

---

---

# SENATE BILL No. 469

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 23-2.

**Synopsis:** Securities and loan brokers. Voids provisions in an agreement to purchase a security that would waive compliance with securities law or a rule or order made under securities law. Increases a security broker's registration fee from 0.05% to 0.10% of the maximum total offering price at which securities are to be offered in Indiana. Increases the minimum registration fee from \$250 to \$300 and the maximum registration fee from \$1,000 to \$2,000 for a security broker. Provides a procedure for an issuer of securities to respond to comments regarding an application for registration made by the securities division. Permits the appointment of a securities division attorney to serve as a special deputy prosecutor in actions arising under securities law. Prohibits the issuance of an interpretive opinions by the securities commissioner concerning an activity that occurred before or is occurring on the date that the opinion is requested. Requires that notice and opportunity to be heard must be provided to a person accused of violating securities law, rather than requiring that a hearing occur as provided by current law. Prohibits various deceptive practices by a person that supplies information concerning securities. Extends liability under securities law to include a variety of persons that are engaged in business with a person liable under current law. Provides that an administrative action under securities law survives the death of a person who might have been a respondent. Makes changes to definitions used in the loan broker statutes. Requires payment of a \$25 registration fee for each employee or potential employee participating in loan origination activities.

**Effective:** July 1, 2004.

---

---

**Clark**

---

---

January 13, 2004, read first time and referred to Committee on Rules and Legislative Procedure.

---

---

C  
o  
p  
y



Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

C  
O  
P  
Y

## SENATE BILL No. 469



A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

1 SECTION 1. IC 23-2-1-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The following securities are  
3 exempted from the registration requirements of section 3 of this  
4 chapter:

- 5 (1) A security (including a revenue obligation) issued or  
6 guaranteed by the United States, a state, a political subdivision of  
7 a state, or an agency or corporate or other instrumentality of one  
8 (1) or more of the foregoing or a certificate of deposit for any of  
9 the foregoing.
- 10 (2) A security issued or guaranteed by Canada, a Canadian  
11 province, a political subdivision of a Canadian province, an  
12 agency, or corporate or other instrumentality of one (1) or more  
13 of the foregoing, or any other foreign government with which the  
14 United States currently maintains diplomatic relations, if the  
15 security is recognized as a valid obligation by the issuer or  
16 guarantor.
- 17 (3) A security issued by and representing an interest in or a debt



1 of, or guaranteed by a bank organized under the laws of the  
 2 United States, a bank, savings institution, or trust company  
 3 organized and supervised under the laws of a state, a federal  
 4 savings association, a savings association organized under the  
 5 laws of a state and authorized to do business in Indiana, a federal  
 6 credit union or a credit union, industrial loan association, or  
 7 similar association organized and supervised under the laws of  
 8 this state, or a corporation or organization whose issuance of  
 9 securities is required by any other law to be passed upon and  
 10 authorized by the department of financial institutions or by a  
 11 federal agency or authority.

12 (4) A security issued or guaranteed by a railroad or other common  
 13 or contract carrier, a public utility, or a common or contract  
 14 carrier or public utility holding company. However, an issuer or  
 15 guarantor must be subject to regulation or supervision as to the  
 16 issuance of its own securities by a public commission, board, or  
 17 officer of the government of the United States, of a state, territory,  
 18 or insular possession of the United States, of a municipality  
 19 located in a state, territory, or insular possession, of the District  
 20 of Columbia, or of the Dominion of Canada or a province of  
 21 Canada.

22 (5) A security listed or approved for listing upon notice of  
 23 issuance on the New York Stock Exchange, the American Stock  
 24 Exchange, the Chicago Stock Exchange, or on any other exchange  
 25 approved and designated by the commissioner, any other security  
 26 of the same issuer that is of senior rank or substantially equal  
 27 rank, a security called for by subscription rights or warrants so  
 28 listed or approved, or a warrant or right to purchase or subscribe  
 29 to any of the foregoing.

30 (6) A promissory note, draft, bill of exchange, or banker's  
 31 acceptance that is evidence of:

- 32 (A) an obligation;
- 33 (B) a guarantee of an obligation;
- 34 (C) a renewal of an obligation; or
- 35 (D) a guarantee of a renewal of an obligation;

36 to pay cash within nine (9) months after the date of issuance,  
 37 excluding grace days, that is issued in denominations of at least  
 38 fifty thousand dollars (\$50,000) and receives a rating in one (1)  
 39 of the three (3) highest rating categories from a nationally  
 40 recognized statistical rating organization.

41 (7) A security issued in connection with an employee stock  
 42 purchase, savings, pension, profit-sharing, or similar benefit plan.

**C**  
**O**  
**P**  
**Y**



- 1 (8) A security issued by an association incorporated under
- 2 IC 15-7-1.
- 3 (9) A security that is an industrial development bond (as defined
- 4 in Section 103(b)(2) of the Internal Revenue Code of 1954) the
- 5 interest of which is excludable from gross income under Section
- 6 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of
- 7 the application of paragraph (4) or (6) of Section 103(b) of the
- 8 Internal Revenue Code of 1954 (determined as if paragraphs
- 9 (4)(A), (5), and (7) were not included in Section 103(b)),
- 10 paragraph (1) of Section 103(b) does not apply to the security.
- 11 (10) A security issued by a nonprofit corporation that meets the
- 12 requirements of Section 103(e) of the Internal Revenue Code of
- 13 1954 and is designated by the governor as the secondary market
- 14 for guaranteed student loans under IC 20-12-21.2.
- 15 (11) A security designated or approved for designation upon
- 16 notice of issuance on the National Association of Securities
- 17 Dealers Automatic Quotation National Market System or any
- 18 other national market system approved and designated by the
- 19 commissioner, any other security of the same issuer that is of
- 20 senior rank or substantially equal rank, a security called for by
- 21 subscription rights or warrants so listed or approved, or a warrant
- 22 or right to purchase or subscribe to any of the foregoing.
- 23 (12) A security that is a "qualified bond" (as defined in Section
- 24 141(e) of the Internal Revenue Code, as amended).
- 25 (b) The following transactions are exempted from the registration
- 26 requirements of section 3 of this chapter:
- 27 (1) An isolated nonissuer offer or sale, whether effected through
- 28 a broker-dealer or not.
- 29 (2) A nonissuer sale effected by or through a registered
- 30 broker-dealer pursuant to an unsolicited order or offer to buy.
- 31 (3) A nonissuer offer or sale by a registered broker-dealer, acting
- 32 either as principal or agent, of issued and outstanding securities
- 33 if the following conditions are satisfied:
- 34 (A) The securities are sold at prices reasonably related to the
- 35 current market price at the time of sale, and if the registered
- 36 broker-dealer is acting as agent, the commission collected by
- 37 the registered broker-dealer on account of the sale is not in
- 38 excess of usual and customary commissions collected with
- 39 respect to securities and transactions having comparable
- 40 characteristics.
- 41 (B) The securities do not constitute an unsold allotment to or
- 42 subscription by the broker-dealer as a participant in the

COPY



1 distribution of the securities by the issuer or by or through an  
2 underwriter.

3 (C) Either:

4 (i) information consisting of the names of the issuer's  
5 officers and directors, a balance sheet of the issuer as of a  
6 date not more than eighteen (18) months prior to the date of  
7 the sale, and a profit and loss statement for either the fiscal  
8 year preceding that date or the most recent year of  
9 operations is published in a securities manual approved by  
10 the commissioner;

11 (ii) the issuer is required to file reports with the Securities  
12 and Exchange Commission pursuant to sections 13 and 15  
13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m and  
14 78o) and is not delinquent in the filing of the reports on the  
15 date of the sale; or

16 (iii) information consisting of the names of the issuer's  
17 officers and directors, a balance sheet of the issuer as of a  
18 date not more than sixteen (16) months prior to the date of  
19 the sale, and a profit and loss statement for either the fiscal  
20 year preceding that date or the most recent year of  
21 operations is on file with the commissioner. The information  
22 required by this item to be on file with the commissioner  
23 must be on a form and made in a manner as the  
24 commissioner prescribes. The fee for the initial filing of the  
25 form shall be twenty-five dollars (\$25). The fee for the  
26 annual renewal filing shall be fifteen dollars (\$15). When a  
27 filing is withdrawn or is not completed by the issuer, the  
28 commissioner must retain the filing fee.

29 (D) There has been compliance with section 6(1) of this  
30 chapter.

31 (E) Unless the issuer is registered under the Investment  
32 Company Act of 1940, all the following must be true at the  
33 time of the transaction:

34 (i) The security belongs to a class that has been in the hands  
35 of the public for at least ninety (90) days.

36 (ii) The issuer of the security is a going concern, is actually  
37 engaged in business, and is not in bankruptcy or  
38 receivership.

39 (iii) Except as permitted by order of the commissioner, the  
40 issuer and any predecessors have been in continuous  
41 operation for at least five (5) years. An issuer or predecessor  
42 is in continuous operation only if the issuer or predecessor

**C**  
**O**  
**P**  
**Y**



1 has gross operating revenue in each of the five (5) years  
 2 immediately preceding the issuer's or predecessor's claim of  
 3 exemption and has had total gross operating revenue of at  
 4 least two million five hundred thousand dollars (\$2,500,000)  
 5 for those five (5) years or has had gross operating revenue of  
 6 at least five hundred thousand dollars (\$500,000) in not less  
 7 than three (3) of those five (5) years.

8 The commissioner may revoke the exemption afforded by this  
 9 subdivision with respect to any securities by issuing an order:

10 (i) if the commissioner finds that the further sale of the  
 11 securities in this state would work or tend to work a fraud on  
 12 purchasers of the securities;

13 (ii) if the commissioner finds that the financial condition of  
 14 the issuer is such that it is in the public interest and is  
 15 necessary for the protection of investors to revoke or restrict  
 16 the exemption afforded by this subsection; or

17 (iii) if the commissioner finds that, due to the limited  
 18 number of shares in the hands of the public or due to the  
 19 limited number of broker-dealers making a market in the  
 20 securities, there is not a sufficient market for the securities  
 21 so that there is not a current market price for the securities.

22 (4) A transaction between the issuer or other person on whose  
 23 behalf the offering is made by an underwriter, or among  
 24 underwriters.

25 (5) A transaction in a bond or other evidence of indebtedness  
 26 secured by a real or chattel mortgage or deed of trust, or by  
 27 agreement for the sale of real estate or chattels, if the entire  
 28 mortgage, deed of trust, or agreement, together with all the bonds  
 29 or other evidences of indebtedness, is offered and sold as a unit.

30 (6) A transaction by an executor, administrator, personal  
 31 representative, sheriff, marshal, receiver, trustee in bankruptcy,  
 32 guardian, conservator, or a person acting in a trust or fiduciary  
 33 capacity where the transaction is effected pursuant to the authority  
 34 of or subject to approval by a court of competent jurisdiction.

35 (7) A transaction executed by a bona fide pledgee without any  
 36 purpose of evading this chapter.

37 (8) An offer or sale to a bank, a savings institution, a trust  
 38 company, an insurance company, an investment company (as  
 39 defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1  
 40 through 80a-52)), a pension or profit-sharing trust, or other  
 41 financial institution or institutional buyer, or to a broker-dealer,  
 42 whether the purchaser is acting for itself or in a fiduciary capacity.

COPY



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

- (9) The offer or sale of securities of an issuer:
  - (i) to a person who is:
    - (A) a director, an executive officer, a general partner, an administrator, or a person who performs similar functions for or who is similarly situated with respect to the issuer;
    - (B) a director, an executive officer, or a general partner of a general partner of the issuer; or
    - (C) any other natural person employed on a full-time basis by the issuer as an attorney or accountant if the person has been acting in this capacity for at least one (1) year immediately prior to the offer or sale;
  - (ii) to an entity affiliated with the issuer;
  - (iii) if the issuer is a corporation, to a person who is the owner of shares of the corporation or of an affiliated corporation representing and possessing ten percent (10%) or more of the total combined voting power of all classes of stock (of the corporation or affiliated corporation) issued and outstanding and who is entitled to vote; or
  - (iv) if the issuer is a limited liability company, to a person who is the owner of an interest in the limited liability company representing and possessing at least ten percent (10%) of the total combined voting power of all classes of such interests (of the limited liability company or affiliated limited liability company) issued and outstanding.
- (10) The offer or sale of a security by the issuer of the security if all of the following conditions are satisfied:
  - (A) The issuer reasonably believes that either:
    - (i) there are no more than thirty-five (35) purchasers of the securities from the issuer in an offering pursuant to this subsection, including purchasers outside Indiana; or
    - (ii) there are no more than twenty (20) purchasers in Indiana.

In either case, there shall be excluded in determining the number of purchasers a purchaser whom the issuer reasonably believes to be an accredited investor or who purchases the securities after they are registered under this chapter.

  - (B) The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation.
  - (C) The issuer reasonably believes that each purchaser of the securities is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for

C  
O  
P  
Y



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

reasonable belief may include:

(i) obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and

(ii) placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under section 3 of this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities.

(D) The issuer:

(i) files with the commissioner and provides to each purchaser in this state an offering statement that sets forth all material facts with respect to the securities; and

(ii) reasonably believes immediately before making a sale that each purchaser who is not an accredited investor either alone or with a purchaser representative has knowledge and experience in financial and business matters to the extent that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(E) If the aggregate offering price of the securities in an offering pursuant to this subdivision (including securities sold outside of Indiana) does not exceed five hundred thousand dollars (\$500,000), the issuer is not required to comply with clause (D) if the issuer files with the commissioner and provides to each purchaser in Indiana the following information and materials:

(i) copies of all written materials, if any, concerning the securities that have been provided by the issuer to any purchaser; and

(ii) unless clearly presented in all written materials, a written notification setting forth the name, address, and form of organization of the issuer and any affiliate, the nature of the principal businesses of the issuer and any affiliate, and the information required in section 5(b)(1)(B), 5(b)(1)(C), 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this chapter.

(F) The commissioner does not disallow the exemption provided by this subdivision within ten (10) full business days after receipt of the filing required by clause (D) or (E). The issuer may make offers (but not sales) before and during the

**C**  
**O**  
**P**  
**Y**



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

ten (10) day period, if:

- (i) each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and
- (ii) no enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received (directly or indirectly) from a prospective purchaser, before the expiration of the ten (10) day period and the vacation of an order disallowing the exemption.

(G) The issuer need not comply with clause (D), (E), or (F) if:

- (i) each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;
- (ii) there are not more than fifteen (15) purchasers in Indiana and each Indiana purchaser is an accredited investor or is a purchaser described in item (i); or
- (iii) the aggregate offering price of the securities, including securities sold outside Indiana, does not exceed five hundred thousand dollars (\$500,000), the total number of purchasers, including purchasers outside of Indiana, does not exceed twenty-five (25) and each purchaser either receives all of the material facts with respect to the security or is an accredited investor or a purchaser described in item (i).

(H) If the issuer makes or is required to make a filing with the commissioner under clause (D) or (E), the issuer must also file with the commissioner at the time of the filing the consent to service of process required by section 16 of this chapter. The issuer shall also file with the commissioner, at the times and in the forms as the commissioner may prescribe, notices of sales made in reliance upon this subdivision.

(I) The commissioner may by rule deny exemption provided in this subdivision to a particular class of issuers, or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter.

(11) An offer or sale of securities to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance if no commission or other remuneration

**C**  
**O**  
**P**  
**Y**



1 (other than a standby commission) is paid or given for soliciting  
 2 a security holder in this state.  
 3 (12) An offer (but not a sale) of a security for which registration  
 4 statements or applications have been filed under this chapter and  
 5 the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order  
 6 or refusal order is in effect and no public proceeding or  
 7 examination looking toward an order is pending under either law.  
 8 (13) The deposit of shares under a voting-trust agreement and the  
 9 issue of voting-trust certificates for the deposit.  
 10 (14) The offer or sale of a commodity futures contract.  
 11 (15) The offer or sale of securities to or for the benefit of security  
 12 holders incident to a vote by the security holders pursuant to the  
 13 articles of incorporation or applicable instrument, on a merger or  
 14 share exchange under IC 23-1-40 or the laws of another state,  
 15 reclassification of securities, exchange of securities under  
 16 IC 28-1-7.5, or sale of assets of the issuer in consideration of the  
 17 issuance of securities of the same or another issuer.  
 18 (16) A limited offering transactional exemption, which may be  
 19 created by rule adopted by the commissioner. The exemption  
 20 must further the objectives of compatibility with federal  
 21 exemptions and uniformity among the states.  
 22 (c) The commissioner may consider and determine if a proposed  
 23 sale, transaction, issue, or security is entitled to an exemption accorded  
 24 by this section. The commissioner may decline to exercise the  
 25 commissioner's authority as to a proposed sale, transaction, issue, or  
 26 security. An interested party desiring the commissioner to exercise the  
 27 commissioner's authority must submit to the commissioner a verified  
 28 statement of all material facts relating to the proposed sale, transaction,  
 29 issue, or security, which must be accompanied by a request for a ruling  
 30 as to the particular exemption claimed, together with a filing fee of one  
 31 hundred dollars (\$100). After notice to the interested parties as the  
 32 commissioner determines is proper and after a hearing, if any, the  
 33 commissioner may enter an order finding the proposed sale,  
 34 transaction, issue, or security entitled or not entitled to the exemption  
 35 claimed. An order entered, unless an appeal is taken from it in the  
 36 manner prescribed in section 20 of this chapter, is binding upon the  
 37 commissioner and upon all interested parties, provided that the  
 38 proposed sale, transaction, issue, or security when consummated or  
 39 issued conforms in every relevant and material particular with the facts  
 40 as set forth in the verified statement submitted.  
 41 (d) The commissioner may by order deny or revoke an exemption  
 42 specified in subsection (a)(6), (a)(7), or (b) with respect to a specific

COPY



1 security or transaction, if the commissioner finds that the securities to  
 2 which the exemption applies would not qualify for registration under  
 3 sections 4 and 5 of this chapter. No order may be entered without  
 4 appropriate prior notice to all interested parties, opportunity for  
 5 hearing, and written findings of fact and conclusions of law, except that  
 6 the commissioner may by order summarily deny or revoke any of the  
 7 specific exemptions pending final determination of a proceeding under  
 8 this subsection. Upon the entry of a summary order, the commissioner  
 9 shall promptly notify all interested parties that it has been entered, of  
 10 the reasons for the order, and that within fifteen (15) days of the receipt  
 11 of a written request the matter will be set down for hearing. If no  
 12 hearing is requested and none is ordered by the commissioner, the  
 13 order will remain in effect until it is modified or vacated by the  
 14 commissioner. If a hearing is requested or ordered, the commissioner,  
 15 after notice of and opportunity for hearing to all interested persons,  
 16 may modify or vacate the order or extend it until final determination.  
 17 No order under this subsection may operate retroactively. No person  
 18 may be considered to have violated section 3 of this chapter by reason  
 19 of an offer or sale effected after the entry of an order under this  
 20 subsection if the person sustains the burden of proof that the person did  
 21 not know, and in the exercise of reasonable care could not have known,  
 22 of the order.

23 (e) If, with respect to an offering of securities, any notices or written  
 24 statements are required to be filed with the commissioner under  
 25 subsection (b)(10), the first filing made with respect to the offering  
 26 must be accompanied by a filing fee of one hundred dollars (\$100).

27 **(f) A condition, stipulation, or provision binding a person**  
 28 **acquiring a security to waive compliance with this chapter or a**  
 29 **rule or order under this chapter is void.**

30 SECTION 2. IC 23-2-1-6 IS AMENDED TO READ AS FOLLOWS  
 31 [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) An application for  
 32 registration may be filed by:

- 33 (1) the issuer;  
 34 (2) any other person on whose behalf the offering is to be made;  
 35 or  
 36 (3) a registered broker-dealer.

37 (b) A person filing an application for registration shall pay a filing  
 38 fee of ~~one-twentieth~~ **one-tenth** of one percent (~~0.05%~~) **(0.1%)** of the  
 39 maximum aggregate offering price at which the registered securities  
 40 are to be offered in Indiana, but the fee may not be less than ~~two~~ **three**  
 41 hundred ~~fifty~~ **(\$300)** and may not be more than ~~one~~ **two**  
 42 thousand dollars (~~\$1,000~~) **(\$2,000)**.

C  
o  
p  
y



1 (c) When an application for registration under subsection (b) is  
2 withdrawn before the effective date or a preeffective stop order is  
3 entered under section 7 of this chapter, the commissioner shall retain  
4 ~~two hundred fifty dollars (\$250)~~ **one hundred percent (100%)** of the  
5 fee.

6 (d) A person filing an amendment to an effective registration which  
7 requires an order of the commissioner shall pay a twenty-five dollar  
8 (\$25) filing fee.

9 (e) An application for registration shall specify:  
10 (1) the amount of securities to be offered in this state;  
11 (2) the states in which a registration statement or similar  
12 document in connection with the offering has been or is to be  
13 filed; and  
14 (3) an adverse order, judgment, or decree entered in connection  
15 with the offering by the regulatory authorities in each state or by  
16 a court or the Securities and Exchange Commission.

17 (f) A document filed under this chapter within five (5) years  
18 preceding the filing of an application for registration may be  
19 incorporated by reference in the application for registration if the  
20 document is currently accurate.

21 (g) The commissioner may by rule or otherwise permit the omission  
22 of an item of information or document from an application for  
23 registration.

24 (h) In the case of a nonissuer distribution, any part of the  
25 information that might otherwise be required under section 5 of this  
26 chapter or subsection (i) need not be furnished if the person filing the  
27 application for registration produces evidence to the reasonable  
28 satisfaction of the commissioner that the person, or the persons on  
29 whose behalf the distribution is to be made, cannot furnish that part of  
30 the required information without unreasonable effort or expense.

31 (i) A registration is effective for:  
32 (1) two (2) years from its effective date; or  
33 (2) a shorter period during which the security is being offered or  
34 distributed in a nonexempted transaction by or for the account of  
35 the issuer or the person on whose behalf the offering is being  
36 made or by an underwriter or broker-dealer who is still offering  
37 part of an unsold allotment or subscription taken by the  
38 underwriter or broker-dealer as a participant in the distribution,  
39 except during the time a stop order is in effect under section 7 of  
40 this chapter.

41 (j) So long as a registration is effective, the commissioner may by  
42 rule or order require the person who filed the application for

C  
o  
p  
y



1 registration to file reports, not more often than quarterly, to keep  
2 reasonably current the information contained in the application for  
3 registration and to disclose the progress of the offering.

4 (k) The commissioner may by rule or order require as a condition of  
5 registration by qualification or coordination:

6 (1) that a security issued within the past three (3) years or to be  
7 issued to a promoter for a consideration substantially different  
8 from the public offering price, or to a person for a consideration  
9 other than cash, be deposited in escrow; and

10 (2) that the proceeds from the sale of the registered security be  
11 impounded until the issuer receives a specified amount.

12 The commissioner may by rule or order determine the conditions of an  
13 escrow or impounding required under this subsection, but the  
14 commissioner may not reject a depository solely because of location in  
15 another state.

16 (l) No transferable share is exempt from registration under section  
17 2(b)(3) of this chapter or is qualified for registration under sections 4  
18 or 5 of this chapter unless the issuer has designated a qualified transfer  
19 agent to handle all transfers. The commissioner may adopt rules to  
20 implement this subsection. The commissioner may by rule or order  
21 exempt an issuer, wholly or partially, from the requirements of this  
22 subsection.

23 (m) A registration statement may be amended after its effective date  
24 to increase the securities specified to be offered and sold if the public  
25 offering price and underwriters' discounts and commissions are not  
26 changed from the amounts reported to the commissioner. An  
27 amendment becomes effective upon an order of the commissioner. A  
28 person filing an amendment must pay a late registration fee of  
29 twenty-five dollars (\$25) and a filing fee under subsection (b) for the  
30 additional securities proposed to be offered. An amendment relates  
31 back to the date of the sale of additional securities being registered if  
32 the amendment is filed within three (3) months after the date of the sale  
33 and the additional filing fee and late registration fee are paid.

34 (n) As permitted by Section 106(c) of the Secondary Mortgage  
35 Market Enhancement Act of 1984 (15 U.S.C. 77r-1(c)), securities that  
36 are offered and sold pursuant to Section 4(5) of the Securities Act of  
37 1933 or that are mortgage-related securities (as that term is defined in  
38 Section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C.  
39 78c(a)(41)):

40 (1) must comply with all applicable:  
41 (A) registration and qualification requirements of this chapter;  
42 and

C  
O  
P  
Y



1 (B) rules adopted by the commissioner; and  
2 (2) shall not be treated as obligations issued by the United States  
3 for the purposes of this chapter.

4 **(o) If:**

5 **(1) the division:**

6 **(A) does not approve an application for registration by**  
7 **coordination or qualification; and**

8 **(B) notifies the applicant not later than ten (10) days after**  
9 **the date the application was not approved of a deficiency**  
10 **in the application that, if satisfied, would allow the**  
11 **approval of the application;**

12 **the applicant may satisfy the deficiency within sixty (60) days**  
13 **after the date described in clause (B); and**

14 **(2) an applicant does not satisfy the deficiency described in**  
15 **subdivision (1):**

16 **(A) the application is considered abandoned;**

17 **(B) the issuer does not receive a refund of the application**  
18 **fee; and**

19 **(C) no further action is required by the division.**

20 SECTION 3. IC 23-2-1-15, AS AMENDED BY P.L.270-2003,  
21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
22 JULY 1, 2004]: Sec. 15. (a) This chapter shall be administered by a  
23 division of the office of the secretary of state. The secretary of state  
24 shall appoint a securities commissioner who shall be responsible for  
25 the direction and supervision of the division and the administration of  
26 this chapter under the direction and control of the secretary of state.  
27 The salary of the securities commissioner shall be paid out of the funds  
28 appropriated for the administration of this chapter. The commissioner  
29 shall serve at the will of the secretary of state.

30 **(b) The secretary of state:**

31 **(1) shall employ a chief deputy, a senior investigator, a senior**  
32 **accountant, and other deputies, investigators, accountants, clerks,**  
33 **stenographers, and other employees necessary for the**  
34 **administration of this chapter; and**

35 **(2) shall fix their compensation with the approval of the budget**  
36 **agency.**

37 The chief deputy, other deputies, the senior investigator, and the senior  
38 accountant, once employed under this chapter, may be dismissed only  
39 for cause by the secretary of state upon ten (10) days notice in writing  
40 stating the reasons for dismissal. Within fifteen (15) days after  
41 dismissal, the chief deputy, other deputies, the senior investigator, and  
42 the senior accountant may appeal to the state personnel board. The

C  
O  
P  
Y



1 state personnel board shall hold a hearing, and if it finds that the  
2 appealing party was dismissed for a political, social, religious, or racial  
3 reason, the appealing party shall be reinstated to the appealing party's  
4 position without loss of pay. In all other cases, if the decision is  
5 favorable to the appealing party, the secretary of state shall follow the  
6 findings and recommendations of the board, which may include  
7 reinstatement and payment of salary or wages lost. The hearing and any  
8 subsequent proceedings or appeals shall be governed by the provisions  
9 of IC 4-15-2 and IC 4-21.5.

10 (c) Fees and funds of whatever character accruing from the  
11 administration of this chapter shall be accounted for by the secretary of  
12 state and shall be deposited with the treasurer of state to be deposited  
13 by the treasurer of state in the general fund of the state. Expenses  
14 incurred in the administration of this chapter shall be paid from the  
15 general fund upon appropriation being made for the expenses in the  
16 manner provided by law for the making of those appropriations.  
17 However, costs of investigations recovered under sections 16(d) and  
18 17.1(c) of this chapter shall be deposited with the treasurer of state to  
19 be deposited by the treasurer of state in a separate account to be known  
20 as the securities division enforcement account. The funds in the  
21 account shall be available, with the approval of the budget agency, to  
22 augment and supplement the funds appropriated for the administration  
23 of this chapter. The funds in the account do not revert to the general  
24 fund at the end of any fiscal year.

25 (d) In connection with the administration and enforcement of the  
26 provisions of this chapter, the attorney general shall render all  
27 necessary assistance to the securities commissioner upon the  
28 commissioner's request, and to that end, the attorney general shall  
29 employ legal and other professional services as are necessary to  
30 adequately and fully perform the service under the direction of the  
31 securities commissioner as the demands of the securities division shall  
32 require. Expenses incurred by the attorney general for the purposes  
33 stated in this subsection shall be chargeable against and paid out of  
34 funds appropriated to the attorney general for the administration of the  
35 attorney general's office.

36 (e) Neither the secretary of state, the securities commissioner, nor  
37 an employee of the securities division shall be liable in their individual  
38 capacity, except to the state, for an act done or omitted in connection  
39 with the performance of their respective duties under this chapter.

40 (f) The commissioner, subject to the approval of the secretary of  
41 state, may adopt rules, orders, and forms necessary to carry out this  
42 chapter, including rules and forms concerning registration statements,

C  
o  
p  
y



1 applications, reports, and the definitions of any terms if the definitions  
 2 are consistent with this chapter. The commissioner may by rule or order  
 3 allow for exemptions from registration requirements under sections 3  
 4 and 8 of this chapter if the exemptions are consistent with the public  
 5 interest and this chapter.

6 (g) The provisions of this chapter delegating and granting power to  
 7 the secretary of state, the securities division, and the securities  
 8 commissioner shall be liberally construed to the end that:

9 (1) the practice or commission of fraud may be prohibited and  
 10 prevented;

11 (2) disclosure of sufficient and reliable information in order to  
 12 afford reasonable opportunity for the exercise of independent  
 13 judgment of the persons involved may be assured; and

14 (3) the qualifications may be prescribed to assure availability of  
 15 reliable broker-dealers, investment advisers, and agents engaged  
 16 in and in connection with the issuance, barter, sale, purchase,  
 17 transfer, or disposition of securities in this state.

18 It is the intent and purpose of this chapter to delegate and grant to and  
 19 vest in the secretary of state, the securities division, and the securities  
 20 commissioner full and complete power to carry into effect and  
 21 accomplish the purpose of this chapter and to charge them with full and  
 22 complete responsibility for its effective administration.

23 (h) It is the duty of a prosecuting attorney, as well as of the attorney  
 24 general, to assist the securities commissioner upon the commissioner's  
 25 request in the prosecution to final judgment of a violation of the penal  
 26 provisions of this chapter and in a civil proceeding or action arising  
 27 under this chapter. If the commissioner determines that an action based  
 28 on the securities division's investigations is meritorious:

29 (1) the commissioner or a designee empowered by the  
 30 commissioner shall certify the facts drawn from the investigation  
 31 to the prosecuting attorney of the judicial circuit in which the  
 32 crime may have been committed;

33 (2) the commissioner and the securities division shall assist the  
 34 prosecuting attorney in prosecuting an action under this section,  
 35 **which may include a securities division attorney serving as a**  
 36 **special deputy prosecutor appointed by the prosecuting**  
 37 **attorney;**

38 (3) a prosecuting attorney to whom facts concerning fraud are  
 39 certified under subdivision (1) may refer the matter to the attorney  
 40 general; and

41 (4) if a matter has been referred to the attorney general under  
 42 subdivision (3), the attorney general may:

C  
O  
P  
Y



1 (A) file an information in a court with jurisdiction over the  
 2 matter in the county in which the offense is alleged to have  
 3 been committed; and

4 (B) prosecute the alleged offense.

5 (i) The securities commissioner shall take, prescribe, and file the  
 6 oath of office prescribed by law. The securities commissioner, senior  
 7 investigator, and each deputy are police officers of the state and shall  
 8 have all the powers and duties of police officers in making arrests for  
 9 violations of this chapter, or in serving any process, notice, or order  
 10 connected with the enforcement of this chapter by whatever officer or  
 11 authority or court issued. The securities commissioner, the deputy  
 12 commissioners for enforcement, and the investigators comprise the  
 13 enforcement department of the division and are considered a criminal  
 14 justice agency for purposes of IC 5-2-4 and IC 10-13-3.

15 (j) The securities commissioner and each employee of the securities  
 16 division shall be reimbursed for necessary hotel and travel expenses  
 17 when required to travel on official duty. Hotel and travel  
 18 reimbursements shall be paid in accordance with the travel regulations  
 19 prescribed by the budget agency.

20 (k) It is unlawful for the secretary of state, the securities  
 21 commissioner, or the securities division's employees to use for personal  
 22 benefit information that is filed with or obtained by the securities  
 23 division and that is not made public. No provision of this chapter  
 24 authorizes the secretary of state, the securities commissioner, or the  
 25 employees of the securities division to disclose information except  
 26 among themselves, or when necessary or appropriate, in a proceeding  
 27 or investigation under this chapter. No provision of this chapter either  
 28 creates or derogates from a privilege that exists at common law or  
 29 otherwise when documentary or other evidence is sought under a  
 30 subpoena directed to the secretary of state, the securities commissioner,  
 31 or the securities division or its employees.

32 (l) The commissioner may honor requests from interested persons  
 33 for interpretative opinions and from interested persons for  
 34 determinations that the commissioner will not institute enforcement  
 35 proceedings against specified persons for specified activities. A  
 36 determination not to institute enforcement proceedings must be  
 37 consistent with this chapter. **A person may not request an  
 38 interpretive opinion concerning an activity that:**

39 **(1) occurred before; or**

40 **(2) is occurring on;**

41 **the date that the opinion is requested.** The commissioner shall charge  
 42 a fee of one hundred dollars (\$100) for an interpretative opinion or

C  
O  
P  
Y



1 determination.

2 SECTION 4. IC 23-2-1-19 IS AMENDED TO READ AS  
 3 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) A person who  
 4 offers or sells a security in violation of this chapter, and who does not  
 5 sustain the burden of proof that the person did not know and in the  
 6 exercise of reasonable care could not have known of the violation, is  
 7 liable to any other party to the transaction who did not knowingly  
 8 participate in the violation or who did not have, at the time of the  
 9 transaction, knowledge of the violation, who may sue either at law or  
 10 in equity to rescind the transaction or to recover the consideration paid,  
 11 together, in either case, with interest as computed in subsection (g)(1),  
 12 plus costs, and reasonable attorney's fees, less the amount of any cash  
 13 or other property received on the security upon the tender of the  
 14 security by the person bringing the action or for damages if the person  
 15 no longer owns the security. Damages are the amount that would be  
 16 recoverable upon a tender less:

17 (1) the value of the security when the buyer disposed of the  
 18 security; and

19 (2) the interest as computed in subsection (g)(1) on the value of  
 20 the security from the date of disposition.

21 (b) A person who purchases a security in violation of this chapter,  
 22 and who does not sustain the burden of proof that the person did not  
 23 know and in the exercise of reasonable care could not have known of the  
 24 violation, is liable to any other party to the transaction who did not  
 25 knowingly participate in the violation or who did not have, at the time  
 26 of the transaction, knowledge of the violation. The other party to the  
 27 transaction may bring an action to rescind the transaction or for  
 28 damages, together, in either case, with reasonable attorney's fees, upon  
 29 the tender of the consideration received by the person bringing the  
 30 action.

31 (c) A person who, for compensation, engages in the business of  
 32 advising others, either directly or through publications or writings, as  
 33 to the value of securities or as to the advisability of investing in,  
 34 purchasing, or selling securities, or who, for compensation and as a part  
 35 of a regular business, issues analyses or reports concerning securities  
 36 and:

37 (1) violates section 8, 12.1(b), ~~or 14~~, **or 26** of this chapter;

38 (2) employs a device, scheme, or artifice to defraud a person; or

39 (3) engages in an act that operates or would operate as fraud or  
 40 deceit upon a person;

41 is liable to the other person, who may bring an action to recover any  
 42 consideration paid for advice, any loss due to advice, interest at eight

C  
 O  
 P  
 Y



1 percent (8%) each year from the date consideration was paid, costs, and  
 2 reasonable attorney's fees less the value of cash or property received  
 3 due to the advice. It is a defense to an action brought for a violation of  
 4 section 12.1(b) **or 26** of this chapter that the person accused of the  
 5 violation did not know of the violation and, exercising reasonable care,  
 6 could not have known of the violation.

7 (d) A person who directly or indirectly controls a person liable  
 8 under subsection (a), (b), or (c) **or section 27 of this chapter**, a  
 9 partner, officer, or director of the person, a person occupying a similar  
 10 status or performing similar functions, an employee of a person who  
 11 materially aids in the conduct creating the liability, and a broker-dealer  
 12 or agent who materially aids in the conduct are also liable jointly and  
 13 severally with and to the same extent as the person, unless the person  
 14 who is liable sustains the burden of proof that the person did not know,  
 15 and in the exercise of reasonable care could not have known, of the  
 16 existence of the facts by reason of which the liability is alleged to exist.  
 17 There is contribution as in cases of contract among the several persons  
 18 liable.

19 (e) A tender specified in this section may be made at any time  
 20 before entry of judgment.

21 (f) A cause of action under this statute survives the death of a person  
 22 who might have been a plaintiff or defendant.

23 (g) Action under this section shall be commenced within three (3)  
 24 years after discovery by the person bringing the action of a violation of  
 25 this chapter, and not afterwards. No person may sue under this section:

26 (1) if that person received a written offer, before suit and at a time  
 27 when the person owned the security, to refund the consideration  
 28 paid together with interest on that amount from the date of  
 29 payment to the date of repayment, with interest on:

30 (A) interest-bearing obligations to be computed at the same  
 31 rate as provided on the security; and

32 (B) all other securities at the rate of eight percent (8%) per  
 33 year;

34 less the amount of any income received on the security, and the  
 35 person failed to accept the offer within thirty (30) days of its  
 36 receipt; or

37 (2) if the person received an offer before suit and at a time when  
 38 the person did not own the security, unless the person rejected the  
 39 offer in writing within thirty (30) days of its receipt.

40 (h) No person who has made or engaged in the performance of a  
 41 contract in violation of this chapter or a rule or order under this  
 42 chapter, or who has acquired a purported right under a contract with

C  
O  
P  
Y



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

knowledge of the facts by reason of which its making or performance was in violation, may base a suit on the contract.

(i) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity.

SECTION 5. IC 23-2-1-19.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19.5. (a) If the commissioner determines, after **notice and opportunity for** a hearing, that any person has violated this chapter, the commissioner may, in addition to or in lieu of all other remedies, impose a civil penalty upon any person who has violated this chapter. This penalty may not exceed ten thousand dollars (\$10,000) for each violation of this chapter found to have been committed. An appeal from the decision of the commissioner imposing a civil penalty under this subsection may be taken by any aggrieved party pursuant to section 20 of this chapter.

(b) The commissioner may bring any action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (a).

(c) Penalties collected under this section shall be deposited in the securities division enforcement account established under section 15(c) of this chapter.

SECTION 6. IC 23-2-1-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 26. (a) This section applies to a person engaged in the business of providing advice to others, directly or by means of analyses, reports, or other publications, concerning:**

- (1) the value of securities; or**
  - (2) the advisability of:**
    - (A) investing in;**
    - (B) purchasing; or**
    - (C) selling;**
- securities.**
- (b) A person described in subsection (a) may not:**
- (1) employ a device, a scheme, or an artifice to defraud a person; or**
  - (2) engage in an act, a practice, or a course of business that operates or would operate as fraud or deceit upon a person.**

SECTION 7. IC 23-2-1-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

C  
o  
p  
y



1, 2004]: **Sec. 27. (a) A person who:**

- 2 (1) directly or indirectly controls;
- 3 (2) is a partner, an officer, or a director of;
- 4 (3) occupies a similar status or performs a similar functions
- 5 as; or
- 6 (4) materially aids in the conduct creating the liability and is:
  - 7 (A) an employee of;
  - 8 (B) a broker dealer of; or
  - 9 (C) an agent of;

10 a person liable under section 3, 8, 12, 12.1, 13, or 26 of this chapter  
 11 is liable jointly and severally with and to the same extent as the  
 12 person liable under section 3, 8, 12, 12.1, 13, or 26 of this chapter.

13 (b) A person is not liable under this section if the person proves  
 14 that:

- 15 (1) the person did not know; and
  - 16 (2) in the exercise of reasonable care could not have known;
- 17 of the existence of the facts by reason of which the liability exists.

18 SECTION 8. IC 23-2-1-28 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20 1, 2004]: **Sec. 28. An administrative action under this chapter  
 21 survives the death of a person who might have been a respondent.**

22 SECTION 9. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,  
 23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2004]: **Sec. 3. (a) As used in this chapter, "certificate of  
 25 registration" means a certificate issued by the commissioner  
 26 authorizing an individual to engage in origination activities on behalf  
 27 of a licensee.**

28 (b) As used in this chapter, "creditor" means a person:

- 29 (1) that loans funds of the person in connection with a loan; and
- 30 (2) to whom the loan is initially payable on the face of the note or  
 31 contract evidencing the loan.

32 (c) As used in this chapter, "license" means a license issued by the  
 33 commissioner authorizing a person to engage in the loan brokerage  
 34 business.

35 (d) As used in this chapter, "licensee" means a person that is issued  
 36 a license under this chapter.

37 (e) As used in this chapter, "loan broker" means any person who, in  
 38 return for any consideration from any person, promises to procure a  
 39 loan for any person or assist any person in procuring a loan from any  
 40 third party. or who promises to consider whether or not to make a loan  
 41 to any person. "Loan broker" does not include:

- 42 (1) any bank, savings bank, trust company, savings association,

**C  
O  
P  
Y**



1 credit union, or any other financial institution that is:

2 (A) regulated by any agency of the United States or any state;  
3 and

4 (B) regularly actively engaged in the business of making  
5 consumer loans that are not secured by real estate or taking  
6 assignment of consumer sales contracts that are not secured by  
7 real estate;

8 (2) any person, **while engaged in and** authorized to sell and  
9 service loans for the Federal National Mortgage Association or  
10 the Federal Home Loan Mortgage Corporation, issue securities  
11 backed by the Government National Mortgage Association, make  
12 loans insured by the United States Department of Housing and  
13 Urban Development, act as a supervised lender or nonsupervised  
14 automatic lender of the United States Department of Veterans  
15 Affairs, or act as a correspondent of loans insured by the United  
16 States Department of Housing and Urban Development. **This**  
17 **subdivision applies only to a person engaged in a transaction**  
18 **with an individual;**

19 (3) any insurance company; or

20 (4) any person arranging financing for the sale of the person's  
21 product.

22 (f) As used in this chapter, "loan brokerage business" means a  
23 person acting as a loan broker.

24 (g) As used in this chapter, "origination activities" means:  
25 ~~establishing the terms or conditions of a loan with a borrower or~~  
26 ~~prospective borrower by~~

27 (1) **acquiring;**

28 (2) **processing; or**

29 (3) **assisting a borrower or prospective borrower concerning;**  
30 **information used to procure a loan from a third party.**

31 (h) **As used in this chapter, "originator" means a person**  
32 **engaged in origination activities.**

33 (i) As used in this chapter, "person" means an individual, a  
34 partnership, a trust, a corporation, a limited liability company, a limited  
35 liability partnership, a sole proprietorship, a joint venture, a joint stock  
36 company, or another group or entity, however organized.

37 (j) As used in this chapter, "registrant" means an individual who  
38 is registered to engage in origination activities under this chapter.

39 (k) As used in this chapter, "ultimate equitable owner" means a  
40 person who, directly or indirectly, owns or controls any ownership  
41 interest in a person, regardless of whether the person owns or controls  
42 the ownership interest through one (1) or more other persons or one (1)

C  
o  
p  
y



1 or more proxies, powers of attorney, or variances.  
2 SECTION 10. IC 23-2-5-4, AS AMENDED BY P.L.230-1999,  
3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2004]: Sec. 4. (a) Any person desiring to engage or continue  
5 in the loan brokerage business shall apply to the commissioner for a  
6 license under this chapter.

7 (b) An individual employed by a licensee to engage in origination  
8 activities shall be registered, by the licensee, with the commissioner  
9 under section 5(a)(3), 5(a)(6), and ~~section~~ 5(c) of this chapter.

10 SECTION 11. IC 23-2-5-5, AS AMENDED BY P.L.115-2001,  
11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2004]: Sec. 5. (a) An application for license or renewal of a  
13 license must contain:

- 14 (1) consent to service of process under subsection (e);
- 15 (2) evidence of the bond required in subsection (b);
- 16 (3) an application fee of two hundred dollars (\$200) **for each**
- 17 **applicant, and a registration fee of twenty five dollars (\$25)**
- 18 **for each employee or prospective employee of the applicant**
- 19 **who is or who will be engaged in origination activities;**
- 20 (4) an affidavit affirming that none of the applicant's ultimate
- 21 equitable owners, directors, managers, or officers have been
- 22 convicted, in any jurisdiction, of an offense involving fraud or
- 23 deception that is punishable by at least one (1) year of
- 24 imprisonment, unless waived by the commissioner under
- 25 subsection (f);
- 26 (5) evidence that the applicant, if the applicant is an individual,
- 27 has completed the education requirements under section 21 of this
- 28 chapter;
- 29 (6) a registration form setting forth the name, home address, home
- 30 telephone number, and Social Security number of each employee
- 31 or prospective employee of the applicant who is or who will be
- 32 engaged in origination activities; and
- 33 (7) evidence that the license applicant's proposed registrants have
- 34 completed the education requirements of section 21 of this
- 35 chapter.

36 (b) A licensee must maintain a bond satisfactory to the  
37 commissioner in the amount of fifty thousand dollars (\$50,000), which  
38 shall be in favor of the state and shall secure payment of damages to  
39 any person aggrieved by any violation of this chapter by the licensee.

40 (c) The commissioner shall issue a license to an applicant that meets  
41 the licensure requirements of this chapter. Whenever the registration  
42 provisions of this chapter have been complied with, the commissioner

C  
o  
p  
y



1 shall issue a certificate of registration authorizing the registrant to  
 2 engage in origination activities.

3 (d) Licenses issued by the commissioner before January 1, 2001,  
 4 shall be valid, and renewal of such licenses shall not be required until  
 5 January 1, 2001. Individuals engaging in origination activities for a  
 6 licensee before January 1, 2001, shall not be required to apply for and  
 7 receive a certificate of registration until January 1, 2001. Except as  
 8 otherwise provided in this subsection, licenses and certificates of  
 9 registration issued by the commissioner are valid until January 1 of the  
 10 second year after issuance. The education requirements of section 21  
 11 of this chapter shall first apply to applicants for issuance or renewal of  
 12 licenses or registrations effective as of January 1, 2001.

13 (e) Every applicant for licensure or for renewal of a license shall file  
 14 with the commissioner, in such form as the commissioner by rule or  
 15 order prescribes, an irrevocable consent appointing the secretary of  
 16 state to be the applicant's agent to receive service of any lawful process  
 17 in any noncriminal suit, action, or proceeding against the applicant  
 18 arising from the violation of any provision of this chapter. Service shall  
 19 be made in accordance with the Indiana Rules of Trial Procedure.

20 (f) Upon good cause shown, the commissioner may waive the  
 21 requirements of subsection (a)(4) for one (1) or more of an applicant's  
 22 ultimate equitable owners, directors, managers, or officers.

23 (g) Whenever an initial or renewal application for license is denied  
 24 or withdrawn, the commissioner shall retain the initial or renewal  
 25 application fee paid.

C  
o  
p  
y

