of this chapter)  
 27 that are or may be granted to national banks domiciled in Indiana.

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

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

41           SECTION 7. IC 28-10-1-1 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A reference to a

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1 federal law or federal regulation in IC 28 is a reference to the law or  
2 regulation in effect January 1, ~~1998~~: 1999.

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

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

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

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

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

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

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

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

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

39 (e) ~~If the corporation is~~ A mutual savings association each  
40 shareholder is entitled at every shareholders' meetings to cast one (1)  
41 vote for each one hundred dollars (\$100) or fraction thereof of the total  
42 amount paid in on all shares standing in the shareholder's name on the



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

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

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

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

28 **Chapter 16. Financial Institution Subsidiaries**

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

14        SECTION 11. IC 28-14-1-9 IS ADDED TO THE INDIANA CODE  
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 16 1, 1999]: **Sec. 9. "Subsidiary" means a foreign or domestic**  
 17 **corporation or a limited liability company in which a corporate**  
 18 **fiduciary has more than a fifty percent (50%) ownership.**

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

22            (1) exercise any power through a subsidiary; and

23            (2) purchase, own, and hold shares of stock of a subsidiary.

24        (b) A subsidiary of a corporate fiduciary may not:

25            (1) exercise a power that the corporate fiduciary could not  
 26            exercise; or

27            (2) engage in an activity in which the corporate fiduciary would  
 28            not be permitted to engage.

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

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

35            (1) whether the proposed activities are legally permissible;  
 36            and

37            (2) whether the proposal endangers the safety and soundness  
 38            of the corporate fiduciary.

39        **The director shall either approve or disapprove the application**  
 40 **within sixty (60) days after the date on which the department**  
 41 **receives the application. The period for approval or disapproval**  
 42 **may be extended by the department based on a determination that**



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1 **additional information from the corporate fiduciary or additional**  
 2 **time for analysis is required.**

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

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

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

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

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

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

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

40 SECTION 15. IC 28-15-9-1 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A savings  
 42 association may form and invest in a service corporation to the same



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1 extent and with the same limitations as a federally chartered savings  
2 association, as provided for by 12 CFR ~~545.74~~: **559**.

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

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

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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.

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