

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 ENROLLED ACT No. 1597

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AN ACT to amend the Indiana Code concerning financial institutions.

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

SECTION 1. IC 28-1-1-3, AS AMENDED BY HEA 1564-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:  
Sec. 3. Unless a different meaning is required by the context, the following definitions apply throughout this article:

- (1) "Financial institution" means any bank, trust company, corporate fiduciary, savings association, credit union, savings bank, bank of discount and deposit, or industrial loan and investment company organized or reorganized under the laws of this state, and includes a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5.
- (2) "Bank" or "bank or trust company" means a financial institution organized or reorganized as a bank, bank of discount and deposit, or trust company under the laws of this state with the express power to receive and accept deposits of money subject to withdrawal by check, and possessing such other rights and powers granted by the provisions of this article in express terms or by implication. The term "bank" or "bank or trust company" does not include a savings association, credit union, or industrial loan and investment company.
- (3) "Domestic corporation" means a corporation formed under the

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laws of this state, and "foreign corporation" means every other corporation.

(4) "Articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly referred to, and includes articles of merger and consolidation, and, in the case of corporations organized before July 1, 1933, articles of reorganization, and all amendments thereto.

(5) "Incorporator" means one (1) of the signers of the original articles of incorporation.

(6) "Subscriber" means one who subscribes for shares of stock in a financial institution.

(7) "Shareholder" means one who is a holder of record of shares of stock in a financial institution.

(8) "Capital stock" means the aggregate amount of the par value of all shares of capital stock.

(9) "Capital" means the aggregate amount paid in on the shares of capital stock of a financial institution issued and outstanding.

(10) "Sound capital" means and includes the paid-in and unimpaired capital, the unimpaired surplus, and the unimpaired proceeds of the notes and debentures of any bank which have been issued under the authority and with the approval, in writing, of the department.

(11) "Assets" includes all of the property and rights of every kind of a financial institution and the term "fixed assets" means such assets as are not intended to be sold or disposed of in the ordinary course of business.

(12) "Principal office" means that office maintained by the financial institution in this state, the address of which is required by the provisions of this article to be kept on file in the office of the secretary of state.

(13) "Subscription" means any written agreement or undertaking, accepted by a financial institution, for the purchase of shares of capital stock in the financial institution.

(14) "Department" means the department of financial institutions.

(15) "Member" means a member of the department of financial institutions.

(16) "Branch" means any office, agency, or other place of business, other than the principal office of a financial institution, at which deposits are received, checks paid, or money lent.

(17) "Subsidiary" means any foreign or domestic corporation or limited liability company in which the parent bank, ~~has~~ **savings**

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**bank, savings association, or industrial loan and investment company had** at least eighty percent (80%) ownership **before July 1, 1999, or is formed or acquired in accordance with IC 28-13-16 after June 30, 1999.**

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

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

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

(i) IC 28-1-21.7;

(ii) IC 28-1-21.8;

(iii) IC 28-1-21.9; or

(iv) IC 28-1-30; or

(C) is incorporated under IC 28-12.

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

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

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

(1) To make such loans and advances of credit and purchases of

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obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

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

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

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

(5) To purchase, take, hold, and dispose of notes, and mortgages securing such notes, made to any joint stock land bank heretofore incorporated, in any case in which not less than ninety-nine percent (99%) of the stock of said joint stock land bank is owned by the bank or trust company at the time such notes or mortgages be acquired by the bank or trust company; and upon dissolution of any such joint stock land bank, or at any stage in the process of such dissolution, any bank or trust company then owning not less than ninety-nine percent (99%) of the stock of such joint stock land bank may take, hold, and dispose of any notes, mortgages, or other assets of such joint stock land bank of whatsoever nature, including real estate, wheresoever situated, which such joint stock land bank shall assign, transfer, convey, or otherwise make over to such bank or trust company by way of final or partial distribution of its assets to its stockholders upon such dissolution or in connection with the process of such dissolution. No law of this state prescribing the nature, amount, location, or form of security, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loan or advances of credit may be made, or prescribing

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any ratio between the amount of any loan and the appraised value of the security for such loan, or requiring periodical reductions of the principal of any loan, shall be deemed to apply to loans, notes, mortgages, real estate, or other assets mentioned in this subdivision.

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

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

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

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

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

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

Unless a written extension of time is given by the department, the bank or trust company shall open its branch within two (2) years from the acquisition date of the real estate. If the bank or trust company does not open a branch on the real estate in that time

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

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

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

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

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

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

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

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

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

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

However, in no case shall the aggregate investments by a bank or trust company under subsection (b)(10) exceed ten percent (10%) of the

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capital and surplus of the bank or trust company.

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

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

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

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

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

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

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respect to the account.

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

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

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

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

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

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

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

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

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

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

(1) the words "savings bank"; or

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

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

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

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

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

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

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

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

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

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

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

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of a mutual savings association as provided in ~~IC 28-13-6-2(e)~~.  
**IC 28-13-6-2(f).**

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

- (1) To issue, negotiate, and sell its secured or unsecured certificates of investment or indebtedness, subject to subdivision (17), upon terms and conditions, in any form, and payable at times that are not inconsistent with this chapter and, subject to subsection (c), bearing a rate of interest approved by the department.
- (2) To make, purchase, discount, or otherwise acquire extensions of credit under IC 24-4.5.
- (3) To lend money without security or upon the security of comakers, personal endorsement, or the mortgage of real or personal property or the mortgage or pledge of bailment leases or rentals due and to become due thereunder and other choses in action, and to contract for interest, discount, fees, charges, or other consideration fixed or permitted by any laws of Indiana concerning interest, discount, or usury.
- (4) To discount, purchase, or otherwise acquire notes, bills of exchange, acceptances, bailment leases, and the property covered thereby or the rentals due or to become due thereunder or other choses in action and, subject to such restrictions the department imposes, to become owner or lessor of personal or real property acquired upon the request and for the use of a customer, and to incur additional obligations incident to becoming an owner or lessor of the property. The liability of a lessee under the lease does not constitute an obligation (as defined in section 8 of this chapter).
- (5) To purchase or construct buildings and hold legal title to them, to be leased for public purposes to municipal corporations or other public authorities having resources sufficient to make payment of all rentals as they become due. Each lease agreement shall provide that upon expiration, the lessee shall become owner of the building.
- (6) To invest in bonds, notes, or certificates which are:
  - (A) the direct or indirect obligations of the United States or of

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the state;

(B) obligations of mutual funds or financial institutions if the obligations represent a participation in a fund invested in, or are secured by, direct or indirect obligations of the United States owned by the mutual fund or financial institution;

(C) the direct obligations of a civil or school county, township, city, town, other taxing district, municipality of Indiana;

(D) a special taxing district in Indiana;

(E) issued by or in the name of the trustees of Indiana University, the trustees of Purdue University, the trustees of Ball State University, the trustees of Indiana State University, or the Indiana educational facilities authority;

(F) issued by or in the name of any municipality of Indiana and payable from the revenues to be derived from the operation of facilities for the production or distribution of water, electricity, gas, or from the operation of sewage works; or

(G) the obligations of any Indiana toll road commission, public library, or schoolhouse holding corporation first mortgage bonds;

which district, municipality, taxing unit, or corporation is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted for a period of more than six (6) months within the five (5) year period immediately preceding the purchase of the securities.

(7) To invest in bonds, notes, or debentures rated in one (1) of the first four (4) classifications established by one (1) or more standard rating services specified by the department that satisfy requirements of marketability prescribed periodically by the department that are the obligations of a person, a firm, a limited liability company, a corporation, a state, a territory, an insular possession of the United States, or a county, township, town, city, taxing district, or municipality thereof which is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted within the five (5) year period immediately preceding the purchase of the securities and other investment securities prescribed by the department by rule. As used in this section, the term "investment securities" means marketable obligations evidencing indebtedness of a person, firm, limited liability company, or corporation in the form of bonds, notes, or debentures commonly known as "investment securities" and the definition of the term "investment securities" prescribed by the department by rule. Except as is otherwise provided in this

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chapter or otherwise permitted by law, nothing contained in this subdivision authorizes the purchase by an industrial loan and investment company of shares of stock or other securities, unless the purchase is necessary to prevent loss under a debt previously contracted in good faith and stocks or other securities so purchased or acquired shall, within six (6) months from the time of its purchase, be sold or disposed of at public or private sale, unless otherwise ordered by the department.

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

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

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

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

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

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

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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.

~~(17)~~ **(16)** To do anything necessary and appropriate to obtain or maintain federal deposit insurance under the Federal Deposit

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Insurance Corporation Act (12 U.S.C. 1811 through 1833e), or insurance under any other federal or Indiana law providing insurance for certificates of investment or indebtedness issued by a company. A company that obtains and maintains federal deposit insurance is not required to obtain approval from the department concerning the rate of interest payable on, or the form, the terms, or the conditions of the certificates of investment or indebtedness, and the company may exercise all of the powers that are conferred upon institutions maintaining federal deposit insurance that are not in conflict with Indiana law.

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

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

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

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

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

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

SECTION 7. IC 28-10-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, ~~1998~~: 1999.

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

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

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

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

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

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

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

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

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

**(e) If the corporation is A mutual savings association each shareholder is entitled at every shareholders' meetings to cast one (1) vote for each one hundred dollars (\$100) or fraction thereof of the total amount paid in on all shares standing in the shareholder's name on the books of the association, unless the articles of incorporation provide otherwise. Each borrowing member who is not a shareholder is entitled**

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to cast one (1) vote as a borrower. A person may not, except as proxy, cast more than fifty (50) votes at any election held by the association: **or mutual savings bank may establish the rights of its voting parties in its articles of incorporation or articles of conversion.**

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

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

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

#### **Chapter 16. Financial Institution Subsidiaries**

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

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

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

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

**Sec. 4. (a) A financial institution may acquire or establish a qualifying subsidiary by providing the department with written**

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notice before acquiring or establishing the subsidiary. The department shall notify the requesting financial institution of the department's receipt of the notice.

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

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

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

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

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

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

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

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

**Sec. 7.** (a) Each qualifying subsidiary and nonqualifying subsidiary is subject to examination by the department or the

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

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

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

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

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

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

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

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

SECTION 15. IC 28-15-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A savings association may form and invest in a service corporation to the same extent and with the same limitations as a federally chartered savings association, as provided for by 12 CFR ~~545.74~~. **559**.

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

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

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